DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM06–7–000]

Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates

June 16, 2006.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend its blanket certification regulations to expand the scope and scale of activities that may be undertaken pursuant to blanket authority. The Commission proposes to expand the types of natural gas projects permitted under blanket authority and to increase the cost limits that apply to blanket projects. In addition, the Commission will clarify that a natural gas company is not necessarily engaged in an unduly discriminatory practice if it charges different customers different rates for the same service based on the date that customers commit to service.

DATES: Comments are due August 25, 2006.

ADDRESSES: You may submit comments, identified by Docket No. RM06–7–000, by one of the following methods:

• *Agency Web Site: http://www.ferc.gov.* Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble. The Commission encourages electronic filing.

• *Mail:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Please refer to the Comments Procedures Section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT: Gordon Wagner, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. *gordon.wagner@ferc.gov.* (202) 502–8947.

John Leiss, Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. *john.leiss@ferc.gov.* (202) 502–8058.

SUPPLEMENTARY INFORMATION:

1. The Federal Energy Regulatory Commission (Commission) proposes to amend its part 157, subpart F, blanket certification regulations to expand the scope and scale of activities that may be undertaken pursuant to blanket authority.[1] The Commission proposes to expand the types of natural gas projects permitted under blanket authority and to increase the cost limits that apply to blanket projects. In addition, the Commission will clarify that a natural gas company is not necessarily engaged in an unduly discriminatory practice if it charges different customers different rates for the same service based on the date that customers commit to service.

2. A natural gas company must obtain a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act (NGA) to construct, acquire, alter, abandon, or operate jurisdictional gas facilities or to provide jurisdictional gas services. Natural gas companies holding an NGA section 7(c) certificate may also obtain blanket certificate authority under part 157, subpart F, of the Commission's regulations to undertake certain types of activities without the need to obtain case-specific certificate authorization for each project. Activities undertaken pursuant to blanket certificate authority are not subject to the longer and more exacting review process associated with individual authorizations issued on an application-by-application basis.[2]

3. Natural gas facilities that may be constructed, acquired, altered, or abandoned pursuant to blanket authority are currently constrained by a cost limit of $8,200,000 for projects which can be undertaken without prior notice (also referred to as self-implementing or automatic authorization projects) and $22,700,000 for projects for which prior notice is required.[3] In addition, the blanket certificate provisions apply only to a restricted set of eligible facilities;[4] ineligible facilities currently include mainlines, storage field facilities, and facilities receiving gas from a liquefied natural gas (LNG) plant or a synthetic gas plant.[5]

4. In this notice of proposed rulemaking (NOPR) the Commission proposes to expand the scope of activities that can be undertaken pursuant to blanket authority by (1) increasing the project cost limit to $9,600,000 for an automatic authorization project and $27,400,000 for a prior notice project and (2) expanding the category of facilities eligible for construction under blanket certificate authority to include mainline facilities, certain LNG and synthetic gas facilities, and certain storage facilities. In addition, the Commission will clarify that a natural gas company is not necessarily engaged in an unduly discriminatory practice if it charges different customers different rates for the same service based on the date that customers commit to service.

Background

Petition To Expand the Blanket Certificate Program and Clarify Criteria Defining Just and Reasonable Rates

5. On November 22, 2005, the Interstate Natural Gas Association of America (INGAA) and the Natural Gas Supply Association (NGSA) jointly filed a petition under § 385.207(a) of the Commission's regulations proposing that the blanket certificate provisions be expanded ''to improve the industry's ability to ensure the adequacy of infrastructure, without impairing any legitimate rights of any party and without frustrating any public-policy objectives.''[6] Petitioners point to natural gas prices and tight gas supply and demand, and stress the need to ensure that natural gas facilities are adequate to reliably move available gas supplies to consuming markets. By way of example, Petitioners observe that natural gas producers faced with takeaway constraints can experience shut-ins, the depression of wellhead prices, and uncertainty as to when and where to

[1] 18 CFR 157.201–157.218 (2005).

[2] Certain activities are exempted from the certificate requirements of NGA section 7(c). For example, § 2.55 of the Commission's regulations exempts auxiliary installations and the replacement of physically deteriorated or obsolete facilities; part 284, subpart I, of the regulations provides for the construction and operation of facilities needed to alleviate a gas emergency.

[3] *See* 18 CFR 157.208(d), Table I (2006), as updated. In November 2005, in response to the impacts of hurricanes Katrina and Rita on gas production, processing, and transportation in and along the Gulf of Mexico, these cost limits were temporarily raised to $50,000,000 for prior notice projects and $16,000,000 for self-implementing projects, provided the projects increase access to gas supply and will be completed by October 31, 2006. *See Expediting Infrastructure Construction To Speed Hurricane Recovery*, 113 FERC ¶ 61,179 (2005). The October 31, 2006 deadline was subsequently extended to February 28, 2007. 114 FERC ¶ 61,186 (2006).

[4] *See* § 157.202(b)(2)(i) of the Commission's regulations, defining ''eligible facilities,'' and § 157.202(b)(2)(ii) (2005) of the regulations, describing facilities excluded from the definition of ''eligible facilities.''

[5] The November 2005 Order cited in note 3 also temporarily extended blanket certificate authority to include what would otherwise be ineligible facilities, namely, an extension of a mainline; a facility, including compression and looping, that alters the capacity of a mainline; and temporary compression that raises the capacity of a mainline.

[6] INGAA/NGSA Petition at 2 (November 22, 2005).

drill new wells. Petitioners add that companies faced with an inability to build new facilities when and where they are needed can experience a lack of growth, operational problems, and constraints on system flexibility. Petitioners argue that implementing their requested regulatory revisions will diminish the likelihood of experiencing such adverse events.[7]

Expanded Blanket Certificate Authority

6. Petitioners observe that the natural gas industry has undergone fundamental change since the blanket certificate provisions were put in place in 1982,[8] and believe that the rationale for certain of the limitations imposed when the blanket certificate program was implemented should no longer apply. Petitioners request that blanket certificate authority be expanded to include mainline facilities, LNG takeaway facilities, and certain underground storage field facilities which are currently excluded from the blanket certificate program, and request that the cost limits for blanket projects be raised.

