

equipment stockpiles; overseeing industry mutual aid pooling and exchange programs; identifying critical facilities, equipment, and personnel; establishing communications protocol; and developing security and contingency plans.¹⁷

19. On November 13, 2002, the President signed into law the Homeland Security Act of 2002. Among other things, that law establishes that within the Department of Homeland Security the Undersecretary of Emergency Preparedness and Response will be responsible for coordinating federal response resources in the event of a terrorist attack or other disaster. In light of these developments, the Commission concludes that it can best support intra- and inter-governmental and industry coordination by contributing to and participating in the efforts of the Department of Homeland Security and DOE's Office of Energy Assurance.

20. The regulatory amendments proposed herein are limited in that they do not address sudden, yet unanticipated, loss of gas or capacity attributable to safety concerns. Nevertheless, we note that section 16(a)(1) of the Pipeline Safety Improvement Act of 2002 establishes an interagency committee, headed by the Council on Environmental Quality (CEQ), with the Commission among its members, "to develop and ensure implementation of a coordinated environmental review and permitting process in order to enable pipeline operators to commence and complete all activities necessary to carry out pipeline repairs" expeditiously. To the extent further changes to the Commission's rules may be necessary to address safety concerns, we expect the interagency committee called for by this Act will provide a vehicle for identifying the relevant issues.

Proposed Regulations

21. To allow pipelines to expedite recovery following an emergency due to a sudden unanticipated loss of gas or capacity that threatens life, health, or property, the Commission is proposing to expand the scope of construction permitted under the blanket certificate authority of part 157, subpart F, of its regulations. One issue conference participants raised repeatedly was the prospect that if mainline facilities are damaged, and the facility owner's access to the damaged site is temporarily

restricted, no regulatory remedy now exists to ensure the rapid restoration of service. The logical alternative to repairing facilities at the point of damage would be to build around that point. The Commission's section 2.55 regulations do not allow replacement and repair activities to take place outside of facilities' original right-of-way, and so preclude any such rerouting. As explained, part 157 is less restrictive, but still does not permit the extensive deviation from an existing right-of-way that would presumably be necessary to circumvent a restricted or quarantined area. Accordingly, we propose expanding part 157 to permit pipeline companies to establish new rights-of-way around an accident site in order to reconnect a severed mainline or to construct other facilities as needed to restore service. Further, to the extent that a pipeline company could compensate for damage to one portion of its system by rearranging gas flows or increasing throughput on an unaffected portion of its system, we propose to place such system modifications within the category of "eligible facilities."

22. As is, part 157 blanket authorization only applies to a limited set of "eligible facilities," and specifically excludes the extension, expansion, or looping of a mainline.¹⁸ As noted above, this restriction was broadened incrementally in 1999 to include mainline replacements undertaken for sound engineering reasons that either created an incidental increase in mainline capacity or did not lie within the original facilities' footprint, and consequently were outside of the section 2.55(b) replacement parameters.¹⁹ However, this modification in the breadth of eligible facilities did not contemplate the more extensive rerouting that would be required to reach around a cordoned accident area.²⁰ We request comments on amending § 157.202 of our regulations to allow a pipeline to reconstitute disrupted service by routing

around, laying loop line along, or boosting compression on a damaged mainline.

23. This proposal is not intended as an open-ended expansion of existing blanket authority. The enlargement of the scope of permissible actions under part 157, subpart F, is restricted to actions necessary to restore service after an interruption due to an emergency event. By way of contrast, if hydrostatic testing discloses a structural weakness in a pipeline, while this weakness has the potential to cause an interruption in service, unless the pipeline has actually ruptured, these circumstances would not qualify as an emergency, as there would be no sudden unanticipated loss of gas or capacity. Accordingly, the pipeline company would be expected to act under other existing authority, such as section 2.55 of our regulations, to rectify the identified structural weakness. Similarly, part 157 would not apply to system modifications that boosted compression or mainline capacity unless the increase was undertaken as part of a program to restore service cut off as a consequence of an event resulting in a sudden unanticipated loss of gas or capacity.

24. We propose to expand the "eligible facility" definition by amending the last line of § 157.202(b)(2)(i) as follows: "Replacements for the primary purpose of creating additional main line capacity are not eligible facilities; however, replacements for the primary purpose of restoring service to prevent loss of life, impairment of health, or damage to property due to sudden unanticipated damage to main line facilities are eligible facilities." In addition, we propose to amend § 157.202(b)(2)(ii)(C), which lists certain exclusions from eligible facilities, to clarify that facilities, including looping and compression, that alter the capacity of a mainline, when necessary to reconstitute service after sudden unanticipated damage to a mainline, will be considered replacement facilities for the primary purpose of restoring service, and be defined as eligible facilities. Specifically, we propose to revise § 157.202(b)(2)(ii)(C) to read as follows: "A facility, including compression and looping, that alters the capacity of a main line, except replacement facilities covered under § 157.202(b)(2)(i)."

25. We believe this expanded blanket authority fills a gap that now confronts a pipeline unable to initiate recovery efforts when (1) section 2.55 of the regulations is inapplicable because of the need to construct outside the footprint of the existing facilities, (2) the

¹⁷ In the event of an emergency, numerous entities will be required to coordinate communications and actions. To facilitate recovery efforts, the Commission will make available via its Web site a list of the entities likely to be involved in these efforts.

¹⁸ 18 CFR 157.202(b)(2)(ii)(B) and (C) (2002).

¹⁹ Order No. 603, FERC Stats. & Regs. ¶ 31,073, at 30,791–94 (1999).

²⁰ Order No. 603 envisioned replacements such as "a section of deteriorated or obsolete 18-inch pipe located between existing 20-inch sections," where replacing the 18-inch pipe with a larger 20-inch segment would serve the sound engineering purpose of making pigging the combined stretch of pipe possible. Order No. 603 also recognized the need to grant natural gas companies the flexibility to act under blanket certificate authority to replace facilities where construction of new facilities might spill over the original temporary workspace or permanent right-of-way. Nothing in Order No. 603 envisioned replacement of facilities outside the existing right-of-way by the creation of an entirely new route due to the need to circumvent an accident site.