

§ 152.3

§ 152.3 Contents of application; filing fee.

Every application shall be accompanied by the fee prescribed in part 381 of this chapter or a petition for waiver pursuant to §381.106 of this chapter and shall set forth in the order indicated, the following:

(a) The exact legal name of applicant.

(b) The name, title, and postoffice address of the person to whom correspondence in regard to the application shall be addressed.

(c) A statement of pertinent facts as to the existing service, if any, or authorized service by applicant, including a showing that all of the natural gas which applicant receives from out-of-State sources is and will be ultimately consumed within the State in which the operations sought to be exempted are conducted.

(Secs. 3, 16, 52 Stat. 822, 830; 15 U.S.C. 717b, 717o)

[Order 173, 19 FR 4276, July 13, 1954, as amended by Order 317, 31 FR 432, Jan. 13, 1966; Order 433, 50 FR 40345, Oct. 3, 1985]

§ 152.4 Certificate from State Commission.

Applications for exemption under §152.3 shall contain, or there shall be separately filed, a certificate from the appropriate State Commission that the natural-gas (a) rates (including rates for sales for resale), (b) service, and (c) facilities of the applicant are subject to the regulatory jurisdiction of the State Commission and that the State Commission is exercising such jurisdiction.

(Sec. 1(c), 68 Stat. 36; 15 U.S.C. 717(c))

[Order 306, 30 FR 12729, Oct. 6, 1965]

§ 152.5 Applicability of exemption.

Nothing in this part shall be construed to relieve any person exempted from the provisions of the Natural Gas Act by section 1(c) thereof from compliance with valid State regulatory requirements. If an exemption from the provisions of the Natural Gas Act is effective pursuant to section 1(c), the exempted person shall be responsible for calling to the attention of the State Commission by which it is regulated and of the Federal Power Commission

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any future operations in which it may engage which may make the exemption inapplicable to it. The exempted person shall also be responsible for calling to the attention of the Federal Power Commission any changes, amendment, or judicial or administrative interpretation of the State law pursuant to which it is regulated, which may make the exemption inapplicable to it.

(Sec. 1(c), 68 Stat. 36; 15 U.S.C. 717(c))

[Order 306, 30 FR 12729, Oct. 6, 1965]

PART 153—APPLICATIONS FOR AUTHORIZATION TO CONSTRUCT, OPERATE, OR MODIFY FACILITIES USED FOR THE EXPORT OR IMPORT OF NATURAL GAS

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AUTHORITY: 15 U.S.C. 717b, 717o; E.O. 10485, 3 CFR, 1949–1953 Comp., p. 970, as amended by E.O. 12038, 3 CFR, 1978 Comp., p. 136, DOE Delegation Order No. 0204–112, 49 FR 6684 (February 22, 1984).

SOURCE: Order 595, 62 FR 30446, June 4, 1997, unless otherwise noted.

Subpart A—General Provisions**§ 153.1 Purpose and scope.**

The purpose of this part is to implement the Commission's delegated authorities under section 3 of the Natural Gas Act and Executive Order 10485, as amended by Executive Order 12038. Subpart B of this part establishes filing requirements an applicant must follow to obtain authorization under section 3 of the Natural Gas Act for the siting, construction, operation, place of entry for imports or place of exit for exports. Subpart C of this part establishes filing requirements an applicant must follow to apply for a Presidential Permit, or an amendment to an existing Presidential Permit, for border facilities at the international boundary between the United States and Canada or Mexico.

§ 153.2 Definitions.

(a) *DOE/FE* means the Department of Energy/Office of Fossil Energy or its successor office.

(b) *NBSIR* means the National Bureau of Standards Information Report.

(c) *Person* means an individual or entity as defined in 10 CFR 590.102(m).

§ 153.3 Notice requirements.

All applications filed under this part are subject to the landowner notification requirements in §157.6(d) of this chapter.