Blanket Project Cost Limits

7. Petitioners comment that ''in the Commission's original justification for the [blanket certificate program] restrictions in Order No. 234, the primary reason given was the impact on ratepayers, not environmental impact or safety.'' [9] In 1982, the blanket project cost limits were set at $4,200,000 for automatic projects and $12,000,000 for prior notice projects; presently, these cost limits stand at an inflation adjusted $8,200,000 and $22,700,000, respectively. Petitioners assert that the current blanket project cost cap is ''sufficiently small'' to render any rate impacts *de minimis* and state their belief in ''the likelihood that new investments will produce new revenue that covers the cost of the investments.'' [10]

8. Petitioners claim that natural gas project costs have escalated faster than inflation, citing costs attributable to more extensive public outreach, greater agency involvement, a more complex permitting process, additional environmental remediation requirements, and the use of technologically advanced construction equipment. In view of this, Petitioners ask the Commission to reassess project costs and raise the blanket project cost limits in § 157.208(d), Table I, of the regulations. Petitioners do not characterize this as enlarging the scale of projects permitted under blanket authorization,[11] but as recalibrating the cost limits to permit a project that could have been constructed within the cost limit in effect in 1982 to be built again today within today's updated cost limit.

Request To Clarify Criteria Defining Just and Reasonable Rate

9. Petitioners state that a natural gas company's decision to go forward with a proposed project can turn on whether there are customer service commitments in hand sufficient to demonstrate the proposal's economic viability. Petitioners request that the Commission allow preferential rate treatment for ''foundation shippers,'' *i.e.*, customers that sign up early for firm service and thereby establish the financial foundation for a new project. Doing so, Petitioners claim, will ''provide a strong incentive for more potential shippers to become foundation shippers, thus allowing needed infrastructure projects to get underway earlier.'' [12] Petitioners seek assurance that offering customers that commit early to a proposed project a more favorable rate than customers that seek service later will not be viewed as unduly discriminatory.

Notice and Comments

10. Notice of the INGAA/NGSA petition was published in the **Federal Register** on December 9, 2005.[13] The Commission sought comments on whether it should take further action on the petition. Responses were filed by: American Gas Association (AGA); American Public Gas Association (APGA); Anadarko Petroleum Corporation (Anadarko); Devon Energy Corporation (Devon); Duke Energy Gas Transmission Corporation (Duke); Enstor Operating Company, LLC (Enstor); Honeoye Storage Corporation (Honeoye Storage); Illinois Municipal Gas Agency (Illinois Municipal); Independent Petroleum Association of America (IPAA); Kinder Morgan Interstate Gas Transmission, LLC (Kinder Morgan); NiSource Inc. (NiSource); Process Gas Consumers Group (Process Gas Consumers); Public Service Commission of New York (PSCNY); and Sempra Global (Sempra).

11. Duke, Enstor, Honeoye Storage, IPAA, and Process Gas Consumers unequivocally support the petition, and the majority of the remaining comments support aspects of the proposal. Several comments question and/or oppose the petition's proposals. The comments are discussed below.

Request for Technical Conference and Commission Response

12. AGA requests the Commission convene a technical conference to consider whether the proposal could adversely impact rates or degrade service, and thus be inconsistent with Commission policy which requires weighing the impact of new facilities on existing customers.[14] AGA is concerned expanding blanket certificate authority would undermine the Commission's rationale for initiating the blanket certificate program, which rests on the premise that blanket activities are minor in scope and ''so well understood as an established industry practice that little scrutiny is required to determine their compatibly with the public convenience and necessity.'' [15]

13. AGA raises legitimate issues relevant to the outcome of this proceeding. That said, the Commission expects all interested persons will have an adequate opportunity to express their views in comments in response to this NOPR. Given that comments have yet to be submitted on the merits of the regulatory revisions proposed herein, the Commission will dismiss AGA's request for a technical conference as premature. Following a review of the comments received in response to this NOPR, the request will be reassessed.

[7] While Petitioners have ''determined that there is little to be improved in the Commission's processing of certificate applications,'' and that ''there are few changes to the current authorization process that would accelerate the process beyond its current, efficient state,'' they nevertheless contend that adopting the proposed revisions will ''further enhance the authorization process'' and provide additional certainty regarding regulatory treatment. INGAA/NGSA Petition at 2 and 4 (November 22, 2005).

[8] *Interstate Pipeline Certificates for Routine Transactions*, Order No. 234, 47 FR 24254 (June 4, 1982), FERC Stats. & Regs. ¶ 30,368 (1982); Order No. 234–A, 47 FR 38871 (September. 3, 1982), FERC Stats. & Regs. ¶ 30,389 (1982).

[9] INGAA/NGSA Petition at 8 (November 22, 2005).

[10] *Id.*

[11] ''[I]t is not contemplated that an increase in the dollar limits will cause blanket projects to be larger, in terms of the project foot print or right of way needed, than they would have been'' in 1982. INGAA/NGSA Petition at 16 (November 22, 2005).

[12] *Id.* at 20.

[13] 70 FR 73,232 (2005).

[14] *See Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement on New Facilities)*, 88 FERC ¶ 61,227 (1999), *orders clarifying statement of policy*, 90 FERC ¶ 61,128 and 92 FERC ¶ 61,094 (2000), *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000).

[15] *Interstate Pipeline Certificates for Routine Transactions*, Order No. 234, FERC Stats. & Regs. ¶ 30,368 at 30,200 (1982). *See also, Distrigas of Massachusetts Corp.*, 60 FERC ¶ 61,274 at 61,931 (1992), in which the Commission stated that ''[t]he blanket procedures were intended to apply only to proposals which by their very nature require limited Commission involvement.''

Proposed Regulatory Revisions

Rationale for the Blanket Certificate

14. The blanket certificate program was designed to provide an administratively efficient means to authorize a generic class of routine activities, without assessing each prospective project on a case-by-case basis. In 1982, in instituting the blanket certificate program, the Commission explained the new program as follows:

> [T]he final regulations divide the various actions that the Commission certificates into several categories. The first category applies to certain activities performed by interstate pipelines that either have relatively little impact on ratepayers, or little effect on pipeline operations. This first category also includes minor investments in facilities which are so well understood as an established industry practice that little scrutiny is required to determine their compatibility with the public convenience and necessity. The second category of activities provides for a notice and protest procedure and comprises certain activities in which various interested parties might have a concern. In such cases there is a need to provide an opportunity for a greater degree of review and to provide for possible adjudication of controversial aspects. Activities not authorized under the blanket certificate are those activities which may have a major potential impact on ratepayers, or which propose such important considerations that close scrutiny and case-specific deliberation by the Commission is warranted prior to the issuance of a certificate.[16]

15. The Commission continues to apply the above criteria in an effort to distinguish those types of activities that may appropriately be constructed under blanket certificate authority from those projects that merit closer, case-specific scrutiny due to their potentially significant impact on rates, services, safety, security, competing natural gas companies or their customers, or on the environment.

