

- b.4. Rickettsia rickettsii.
 - c. Bacteria, as follows:
 - c.1. Bacillus anthracis;
 - c.2. Brucella abortus;
 - c.3. Brucella melitensis;
 - c.4. Brucella suis;
 - c.5. Burkholderia mallei (Pseudomonas mallei);
 - c.6. Burkholderia pseudomallei (Pseudomonas pseudomallei);
 - c.7. Chlamydia psittaci;
 - c.8. Clostridium botulinum;
 - c.9. Francisella tularensis;
 - c.10. Salmonella typhi;
 - c.11. Shigella dysenteriae;
 - c.12. Vibrio cholerae; or
 - c.13. Yersinia pestis.
 - d. "Toxins", as follows: and subunits thereof:
 - d.1. Botulinum toxins;
 - d.2. Clostridium perfringens toxins;
 - d.3. Conotoxin;
 - d.4. Microcystin (cyanoginisin);
 - d.5. Ricin;
 - d.6. Saxitoxin;
 - d.7. Shiga toxin;
 - d.8. Staphylococcus aureus toxins;
 - d.9. Tetrodotoxin;
 - d.10. Verotoxin; or
 - d.11. Aflatoxins.

1C991 Vaccines, immunotoxins and medical products, as follows (see List of Items controlled).

License Requirements

Reason for Control: CB, AT.

Control(s)	Country chart
CB applies to 1C991.c.	CB Column 3.
AT applies to entire entry.	AT Column 1.

License Exceptions

LVS: N/A
 GBS: N/A
 CIV: N/A

List of Items Controlled

Unit: \$ value.

Related Controls: N/A.

Related Definitions: For the purpose of this entry "immunotoxin" is defined as an antibody-toxin conjugate intended to destroy specific target cells (e.g., tumor cells) that bear antigens homologous to the antibody. For the purpose of this entry, "medical products" are prepackaged in units applicable to the intended medical treatment, and do not include biological toxins in any other configuration, including bulk shipments, or for any other end-uses. Such toxins are controlled by ECCN 1C351.

Items: a. Vaccines containing items controlled by ECCNs 1C351, 1C352, 1C353 and 1C354;

b. Immunotoxins; and
 c. Medical products containing biological toxins controlled by ECCN 1C351.d, except d.5 and d.6.

3. Category 2, Materials Processing, of the Commerce Control List is amended by revising the "List of Items Controlled" in ECCN 2B351 to read as follows:

2B351 Toxic gas monitoring systems and dedicated detectors therefor.

* * * * *

List of Items Controlled

Unit: Equipment in number.

Related Controls: N/A.

Related Definitions: N/A.

Items: a. Designed for continuous operation and usable for the detection of chemical warfare agents or chemicals controlled by 1C350 at concentrations of less than 0.3mg/m³ (see technical note below); or

b. Designed for the detection of cholinesterase-inhibiting activity.

Technical Note: Toxic Gas Monitoring Systems, controlled under 2B351.a., include those with detection capability for chemicals containing phosphorus, sulfur, fluorine or chlorine, other than those specified in 1C350.

Dated: September 30, 1999.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 157, 284, 380, and 385

[Docket No. RM98-9-001; Order No. 603-A]

Revision Of Existing Regulations Under the Natural Gas Act

Issued September 29, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order on rehearing.

SUMMARY: On rehearing, the Federal Energy Regulation Commission reaffirms its basic determinations in Order No. 603 and modifies and clarifies certain aspects of the Final Rule based on the requests for rehearing. Order No. 603 updated the Commission's regulations governing the filing of applications for the construction and operation of facilities to provide service or to abandon facilities or service under section 7 of the Natural Gas Act. The changes were

necessary to conform the Commission's regulations to the Commission's current policies.

DATES: The revision to the regulations in this order on rehearing become effective November 8, 1999.

ADDRESSES: Federal Energy Regulatory Commission 888 First Street, N.E. Washington DC, 20426.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE., Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home Page (<http://www.ferc.fed.us>) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 8.0. User assistance is available at 202-208-2474 or by E-mail to cips.master@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home Page using the RIMS link or the Energy Information Online icon. User assistance is available at 202-208-2222, or by E-mail to rimsmaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

I. Introduction

In this order the Federal Energy Regulatory Commission (Commission) is modifying and clarifying certain aspects of the Final Rule issued in Order No. 603.¹ Specifically, this order (1) clarifies certain aspects of section 2.55, including the 30-day notification requirement, the construction area requirements, and the phrase "designed delivery capacity" as it pertains to a storage reservoir; (2) clarifies how a pipeline should apply the construction area guidelines in Appendix A to Part 2; (3) explains the modifications to the existing electronic filing requirements in section 157.6; (4) clarifies that under section 157.8 the Director of the Office of Pipeline Regulation (OPR) may reject an application subsequent to noticing it if the applicant fails to provide necessary information; (5) clarifies certain aspects of section 157.10 that requires that the pipeline make available copies of its application and voluminous or difficult to reproduce material at various locations along the proposed pipeline route; (6) explains aspects of section 157.202(b), including the application of the terms "closest available size" and "sound engineering reasons," and clarifies what minor changes to storage operations would encompass; (7) changes the definition of "interconnecting point" in section 157.202(b)(2)(ii) to include the related pipeline segment; (8) explains the implications of the dismissal of protests under section 157.205(g); (9) explains the compressor station noise requirements in section 157.206(b)(5); (10) removes the phrase "due to construction delays" from section 157.206(c); (11) explains certain environmental requirements in section 157.208(c)(9); (12) clarifies the applicability of the prior notice procedures to increases to the Maximum Allowable Operating Pressures; (13) denies requests that the Commission review its bypass and contract demand (CD) reduction policies in this proceeding; (14) clarifies the automatic and prior notice abandonment authorization in section 157.216; (15) clarifies the application of certain requirements under the National Historic Preservation Act of 1966 in Appendix II to Subpart F and section 380.14; (16) explains the requirements concerning nonjurisdictional facilities in section 380.12(c)(2); (17) clarifies the requirements concerning the cultural

resource reports required in section 380.12(f)(2); (18) modifies the minimum filing requirements in section 380.12(k)(4) for information concerning compressor facilities; (19) clarifies the minimum filing requirements applying to the Coastal Zone Management Act in Appendix A to Part 380, Resource Report 8; and (20) explains the siting and maintenance requirements in section 380.15.

II. Background

On April 29, 1999, the Commission issued a Final Rule in Order No. 603 amending its regulations governing the filing of applications for certificates of public convenience and necessity authorizing the construction and operation of facilities to provide service or to abandon facilities or service under section 7 of the Natural Gas Act (NGA),² and amending the blanket certificate regulations under Subpart F of Part 157. The Final Rule: (1) Conformed the existing regulations with current practices and policies; (2) eliminated ambiguities and obsolete language; (3) made the regulations more germane and less cumbersome; and (4) reduced the existing reporting burden by a total of 8,284 hours. Additionally, the Final Rule consolidated and clarified the Commission's current practices concerning the filing and reporting requirements associated with its environmental review of pipeline construction projects under the National Environmental Policy Act of 1969.³

The Commission received rehearing/clarification requests from 10 parties including the American Public Gas Association (APGA), CNG Transmission Corporation (CNG), Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia), El Paso Energy Corporation (El Paso), Enron Interstate Pipelines (Enron), Great Lakes Gas Transmission (Great Lakes), Indicated Shippers, Interstate Natural Gas Association of America (INGAA), Process Gas Consumers Group, the American Iron and Steel Institute, and the Georgia Industrial Group (Process Gas), and Williston Gas Interstate Pipeline Company (Williston Basin).

Indicated Shippers filed a motion to file an answer and an answer to requests for rehearing. While our rules do not permit answers to rehearing requests,⁴ we may, for good cause, waive a rule.⁵ We find good cause to do so in this instance. To achieve a complete and

accurate record, we will accept Indicated Shippers' answer.

III. Discussion

A. Section 2.55(a)—Auxiliary Facilities Constructed With Newly Proposed Jurisdictional Facilities

Under section 2.55 of the regulations, the Commission exempts auxiliary facilities, such as valves, drips, yard and station piping, and cathodic protection equipment, from NGA section 7(c) authority. Traditionally, section 2.55 limited the installation of auxiliary facilities to facilities installed on an existing transmission system. In the Final Rule, the Commission stated that it would include in the exemption auxiliary facilities constructed in conjunction with new transmission facilities. However, for auxiliary facilities on newly authorized transmission facilities not yet in service, the Final Rule stated that the Commission would require that the pipeline notify it 30 days prior to installing the auxiliary facilities.

Comments. On rehearing, El Paso and INGAA request that the Commission clarify that the 30-day advance notice requirement is satisfied if the auxiliary facilities are identified in a pipeline's certificate or prior notice application. El Paso states that the pipeline should not be required to make a separate filing to identify such auxiliary facilities.

El Paso and INGAA also request that the Commission clarify that the 30-day advance notification requirement does not apply when such facilities are being constructed on, or at the same time, as facilities which are being constructed automatically under the Subpart F blanket construction certificate. They contend that such notification would essentially nullify the automatic authorization provision and delay construction of such facilities.

Columbia questions what follows once the pipeline notifies the Commission of the impending section 2.55(a) construction. It contends that if the Commission intends to conduct a substantive review of the facilities, it should have the necessary resources to conduct any inquiry in a timely manner.

Commission Response. The Commission intends to review the filings under section 2.55(a)(2) for compliance with the Commission's environmental regulations. The Commission intended that the 30-day notification requirement in section

¹ Revisions of Existing Regulations Under Part 157 and Related Sections of the Commission's Regulations Under the Natural Gas Act, Order No. 603, 64 FR 26571 (May 14, 1999), FERC Stats. and Regs. ¶ 31,073 (Apr. 29, 1999).

² 15 USC 717b.

³ 42 USC 4321-4370a.

⁴ See 18 CFR 385.213(a)(2).

⁵ 18 CFR 385.101(e).

2.55(a)(2)(ii) apply to case-specific projects which include an Environmental Report as specified in section 380.12 of the Commission's regulations or to prior notice projects under section 157.208. It does not apply to projects constructed under the Part 157 automatic authorization procedures. To clarify this in the regulations, we will add the phrase "except those authorized under the automatic authorization procedures of Subpart F of Part 157 of this chapter" to section 2.55(a)(2)(ii).