[Order 609, 64 FR 57390, Oct. 25, 1999]

Subpart B—Application Under Section 3**§ 153.5 Who shall apply.**

(a) *Applicant*. Any person proposing to site, construct, or operate facilities which are to be used for the export of natural gas from the United States to a foreign country or for the import of natural gas from a foreign country or to amend an existing Commission authorization, including the modification of existing authorized facilities, shall file with the Commission an application for authorization therefor under subpart B of this part and section 3 of the Natural Gas Act.

(b) *Cross-reference*. Any person applying under paragraph (a) of this section

to construct facilities at the borders of the United States and Canada or Mexico must also simultaneously apply for a Presidential Permit under subpart C of this part.

§ 153.6 Time of filing.

(a) An application filed pursuant to §153.5(a) shall state whether DOE/FE authorization for the import/export of natural gas is required and whether DOE/FE has granted all required authorizations for the import/export of natural gas.

(b) If all required DOE/FE authorizations have not been obtained prior to filing an application with the Commission, the applicant agrees, as a condition of its authorization, to file a statement that all required DOE/FE authorizations have been obtained prior to applicant's construction of border facilities.

§ 153.7 Contents of application.

Every application under subpart B of this part shall include, in the order indicated, the following:

(a) *Information regarding applicant*. (1) The exact legal name of applicant;

(2) The name, title, and post office address, telephone and facsimile numbers of the person to whom correspondence in regard to the application shall be addressed;

(3) If a corporation, the state or territory under the laws of which the applicant was organized, and the town or city where applicant's principal office is located. If applicant is incorporated under the laws of, or authorized to operate in, more than one state, all pertinent facts should be stated. If applicant company is owned wholly or in part by any foreign government entity, or directly or indirectly subsidized by any foreign government entity; or, if applicant company has any agreement for such ownership or subsidization from any foreign government, provide full details of ownership and/or subsidies.

(b) *Summary*. A detailed summary of the proposal, including descriptions of the facilities utilized in the proposed export or import of natural gas; state, foreign, or other Federal governmental

licenses or permits for the construction, operation, or modification of facilities in the United States, Canada, or Mexico; and the status of any state, foreign, or other Federal regulatory proceedings which are related to the proposal.

(c) *Statements.* (1) A statement demonstrating that the proposal or proposed construction is not inconsistent with the public interest, including, where applicable to the applicant's operations and proposal, a demonstration that the proposal:

(i) Will improve access to supplies of natural gas, serve new market demand, enhance the reliability, security, and/or flexibility of the applicant's pipeline system, improve the dependability of international energy trade, or enhance competition within the United States for natural gas transportation or supply;

(ii) Will not impair the ability of the applicant to render transportation service in the United States at reasonable rates to its existing customers; and,

(iii) Will not involve any existing contract(s) between the applicant and a foreign government or person concerning the control of operations or rates for the delivery or receipt of natural gas which may restrict or prevent other United States companies from extending their activities in the same general area, with copies of such contracts; and,

(2) A statement representing that the proposal will be used to render transportation services under parts 157 or 284 of this chapter, private transportation, or service that is exempt from the provisions of the Natural Gas Act pursuant to sections 1(b) or 1(c) thereof. The applicant providing transportation service under part 157 of this chapter must represent that the pipeline's proposed increase in capacity at an existing import/export point is not exclusively reserved for part 157 users and that all new service made available as a result of a new or modified import/export facility will be under part 284 of this chapter.

§ 153.8 Required exhibits.