16. ''Under section 7 of the NGA, pursuant to which the blanket certificate rule is promulgated,'' the Commission has ''an obligation to issue certificates only where they are required by the public convenience and necessity. The blanket certificate rules set out a class of transactions, subject to specific conditions, that the Commission has determined to be in the public convenience and necessity.'' [17] To the extent this class of transactions is enlarged, there must be an assessment, and assurance, that each added class of transactions is similarly required by the public convenience and necessity.

17. In this NOPR, the Commission proposes to expand the scope of blanket certificate activities to include mainlines, storage facilities, and certain facilities carrying regasified LNG and synthetic gas, and to expand the scale of blanket certificate activities by raising the project cost limits. The Commission seeks comments on whether this can be accomplished without compromising the rationale upon which the blanket certificate program is founded.

Comments and Commission Response

18. APGA questions the rationale for revising the blanket certificate program. Unlike Petitioners, APGA sees no cause to attribute current high natural gas prices and recent price volatility to inadequate gas transportation or storage facilities. Instead, APGA contends prices reflect tight supplies and a relatively inelastic demand.[18] Consequently, APGA does not expect the proposed regulatory revisions to result in lower gas prices or less price volatility. APGA contends the proposed changes will eliminate protections mandated by the NGA and will be contrary to Commission's Policy Statement on New Facilities.[19]

19. The regulatory revisions proposed herein are not intended to drive down current gas costs; rather, the Commission seeks to provide a streamlined means for natural gas companies to make infrastructure enhancements in a timely manner. Nevertheless, to the extent prices reflect capacity constraints that might be alleviated by adding or upgrading facilities, then expanding the blanket certificate program, which offers companies an expedited means to obtain construction authorization, may indirectly drive prices down by allowing companies to address system bottlenecks expeditiously through use of their blanket certificate authority. The Commission recognizes that the proposed revisions, by expanding blanket certificate authorization, would modify the nature of the blanket program; however, for the reasons discussed below, the Commission believes the proposed revisions comport with the Commission's mandate under the NGA and are consistent with current Commission policy.

20. APGA observes that in the past, the Commission has temporarily altered provisions of the blanket certificate program in response to natural gas emergencies, and states that these temporary measures have proved effective. In view of the Commission's success in making temporary adjustments, APGA sees no need to permanently expand blanket certificate authority. APGA contends that but for the electric crisis in the Western United States in 2000–2001, Petitioners have not cited any instance of mainline pipeline capacity constraint that would justify lifting the prohibition on adding mainline capacity under blanket certificate authority. APGA states that the Commission's response to the 2005 Gulf Coast hurricanes is designed to expedite rebuilding infrastructure to restore lost services, and does not reflect a need to permanently alter the blanket certificate regulations in order to promote a nationwide expansion of facilities and services.

21. The Commission concurs with APGA that flexibility afforded by the NGA, and the intermittent use of provisional waivers of certain Commission regulations, have proved effective in accelerating the industry's recovery from natural gas emergencies. However, the Commission does not view the result of a temporary waiver of compliance with certain blanket certificate requirements —whether the result be deemed a success or not—as a reason to adopt or reject the blanket certificate program expansion as Petitioners propose. The Commission believes the emphasis of the blanket certificate program should remain, as it always has, on expediting the process of adding and improving gas facilities and services, while ensuring that there are no adverse impacts on existing rates, services, or the environment. The immediate crisis in the aftermath of the hurricanes has eased. However, the need to restore and add infrastructure remains critical: (1) To attach new supplies to offset the continuing decline from existing gas sources; (2) to add interconnections, extensions, and other new facilities to enhance the flexibility and responsiveness of the grid; and (3) to accommodate anticipated increases in imports of LNG. It is with these objectives in mind that the Commission proposes to expand its blanket certificate program.

22. The Commission seeks comment whether allowing project sponsors the option of requesting an incremental rate

[16] 47 FR 24254 (June 4, 1982).

[17] *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 436, 50 FR 42408 (October 18, 1985).

[18] APGA adds that the municipal and publicly-owned local distribution systems it represents, and the retail customers they serve, are ''extremely sensitive'' to increases in the cost of natural gas and it urges the Commission to ''take all reasonable actions to ensure the lowest natural gas prices and to minimize price volatility.'' APGA's Comments at 4 (January 17, 2006).

[19] *See* note 14.

for a particular project[20] will provide additional flexibility to expedite the process of adding and improving gas facilities and services, while ensuring that there are no adverse impacts on existing rates, services, or the environment. Further, the Commission seeks comment regarding what additional or alternative revisions to the blanket certificate regulations would be necessary to establish the appropriate procedures.

Facilities Subject to Blanket Certificate Authority

23. To meet the above stated objectives, the Commission proposes to expand the scope of the blanket certificate program by including certain facilities associated with LNG and synthetic gas plants, storage facilities, and mainlines—all of which have heretofore been excluded from the blanket certificate program.[21] In 1982, these facilities were excluded principally due to their perceived potential to adversely impact existing customers' rates and services. With respect to rates, a presumption that blanket certificate project costs will qualify for rolled-in rate treatment will continue to apply, subject to rebuttal by showing adverse impacts in a NGA section 4 rate case proceeding. With respect to facilities and services, the proposal discussed below to require prior notice for projects undertaken as a result of expanded blanket certificate authority, in conjunction with the proposal to lengthen the prior notice period, should provide a reasonable opportunity to review the potential system impacts of a proposed blanket project prior to its construction.

Facilities Receiving LNG and Synthetic Gas

24. The blanket certificate regulations exclude facilities used to take gas away from plants regasifying LNG and manufacturing synthetic gas, a restriction imposed in 1982, in part, to protect customers from the impact of paying the high commodity cost of LNG and synthetic gas.[22] Such rate protection is now little more than an artifact of the era when jurisdictional pipelines provided merchant service, charging customers a bundled rate that combined a transportation charge for delivering natural gas plus the cost to purchase gas. In 1992, in Order No. 636,[23] the Commission undertook a process of restructuring the gas industry, resulting in the itemization and separate billing of previously bundled gas services. As a result, today's jurisdictional rates no longer include the commodity cost of gas purchased by the pipeline and sold to the customer. Further, over the last several years, the cost differential between non-traditional energy sources, particularly imported LNG, and traditional domestic, Canadian, and Mexican gas supplies has narrowed. In view of recent and anticipated market conditions, barring facilities receiving LNG and synthetic gas from the blanket program may be hindering consumers' access to competitively-priced gas supplies.

25. The Commission believes that increasing access to LNG and synthetic gas is consistent with the public interest. Accordingly, the Commission proposes to revise its regulations to permit certificate holders to rely on blanket authority to add, alter, or abandon certain pipeline facilities used to carry gas away from an LNG terminal, a deepwater LNG port, an inland LNG storage facility, or a synthetic gas manufacturing plant.