We will also clarify that the 30-day notification requirement does not apply if the auxiliary facilities are identified in the certificate application. We believe that the use of the word "or" between paragraphs (ii) and (iii) of paragraph 2.55(a)(2) precludes the application of both to a given project and its related auxiliary facilities. However, we will also modify the introductory paragraph to paragraph 2.55(a)(2) to read, "[o]ne of the following requirements will apply to any specified auxiliary installation."

B. Section 2.55(b)—Construction Area for Replacement Facilities in Existing Right-of-Way

1. Existing, Unrelated Rights-of-Way

In the Final Rule, the Commission codified its current policy that limits the construction area for replacement facilities to the temporary work space used to construct the original facilities.

Comments. On rehearing, Great Lakes contends that the Commission did not respond to its comments requesting authority to use its entire existing right-of-way, including Commission-approved rights-of-way unrelated to the construction of facilities being replaced. It claims that any existing right-of-way that has already been disturbed for pipeline construction, has been reviewed for archaeological concerns, and for which the pipeline has obtained appropriate land rights should be available for use. Great Lakes notes that the pipeline would be required to obtain updated clearances for cultural resources and threatened or endangered species prior to using such replacement construction areas. It asserts that the Commission's concerns regarding environmental assessments are not present when the pipeline uses an existing right-of-way. It requests that the Commission explain why use of unrelated, existing right-of-way is not appropriate when use of the existing right-of-way approved for the facilities being replaced is less safe, environmentally disadvantaged, or impractical.

Commission Response. The types of construction activities being conducted under section 2.55 are replacements that should only involve basic maintenance or repair to relatively minor facilities where the Commission has determined that no significant impact to the environment will occur. The Commission believes that the existing right-of-way that was used to construct the original facilities should be sufficient for these types of activities. Pipelines may use their blanket certificate authority to perform projects involving more extensive work that would need additional workspace, including the use of other unrelated rights-of-way. This would allow for the required additional environmental scrutiny. Therefore, those projects should be done under the pipeline's blanket certificate.

As Great Lakes points out, there may be a need for updated clearances. The Commission believes that use of the blanket process is more appropriate in these situations since the replacement regulations do not contain any such requirement. Accordingly, Great Lakes' request that the Commission allow the use of any existing rights-of-way for activities conducted under section 2.55 is denied.

2. Equivalent Designed Delivery Capacity

The Final Rule clarified that the phrase "equivalent designed delivery capacity" used in the context of replacement storage wells refers to both the daily deliverability and seasonal cyclic capacity.

Comments. CNG seeks further clarification that "designed delivery capacity" refers to the capacity of the entire storage pool, not that of each individual well. CNG states that operators manage the pool on the basis of overall deliverability and that it is the deliverability of the entire storage pool that is certificated, not each individual well in the pool. According to CNG, the deliverability from individual wells will fluctuate over time, and increasing the deliverability of an individual well will not increase the certificated capacity of the entire storage pool.

Commission Response. We agree with CNG that it is the deliverability and capacity of a storage reservoir that is certificated, not the capability of individual wells. We recognize that the deliverability of an individual replacement well may differ from the original well being replaced. However, as long as the replacement well does not alter the underlying parameters of the storage field, *i.e.*, the certificated capacity, deliverability, or storage

boundary, and functions in a manner similar to the well it replaced, we will view such a replacement well as having a substantially equivalent designed delivery capacity as the facility it replaced.

C. Appendix A to Part 2—Guidance for Determining the Acceptable Construction Area for Replacements

In the Final Rule, the Commission codified its current policy that requires that replacement facilities must be placed in the existing right-of-way. Appendix A to Part 2 delineates guidelines for the pipeline to use to determine the acceptable construction area for replacement facilities. Subpart (b) of the Appendix requires that the temporary right-of-way (working side) be on the same side as the original construction work area.

Comments. Williston Basin requests that the Commission clarify how subpart (b) applies when there is no documentation as to which side was used in constructing the original pipeline. It contends that it may not always be possible for the pipeline to tell by visual inspection which side was the original working side. Williston Basin suggests that it would be appropriate for the Commission to state that, when the original working side is unknown, the pipeline should make the working side of any replacement activity the side that will have the lowest impact on the environment.

Commission Response. The purpose of Appendix A is to provide guidance for determining the appropriate workspace for replacement facilities constructed under section 2.55 when the original documentation is not available. In Appendix A, the Commission is attempting to maximize the probability that the pipeline construction footprint of the replacement activities will coincide with the footprint of the original construction and that the nature of the environmental impact will be the same.

As stated, the guidelines in paragraph (a) are to be used in the absence of contradictory physical evidence. Any reasonable physical evidence pointing to the likely location of the working side during the initial construction can be used to estimate the size and location of the original work space. For example, if the line to be replaced is a loop adjacent (within about 25 feet) to another line, it may be assumed that the working side was on the opposite side of the line to be replaced. If there are trees or structures close to one side of the pipeline to be replaced, and they predate the pipeline, then it is unlikely that side was the working side.

However, we note that when visual inspection fails, *i.e.*, if there are no reasonable hints to the location of the working side, the facilities cannot be constructed under section 2.55. They must be constructed under the Subpart F of Part 157 blanket program to ensure protection of the resources. The Part 157 regulations include criteria for minimizing environmental impacts without relying on the company's guess as to where the facilities should be constructed to have the lowest impact on the environment.

D. Section 157.6—Applications; General Requirements

1. Electronic Filing Requirements

The Final Rule modified the existing electronic filing requirements for certificate applications.

Comments. On rehearing, Enron states that section 157.6(a)(2) has been revised to require that all applications and exhibits are to be "submitted in electronic format as prescribed by the Commission." Enron is unsure as to whether the Commission is proposing substantive changes to the current electronic reporting requirement or is placing a general reference to electronic formats in the regulations in anticipation of new or modified electronic formats that may be a result of the proceeding in Docket No. PL98-1-000.⁶ Enron seeks clarification that the Commission is not imposing new electronic filing requirements as part of the Final Rule. INGAA raises similar concerns.

Commission Response. The Final Rule does not impose any new electronic filing requirements. The documents listed in section 157.6(a)(2) simply delineated the specific documents that previously were included in the all encompassing phrase: "[a]pplications, amendments thereto, and all exhibits and other submissions required * * * under this subpart" in section 157.6(a)(1).

Additionally, on November 30, 1998, a Notice to Provide Additional Guidance about the Revised Electronic Filing Requirements for Certificate Applications was issued that explained the specific electronic format requirements and reduced the electronic filing requirements.⁷ These reduced electronic filing requirements will be in effect pending the outcome of the proceeding in Docket No. PL98-1-000.

⁶ 63 FR 27532 (May 13, 1998).

⁷ Notice to Provide Additional Guidance About the Revised Electronic Filing Requirements for Certificated Application, 80 FERC ¶ 62,139 (1998).

2. Pricing Policy Statement

In the Final Rule in section 157.6(b)(8) the Commission codified certain filing requirements in accordance with the *Pricing Policy Statement For New and Existing Facilities Constructed By Interstate Natural Gas Pipeline*.⁸ On September 15, 1999, the Commission issued a new statement of policy to provide the industry with guidance as to how the Commission will evaluate proposals for certificating new construction.⁹ On rehearing, we will make conforming modifications to section 157.6(b)(8) to reflect the new policy statement.

E. Section 157.8—Acceptance for Filing or Rejection of Applications

In the Final Rule, the Commission revised section 157.8 to provide that the Director of OPR may reject an application within ten days of filing if the application "patently fails to comply with applicable statutory requirements or with applicable Commission rules, regulations, and orders." The ten day time frame is intended to provide the Director the opportunity to make an initial finding that the application contains the minimum information necessary for providing public notice of the application and to begin preliminary processing. As stated in the Final Rule, the Commission recognizes that not all information, for example, certain environmental data, may be available at the time of filing. However, we note that once the application has been noticed, the applicants are required to file any and all information necessary to complete their application. We wish to clarify that this section does not limit the Director's ability to subsequently reject the application after it has been noticed if the applicant fails to provide any information needed to fully process that application. Therefore, we will modify section 157.8 to state that the Director may also reject an application after it has been noticed if it does not conform to the requirements of Part 157.

F. Section 157.10—Interventions and Protests

1. Availability of Application

Section 157.10 of the Final Rule requires that complete copies of the application must be available in each county in the project area within three days of the filing of the application.

Comments. CNG contends that the application should not be made available until three business days from

⁸ 71 FERC ¶ 61,241 (1995).

⁹ Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,227 (1999).

the time the application is issued a docket number and after a Commission notice is issued. According to CNG, if the Commission were to reject the application later than three days after it were filed, the entire project would already be in the public domain, even though no project was then on file with the Commission. CNG argues that the pipeline should not be subjected to this risk of disclosure. Further, it could cause substantial confusion and complication to have a copy of an application available to the public before a docket number has been assigned and the application has been accepted by the Commission. CNG contends that if the application were rejected or modified to respond to Commission comments, there could be multiple versions of a project in circulation. In that event, CNG states that the benefit of providing a copy to the public early to give time for a more thorough review would be outweighed by the burden of reviewing a later, conflicting document.

Commission Response. We will modify Section 157.10 to require that pipelines have complete copies of their applications available within three business days of the date a filing is issued a docket number. We will not, however, extend the time the application needs to be made available to after the application is noticed. The Final Rule put pipelines on notice that they must file substantially complete applications or face the risk of rejection. It is incumbent upon the pipeline to ensure that each application is complete and ready to be noticed when it is filed to avoid the potential for rejection, the risk of disclosure, and the possibility of multiple versions.

Further, we note that in the Final Rule in Docket No. RM98-17-000, the Commission is requiring that pipelines notify all affected landowners within three business days of receiving the docket number for a filed application. The Commission believes that the application should be available for those landowners to review when they receive the notice that the application has been filed.

2. Voluminous/Difficult To Reproduce Material

In section 157.10, the Final Rule also provides that pipelines do not have to serve voluminous or difficult to reproduce material, such as copies of environmental information, on all parties in the proceeding. However, the Final Rule does require that the pipelines have copies of the material available for inspection in each county in the project area within three business

days of filing the material with the Commission. It also requires that the pipelines make copies of the material available to any party that requests it within five business days of receiving a request for the material.