(a) An application must include the following exhibits:

(1) *Exhibit A.* A certified copy of articles of incorporation, partnership or joint venture agreements, and by-laws of applicant; the amount and classes of capital stock; nationality of officers, directors, and stockholders, and the amount and class of stock held by each;

(2) *Exhibit B.* A detailed statement of the financial and corporate relationship existing between applicant and any other person or corporation;

(3) *Exhibit C.* A statement, including signed opinion of counsel, showing that the construction, operation, or modification of facilities for the export or the import of natural gas is within the authorized powers of applicant, that applicant has complied with laws and regulations of the state or states in which applicant operates;

(4) *Exhibit D.* If the proposal is for a pipeline interconnection to import or export natural gas, a copy of any construction and operation agreement between the applicant and the operator(s) of border facilities in the United States and Canada or Mexico;

(5) *Exhibit E.* If the proposal is to import or export LNG, evidence that an appropriate and qualified concern will properly and safely receive or deliver such LNG, including a report containing detailed engineering and design information. The Commission staff's "Guidance Manual for Environmental Report Preparation" may be obtained from the Commission's Office of Pipeline Regulation, 888 First Street, NE., Washington, DC 20426;

(6) *Exhibit E-1.* If the LNG import/export facility is to be located at a site in zones 2, 3, or 4 of the Uniform Building Code's Seismic Risk Map of the United States, or where there is a risk of surface faulting or ground liquefaction, a report on earthquake hazards and engineering. Guidelines are contained in "Data Requirements for the Seismic Review of LNG Facilities," NBSIR 84-2833. This document may be obtained from the National Technical Information Service or the Commission's Office of Pipeline Regulation, 888 First Street, NE., Washington, DC 20426;

(7) *Exhibit F.* (i) An environmental report as specified in § 380.3 and § 380.12 of this chapter. Applicant must submit all appropriate revisions to Exhibit F

whenever route or site changes are filed. These revisions should identify the specific differences resulting from the route or site changes, and not just provide revised totals for the resources affected; and

(8) *Exhibit G*. A geographical map of a suitable scale and detail showing the physical location of the facilities to be utilized for the applicant's proposed export or import operations. The map should indicate with particularity the ownership of such facilities at or on each side of the border between the United States and Canada or Mexico, if applicable.

(b) The applicant may incorporate by reference any Exhibit required by paragraph (a) of this section already on file with the Commission.

[Order 595, 62 FR 30446, June 4, 1997, as amended by Order 603, 64 FR 26604, May 14, 1999]

§ 153.9 Transferability.

(a) *Non-transferable*. Authorizations under subpart B of this part and section 3 of the Natural Gas Act and related facilities shall not be transferable or assignable without prior Commission authorization.

(b) *Involuntary transfer*. A Commission order granting such authorization shall continue in effect temporarily for a reasonable time in the event of the involuntary transfer of facilities used thereunder by operation of law (including such transfers to receivers, trustees, or purchasers under foreclosure or judicial sale) pending the making of an application for permanent authorization and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the physical facts relating to operations of the facilities remain substantially the same as before the transfer and as stated in the initial application for such authorization.

§ 153.10 Authorization not exclusive.

No authorization granted pursuant to subpart B of this part and section 3 of the Natural Gas Act shall be deemed to prevent the Commission from granting authorization under subpart B to any other person at the same general location, or to prevent any other person

from making application for such authorization.

§ 153.11 Supplemental orders.

The Commission also may make, at any time subsequent to the original order of authorization, after opportunity for hearing, such supplemental orders implementing its authority under section 3 of the Natural Gas Act as it may find necessary or appropriate.

§ 153.12 Collaborative procedures for applications for authorization to site, construct, maintain, connect, or modify facilities to be used for the export or import of natural gas.

The definitions and pre-filing collaborative procedures for certificate applications in §§ 157.1 and 157.22 of this chapter are applicable to applications under section 3 of the Natural Gas Act filed pursuant to subpart B of this part.

[Order 608, 64 FR 51220, Sept. 22, 1999]

§ 153.13 Emergency reconstruction.

The provisions of subpart F of part 157 of this chapter that permit reconstruction for the purpose of immediately restoring interrupted service for the protection of life or health or for maintenance of physical property in an emergency due to a sudden unanticipated loss of gas supply or capacity are applicable to facilities subject to section 3 of the Natural Gas Act.