26. The Commission proposes to add § 157.212, to read as follows:

§ 157.212 Synthetic and liquefied natural gas facilities.

Prior Notice. Subject to the notice requirements of §§ 157.205(b) and 157.208(c), the certificate holder is authorized to acquire, abandon, construct, modify, replace, or operate natural gas facilities that are used to transport exclusively either synthetic gas or revaporized liquefied natural gas and that are not ''related jurisdictional natural gas facilities'' as defined in § 153.2(e). The cost of a project may not exceed the cost limitation set forth in column 2 of Table I of § 157.208(d). The certificate holder must not segment projects in order to meet this cost limitation.

27. This approach is intended to provide advance notice of proposed blanket certificate projects involving facilities carrying exclusively LNG or synthetic gas to allow the public, or Commission staff, to comment or protest, and thereby possibly compel case-specific consideration of a proposal.[24] The Commission views ''facilities that are used to transport exclusively either synthetic gas or revaporized liquefied natural gas'' as pipelines interconnected directly to an LNG or synthetic gas plant and downstream laterals; the facilities extend from an LNG or synthetic gas source to the first junction with a line carrying natural gas drawn from the ground. Once gas supply sources are commingled, § 157.212 becomes inapplicable. Pursuant to § 153.2(e), blanket certificate authority will not apply to the outlet pipe of an LNG or synthetic gas plant, but only to those facilities that attach to the directly interconnected pipe.

28. The Commission acknowledges that there may be no objections presented to certain LNG and synthetic gas takeaway pipeline projects, *e.g.*, a meter at a line leading from an inland LNG peaking plant. Nevertheless, the Commission believes it is prudent to provide prior notice of all LNG and synthetic gas takeaway pipeline projects to give end users, local distribution companies, the Commission, and others the opportunity to review the potential impacts of a proposal and the option to comment or protest.

29. The blanket certificate provisions do not apply to LNG plant facilities,[25] and this proposed regulatory revision will not change that. LNG plant facilities are not within the class of minor, well-understood, routine activities that the blanket certificate program is intended to embrace; LNG plant facilities necessarily require a review of engineering, environmental,

[20] *See, e.g.*, Tennessee Gas Pipeline Company, 110 FERC ¶ 61,047, *order denying reh'g*, 111 FERC ¶ 61,094 (2005), discussing the Commission's rejection of a pipeline's proposal to construct a five-mile lateral line under blanket authority and charge an incremental rate.

[21] Certain limited underground storage field testing and development is permitted under § 157.215; this NOPR proposes a significant expansion of blanket-eligible storage field activities. Also, as noted above, blanket certificate authority has been extended to otherwise ineligible facilities on a temporary basis in order to respond to a natural gas emergency.

[22] As stated in the 1982 order promulgating the blanket certificate regulations, because LNG and synthetic gas ''facilities may have a significant impact on ratepayers, the Commission believes they should not be authorized under a blanket certificate, but should be subjected instead to the scrutiny of a case-specific determination.'' 47 FR 24254 (June 4, 1982).

[23] *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939 (1992), *order on reh'g*, Order No. 636–A, FERC Stats. & Regs. ¶ 30,950 (1992), order on reh'g, Order No. 636–B, 61 FERC ¶ 61,272 (1992), *aff'd in part, rev'd in part sub nom. United Distribution Cos.* v. *FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *cert. denied sub nom. Associated Gas Distributors* v. *FERC*, 520 U.S. 1224 (1997), *on remand*, Order No. 636–C, 78 FERC P 61,186 (1997), *order on reh'g*, Order No. 636–D, 83 FERC ¶ 61,210 (1998).

[24] A protest may be filed in response to a prior notice of a proposed blanket project. 18 CFR 157.205(e) (2005). If the protest is not withdrawn or dismissed within the time allotted, the prior notice proceeding is then treated as an application for a case-specific NGA section 7 certificate authorization. 18 CFR 157.205(f) and (g) (2005).

[25] LNG facilities' construction and operation remain subject to separate regulatory requirements, either NGA section 3 approval for import or export plant facilities, or NGA section 7 case-specific certificate authorization for LNG storage facilities. The Commission's jurisdiction over the transportation and sale of natural gas in interstate commerce does not apply to synthetic gas manufacturing plant facilities.

safety, and security issues that the Commission believes only can be properly considered on a case-by-case basis. Similarly, the proposed blanket certificate provisions will be inapplicable to jurisdictional natural gas facilities directly attached to an LNG terminal, since such facilities are subject to the mandatory 180-day pre-filing process specified in § 157.21 of the Commission's regulations.[26]

30. The mandatory 180-day pre-filing process for jurisdictional natural gas facilities that directly interconnect with the facilities of an LNG terminal was put in place last year pursuant to section 311(d) of the Energy Policy Act of 2005 (EPAct 2005).[27] Petitioners ask that the Commission revise these recently enacted regulations so that ''the pipeline lateral receiving LNG is not subject to the Commission's mandatory pre-filing process,'' asserting that a ''lateral to hook up to existing LNG facilities should cause no additional issues regarding safety and environmental concerns.'' [28] The Commission disagrees. Because an LNG terminal and the facilities that attach directly to it are interdependent—inextricably bound in design and operation—a terminal and its takeaway facilities must be evaluated in tandem; both merit a similar degree of regulatory scrutiny.

31. Petitioners argue that rules ''that make it considerably more difficult to hook up LNG to the interstate grid * * * differentiate between facilities for different types of supply'' which ''appears unduly discriminatory.'' [29] Again, the Commission disagrees. The different rules applicable to different natural gas supply sources reflect the different technology involved in importing, storing, and regasifying LNG. In addition, different public policy considerations apply to LNG, *e.g.*, safety and reliability concerns and issues related to gas quality and interchangeability. In view of this, the Commission finds legitimate cause to draw a regulatory distinction between LNG imports and traditional gas supplies, and will decline the request to revisit the provisions put in place in last year's Order No. 665.

Comments and Commission Response

32. Devon is apprehensive that expanding blanket certificate authority to include certain LNG pipelines could give LNG imports a competitive advantage over domestic gas supplies. The Commission is not in a position to address this, as it is not charged with or conducting a comparative analysis of types of energy, or with promoting one source or type of energy over another, or with determining whether the national interest lies with obtaining energy independence or foreign energy supplies. More to the point, LNG import terminals and the pipelines directly interconnected to them need to be constructed, or expanded, in tandem before additional volumes of LNG can be brought into the United States, and the proposed expansion of blanket certificate authority will not apply to either LNG terminals or the facilities that are directly interconnected with them.[30] Thus, the construction, expansion, or modification of facilities capable of boosting LNG imports will remain subject to case-specific NGA section 7 certificate authorization and case-specific NGA section 3 approval.