Comments. Enron and INGAA seek rehearing of the requirement to serve complete copies of applications, including voluminous or difficult-to-reproduce materials, on individual parties that request the information. Enron contends that the requirement to establish public reference sites to provide access to complete copies of applications is not an insignificant effort. According to Enron, this effort is worthwhile only to the extent that it offsets the requirement to produce voluminous or difficult-to-reproduce materials. However, Enron questions the cost/benefit of this effort if parties may nevertheless request individual copies. Enron requests that pipelines only be required to serve a copy of the application, excluding voluminous or difficult-to-reproduce materials. Enron suggests that pipelines make the voluminous or difficult-to-reproduce materials available on an Internet web site rather than be required to produce hard copies of such material. Enron states that such materials will also be available at the designated public locations. INGAA agrees.

Great Lakes also seeks clarification concerning the meaning of the requirement to make electronic copies available in each county. It requests that the Commission accept placement of the complete application on the pipeline's Internet website as complying with the requirement to keep electronic copies in each county.

Additionally, Great Lakes is concerned with the Commission's requirement that voluminous materials be made available in each county in the project area. Great Lakes contends that libraries and public buildings may not be available in every county, may not have evening and weekend hours, and that such places may not consent to or be able to accommodate the public in this way. Great Lakes seeks clarification as to whether any non-public buildings are acceptable as a central location. It also seeks rehearing and a determination that flexible hours of operation are not a requirement but a goal, because one alternative, the County Clerk's office, would not offer evening and weekend hours.

Commission Response. Upon reconsideration, we will modify section 157.10 and not require that the applicant serve a copy of the entire voluminous or difficult-to-reproduce material when requested by a party to

the proceeding. However, we will require that if an individual party requests information concerning that party's particular piece of property that may be included in the voluminous and difficult to reproduce material, the applicant should provide that particular information to that party within 5 business days from the request. For example, if a landowner requests a copy of the map that shows where the pipeline will be going through that landowner's property, the applicant should provide the landowner with a copy of the portion of the map that includes that particular piece of property.

The Commission intends that pipeline applications be readily accessible and available to all interested parties along the pipeline route. We will not change our requirement that complete copies of applications, including voluminous or difficult-to-reproduce materials must be placed in publicly available places in each county along the pipeline route. However, in light of the rehearing requests, we will modify and further clarify that requirement.

First, the application can either be in paper or electronic format. A pipeline does not have to provide both paper and electronic copies, unless it desires to do so. However, it must provide a complete copy in either one of the two formats. If the copy is in electronic format, any party accessing such copy should be able to obtain a hard copy version from the electronic format.

Second, we also believe that it is reasonable to allow pipelines to establish an Internet web site on which to post its voluminous and difficult-to-reproduce material, in addition to having such material available at public sites along the project route. However, because not everyone has access to the Internet, we will still require pipelines to have complete copies available in each county along the pipeline route.

Finally, we will modify section 157.10 to allow the applicant more flexibility in determining where the applications will be placed for public viewing. The applicant should place copies of the complete application, including the voluminous and difficult-to-reproduce material, in central locations in each county with public access and flexible hours. We expect the applicant will use its best judgement in determining the best location to put the materials.

G. Section 157.202(b)(2)(i)—Eligible Facilities

1. Replacement of Mainline and Lateral Facilities

The Final Rule stated that replacing pipeline and compression facilities must be done for sound engineering reasons and not for the primary purpose of creating additional mainline capacity. The order emphasized that such replacement facilities must be the closest available size and horsepower rating to the facilities being replaced.

Comments. Columbia states that the requirement that the replacement be the "closest available size" may be overly restrictive and go beyond the Commission's intended goal. Columbia states that on older portions of its system, it has inconsistently sized pipe in the same area. For example, in storage fields, Columbia may have a several mile pipeline comprised of 4-, 6-, 8- and 10-inch pipeline in alternating segments. Columbia states that when one of those segments need to be replaced, sound engineering practice dictates that a single size pipe be selected for all replacements on that line. It claims that this would permit more efficient pipeline maintenance by use of smart pig technology through longer segments. Columbia also asserts that it would also reduce the need for installing multiple pig launchers and receivers. To that end, Columbia states that it might choose to replace a 4-inch segment with 8-inch line, solely for the purpose of achieving maintenance related uniformity, even though 4- and/or 6-inch pipe is available. Columbia is concerned that such a replacement might not qualify under the blanket certificate regulations. Columbia requests that the Commission refine the expansion of eligible facilities so that replacements may be done for sound engineering reasons without the restriction that the replacement must be the closest available size to the facility being replaced.

Conversely, Indicated Shippers request that the Commission modify the Final Rule to eliminate automatic authorization of replacement facilities that can increase mainline capacity. Indicated Shippers contend that pipelines will use this authority to circumvent the spending caps on blanket authorization. Indicated Shippers claim that the Commission's statement in the Final Rule that pipelines should not segment a project to circumvent the automatic or prior notice spending limits, acknowledges that pipelines will have an incentive to do so but fails to impose adequate safeguards. They claim that any

challenge to whether facilities were constructed for sound engineering purposes would result in a battle of expert engineers and professional judgements that may differ substantially. Further, they argue that a shipper's ability to file a complaint against a pipeline for an apparent attempt to circumvent the spending caps would be inherently limited because the shipper is burdened with assembling the necessary facts to support the complaint and that the pipeline will have exclusive possession of the relevant information.

Finally, Indicated Shippers assert that the Commission's suggestion that the parties could challenge an improper mainline expansion in a future rate case ignores the elimination of the three-year rate filing requirement in Order No. 636. As such, the pipelines have no legal requirement to file a rate case by any date certain.

Commission Response. We underscore our policy that the blanket certificate regulations cannot be used in a manner that will alter mainline capacity in any substantive manner. Thus, we require that replacements be done for sound engineering reasons and not for the primary purpose of creating additional mainline capacity. We intend that virtually the same criteria applicable under section 2.55(b) apply to replacements under the blanket certificate. Namely, the existing facilities are or will soon become physically deteriorated or obsolete, and the replacement will not result in a reduction or abandonment of service through the facilities. While replacements under section 2.55(b) must also have a substantially equivalent designed delivery capacity as the facilities being replaced, we recognize that replacements done under the blanket certificate may result in an incidental increase in mainline capacity because the replacement facilities do not exactly match the original. However, pipelines are still required to design the replacements so that they have a substantially equivalent designed delivery capacity and are prohibited from using the blanket certificate to create new point to point mainline capacity via the replacement procedure. Thus, there must be a physical need to replace facilities.

We emphasized in the Final Order that replacements must be the closest available size and horsepower rating to the facilities being replaced. The situation described by Columbia, to the extent it is required for sound engineering reasons, *i.e.*, to allow continuous pigging and minimize the number of launchers and receivers,

could qualify for blanket treatment. However, we envision limited applicability for such replacements. As described by Columbia, these type replacements may pertain to older, inconsistently sized sections, such as in storage fields or producing areas. We do not intend for pipelines to use this rationale to replace long sections of mainline pipeline under the blanket certificate under the guise of "efficient pipeline maintenance." We reiterate that the pipeline must be able to support its prudent decision to use any replacement facility that is not the closest available size and/or horsepower rating to the facility being replaced.

Indicated Shippers reiterate its opposition to automatic authorization of facilities that could increase mainline capacity. As stated in the Final Rule, replacement facilities must not create new, usable capacity that a pipeline would otherwise need to certificate in a separate section 7(c) proceeding. Pipelines are reminded that the procedures for constructing replacement facilities under the blanket certificate do not allow pipelines to circumvent the section 7(c) authority needed to construct projects for new mainline capacity. Additionally, section 157.208 specifically prohibits pipelines from segmenting projects to circumvent the cost limits under the blanket certificate.

The Commission intends to monitor the effect the newly granted automatic authorizations have on the workings of the industry and may consider whether further changes are necessary. In the interim, if Indicated Shippers believe that a pipeline is violating or deliberately circumventing the Commission's regulations, it should bring the alleged violation to the Commission's attention by filing a complaint. Finally, although the three-year filing requirement was eliminated by Order No. 636, whenever a rate case is filed, the pipeline must include the costs of new plant. At that point, any such costs associated with the alleged improper mainline expansion would be open to challenge.

2. Minor Storage Operations

In the Final Rule the Commission modified section 157.202(b)(2)(ii)(D) to allow minor changes to storage field operations, but did not allow the drilling of storage wells as eligible facilities.

Comments. CNG contends that in the NOPR the Commission proposed to exclude any facility required to test, develop, or utilize an underground storage field as an eligible facility under the blanket certificate. According to CNG, the Commission intended to allow

minor changes to field operations and facilities, such as rerouting or changing storage field lines. CNG argues, however, that the practical result of the change in the Final Rule was to prevent minor modifications of facilities under the blanket certificate.

CNG also contends that while the Final Rule states that wells must still be drilled under section 157.215, it is not clear that this section applies to existing storage pools, rather than just new storage pools. CNG questions whether drilling a new storage well in an existing pool is permitted under this section.

CNG seeks rehearing of this issue and requests that the Commission implement its intent to provide for minor changes to field operations and facilities, by changing the "or" back to an "and," and clarify that new wells can be drilled in existing storage pools under section 157.215.

Commission Response. Under the Commission's regulations, pipelines currently can use their blanket certificate to construct and operate facilities to test and develop underground storage reservoirs for the possible storage of gas. However, such facilities are excluded from the definition of eligible facilities and must be constructed separately under section 157.215. Once such a reservoir is tested and developed, pipelines must obtain separate authority under section 7(c) in order to utilize a storage reservoir to render service. We are not altering that authority here.

In modifying section 157.202(b)(2)(ii)(D), the Commission intended to continue to exclude facilities required to test and develop storage fields from the definition of eligible facilities. We also intend to exclude wells needed to utilize an underground storage field. However, the regulation will allow pipelines to make minor changes to field operations and facilities, such as rerouting, changing, or adding storage field lines. We intend to allow pipelines to make modifications that will improve the operation and/or flexibility of a storage field, without altering the parameters of the underlying certificate authority.

As stated in the Final Rule, we do not intend for the change in this section to allow pipelines to drill additional injection/withdrawal wells under the blanket certificate because such wells may inherently alter the deliverability, capacity, or boundary of a reservoir. Drilling new injection/withdrawal wells in existing storage pools requires separate section 7(c) authorization. We will revise section 157.202(b)(2)(ii)(D) to clarify that it applies only to the testing

or developing of underground storage fields.

H. Section 157.202(b)(12)—Interconnecting Point

In the Final Rule, the Commission limited interconnecting points to the tap, metering, metering and regulating (M&R) facilities, and minor related piping. The Commission found that any related pipeline connecting two interstate pipelines would function as a mainline facility and thus, not qualify as an eligible facility.

