

4. In general, staff found the Commission's existing authorities and policies sufficient, and sufficiently flexible, to enable pipelines to respond to emergencies in a timely manner. However, following consideration of the April 2002 conference's presentations, discussions, and comments, the Commission has identified circumstances under which its present practices could constrain a pipeline from initiating a timely response. Accordingly, as discussed below, the Commission proposes to amend its regulations concerning blanket certificates.

Discussion

The Commission's Existing Authority

5. In the normal course of events, an interstate gas pipeline seeking to build new facilities, or rebuild existing facilities, will file an application with the Commission pursuant to section 7(c) of the Natural Gas Act (NGA) for authorization for the proposed construction. The Commission reviews the application, considers comments in favor of and opposed to the proposal, and assesses economic and environmental impacts. The time required to ensure that all views receive a full hearing, and all impacts are adequately assessed, varies with the complexity of the project proposed. The time needed to reach a final determination on an application is typically measured in months. Consequently, the standard NGA section 7(c) certification process is not suited to an emergency situation that requires an immediate response to prevent loss of life, impairment of health, or damage to property.

6. In establishing the initial framework for federal regulation of the natural gas industry, the NGA explicitly recognized the need to provide for a rapid response to an emergency. NGA section 7(c)(1)(B) states that "the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application of a certificate." The Commission has issued temporary certificates in response to companies' requests for authorization to undertake various activities on an emergency basis, with temporary authorization valid until the Commission acts on an application for permanent authorization. Natural gas companies have received temporary emergency authorization to build new facilities, modify existing facilities, alter operational parameters, and change

rates.³ Section 2.57 of the Commission's regulations states that temporary certificates should be employed for minor enlargements or extensions of existing facilities, and not for construction "of major proportions."⁴

7. In addition to the NGA's statutory emergency provision, the Commission's regulations permit pipelines to undertake limited construction projects without waiting for NGA section 7(c) case specific certificate authorization. For example, section 2.55 of the Commission's regulations permits pipeline companies to replace or refurbish deteriorating facilities and make minor upgrades to facilities without first obtaining an NGA section 7(c) certificate. Thus, if facilities are damaged or become inoperable for any reason, a pipeline could, pursuant to section 2.55, undertake repairs or replacement as necessary to restore service. However, section 2.55 is limited to returning a facility to its original service capacity; it does not apply to efforts that will expand or eliminate existing services. Further, section 2.55 applies only to new facilities located within the same right-of-way or at the same site as the existing facilities. Finally, certain auxiliary facilities, and replacement facilities projected to cost more than \$7,500,000, are subject to a 30-day prior notice.⁵

8. If gas facilities are damaged, and a subsequent investigation of the event or contamination of the area restricts access to the damage site, we expect section 2.55 would prove ineffective if rapid reconstruction is required to restore service. In such circumstances, a company would be compelled to reroute around its damaged facilities, which would require construction outside the footprint of the existing facilities' right-

of-way. Construction beyond the bounds of the existing right-of-way, and even construction within the existing right-of-way that uses temporary workspace other than that used to construct the original facility, is barred by section 2.55.⁶

9. Section 2.55 of the Commission's regulations serves, in effect, as standing authorization for pipelines to perform periodic maintenance and routine replacement. Given section 2.55's inherent limitations on the type of and location of facilities permitted, and the potential to trigger a 30-day prior notice delay, we believe that section 2.55 cannot always serve to ensure a prompt response to sudden unanticipated service disruptions. In particular, section 2.55 is inapplicable if construction outside of the existing right-of-way is needed.⁷ Section 2.55 is best suited to its intended use, that being the replacement of physically deteriorated or obsolete facilities and the installation of auxiliary or appurtenant facilities to enhance operations, such as valves, pigging facilities, or communication equipment.

10. The blanket authority conferred by part 157, subpart F, of the regulations provides another vehicle for reconstruction of facilities in an emergency, but this authority is also limited. Virtually all existing interstate gas pipelines hold blanket certificates allowing them to acquire, operate, abandon, replace, and rearrange certain facilities. Acting under blanket authority, a pipeline may install new facilities on a new right-of-way, which may be acquired through the pipeline's exercise of eminent domain. However, blanket authority is limited to projects costing no more than \$21,000,000.⁸ Further, blanket authority does not apply to projects that alter or add mainline loop line, or extend a mainline, or increase compression to boost mainline capacity. An important

³ See, e.g., Texas-Ohio Pipeline, Inc., 58 FERC ¶ 61,025 (1992) (order issuing temporary certificate) and 69 FERC ¶ 61,145 (1994) (order issuing permanent certificate).

⁴ In *Pennsylvania Gas and Water Company v. FPC*, 427 F.2d 568, 574 (D.C. Cir. 1970), the court reviewed the legislative history of the section 7 temporary certificate provision, and found it "was meant to cover a narrow class of situations, to permit temporary and limited interconnection, or expansion of existing facilities in order to meet such emergencies as breakdowns in the service of operating natural gas companies, or sudden unanticipated demands." Citing *Algonquin Gas Transmission Company v. FPC*, 201 F.2d 334 (1st Cir. 1953). See also *Mississippi River Transmission Corporation*, 40 FPC 190 (1968).

⁵ This amount is adjusted annually. See 18 CFR 157.208(d) (2002), Table 1, column 1. Advance notice for replacement facilities that exceed the current \$7.5 million cost limit of 18 CFR 157.208(d) must include maps and a description of the erosion control, revegetation and maintenance, and stream and wetland crossings procedures. This prior notice would not apply if DOT safety regulations required that the replacement activity be performed immediately.

⁶ See 18 CFR § 2.55(b) (2002), Appendix A to part 2, Guidance for Determining the Acceptable Construction Area for Replacements, specifies the criteria that must be met in order to proceed under section 2.55(b), and cautions that "[i]f these guidelines cannot be met," and no exemption is applicable, "construction authorization must be obtained pursuant to another regulation under the Natural Gas Act."

⁷ The scope of section 2.55 is expanded in section 2.60 to include the installation and modification of "defense-related facilities," such as emergency company headquarters, emergency communications equipment, and fallout shelters at compressor stations. However, as a practical matter, the Commission does not expect this particular provision to ameliorate the other section 2.55 constraints that render these regulations unsuitable as a vehicle to recover from accidental or intentional damage.

⁸ This amount is adjusted annually. By way of contrast, section 2.55 has no such project cost cap.