33. Devon and APGA observe that LNG imports can have characteristics different from traditional gas supplies and assert that the changed character of the gas could result in adverse impacts on pipelines carrying imported LNG and end users consuming it. The Commission's Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs (Policy Statement on Gas Quality) in Docket No. PL04–3–000, issued concurrently with this NOPR, provides direction for addressing gas quality and interchangeability concerns. Assuming LNG supplies conform to the gas quality standards of jurisdictional pipelines' tariffs, and the tariffs are in accord with the Policy Statement on Gas Quality, the Commission believes that objections that concern the character of particular volumes of gas are best presented to parties buying and reselling the gas. However, if there are indications that gas volumes—regardless of their source—may have characteristics incompatible with pipelines' tariff provisions, or inconsistent with the Policy Statement on Gas Quality, then it would be appropriate to inform the Commission either by a protest to a proposed blanket certificate project or by presenting an NGA section 5 complaint.

34. Devon suggests that LNG imports could interfere with pipelines' operations by creating capacity constraints. A pipeline would not agree to accept LNG imports—or, indeed, additional quantities of gas from any source—if doing so could compromise its ability to continue to reliably meet its commitments to its existing customers, since doing so would conflict with the pipeline's certificate obligation to meet its customers' firm service requirements. If there is an indication that a change in a natural gas company's operations, be it due to receipt of LNG or any other cause, may interfere with the company's capability to continue to provide certificated services, allegations to this effect may be presented in a protest to a proposed blanket certificate project or in an NGA section 5 complaint. The Commission will act as necessary to prevent and remedy improper practices; as appropriate, the Commission will employ its NGA enforcement authority, under which it may impose a civil penalty of up to $1,000,000 per day for the violation of any provision of the NGA ''or any rule, regulations, restriction, condition, or order made or imposed by the Commission under authority of'' the NGA.[31]

35. AGA and Petitioners concur that the motive for excluding LNG takeaway facilities from blanket certificate projects—*i.e.*, the concern that high-priced LNG imports would raise gas costs for the customers of merchant pipelines—is now no more than an artifact of the bundled era, and is thus no longer relevant. Nevertheless, AGA urges that LNG takeaway lines continue to be excluded from the blanket certificate program due to the public safety and operational issues raised by the import of additional LNG supplies. AGA suggests awaiting the outcome of the proceeding in Docket No. PL04–3–000 prior to applying any expanded blanket certificate authority to LNG pipeline facilities. Similarly, APGA maintains that modifications to LNG takeaway facilities raise technical issues that merit examination prior to implementation. APGA adds that the compatibility of LNG supplies with existing transmission equipment and with end users' facilities and processes is an issue that should be considered, yet might not receive the attention deserved if LNG takeaway facilities were expanded under blanket certificate authority.

[26] Section 153.2 of the Commission's regulations states that the construction of any pipelines or other natural gas facilities subject to section 7 of the NGA which will directly interconnect with the facilities of an LNG terminal, and which are necessary to transport gas to or regasified LNG from a proposed or existing authorized LNG terminal, are subject to a mandatory minimum six-month pre-filing process. 18 CFR 153.2 (2006). *See Regulations Implementing Energy Policy Act of 2005; Pre-Filing Procedures for Review of LNG Terminals and Other Natural Gas Facilities*, Order No. 665, 113 FERC ¶ 61,015 (2005).

[27] Public Law 109–58, 119 Stat. 594 (2005).

[28] INGAA/NGSA Petition at 14 (November 22, 2005).

[29] *Id.*

[30] *See* 18 CFR 153.2(e) (2006).

[31] *See* EPAct 2005 section 314, amending the Commission's civil penalty authority under NGA section 22.

36. First, pursuant to Order No. 665, the blanket certificate provisions do not apply to facilities attached directly to an LNG terminal. With respect to LNG and synthetic gas takeaway facilities to which the blanket certificate provisions will apply, all proposed § 157.212 projects will require prior notice, which should permit the public an adequate opportunity to identify, address, and resolve issues before construction can commence. If there is an interest in exploring gas quality and interchangeability issues, or any issues related to the operational characteristics of LNG and synthetic gas plants, an interested person may protest, and by doing so, potentially convert the blanket proceeding to a case-specific NGA section 7 certificate authorization proceeding. Finally, as noted, in Docket No. PL04–3–000 a Policy Statement on Gas Quality is issued concurrently with this NOPR and will apply to all blanket certificate projects.

Underground Storage Field Facilities

37. Currently, the blanket certificate program excludes 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 * * * or wells needed to utilize an underground storage field.'' [32] Petitioners request these restrictions be removed, provided blanket certificate activities do not result in inappropriate changes to the physical characteristics of an underground storage field. Specifically, Petitioners seek to expand the blanket certificate program to include: (1) Facilities that provide deliverability enhancements (*e.g.* aboveground piping or compression); (2) infill wells that increase injection or withdrawal capability; (3) the development of new caverns or storage zones within a previously defined project area or field, as long as there is no change in the certificated boundaries or pressure of the field.

38. As a general proposition, it is easier to track gas volumes moving through a pipeline than gas volumes moving in and out of an underground reservoir. The boundaries, integrity, and operational characteristics of a segment of pipe are known and fixed, but these characteristics are neither obvious nor immutable for an underground storage facility. In view of the operational and engineering ambiguities inherent in managing underground storage facilities, these facilities (but for a limited § 157.215 exception for facilities for testing and development) have been excluded from the blanket certificate program.

39. Underground storage fields are designed, constructed, developed, and operated based on initial available data, and as additional data are obtained over the course of a storage field's operation, the facilities' design and the operational parameters may be modified to optimize the field's development and productivity. Because storage design and development is not an exact science, it typically takes three to ten years of full operation to understand and incorporate engineering, geological, and related data to obtain optimal storage field functioning.

40. The Commission seeks to ensure that storage facilities are operated in a manner that will maintain their long-term integrity while meeting day-to-day performance requirements. Because certain modifications may affect operational parameters such as total storage capacity and working and cushion gas volumes, the Commission believes it would be imprudent to expand blanket certificate authority to activities that could impact the operating pressures, reservoir or buffer boundaries, or the certificated capacity of a storage facility. Nevertheless, the Commission believes the administrative advantages of construction under blanket certificate authority can be prudently extended to certain storage field activities provided there is sufficiently detailed prior notice of a proposed project. This will allow companies, under blanket certificate authority, to utilize re-engineering to enhance the capability of existing storage facilities while permitting the Commission and the public to assess whether a proposal might compromise a storage field's integrity or alter its physical characteristics or certificated capacity.