Comments. El Paso states that the practical effect of the Commission's decision prevents "long" segments of interconnecting pipeline between two transporters of natural gas from being constructed under the blanket certificate. El Paso, Enron, Great Lakes, INGAA, and Williston Basin all believe that interconnecting segments should be included along with the tap and meter as eligible facilities.

El Paso argues that there is no functional difference between an "interconnecting point" that requires ten feet of interconnecting pipeline and a point that requires five miles of pipeline. According to El Paso, however, the Commission will allow the ten foot segment to be constructed as an eligible facility (as minor piping) but not the five mile segment. El Paso contends that both short and long interconnecting segments are capable of receiving/delivering the same level of volumes, provide the same flexibility to permit backhaul arrangements, could be capable of accommodating bi-directional gas flows, and would have the same effect on gas flows on the two interconnecting pipelines. Under these circumstances, there is no legitimate "operational" reason to differentiate between a short and long interconnecting segment. Enron and INGAA agree that interconnecting pipeline of various lengths share these operating characteristics.

Enron and INGAA contend that interconnecting pipeline segments will facilitate interconnection of the pipeline grid. El Paso, however, argues that the Commission's goal of fostering development of a national pipeline grid is hampered without including long interconnecting segments as eligible facilities.

El Paso and INGAA state that the spending limits for blanket certificate construction will effectively limit the length of any interconnecting pipeline. Thus, they argue, constructing long interconnecting pipeline cannot impact ratepayers to a greater extent than construction of any other eligible facility.

El Paso further argues that the Commission does not support its conclusion that a "long" interconnecting pipeline between two transporters constitutes mainline, not supply or delivery lateral. INGAA contends that interconnecting pipeline does not function differently than a lateral line; both facilities are designed to receive and/or deliver gas supplies. El Paso states that the only difference between a lateral and an interconnecting pipeline is that a lateral generally connects a pipeline to a production field, gathering system or customer delivery point, whereas interconnecting pipeline connects a pipeline to another pipeline. According to El Paso, that difference cannot serve as a basis to find that "long" interconnecting pipeline performs a mainline function, while interconnecting points, including minor related pipeline, are eligible facilities.

Commission Response. In *KN Interstate Gas Transmission Company (KN Interstate)*,¹⁰ we found that a 2-mile pipeline was not an interconnecting point. The order clarified that "interconnecting point" under section 157.208(a) specifically refers to taps, meters, M&R facilities and minor piping. We adopted that definition in the Final Rule. However, upon reconsideration, we will grant rehearing on this issue. We will allow interconnecting pipelines between Part 284 transporters to be constructed as eligible facilities, subject to the cost limits under the blanket certificate. We agree that such facilities do not operate as mainline facilities or extensions of mainline facilities, because they do not alter the mainline capacity.¹¹ We will view interconnecting pipeline segments in the same manner that we view lateral lines—both serve to receive and/or deliver gas supplies, and both can be constructed automatically, subject to the cost limits under section 157.208. While we stated in *KN Interstate* that a 2-mile pipeline was not an interconnecting point, we now believe that interconnecting pipelines between Part 284 transporters should be covered under the blanket certificate because they display more characteristics in common with lateral lines than with mainlines. Thus, we will change the definition in section 157.202(b)(2)(ii) to reference interconnecting facilities, instead of interconnecting points. We will also change the definition in section 157.202(b)(12) to encompass

¹⁰ 83 FERC ¶ 61,305 (1998).

¹¹ However, to the extent that any interconnecting facility will alter mainline capacity of either Part 284 transporter, such facility will not be covered under the blanket certificate.

both the interconnecting point facilities and the related pipeline segment necessary to interconnect two Part 284 transporters. Since the length of such segments will be governed by the cost limits of the blanket certificate, these facilities will have a minimal impact on a certificate holder's system. Upon reconsideration, we believe that allowing interconnecting pipeline segments is consistent with the intent of the blanket certificate, which authorizes pipelines to construct routine facilities that have relatively little impact on ratepayers or pipeline operations.

I. Section 157.205(g)—Withdrawal or Dismissal of Protest

The Final Rule authorized the Director of OPR to dismiss any protest to a prior notice filing which does not raise a substantive issue and fails to provide any specific reason or rationale for the objection.

Comments. APGA states that the Commission has not documented the number of "no issue" protests that are the basis for the change in the regulation. APGA surmises that there are no protests to bypasses that fail to raise substantive issues. However, APGA contends that it is the Commission's practice to refuse requests for discovery when a protested prior notice is converted to a section 7(c) application. According to APGA, the Commission concluded in a recent order that the bypassed distributor that protested the application had "not proffered any evidence indicating that unfair competition or undue discrimination has occurred," while simultaneously denying the Local Distribution Company (LDC) the opportunity to seek information from the pipeline that might prove such undue discrimination.¹² APGA argues that if an LDC cannot obtain details of the bypass "deal," then it stands to reason that it will not prove its case to the satisfaction of the Commission. APGA fears that in such a situation the Director of OPR could conclude that distributors that do not prove their case will also fail to "raise a substantive issue and fail to provide any specific detailed reason or rationale for its objection." Thus, LDCs would be denied not only due process rights to obtain information to make a case, but they would be denied due process completely by the summary rejection of a protest to a bypass application ten days after it is filed. APGA argues that the absence of process will rob the Commission of its opportunity to detect

¹² See Transcontinental Gas Pipe Line Corp., 87 FERC ¶ 61,136 (1999).

unfair competition because industry participants, particularly LDCs, will not be able to bring facts to its attention.

Alternatively, APGA requests that the Commission clarify the relationship among any dismissal by the Director of OPR, conversion to a section 7 proceeding, and the 30-day reconciliation period. APGA contends that the Commission would enforce a reconciliation or settlement period, yet this period would appear to come after the dismissal of the protest. Therefore, APGA contends that it is unlikely that there can be any settlement on a non-existent protest. APGA states that the purpose of the reconciliation period is to obtain the withdrawal of the protest; the end-user and the pipeline that seek to bypass the LDC need not talk to the LDC if the LDC's protest has been dismissed.

El Paso and INGAA state that section 157.205(g) provides that when a protest is dismissed by the Director of OPR, the notice requirements will not be fulfilled until the earlier of: (1) 30 days after the deadline for filing protests and interventions (referred to as the "waiting period"); or (2) the dismissed protesting party notifies the Commission that its concerns have been resolved.

Both El Paso and INGAA believe that imposing a "waiting period" after a protest is dismissed unfairly penalizes pipelines and rewards protesting parties which fail to raise substantive issues or provide adequate support for their claims. They argue that if a protest is dismissed, a pipeline should not have to wait the additional 30 days before it can commence construction. They further argue that this section rewards protestors that file frivolous protests, which is inconsistent with the intent of the section. They also claim that this treatment is inconsistent with the Commission's treatment of withdrawn protests under the blanket certificate. El Paso states that prior notice authorization becomes effective on the day after all protests are withdrawn. El Paso believes that there is no reason to treat a dismissed protest differently than a withdrawn protest.

El Paso, INGAA, and Williston Basin contend that if the Director of OPR dismisses a protest within the 45-day notice period, and there are no other protests, the proposed construction should be deemed authorized consistent with the prior notice procedures, *i.e.*, on the day after the 45-day protest/intervention period. If the Director of OPR dismisses a protest after the 45-day protest/intervention period has passed, and there are no other protests, El Paso and INGAA contend that the proposed

construction should be deemed authorized on the day after the protest is rejected.

Indicated Shippers disagree with El Paso's position that the Commission should not require a pipeline to wait up to 30 days beyond the protest deadline if the Director of OPR dismisses a protest for failure to raise a substantive issue. Indicated Shippers state that a protestor may appeal the dismissal of its protest to the Commission. Thus, the additional 30 days that the Commission would add to the end of the 45-day protest period does not constitute "undue delay."

Commission Response. First, we find the APGA's concerns that it will be denied due process unfounded. As we stated in the Final Rule, a protesting party must substantiate its allegation, not necessarily prove that the allegation is true. As long as the protesting party provides some substantiating evidence, the protest will not be dismissed. Further, the party still has its right to request rehearing and have the dismissal reviewed by the Commission, and subsequently by the court of appeals.

Second, we disagree that there is no reason to treat a dismissed protest differently than a withdrawn protest. The 30-day period is to allow appeal of the Director of OPR's action to the Commission, which is required under sections 375.301 and 385.1902 (Rule 1902) of the regulations.¹³ While a frivolous protest may delay construction beyond the 45-day prior notice protest period to allow for the required right to file for rehearing, the application does not roll over to a section 7(c), which potentially could result in substantial delays for the applicant. Thus, while construction may be delayed in such a case, it only will be delayed for a minimal period.

Finally, we believe the pipeline still has an incentive to reconcile or settle with the party with the dismissed protest. For example, the Commission may grant the request for rehearing, thereby reinstating the protest and possibly converting the prior notice proceeding to a section 7(c). Thus, the pipeline may want to resolve the protesting party's concerns before the rehearing period has run in order to commence construction sooner.

J. Section 157.206(b)(5)—Compressor Station Noise

In the Final Rule, the Commission updated section 157.206(b)(5) to bring it

into line with current usage concerning limitations on compressor station noise levels. Specifically, it requires that the noise attributable to any new compressor stations, compression added to an existing station, or any modification, upgrade or update of an existing station, must not exceed a day-night level (Ldn) of 55 dBA at any pre-existing noise-sensitive area (such as schools, hospitals, or residences).

Comments. On rehearing, Columbia contends that the modification would inappropriately include potential noise effects of any change to an existing compressor station, not just from compressor unit modifications. It claims that nothing has been presented in this proceeding to suggest that there is a noise concern for other aspects of compressor station operations beyond the compressor units themselves.

Commission Response. In fact, it was the Commission's intent to include any potential new noise source or any change in the existing station that might have an effect on the noise generated by the station and be heard at nearby noise-sensitive areas. There are many potential modifications that could do this, including: additions or changes to the cooling fans; modification to suction or discharge piping; addition or modification of the gas scrubbers; changes to metering facilities (including purely operational changes); and removal of structures or other screening. Likewise, there is a wide range of modifications that cannot reasonably be expected to have any effect on noise (*e.g.*, utility, administration, or maintenance structures or their contents, and communications equipment). In these cases, surveys would rarely be required. The companies should be able to distinguish between the different types of modifications. However, there may be occasions where a company would want to do a noise survey even if experience indicates there is little probability for an effect. For example, there may be instances where a complaint or an inspection results in a need for such surveys. In these instances, which we believe will be rare, the surveys would be done after the change was made.