[Order 633, 68 FR 31604, May 28, 2003]

Subpart C—Application for a Presidential Permit

§ 153.15 Who shall apply.

(a) *Applicant*. Any person proposing to construct, operate, maintain, or connect facilities at the borders of the United States and Canada or Mexico, for the export or import of natural gas to or from those countries, or to amend an existing Presidential Permit, shall file with the Commission an application for a Presidential Permit under subpart C of this part and Executive Order 10485, as amended by Executive Order 12038.

(b) *Cross-reference*. Any person applying under paragraph (a) of this section

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for a Presidential Permit for the construction and operation of border facilities must also simultaneously apply for authorization under subpart B of this part.

§ 153.16 Contents of application.

(a) *Cross-reference.* The submission of information under §§153.7 and 153.8 of subpart B of this part shall be deemed sufficient for purposes of applying for a Presidential Permit or an amendment to an existing Presidential Permit under subpart C of this part for the construction and operation of border facilities.

(b) *Amendment not proposing construction.* An applicant proposing to amend the article(s) of an existing Presidential Permit (other than facilities aspects) must file information pursuant to §153.7(a) and a summary and justification of its proposal.

§ 153.17 Effectiveness of Presidential Permit.

A Presidential Permit, once issued by the Commission, shall not be effective until it has been accepted by the highest authority of the Permittee, as indicated by Permittee's execution of a Testimony of Acceptance, and a certified copy of the accepted Presidential Permit and the executed Testimony of Acceptance has been filed with the Commission.

Subpart D—Paper Media and Other Requirements

§ 153.20 General rule.

(a) *Number of copies.* Applications under subpart B of this part must be submitted to the Commission in an original and 7 conformed paper copies. Applications under subpart C of this part must be submitted to the Commission in an original and 9 conformed paper copies.

(b) *Certification.* All applications must be signed in compliance with §385.2005 of this chapter.

(1) The signature on an application constitutes a certification that: The signer has read the filing signed and knows the contents of the paper copies; and, the signer possesses the full power and authority to sign the filing.

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(2) An application must be signed by one of the following:

(i) The person on behalf of whom the application is made;

(ii) An officer, agent, or employee of the governmental authority, agency, or instrumentality on behalf of which the filing is made; or,

(iii) A representative qualified to practice before the Commission under §385.2101 of this chapter who possesses authority to sign.

(c) *Where to file.* The paper copies and an accompanying transmittal letter must be submitted in one package to: Office of the Secretary, Federal Energy Regulatory Commission, Washington, DC 20426.

§ 153.21 Conformity with requirements.

(a) *General Rule.* Applications under subparts B and C of this part must conform with the requirements of this part.

(b) *Rejection of applications.* 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: Environmental reports that are incomplete because the company has not been granted access by the affected landowner(s) to perform required surveys, or environmental reports that are incomplete, but where the minimum checklist requirements of part 380, appendix A of this chapter have been met. An application that relates to an operation, service, or construction 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.

[Order 595, 62 FR 30446, June 4, 1997, as amended by Order 603, 64 FR 26604, May 14, 1999]

§ 153.22 Amendments and withdrawals.

Amendments to or withdrawals of applications must conform to the requirements of §§385.215 and 385.216 of this chapter.

§ 153.23 Reporting requirements.

Each person authorized under this part 153 that is not otherwise required to file information concerning the start of construction or modification of import/export facilities, the completion of construction or modification, and the commencement of service must file such information with the Commission within 10 days after such event. Each person, other than entities without pipeline capacity, must also report by March 1 of each year the estimated peak day capacity and actual peak day usage of its import/export facilities.

PART 154—RATE SCHEDULES AND TARIFFS**Subpart A—General Provisions and Conditions**

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AUTHORITY: 15 U.S.C. 717-717w; 31 U.S.C. 9701; 42 U.S.C. 7102-7352.

SOURCE: Order 582, 60 FR 52996, Oct. 11, 1995, unless otherwise noted.