41. The Commission proposes to add § 157.213, specifying information to be included in a prior notice of a proposed project affecting underground storage field facilities.[33] Under these proposed regulatory revisions, if a certificate holder is able to demonstrate, by theoretical or empirical evidence, that a proposed project will improve storage operations without altering an underground storage facility's total inventory, reservoir pressure, or reservoir or buffer boundaries, and will comply with environmental and safety provisions, then blanket certificate authority may be used to re-engineer an existing storage facility to decrease cushion gas, increase working gas, improve injection and withdrawal capabilities, and add more cycles per season. Storage field facilities can include gathering lines, wells (vertical, horizontal, directional, observation, and injection and withdrawal), pipelines, compression units, and dehydration and other gas treatment facilities. This proposed expanded blanket certificate authority might be used to maintain and enhance deliverability in existing fields with lagging performance due to deteriorated wells or flow strings, damage to well bore drainage areas, water encroachment, and other operational and facility problems, and to make field enhancements, such as converting a nonjurisdictional observation well to withdrawal or injection/withdrawal status. These enhancements can serve to improve peak, daily, and/or seasonal deliverability by decreasing cushion gas, increasing working gas, improving injection and withdrawal capabilities, or adding more cycles per season—all without affecting overall operating limits.

42. Petitioners promote expanding blanket certificate authority to encompass the development of new caverns or storage zones within a previously defined and certificated project area or field. The Commission, however, views the blanket certificate program as ill suited to construction that would create new storage zones, because impacts associated with such projects are wide ranging and go beyond the limited impact that increases in deliverability are expected to have on existing fields. The development of new storage zones within a previously defined and certificated field is no different than the development of an entirely new storage field and thus deserves the same level of scrutiny. The issues to be considered in establishing new underground gas reservoirs require a close review of technical characteristics and test results, among other criteria, that go far beyond the project description, and limited assessment thereof, available in prior notice proceeding.[34]

43. Similarly, the proposed expanded blanket certificate authority is not

[32] 18 CFR 157.202(b)(2)(ii)(D) (2005).

[33] The information to be included in prior notice should satisfy APGA's request for an opportunity to review blanket project storage field modifications before construction.

[34] This also applies to the development of new salt caverns. The safety parameters of a salt cavern within a salt dome or salt formation are more complicated and require more detailed studies and analysis than depleted gas or oil fields. The development of salt caverns, even if within a previously studied and certificated dome or bedded salt formation, calls for exacting step-by-step procedures to verify the validity of the original and modified design.

intended to include storage reservoirs that are still under development or reservoirs which have yet to reach their inventory and pressure levels as determined from their original certificated construction parameters. Such reservoirs may or may not have reliable information available on geological confinement or operational parameters via data gathered throughout the life of a storage field, whereas new storage zones lack data collected over time on physical and operational aspects of a field. Therefore, for such facilities, the Commission finds it necessary to individually examine each reservoir to determine its potential operating parameters (capacity, cushion and working gas, operational limits, well locations, etc.) and to review data essential to understand and predict how modifications might affect the integrity, safety, and certificated parameters of the facility.

44. The Commission proposes to expand the blanket certificate program to permit additional storage field activities subject to the §§ 157.205 and 157.208(c) prior notice provisions and the submission of information pertinent to the proposed project, as specified below. The current § 157.215 automatic authorization remains in effect for limited storage testing and development. The Commission proposes to add a new § 157.213 for prior notice storage projects, as follows:

§ 157.213 Underground storage field facilities.

(a) *Prior Notice.* Subject to the notice requirements of §§ 157.205(b) and 157.208(c), the certificate holder is authorized to acquire, abandon, construct, modify, replace, or operate natural gas underground storage facilities, provided the storage facility's total inventory, reservoir pressure, reservoir and buffer boundaries, certificated capacity, and compliance with environmental and safety provisions remain unaffected. The cost of a project may not exceed the cost limitation set forth in column 2 of Table I of § 157.208(d). The certificate holder must not segment projects in order to meet this cost limitation.

(b) *Contents of request.* In addition to the requirements of §§ 157.206(b) and 157.208(c), requests for activities authorized under paragraph (a) must contain:

(1) A description of the current geological interpretation of the storage reservoir, including both the storage formation and the caprock, including summary analysis of any recent cross-sections, well logs, quantitative porosity and permeability data, and any other relevant data for both the storage reservoir and caprock;

(2) The latest isopach and structural maps of the storage field, showing the storage reservoir boundary, as defined by fluid contacts or natural geological barriers; the protective buffer boundary; the surface and bottomhole locations of the existing and proposed injection/withdrawal wells and observation wells; and the lengths of open-hole sections of existing and proposed injection/withdrawal wells;

(3) Isobaric maps (data from the end of each injection and withdrawal cycle) for the last three injection/withdrawal seasons, which include all wells, both inside and outside the storage reservoir and within the buffer area;

(4) A detailed description of present storage operations and how they may change as a result of the new facilities or modifications. Include a detailed discussion of all existing operational problems for the storage field, including but not limited to gas migration and gas loss;

(5) Current and proposed working gas volume, cushion gas volume, native gas volume, deliverability (at maximum and minimum pressure), maximum and minimum storage pressures, at the present certificated maximum capacity or pressure, with volumes and rates in MMcf and pressures in psia;

(6) The latest field injection/withdrawal capability studies including curves at present and proposed working gas capacity, including average field back pressure curves and all other related data;

(7) The latest inventory verification study for the storage field, including methodology, data, and work papers;

(8) The shut-in reservoir pressures (average) and cumulative gas-in-place (including native gas) at the beginning of each injection and withdrawal season for the last 10 years; and

(9) A detailed analysis, including data and work papers, to support the need for additional facilities (wells, gathering lines, headers, compression, dehydration, or other appurtenant facilities) for the modification of working gas/cushion gas ratio and/or to improve the capability of the storage field.

Comments and Commission Response

45. APGA argues that making modifications to underground storage facilities raises technical issues that should be reviewed in advance of any construction activity, and that the blanket certificate program does not provide for adequate advance oversight. The Commission believes adequate oversight will be assured because prospective storage field projects will be subject to prior notice, which notice must include the detailed information descried above.

46. Honeoye Storage contends that there is no reason to subject storage field construction to greater scrutiny than other construction activities as long as additional well construction or other activities do not alter the certificated parameters of existing storage facilities. For the reasons discussed above, the Commission believes that activities that alter certain characteristics of a storage field merit close scrutiny. However, provided there is adequate advance study and documentation of the proposed construction, the Commission finds no reason to bar every activity that might alter a certificated parameter from the blanket certificate program.[35] The information a project sponsor is required to submit pursuant to proposed § 157.213 is intended to give the Commission and interested persons a sufficient basis upon which to assess the prudence of proposed storage field activities.