While this same wording is used in section 380.12(k), as long as the application specifies that the modification (not new or changed compressor units) would have no noise impact, it will be up to the Commission's staff to determine if a noise analysis is needed. We emphasize, however, that noise analyses are always needed for new or changed compressor units.

¹³ Section 375.301 states that "[A]ny action by a staff official under the authority of this subpart may be appealed to the Commission in accordance with Section 385.1902 of this chapter."

K. Section 157.206(c)—Commencement

The Final Rule amended the regulations to allow for facilities to be completed "and made available for service" instead of "in actual operation" within one year of authorization. The Final Rule also provides that a certificate holder may apply to the Director of OPR for an extension of the one year deadline "due to construction delays."

Comments. El Paso and INGAA argue that the Commission should delete the phrase "due to construction delays" and return to its practice of permitting pipelines to seek an extension of the deadline for any reason. They state that extensions may be necessary and appropriate for reasons other than construction delays. El Paso offers, for example, a situation where a pipeline proposes to construct a delivery lateral to serve a new power plant which is not expected to be placed into service for a couple of years. There, a plant owner may need to ensure that all regulatory authorizations are in place before it can obtain the financing and contracts necessary to commence construction of the plant. In such a situation, it contends that a pipeline may need to seek prior notice approval more than a year in advance, while not actually constructing facilities until the plant is ready to go on line. Thus, it argues the pipeline would need to request an extension of the one year deadline. El Paso states that if the Commission does not revise section 157.206(c), pipelines face two undesirable alternatives in the future: (1) Construct facilities far in advance of the end-user's projected service date; or (2) file section 7(c) applications for facilities which otherwise could be constructed under the blanket certificate.

Commission Response. The phrase "construction delays" was used to differentiate between pipeline delays and delays attributable to a shipper/end-user. We intend for this section to encompass situations such as that described by El Paso. However, in order to clarify this intent, we will remove the phrase "due to construction delays." Further, the next to last sentence in section 157.206(c) is modified to read: "The certificate holder may apply to the Director of the Office of Pipeline Regulation for an extension of this deadline."

L. Section 157.208(c)(9)—Prior Notice

In the Final Rule, the Commission required that a copy of consultations for the Endangered Species Act, the National Historic Preservation Act, and

the Coastal Zone Management Act be included in all prior notice filings.

Comments. On rehearing, INGAA, Columbia and Williston Basin state that the Commission should allow the pipeline to submit the clearances during the 45-day notice period. INGAA asserts that it is current industry practice for pipelines to file a prior notice application prior to receipt of final clearances but with a statement that the pipeline anticipates the clearance to be submitted in the near future. It contends that the Commission did not cite any ongoing industry-wide abuse of the process or environmental harm which has resulted from the current practice that would justify a change. INGAA claims that there are significant efficiencies in beginning the prior notice process while the pipeline is waiting to hear back from the agencies for their final agreements.

INGAA proposes that the Commission revise section 157.208(c)(9) to permit a pipeline to file with its prior notice filing: (1) The requests for clearances that have been sent to the various agencies; and (2) a commitment that the final agreements will be in place prior to the end of the 45-day notice period. It also suggests that the application should automatically be deemed protested on the forty-fifth day if the clearances are not filed within 30-days of the prior notice being filed.

Similarly, Columbia claims that "the benefit of permitting the filing of a prior notice application when clearances are not in hand but soon anticipated is obvious."¹⁴ It contends that although a portion of the time required to obtain the clearances will run concurrently, it should not impede the Commission's ability to review the application, nor does it create any risk that the construction might begin without necessary clearance.

Commission Response. We will deny rehearing on this issue. One of the purposes of the Final Rule is to make changes in the Commission's regulations that would streamline the certificate process. Incomplete information at the time applications are filed only fosters inefficiencies and additional expenditures of Commission resources.

INGAA's claim that it is current industry practice to file the prior notice prior to receipt of the agency agreements is overly broad "a substantial number of pipelines file this information with the prior notice. When clearances are not filed with the application, it requires that the Commission's staff expend effort in keeping track of the

status of the filing and then file a protest if the material is not forthcoming. INGAA's proposed compromise, as well as the baseline suggestion, introduces an unnecessary level of complexity and bookkeeping. In addition, in the case of the compromise solution, the company is setting itself up for an automatic protest, more paperwork, and delay that would not be necessary if the prior notice filing is complete when initially filed.

M. Section 157.208(f)(2)—Maximum Allowable Pressure

The Final Rule modified section 157.208(f)(2) to permit pipelines to follow prior notice procedures in order to increase the Maximum Allowable Operating Pressure (MAOP) of laterals constructed under individual section 7(c) authority.

Comments. Indicated Shippers state that the Commission appears to have adopted this proposal based on considerations pertinent to delivery laterals. However, Indicated Shippers contend that MAOP increases have been a basis for concern in recent certificate cases involving supply area facilities, in which producers of "older" reserves faced the prospect of shut-in of lower-pressure production as "new" higher-pressure production is attached to a pipeline's system. Indicated Shippers state that the Commission must modify the Final Rule to prohibit pipelines from increasing the MAOP of supply area laterals under the blanket certificate procedures. Instead, they argue that all MAOP increases involving supply area laterals should be authorized under Subpart A of Part 157, to provide potentially adversely affected parties a meaningful opportunity to present their concerns in advance of authorization.

Commission Response. In the Final Rule, the Commission intended for supply area facilities to be treated in the same manner as delivery area facilities. In order to clarify this, we will modify section 157.208(f)(2) to recognize that changes in the MAOP of both supply and delivery area laterals are subject to the prior notice procedures under section 157.205. In the Final Rule, we also recognized that there could be potentially detrimental effects on receipt area facilities. Therefore, we subjected this type of construction to the prior notice procedures and denied a request to allow MAOP increases to be implemented automatically. Under the prior notice procedures, all affected parties will have a meaningful opportunity to present their concerns and/or protest any proposed change in the MAOP of any lateral facilities.

¹⁴ See Columbia's request for rehearing, at 5.

N. Section 157.211—Delivery Points

The Final Rule revised section 157.211 to provide for automatic and prior notice authorization to acquire, replace, modify, or construct delivery points. In the Final Rule, the Commission required that all delivery points constructed to provide service for an end-user currently being served by an LDC were subject to the Commission's prior notice procedures.

1. CD Reduction

Comments. APGA contends that the Commission erred by failing to change its policy on contract demand reduction relief in the event of bypass. APGA argues that the Commission should reform its bypass practices and policies. According to APGA, the Commission had not provided CD reduction relief because it demands that an LDC present evidence of a written service contract between the LDC and the bypassed customer. AGPA argues that a contract is not the only way in which to demonstrate that a nexus exists between the LDC's contract demand on the bypassing pipeline and the LDC's service to the end-user. According to APGA, evidence of a history of service rendered to the end-user by the LDC is equally valid.

Commission Response. As stated in the Final Rule, the Commission determines if CD reductions are appropriate on a case-by-case basis depending on the particular facts and circumstances in each case.¹⁵ The Commission does not believe it is necessary to codify its bypass and CD reduction policies in its regulations. Nor does it believe it is appropriate to make any changes to that policy in the context of this rulemaking proceeding. Any challenges to the Commission's existing policies should be made in proceedings where the issues are raised.

2. Prior Notice for Bypass Facilities

Comments. Process Gas contends that the Commission's ruling that the contract must expire before the new delivery point is constructed in order not to constitute bypass creates practical problems with respect to timing of a service change and the strong possibility the gas transportation service to the end user could be interrupted during the transition to the new supply arrangement. Process Gas requests rehearing in order to prevent such interruptions. It contends that the Commission should allow construction of the delivery point as long as

deliveries through the new delivery point await expiration of the user's previous contract with its LDC.

Similarly, Great Lakes contends that the Commission's definition of bypass fails to recognize that the pipeline generally can time the construction of its facilities to be in-service contemporaneously with the termination date of the LDC's service. It claims that the gap in service provides a disincentive for customers of LDCs to look for the most economical supply/transportation.

Great Lakes contends that under the Commission's bypass policy, it is engaging in speculation as to the LDC's market by protecting the LDC from the forces of competition and creating a gap in service for any LDC customer desiring to use a more cost-effective combination of supply and transportation. Great Lakes recommends that the Commission not require a prior notice filing unless both: (1) the pipeline's service to the current LDC customer will take the place of the service provided by the LDC; and (2) the effective date of the pipeline's service is prior to the termination date of the LDC's contract with the same end-user. It states that, if both of the prongs are not met, the Commission should only require that the pipeline provide advance notice to the LDC of its intent to construct facilities.

Additionally, Great Lakes and Process Gas contend that the Commission should allow automatic authorization for the construction of delivery points when an end user served by an LDC is constructing a new facility or plant. Process Gas argues that the automatic authorization should apply to new facilities at least as long as those facilities are not expressly covered by an existing contract between the end user and the LDC serving the area. It states that an end user should not be subject to the expense and delays of protests and prior notice procedures simply because it currently receives LDC service for other existing facilities in the LDC's service territory.

Commission Response. As stated in the Final Rule, the Commission believes that an LDC should have notice before facilities that could potentially create a bypass of its service area are constructed. This gives the LDC an opportunity to negotiate and compete with the pipeline for the end user's business. We do not believe that this necessarily protects the LDC from competition or creates a problem with a gap in service. The end user knows the expiration date of the existing contract well in advance. Similarly, the planning and construction of a new plant or

facilities is not an isolated incident that is decided on the spur of the moment. The end users and the pipeline have sufficient notice to plan accordingly for the possibility that there may be a delay because of the prior notice procedures. The pipeline need not wait until the expiration of the existing contract before filing a prior notice proceeding. Therefore, being subject to the prior notice procedures need not necessarily delay the ultimate construction of the new delivery point.

O. Section 157.216—Automatic Abandonment

1. Automatic Authorization

The Final Rule allowed a pipeline to automatically abandon a receipt point which had not been used within a twelve-month period if the point is no longer covered under a firm contract.

Comments. Enron requests that the Commission clarify that the availability of a point as an alternate delivery point does not preclude automatic abandonment under the new requirements, provided the point has not been used for a period of one year prior to the effective date of the proposed abandonment. INGAA requests clarification that a pipeline should be able to automatically abandon a receipt or delivery point so long as the point is no longer covered under a firm contract as a primary point—even if the point is listed or has been available as an alternative point. INGAA contends that this is consistent with the Commission's intent since many pipeline shippers designate all or many points as alternatives to their primary points. INGAA argues that if this clarification is not granted, pipelines will be unable to abandon a point if a shipper has designated all points as alternatives to their primary points on their contract. Williston Basin raises a similar concern.

