

exception to this limitation applies to mainline, lateral, and compressor replacements that do not qualify under 2.55(b) because they will result in an incidental increase in capacity⁹ or because they cannot satisfy the location or workspace requirements of section 2.55(b).¹⁰

11. In other words, part 157, subpart F, permits replacement construction that uses temporary workspace beyond the bounds of the temporary workspace previously used to construct the original facilities as necessary to install replacement facilities. These regulations also permit locating a portion of mainline, lateral, or compressor replacement facilities outside, but presumably adjacent to, an existing right-of-way where, for whatever reason, the new facilities could not be placed entirely within the original facilities' existing right-of-way. These regulations, however, do not appear to contemplate mainline construction over an entirely different route as may be necessary to circumvent the site of a disaster if immediate replacement is necessary before the original site is again available.

12. In addition, part 157 blanket authorization, although granted automatically, is subject to compliance with standard conditions, in particular, the environmental criteria specified in § 157.206(d) and the reporting requirements of § 157.207. Any project undertaken pursuant to blanket authority that will exceed \$7,500,000 in costs is subject to a 45-day prior notice requirement.¹¹ If a protest to a proposal is submitted during this time, and the project sponsor is unable to resolve the objection within another 30 days, then instead of proceeding under blanket authority, the prior notice filing is treated as an application for section 7(c) certificate authorization.

13. While section 2.55 and part 157 of the Commission's regulations are commonly employed for routine business activities, part 284, subpart I, of the regulations applies only in an emergency.¹² Under part 284, a pipeline

may extend its facilities, interconnect with other pipelines, sell gas as needed to maintain adequate service or serve particular customers, and increase gas deliveries in order to meet weather-induced demand. However, approval for facilities and services under part 284 is provisional; the regulations only apply to actions that are anticipated to last no longer than 60 days,¹³ since it is expected that the pipeline will be able to reconstitute service within this time frame or will seek another source of authorization for its actions.¹⁴ Although part 284 places no explicit limitation on the types of facilities or transactions covered, these regulations have not been viewed as applicable to long-term or large-scale undertakings. In practice, these emergency regulations have typically been used for small-scale efforts, such as installing a tap. Also, the part 284 emergency regulations do not provide the pipeline with the right to acquire easements by means of eminent domain.

Issues Regarding the Commission's Existing Authority

14. The Commission believes that its existing authority is adequate to manage a timely response to most foreseeable types of emergencies caused by damage to gas facilities.¹⁵ Conference participants, however, have identified certain circumstances that could inhibit a timely response. We are persuaded that if facilities sustain sudden, significant, unanticipated damage, and restoring service requires construction of mainline facilities over a new right-of-way, our existing regulations may not always allow for arapid or sufficiently expansive response to such an emergency.

15. INGAA urges the Commission to take the lead in expediting emergency permits and authorizing necessary facilities. INGAA proposes that the Commission, following notification by a pipeline that an emergency exists,

foreseeable facility outage resulting from a natural disaster beyond the company's control; or a situation in which the company determines that immediate action is needed or will be needed to protect life, health, or property.

¹³ A single, additional 60-day extension may be requested. Although the part 284, Subpart I, regulations may exempt a gas company, Hinshaw pipeline, or intrastate pipeline from NGA section 7 jurisdiction in order to respond to an emergency, if emergency conditions persist beyond 120 days (60 days plus a 60-day extension), then an NGA section 7(c) certificate would be required for permanent authority to continue operations.

¹⁴ See, e.g., Northern Natural Gas Company, 64 FERC ¶ 61,187, at 62,562–63 (1993).

¹⁵ The Commission requested comments on whether it would be prudent to prepare for emergencies by directing pipelines to build redundant facilities. No participant endorsed this approach.

authorize the replacement of facilities as necessary to restore service, whether within or outside of an existing right-of-way. INGAA suggests the Commission consider including a certificate or tariff provision to authorize emergency construction outside of an existing right-of-way. INGAA does not propose that this provision be self implementing, but rather suggests that it be subject to the Director of Energy Projects finding that an emergency exists and the Commission finding the actions of the pipeline to be appropriate.

16. A representative of Pennsylvania's Public Utility Commission recommends that the Commission require pipelines to incorporate an emergency response plan as a condition of a certificate, and that as part of a certificate authorization, the Commission grant waivers for certain operations in the event of specific service interruptions, such as authorization to establish a new right-of-way to detour around a damaged facility site when necessary to expedite restoration. Conference participants suggest that the Commission amend its part 284 emergency regulations to allow for actions that last longer than the current 60-day limit.

17. Several participants at the April 2002 conference stress the need to plan for and to coordinate the efforts of local, state, and federal authorities to respond to an emergency, and suggest the Commission take the lead in this effort.¹⁶ In large part, events have effectively overtaken such suggestions. In May 2002, DOE created an Office of Energy Assurance, charged with the mission of working in close collaboration with local and state governments and the private sector to guard against and respond to energy disruptions. The Office of Energy Assurance has formed a team composed of DOE personnel, DOE laboratories and facilities, other federal agencies, local and state officials, and the owners and operators of the energy infrastructure. This team's task is to identify critical components and interdependencies of the energy system, identify threats to the system, recommend actions to correct or mitigate vulnerabilities, plan for response and recovery in the event of disruptions, and provide technical response support during emergencies.

18. The Office of Energy Assurance's statement of mission and goals indicate that it will function as the federal managerial focal point for: Activities involving the location and content of

¹⁶ For example, several comments propose the formation of an interagency crisis task force, made up of representatives of local, state, and federal agencies, charged with coordinating and expediting emergency response and recovery.

⁹ Incremental increases in mainline capacity that occur incidental to facilities' modifications undertaken for sound engineering purposes are permitted. 18 CFR 157.202(b)(2)(i) (2002).

¹⁰ 18 CFR 157.202(b)(2) (2002).

¹¹ 18 CFR 157.205 (2002). Further, before initiating construction or easement negotiations, a pipeline company seeking to act under blanket authorization is expected to make a good faith effort to provide 30-day prior notice to all affected landowners. 18 CFR § 157.203(d) (2002).

¹² "Emergency" is defined as an actual or expected shortage of gas supply or capacity that would disrupt existing service; a sudden unanticipated loss of gas supply or capacity; an anticipated loss of gas supply or capacity due to a