Mainline Facilities

47. The Commission proposes to extend blanket certificate authority to mainline facilities. Heretofore, the blanket certificate provisions have excluded mainline facilities, in part out of concern that mainline project costs could be large enough to adversely impact existing rates. Without this exclusion, it might be possible for a natural gas company to break a costly mainline project into several blanket-sized segments. This remains a valid concern, and as stressed in comments, this concern is rendered more acute as blanket project cost limits increase.

48. To allay this concern, the Commission proposes to require that all blanket certificate projects involving mainline facilities be subject to prior notice to give the Commission and interested persons a means to assess a proposal and express objections before construction begins. Section 157.208(b) of the Commission's regulations states that a blanket certificate holder ''shall not segment projects in order to meet the cost limitation set forth in column 2 of Table I,'' *i.e.*, the prior notice project cost cap. The Commission intends to continue to closely monitor blanket certificate projects, and in cases when a project sponsor relies on blanket certificate authority for multiple projects, to review blanket activities to verify that individual projects are not piecemeal portions of a larger integrated undertaking. If the Commission determines segmentation has occurred, it may impose sanctions, which can include precluding a natural gas company from acting under blanket certificate authority[36] and penalties of up to $1,000,000 per day per violation.

49. The Commission proposes to add § 157.210, to read as follows:

§ 157.210 Mainline natural gas facilities.

Prior Notice. Subject to the notice requirements of §§ 157.205(b) and 157.208(c),

[35] *See Texas Eastern Transmission Corporation,* 62 FERC ¶ 61,196 (1993).

[36] *See, e.g., Destin Pipeline Company, L.L.C.,* 90 FERC ¶ 61,270 (2000), in which the Commission responded to construction costs that greatly exceeded the project cost limit by suspending the natural gas company's blanket certificate authority.

the certificate holder is authorized to acquire, abandon, construct, modify, replace, or operate natural gas mainline facilities. The cost of a project may not exceed the cost limitation set forth in column 2 of Table I of § 157.208(d). The certificate holder must not segment projects in order to meet this cost limitation.

Comments and Commission Response

50. Petitioners observe that one of the reasons for excluding mainline capacity expansion projects in the past was the worry that the new capacity might be inequitably allocated, and reply that the regulations instituted since the industry restructuring following Order No. 636 have reduced the potential to allocate existing or new capacity inequitably. The Commission believes its current capacity allocation requirements, *e.g.*, posting and bidding, which apply to capacity made available as a result of blanket projects, will act as a check on discrimination in capacity allocation. If a party suspects a request for service has been improperly awarded, it may seek redress by submitting a complaint to the Commission under NGA section 5. The Commission will act as necessary to prevent, remedy, and penalize improper practices.

51. AGA is apprehensive that expanding blanket authority to include mainline facilities could lead to insufficient scrutiny of environmental or operational impacts, particularly in the case of automatic authorization projects. First, the Commission does not propose to permit automatic authorization for projects involving mainline facilities, regardless of cost. Second, blanket certificate projects are subject to the § 157.206(b) environmental compliance conditions to ensure that actions that could cause a significant adverse impact on the human environment are not conducted under blanket certificate authority, but are instead subject to case-specific review. If the blanket certificate program is enlarged to include mainline facilities as proposed, the § 157.206(b) conditions will apply. In view of this, and the proposal herein to fortify prior notice and environmental compliance provisions, the Commission concludes that proposals involving mainline facilities will receive sufficient scrutiny.

52. Anadarko is apprehensive the proposed revisions could undermine the Commission's authority to ensure that the legislative goals and requirements of the Alaska Natural Gas Transportation Act of 1976 (ANGTA) [37] and the Alaska Natural Gas Pipeline Act (ANGPA) [38] are met. Anadarko states that the Commission's consideration of a case-specific certificate application, and the attendant open season allocation requirement, provides ''the first, and perhaps the only, opportunity for objections to be raised to the size of the proposed expansion, the allocation of capacity, or the rate to be charged, and it is the first opportunity for discrimination claims to be raised.'' [39] Anadarko argues that allowing ''any mainline expansion of an Alaskan natural gas pipeline'' without ''all of the protections afforded by a complete NGA section 7(c) certificate proceeding'' could conflict with the ANGTA and ANGPA rate and the open season regulatory requirements recently articulated in the Commission's Order No. 2005.[40] Anadarko asks that the Commission specifically exempt an Alaska natural gas transportation project from any expanded blanket certificate authority.

53. The Commission, in implementing its regulatory authority under ANGPA, explained that ''a number of existing Commission policies predicated on competitive conditions in the lower 48 states are ill-suited for application in the case of an Alaska natural gas transportation project;'' therefore, there is a ''need in certain instances to accommodate existing Commission policy to the unique circumstances surrounding the exploration, production, development, and transportation to market of Alaska natural gas.'' [41] Consequently, the Commission will consider the need to accommodate the blanket certificate program to the unique circumstances of an Alaska project in any future proceedings authorizing such a project.

54. Kinder Morgan states its intention to extend or expand mainlines in order to bring natural gas to new ethanol production plants. Kinder Morgan cites public policy initiatives intended to promote the production and consumption of ethanol and expresses the concern that the current blanket certificate program's exclusion of mainline facilities may hinder the timely construction of facilities necessary to supply gas to new ethanol plants. The Commission expects the proposal to expand the blanket certificate provisions to include mainlines will provide Kinder Morgan with the additional authority it seeks. Kinder Morgan describes requests it has received from a developer of two new ethanol plants: one to extend a mainline by adding 2 to 3 miles of 8-inch pipe, the other to loop a mainline with 14 miles of 12-inch pipe. Under the proposed revised regulations, both projects would fall well within the parameters of the expanded blanket certificate program.

Blanket Project Cost Limits

55. Blanket certificate projects are constrained (1) by cost caps, (2) by compliance with the § 157.206(b) environmental requirements, and (3) by being limited to a restricted set of facilities.[42] The Commission proposes to raise the cost caps for blanket certificate projects.

56. The blanket certificate project cost limits were initially set at $4,200,000 for an automatic authorization project and $12,000,000 for a prior notice project. Since 1982, the Commission has used an inflation tracker (the gross domestic product implicit price deflator as determined by the Department of Commerce) that has resulted in incrementally ratcheting up blanket project cost limits to the current level of $8,200,000 for an automatic authorization project and $22,700,000 for a prior notice project. Petitioners contend these inflation-adjusted cost caps fail to take into account additional costs, such as regulatory compliance requirements and the use of more expensive construction technology, which did not play as prominent a part in 1982 as they do today, and request the Commission initiate a study to analyze and compare costs in 1982 to costs today.