Indicated Shippers argue that the amendments adopted by the Commission provide pipelines with considerable discretion to abuse market power and limit competition. Indicated Shippers contend that the Commission erred in permitting automatic abandonment of any supply area facility. Additionally, they claim that the Commission erred in refusing to require that pipelines obtain consent of upstream supply parties in order to abandon supply area facilities.

According to Indicated Shippers, the Commission must support pre-granted abandonment approvals with appropriate findings that existing market conditions and regulatory structures protect customers from

¹⁵ See, e.g., Transcontinental Gas Pipe Line Corporation, 84 FERC ¶ 61,160 (1998), order on reh'g, 87 FERC ¶ 61,136 (1999).

pipeline market power. Indicated Shippers contend that pipelines will strand supply if it is in their economic interest to do so, regardless of what would be best for supply area competition. Indicated Shippers point out that contrary to the Commission's statement that upstream suppliers have contract agreements with shippers and that they should seek the appropriate remedy from the shipper, suppliers have Operational Balancing Agreement (OBA) and pooling agreements with the pipelines. They contend that allowing abandonment of pipeline supply facilities based solely on the non-opposition from shippers may not adequately protect against premature abandonment of those facilities. Indicated Shippers contend that the Commission's abandonment rules must provide adequate procedures to ensure that upstream suppliers and other parties have a meaningful opportunity to present their views and supporting information before a pipeline abandons a supply area facility. They also claim that the Commission has failed to justify the elimination of the supplier's right to protest in a prior notice filing to show that the facility will provide a meaningful level of service in the foreseeable future. The Commission must provide sufficient procedural safeguards to ensure that before a pipeline may abandon jurisdictional facilities or services, the public interest is protected through adequate safeguards against the pipeline's exercise of market power.

Commission Response. The Commission sees no reason to differentiate between primary and alternate firm receipt points. We do not intend to allow automatic abandonment for primary and/or alternate points used for firm service under effective contracts, because parties paying demand charges should retain the availability of those points. However, if firm primary or alternate receipt points are no longer under a firm contract and have not been used in the prior year, such points would be covered by the automatic authority under section 157.216(a)(1). If firm primary or alternate receipt points were in use during the last 12 months, a pipeline can obtain consent of its customers and use the automatic provision under section 157.216(a)(2) to abandon such facilities. If a pipeline cannot obtain consent, it must use the prior notice procedures to abandon such facilities.

As to Indicated Shippers' argument, pipelines cannot unilaterally abandon a receipt point which is under a firm contract or that was used for firm or interruptible service during the past 12

months. While there may be many reasons a receipt point goes unused for some period of time, pipelines should not be required to keep that point available indefinitely in the event a supplier and/or their customers determine they may need it at some later date. Suppliers must rely on their underlying contractual arrangements for remedies. We agree that supply area parties do enter into OBAs and pooling agreements with the pipeline and not the shipper, but these are balancing agreements only. The supply area parties enter into contracts for the sale of gas to shippers who contract with the pipeline for transportation. Thus, shippers such as LDCs and end-users are contractually committed to the suppliers for their required gas supply and to the pipeline for the necessary transportation capacity.

It is to the supply contract with pipeline shippers that these parties must look for a remedy if a supply area receipt point is proposed to be abandoned by a pipeline. These agreements may cover multiple receipt points and a shipper may ultimately decide that it no longer needs service from a particular supply area facility because its needs have changed, alternative transportation options exist, or its supply contract expires or terminates. The point is, supply area parties should be aware of the market area situation affecting both the shippers purchasing their gas and themselves. If a facility is in use by firm or interruptible shippers, pipelines cannot abandon the facility without shipper consent. If the shippers consent, the question revolves around the status of the shipper-supplier contract. If a shipper agrees to the abandonment of a receipt facility while it is still contractually committed to a supplier, the supplier would seek remedy under its contract with the shipper.

In the Final Rule, we required pipelines to make a prior notice filing in order to abandon delivery facilities which were in use during the preceding 12 months. The order stated that delivery points are not eligible facilities because of potential bypass situations and are not covered by section 157.216(b)(2). We continue to believe that prior notice is necessary for the construction of delivery points that involve bypass. However, once such delivery facilities are constructed, bypass is no longer relevant. Thus, it should not be a factor when the time comes to abandon the delivery facilities.

We believe that delivery facilities which have been in use during the preceding 12 months should be eligible for automatic abandonment under

section 157.216(a)(2), subject to the pipeline's obtaining the written consent of the customers served through such facilities. Therefore, we will modify section 157.216(a)(2) accordingly.

2. Prior Notice Authorization

Comments. INGAA states that section 157.216(b)(1) provides that a pipeline can abandon any receipt or delivery point if the existing customers consent. INGAA contends that the Commission should strike the reference to receipt point here because it has already clarified that receipt points are eligible for automatic authorization under section 157.216(a)(2) where customer consent has been received.

Indicated Shippers request that the Commission clarify that pipelines must use the prior notice procedures to abandon receipt points and related facilities that exceed the automatic project cost limit. Indicated Shippers take issue with INGAA's request that the Commission delete reference to receipt points in section 157.216(b)(1) because receipt points are eligible for automatic abandonment under section 157.216(a)(2).

According to Indicated Shippers, INGAA assumes that all receipt points qualify under section 157.216(a)(2), which requires that the facility must have been installed under the automatic construction authority of, and met the cost limitations under, section 157.208(a), or must qualify at the time of abandonment. Indicated Shippers state that pipelines, however, may seek to abandon a receipt point (or perhaps multiple receipt points) and other appurtenant supply area facilities as part of a single comprehensive abandonment. Indicated Shippers aver that those facilities taken as a whole may exceed the cost caps in section 157.208, and thus would not qualify for automatic abandonment under section 157.216(a).

Commission Response. The only facilities that can be abandoned under the automatic authority of section 157.216(a) are those facilities that both meet the eligibility requirements and do not exceed the section 157.208 cost limitations. Receipt facilities that were constructed under the prior notice requirements or whose original cost exceed the level for automatic construction are not eligible for automatic abandonment under section 157.216(a). Pipelines must use the prior notice authority under section 157.216(b) to abandon such facilities. However, since the cost limit for automatic construction under the blanket certificate is currently \$7.2 million, we do not expect that many

supply area abandonments will exceed this limitation.

3. Abandonment by Sale

In addition, we clarify that using either the automatic or prior notice authority of this section to abandon facilities by sale to a third party does not address the jurisdictional status of the facilities after the effective date of abandonment. The acquiring party is still responsible for seeking a determination, if one is desired, on the jurisdictional status of the facilities.

P. Section 157.217—Changes in Rate Schedules

The Final Rule allowed pipelines to change rate schedules, at customer request, for the purpose of converting Part 157 transportation or storage service to a complementary Part 284 service. The order also provided automatic abandonment authorization for the Part 157 transportation service and noted that pipelines will need to make a filing to reflect removal of the Part 157 rate schedule from their tariff. Consistent with this discussion, we will add a new section 157.217(a)(4) that requires pipelines to remove any Part 157 rate schedule under which service has been totally converted to Part 284 service.

Q. Appendix II to Subpart F—Procedures for Compliance With the National Historic Preservation Act of 1966 Under Section 157.206(d)(3)(ii)

In the Final Rule, the Commission defined the Tribal Historic Preservation Officer (THPO) and added references to the THPO where State Historic Preservation Officer (SHPO) is cited in section 157.202(d)(3)(ii).

Comments. Enron requests that the Commission clarify that, to the extent a THPO declines to comment in writing or a SHPO gives conditional clearance subject to the approval of the THPO, a project will not automatically convert to a case-specific certificate proceeding. El Paso states that the definition of THPO should be consistent with the definition in Section 106 of National Historic Preservation Act (NHPA) and the implementing regulations of the Advisory Council on Historic Preservation (Advisory Council).

El Paso requests that the Commission clarify who will constitute an "alternative consultant" and how the consultant will be designated by the Commission. El Paso also requests that the Commission clarify that if the pipeline files a request for clearance, and the SHPO/THPO does not respond to the request within 30 days, the lack of response means that the SHPO/THPO

has declined to consult with the certificate holder. Additionally, it contends that the Commission should revise its procedures to provide that if the SHPO/THPO does not respond within 30 days, the pipeline either may proceed with the next step Under the Advisory Council's process or should consult with the alternative consultant designated by the Commission. Finally, it requests that the Commission clarify that if it designates an alternative consultant, that consultant must act within 30 days of the pipeline's request for clearance.

Commission Response. Under section 106 of the NHPA, the Commission is obligated to ensure that the Advisory Council's process is properly carried out. Under the Commission's blanket certificate construction program, the pipeline's construction must be subject to the SHPO/THPO review and it can have no impact to covered cultural resources. If these two requirements are met, the Commission has determined that it has met its obligation under the Advisory Council's regulations.

If the SHPO/THPO have not responded to a company's request within 30 days, it does not mean that they have declined to consult with the certificate holder. Section 106 of the NHPA pertains to responding to the Federal agency official, not the applicant. The Commission views the SHPO/THPO's failure to respond and declining to consult as two different things.

If the SHPO/THPO respond to the certificate holder that they will not consult with the certificate holder, then Appendix II provides that the certificate holder should contact the Commission for a determination of how to proceed. Depending on the circumstances of the project, and the reason given for declining to consult, the Commission staff will designate an alternative entity, to be determined by the Director of the OPR, or it might take over the consultation responsibility. This provision allows the blanket process to continue where it might otherwise be stymied. Projects do not convert to the case-specific authorization procedures because either the SHPO or the THPO decline to consult.

If the SHPO/THPO fail to respond to the certificate holder, it is up to the certificate holder to decide how long it will wait before it requests assistance from the Commission or determines that it can not use the blanket process for a given project. In any event, it may not proceed with the blanket project unless it gets a response from the SHPO/THPO or until it contacts the Commission, which will then determine how to

proceed under the particular circumstances.

Finally, we will revise paragraph (d) of Appendix II consistent with the Advisory Council regulation to state that THPO means the Tribal Historic Preservation Officer, as at Title 36 section 800.2(c)(2) of the Code of Federal Regulations (CFR).

R. Section 380.12(c)(2)—Nonjurisdictional Facilities

In the Final Rule, the Commission listed the information it needed to consider the environmental impact of related nonjurisdictional facilities that would be constructed upstream or downstream of the jurisdictional facilities for the purpose of delivering, receiving, or using the proposed gas volumes.

Comments. Generally, INGAA and Enron contend that the Commission is requesting too much information under the filing requirements relative to the four-factor test,¹⁶ and that the information may not be available at the time the pipeline files the application. Further, they contend that the requirements should not be part of the minimum checklist and that the application should not be rejected if the pipeline fails to provide all the information.

Commission Response. The four-factor test cannot be applied without a knowledge of what the facilities are and where they are to be located. Without a description of the facilities, it is difficult to apply the first factor and determine whether the "regulated activity comprises 'merely a link' in a corridor type project." Without location information and a reasonable description of the facilities involved, it isn't possible to apply factors two or three to determine whether there "are aspects of the nonjurisdictional facility in the immediate vicinity of the regulated activity which uniquely determine the location and configuration of the regulated activity" or the "extent to which the entire project will be within the Commission's jurisdiction." Locational information, as well as the status of permits needed for the nonjurisdictional facility, are required to determine factor four, "the extent of cumulative Federal control and responsibility." Consequently, the Final Rule requires in sections 380.12(c)(2)(i)(A-C) that the filing provide a brief description, locational information, and status of permits for the nonjurisdictional facilities.

¹⁶ See Algonquin Gas Transmission Co., 59 FERC ¶ 61,255, at 61,934 (1992).

The Final Rule also requires consultation with the appropriate agencies for endangered species, cultural resources, and coastal zone management in sections 380.12(c)(2)(i)(D-F). While this information is not needed for the four-factor test, it is usually needed for a complete analysis of the project under the legislation covering these resources. Further, if it hasn't already been done by the nonjurisdictional sponsor, it can usually be done with very little effort at the same time as similar analysis is done for the jurisdictional facilities.

Finally, section 380.12(c)(2)(ii) asks the jurisdictional company to give the Commission its view of the results of applying the four-factor test. This allows the company direct input into the analysis and can help the staff more fully understand the circumstances of the project so it can make an appropriate recommendation to the Commission.

The four-factor test must be applied as early in the environmental review process as possible to avoid substantial delays. Without it, it is difficult for the Commission to determine whether an environmental assessment may suffice or whether an environmental impact statement would be appropriate. It is difficult to identify the scope of whatever environmental document will be prepared without this information, and, in fact, if it is filed after the initial scoping, it is entirely possible that a second scoping process, including additional public meetings, would be required. This would be wasteful of Commission's time and resources, as well as having the potential to delay the environmental review and the Commission's ultimate disposition of the application. Therefore, we believe it is necessary that this information be filed with the application.

S. Section 380.12(f)(2)—Cultural Resources

The Final Rule requires that the documentation of the applicant's initial cultural resources consultation and Overview and Survey Reports must be filed with the initial application. Further, it requires that the comments of the SHPO and land management agency, if appropriate, be filed with the initial application if they are available.

1. Survey Reports

Comments. INGAA requests that the Commission clarify that the intent of the language in section 380.12(f)(2) is not to require that a survey report is necessary in every case. It states that the general practice of the industry is to file an Overview Report with the application. It

explains that the Overview Report canvasses existing literature to identify significant sites in the vicinity of the proposed project, and allows the sponsor either to avoid the site or to set forth proposed mitigation measures. It argues that a survey report takes much longer to complete and is significantly more costly since it involves using an archeologist to examine the actual route to determine whether there are additional sites not currently identified in existing literature. It contends that the determination of whether a survey is required is made in consultation with the appropriate SHPO.

Commission Response. As clearly stated in section 380.12(f)(2), it is our intent to require that the survey report is filed with the application in all cases where the report is deemed necessary *during the cultural resources consultations*. As stated, one of the Commission's goals in the Final Rule is to facilitate expediting the certificate process. The current practice of the industry that INGAA alludes to is a significant contributing factor to the time required for Commission review. Applications which do not have the survey reports included are invariably delayed while the applicant and the Commission's staff attempt to satisfy the requirements of the law before a certificate is issued or construction begins. Therefore, the survey report should be filed with the application when it is deemed necessary as a result of the consultations.

2. Issuing Certificates

Comments. Enron and INGAA request that the Commission clarify the timing for providing SHPO/THPO clearances in conjunction with the issuance of a case-specific certificate. They contend that currently certificates are issued contingent on receiving clearances before construction begins on the affected area because the pipeline may not have been able to secure the land rights necessary to perform cultural resource work prior to the issuance of the certificate.

Commission Response. The Commission prefers that the SHPO/THPO comments on the Overview and Survey Reports and the Evaluation Report and Treatment Plan, if required, for the entire project be filed before a certificate is issued. However, we understand that if access to the property is denied by the landowner, comments for the areas to which access has been denied would be filed after the certificate is issued. The Commission will determine on a case-by-case basis if it is necessary to issue a certificate

contingent on the pipeline receiving clearances before construction begins.

T. Section 380.12(k)(4)—Compressor Facilities

In the Final Rule, the Commission required that the pipeline provide certain specific information concerning the compression facilities proposed in an application and the noise impact of proposed compression and LNG facilities.

Comments. On rehearing, INGAA contends that much of the information concerning the compression facilities is not available at the time the application is filed because the pipeline has not made its final selection of compressor units. It requests that the minimum checklist be clarified so as to require data that is reasonably available at the time the application is filed. Williston Basin makes a similar request.

Commission Response. The Commission agrees that some of the items listed in the minimum checklist may not be available at the time of filing, especially for large projects with long lead times. This information includes the manufacturer's name and the model number of the compressor units. Therefore, we will modify section 380.12(k)(4)(ii) and paragraph 4 of the Resource Report 9 section of the Appendix A to Part 380 and limit the information the pipeline must provide for new compressors at the time the application is filed to the proposed horsepower of compression, the type of compressor that is needed (turbine, reciprocating), and the energy source (natural gas or electricity). These are basic pieces of information that are needed to formulate a project. If the additional required information listed in the resource report is not available at the time the application is filed, the applicants should justify the absence of such information, especially for smaller projects where there may not be a long lead time. Additionally, the application should specify when the listed information will be available and when it will be filed.

U. Section 380.14(a)(3)—Cultural Resources Procedure for Case-specific Projects

The Final Rule adds a new section 380.14 to the Commission's regulations to address concerns regarding the Commission's compliance with the National Historic Preservation Act.

Comment. INGAA requests that the Commission clarify that if a pipeline files a request for clearance and the SHPO/THPO does not respond to the pipeline within 30 days, the SHPO/THPO has declined to consult with the

certificate holder for the purpose of complying with section 380.14(a).

Commission Response. As explained above, under section 106 of the NHPA, the Commission is obligated to ensure that the Advisory Council's process is properly carried out. If the SHPO/THPO has not responded within 30 days, it does not mean that they have declined to consult with the certificate holder. If the SHPO/THPO does not respond, the applicant should contact the Commission's staff for further guidance.

V. Section 380.15—Siting and Maintenance Requirements

In section 380.15 of the Final Rule, the Commission moved the siting guidelines from section 2.69 in the General Policy and Interpretations section to the environmental regulations in Part 380.

Comments. INGAA requests that the Commission clarify that this section should be titled "guidelines" and not requirements since section 380.15(d) lists suggestions to avoid or minimize effects on scenic, historic, wildlife, and recreational values that may or may not be applicable to every project.

Commission Response. In section 380.15 the Commission is requiring that the pipeline consider the areas listed when it is planning a construction activity. If the requirements of the section are "not applicable" to a project, then they are not relevant to that project and there is no potential for conflict. For projects where they are applicable, the wording is such that a good faith effort to comply should be adequate. In all cases, the applicant should be able to justify the level of compliance.

W. Miscellaneous

Minor modifications have been made to certain sections in the regulations to correct references to other sections that have been changed and to update the Commission's address and phone number. Additionally, the Commission intends to modify the minimum filing requirement in Resource Report 8 for facilities in a designated coastal zone management area as specified in number nine in Resource Report 8 in Appendix A to Part 380. In addition to requiring that the pipeline identify all facilities located within a designated coastal zone management area, it will also require that the applicant provide a consistency determination or evidence that it has requested a consistency determination consistent with the existing requirements in section 380.12(j)(7).

The Commission will also clarify the minimum filing requirement in Resource Report 3 for threatened or

endangered species surveys as specified in number six in Resource Report 3 in Appendix A to Part 380. The text of this resource report clearly and explicitly indicates that the surveys for the species or, in the case where timing problems exist, habitat surveys must be done and reported upon as part of the initial application. This requirement was implicit in the wording of Appendix A. We clarify the intent by making it explicit.

In the Final Rule, the existing paragraph (a)(2), Maps and diagrams, in section 157.6 was inadvertently removed. We will correct this error by reinserting this paragraph.

Finally, in the Final Rule the existing paragraph (g), Reports, in section 157.206 was inadvertently removed and paragraph (h), Treatment of Revenues, was redesignated as paragraph (d). Paragraph (g), Reports, should have been redesignated as paragraph (d) and the Treatment of Revenues paragraphs should have been removed. We will correct this error in this rehearing order.

List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and record keeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and record keeping requirements.

18 CFR Part 284

Continental shelf, Natural gas, Reporting and record keeping requirements.

18 CFR Part 380

Environmental impact statements, Reporting and record keeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and record keeping.

By the Commission.

David P. Boergers,
Secretary.

In consideration of the foregoing, the Commission amends parts 2, 157, 284, 380, and 385, Chapter I, Title 18, Code of Federal Regulations, as follows .

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 601; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

2. In § 2.55, paragraphs (a)(2) introductory text and (a)(2)(ii) are revised to read as follows:

§ 2.55 Definition of terms used in section 7(c).

* * * * *

(a) * * *

(2) *Advance notification.* One of the following requirements will apply to any specified auxiliary installation. If auxiliary facilities are to be installed:

* * * * *

(ii) On, or at the same time as, certificated facilities which are not yet in service (except those authorized under the automatic procedures of part 157 of subpart F of this chapter), then a description of the auxiliary facilities and their locations must be provided to the Commission at least 30 days in advance of their installation; or

* * * * *

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

3. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717W, 3301–3432; 42 U.S.C. 7101–7352.

4. In § 157.6:

A. Paragraphs (a)(2) through (a)(5) are redesignated as (a)(3) through (a)(6).

B. A new paragraph (a)(2) is added.

C. Paragraph (b)(8) is revised.

The addition and revision read as follows:

§ 157.6 Applications; general requirements.

(a) * * *

(2) *Maps and diagrams.* An applicant required to submit a map or diagram under this subpart must submit one paper copy of the map or diagram.

* * * * *

(b) * * *

(8) For applications to construct new facilities, detailed cost-of-service data supporting the cost of the expansion project, a detailed study showing the revenue responsibility for each firm rate schedule under the pipeline's currently effective rate design and under the pipeline's proposed rates, a detailed rate impact analysis by rate schedule (including by zone, if applicable), and an analysis reflecting the impact of the fuel usage resulting from the proposed

expansion project (including by zone, if applicable).

* * * * *

5. Section 157.8 is revised to read as follows:

§ 157.8 Acceptance for filing or rejection of applications.

Applications will be docketed when received and the applicant so advised.

(a) If an application patently fails to comply with applicable statutory requirements or with applicable Commission rules, regulations, and orders for which a waiver has not been granted, the Director of the Office of Pipeline Regulation may reject the application within 10 days of filing as provided by § 385.2001(b) of this chapter. This rejection is without prejudice to an applicant's refiling a complete application. However, an application will not be rejected solely on the basis of:

(1) Environmental reports that are incomplete because the company has not been granted access by the affected landowner(s) to perform required surveys; or,

(2) Environmental reports that are incomplete, but where the minimum checklist requirements of Part 380, Appendix A of this chapter have been met.

(b) An application which relates to an operation, sale, service, construction, extension, acquisition, or abandonment concerning which a prior application has been filed and rejected, shall be docketed as a new application. Such new application shall state the docket number of the prior rejected application.

(c) The Director of the Office of Pipeline Regulation may also reject an application after it has been noticed, at any time, if it is determined that such application does not conform to the requirements of this part.

6. Section 157.10 is revised to read as follows:

§ 157.10 Interventions and protests.

(a) Notices of applications, as provided by § 157.9, will fix the time within which any person desiring to participate in the proceeding may file a petition to intervene, and within which any interested regulatory agency, as provided by § 385.214 of this chapter, desiring to intervene may file its notice of intervention.

(1) Any person filing a petition to intervene or notice of intervention shall state specifically whether he seeks formal hearing on the application.

(2) Any person may file to intervene on environmental grounds based on the draft environmental impact statement as stated at § 380.10(a)(1)(i) of this chapter.

In accordance with that section, such intervention will be deemed timely as long as it is filed within the comment period for the draft environmental impact statement.

(3) Failure to make timely filing will constitute grounds for denial of participation in the absence of extraordinary circumstances or good cause shown.

(4) Protests may be filed in accordance with § 385.211 of this chapter within the time permitted by any person who does not seek to participate in the proceeding.

(b) A copy of each application, supplement and amendment thereto, including exhibits required by §§ 157.14, 157.16, and 157.18, shall upon request be promptly supplied by the applicant to anyone who has filed a petition for leave to intervene or given notice of intervention.

(1) An applicant is not required to serve voluminous or difficult to reproduce material, such as copies of certain environmental information, to all parties, as long as such material is publically available in an accessible central location in each county throughout the project area.

(2) An applicant shall make a good faith effort to place the materials in a public location that provides maximum accessibility to the public.

(c) Complete copies of the application must be available in accessible central locations in each county throughout the project area, either in paper or electronic format, within three business days of the date a filing is issued a docket number. Within five business days of receiving a request for a complete copy from any party, the applicant must serve a full copy of any filing on the requesting party. Such copy may exclude voluminous or difficult to reproduce material that is publically available. Pipelines must keep all voluminous material on file with the Commission and make such information available for inspection at buildings with public access preferably with evening and weekend business hours, such as libraries located in central locations in each county throughout the project area.

§ 157.103 [Amended]

7. In § 157.103, in paragraph (i) the reference to "157.206(d)" is removed and a reference to "157.206(b)" is added in its place.

8. In § 157.202, the second sentence in paragraph (b)(2)(i), and paragraphs (b)(2)(ii)(D) and (b)(12) are revised to read as follows:

§ 157.202 Definitions.

* * * * *

(b) * * *

(2)(i) * * * Eligible facility also includes any gas supply facility or any facility, including receipt points, needed by the certificate holder to receive gas into its system for further transport or storage, and interconnecting facilities between transporters that transport natural gas under part 284 of this chapter. * * *

(ii) * * *

(D) A facility required to test or develop an underground storage field or that alters the certificated capacity, deliverability, or storage boundary, or a facility required to store gas above ground in either a gaseous or liquified state, or a facility used to receive gas from plants manufacturing synthetic gas or from plants gasifying liquefied natural gas, or wells needed to utilize an underground storage field.

* * * * *

(12) Interconnection facilities means the interconnecting point, which includes the tap, metering, and M&R facilities and the related interconnecting pipeline.

* * * * *

9. In § 157.206, in the second sentence in paragraph (c) the words "due to construction delays" are removed, and paragraph (d) is revised to read as follows:

§ 157.206 Standard conditions.

* * * * *

(d) *Reports.* The certificate holder shall file reports as required by this subpart.

* * * * *

10. In § 157.208, the second sentence in paragraph (f)(2) is revised to read as follows:

§ 157.208 Construction, acquisition, operation, replacement, and miscellaneous rearrangement of facilities.

* * * * *

(f) * * *

(2) * * * In the event that the certificate holder thereafter wishes to change the maximum operating pressure of supply or delivery lateral facilities constructed under section 7(c) of the Natural Gas Act or facilities constructed under this section, it shall file an appropriate request pursuant to the procedures set forth in § 157.205(b).

* * * * *

11. In § 157.216, paragraph (a)(2) is revised to read as follows:

§ 157.216 Abandonment.

(a) * * *

(2) An eligible facility that was installed pursuant to automatic authority under § 157.208(a), or that now qualifies for automatic authority under § 157.208(a), or a facility constructed under § 157.211, provided the certificate holder obtains the written consent of the customers that have received service through the facilities during the past 12 months.

12. In § 157.217, paragraph (a)(4) is added to read as follows:

§ 157.217 Changes in rate schedules.

(a) * * *

(4) The certificate holder shall make a filing to reflect removal of the Part 157 rate schedule from its tariff.

13. In Appendix I to Subpart F of Part 157, the reference to "157.206(b)(2)(vii)" in the second paragraph of the introductory text and the introductory text in paragraph 2, and paragraph 3, is removed and a reference to "157.206(b)(2)(vi)" is added in its place.

14. In Appendix II to Subpart F of Part 157, in paragraph (7) the phrase " , or THPO, as appropriate," is added after the reference to "the SHPO" wherever it appears, and paragraph (d) is revised to read as follows:

Appendix II to Subpart F—Procedures for Compliance With the National Historic Preservation Act of 1966 Under § 157.206(b)(3)(ii)

(d) "THPO" means the Tribal Historic Preservation Officer, as defined at 36 CFR 800.2(c)(2).

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS ACT, THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

15. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352; 43 U.S.C. 1331-1356.

16. In § 284.11, in paragraphs (a) and (c)(2) the references to "157.206(d)" are removed and references to "157.206(b)" are added in their place.

PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

17. The authority citation for part 380 is revised to read as follows:

Authority: 42 U.S.C. 4321-4370a, 7101-7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

§ 380.8 [Amended]

18. In § 380.8:

A. The references to "400 First Street NW.," and "825 North Capitol Street NW.," are removed and references to "888 First Street NE.," are added in their place.

B. The reference to "and Producer" in the second sentence is removed.

C. The telephone number "376-9171" is removed and the telephone number "219-2700" is added in its place.

D. The telephone number "357-8500" is removed and the telephone number "208-0700" is added in its place.

§ 380.9 [Amended]

19. In § 380.9, in paragraph (b) the reference to "825 North Capitol Street NW., room 1000" is removed and a reference to "888 First Street NE., Room 2A" is added in its place.

20. In § 380.12, a heading is added to paragraph (f)(2); and the last sentence in paragraph (f)(2) introductory text and paragraph (k)(4)(ii) are revised to read as follows:

§ 380.12 Environmental Reports for Natural Gas Act Applications.

* * * * *

(f) * * *

(2) Initial filing requirements. * * * If surveys are deemed necessary by the consultation with the SHPO/THPO, the survey report must be filed with the application.

* * * * *

(k) * * *

(4) * * *

(ii) Include sound pressure levels for unmuffled engine inlets and exhausts, engine casings, and cooling equipment; dynamic insertion loss for all mufflers; sound transmission loss for all compressor building components, including walls, roof, doors, windows and ventilation openings; sound attenuation from the station to nearby noise-sensitive areas; the manufacturer's name, the model number, the performance rating; and a description of each noise source and noise control component to be employed at the proposed compressor station. For proposed compressors the initial filing must include at least the proposed horsepower, type of compression, and energy source for the compressor.

* * * * *

21. In Appendix A to Part 380, paragraph 6 of Resource Report 3, paragraph 9 of Resource Report 8, and paragraph 4 of Resource Report 9 are revised to read as follows:

Appendix A to Part 380—Minimum Filing Requirements for Environmental Reports Under the Natural Gas Act

* * * * *

Resource Report 3—Vegetation and Wildlife

* * * * *

6. Identify all federally listed or proposed endangered or threatened species that potentially occur in the vicinity of the project and discuss the results of the consultations with other agencies. Include survey reports as specified in § 380.12(e)(5).

* * * * *

Resource Report 8—Land Use, Recreation and Aesthetics

* * * * *

9. Identify all facilities that would be within designated coastal zone management areas. Provide a consistency determination or evidence that a request for a consistency determination has been filed with the appropriate state agency. (§ 380.12(j)(4 & 7))

* * * * *

Resource Report 9—Air and Noise Quality

* * * * *

4. Describe the existing compressor units at each station where new, additional, or modified compressor units are proposed, including the manufacturer, model number, and horsepower of the compressor units. For proposed new, additional, or modified compressor units include the horsepower, type, and energy source. (§ 380.12(k)(4)).

* * * * *

PART 385—RULES OF PRACTICE AND PROCEDURE

22. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551-557; 15 U.S.C. 717-717z, 3301-3432; 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352; 49 U.S.C. 60502; 49 App. U.S.C. 1-85.

§ 835.2001 [Amended]

23. In § 385.2001, the reference in paragraph (a)(1)(i) to "825 North Capitol Street" is removed and a reference to "888 First Street N.E." is added in its place.

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