57. There is no question that construction costs vary over time, and do so in a manner that is not easily predicted. Recently, for example, certain project components—notably the price of steel pipe—have risen far faster than any measure of overall inflation. However, although steel prices have run up over the past several years, in looking back to 1982, there were periods during which steel prices fell substantially. Further, changing regulatory requirements and construction techniques, to which Petitioners attribute cost increases, do

[37] 15 U.S.C. 719, *et seq.* (2000).

[38] 15 U.S.C. 720, *et seq.* (2000).

[39] Anadarko's Comments at 4 (January 17, 2005).

[40] *Regulations Governing the Conduct of Open Seasons for Alaska Natural Gas Transportation Projects*, Order No. 2005, 70 FR 8269 (February 9, 2005) 110 FERC ¶ 61,095 (2005).

[41] Order No. 2005–A, 70 FR 35011, 35016 (June 16, 2005); 111 FERC ¶ 61,332, P 36 (2005).

[42] Further, as a prerequisite for a blanket certificate, the Commission requires a company to first obtain a case-specific certificate, because it is in the context of evaluating an application for an NGA section 7 certificate authorization that the Commission establishes a ''jurisdictional and informational base * * * concerning such matters as rates, system supplies and certificated customers.'' *Interstate Pipeline Certificates for Routine Transactions*, Order No. 234, 47 FR 24254 (June 4, 1982); 47 FR 30724 (July 15, 1982), Reg. Preambles 1982–1985 P 30,200 (1982).

not always add to project costs, and may well contribute to cost reductions and efficiencies.

58. Petitioners request the Commission reassess construction costs to determine if a project constructed within 1982 cost limits could be replicated within today's cost limits. The Commission is concerned that a focus on changes in construction costs over time risks losing sight of the fundamental premise of the blanket certificate program, namely, that blanket authorization be restricted (1) to projects that are modest in scale and routine in nature, *i.e.*, projects that are sufficiently well understood so as to permit them to proceed with a lesser level of regulatory scrutiny, and (2) to projects that will not result in unjustified increases in existing customers' rates. With respect to the latter, comparing construction costs over time is irrelevant; the relevant question is whether the project cost caps have served to adequately insulate existing rates from increases attributable to blanket program costs. The Commission cautions that even if it were possible to mirror 1982 costs to costs today, the dollar amounts would not reflect proportionate impacts on existing rates, since in 1982 the commodity cost of gas was a significant portion of pipeline customers' merchant service rate, whereas today, gas costs are no longer a component of pipeline customers' transportation service rate. In view of this, the Commission questions the utility of undertaking a formal inquiry to try to true up construction costs from 1982 to today, and so declines Petitioners' invitation to do so.

59. Nevertheless, in an effort to gauge whether the inflation tracker employed by the Commission over the past quarter century has functioned as a reliable indicator of the rise in construction costs, the Commission has reviewed changes in gas utility construction materials costs. Between 1982 and 2005, such costs have risen by a factor of approximately 2.29,[43] compared to a factor of approximately 1.90 using the inflation tracker employed by the Commission. To account for this divergence, the Commission proposes to raise blanket cost limits to $9,600,000 for a no-notice project and to $27,400,000 for a prior notice project. In view of the relatively small disparity demonstrated between utility construction materials costs and the Department of Commerce's GDP implicit price deflator, the Commission proposes to continue to rely the latter, a commonly used and generally accepted measure of overall inflation levels, as the measure for making annual adjustments to the project cost limits. The Commission declines to tie the blanket cost limit adjustment to commodity prices (such as steel), labor rates, or other potentially subjective and varying project cost components out of a concern that this could result in volatile or inappropriate cost limit adjustments.

60. The Commission requests comments on (1) the merits of this proposed boost in the blanket project cost limits, (2) whether the inflation tracker mechanism currently employed by the Commission accurately reflects changes in blanket project costs, and (3) whether another means of accounting for changes in project costs may be preferable. With respect to prospective comments, the Commission notes that the blanket certificate program was implemented to allow a generic class of minor projects to go forward without case-specific review, based on the expectation that the cumulative effect of such construction would neither raise existing rates nor degrade existing services. Thus, the pertinent question is not the extent to which construction costs may have changed over the last quarter century, but whether blanket certificate activities can be expanded without compromising the program's premise that there be no significant adverse impacts on existing ratepayers, services, or the environment.

Comments and Commission Response

61. Commentors did not argue for either particular new cost limits or any means to calculate such limits, although AGA did ask as an initial matter to establish ''whether the initial purpose of the blanket construction certificate regulations is being frustrated by the current dollar limits.''[44] The Commission welcomes comments on this question.

62. Several commentors caution that increasing the blanket certificate project cost limits will put exiting customers at risk for rising rates. Currently, blanket certificate project costs are afforded a presumption that they will qualify for rolled in rate treatment in a future NGA section 4 rate proceeding.[45] Commentors are apprehensive that if the blanket certificate program is expanded as proposed, additional construction will take place under blanket certificate authority, and the costs of this additional construction subsequently will be rolled into a natural gas company's existing rate base, and thereby raise systemwide rates. The Commission believes that the proposed measured increase in blanket certificate project cost caps, in conjunction with the proposal to require prior notice for projects that rely on the expanded blanket certificate authority proposed herein, will provide interested persons a preview of and opportunity to comment on the rate impact of proposed blanket certificate projects. As noted, persons that object to a blanket project subject to prior notice can file a protest, which if not withdrawn or dismissed within the allotted time, will result in the proposed blanket certificate project being treated as a case-specific NGA section 7 certificate application.

63. Commentors suggest the proposed revisions could alter the nature of the blanket certificate program and undermine the premise of the program: that the impacts of projects constructed under blanket certificate authority will be insignificant. The Commission seeks comments on what additional measures, if any, it should consider to limit any potentially adverse impacts which might be associated with its proposed expansion of the blanket certificate program.[46]

[43] The gas utility construction materials cost factor is derived by averaging regional costs throughout the 48 contiguous states, as estimated in the *Handy-Whitman Index of Public Utility Construction Costs, Trends of Construction Costs*, Bulletin No. 162, 1912 to July 1, 2005. In initiating the blanket certificate program, ''[m]any commenters argued against the use of the ''GNP implicit price deflator'' for adjusting * * * [project cost] limits and recommended using the Handy-Whitman Index, a pricing index of various utility and utility-type equipment, updated semi-annually, for this purpose. The Commission believes that it is preferable to use the GNP implicit price deflator instead of an index based on a private collection of data not easily susceptible to governmental verification.'' (*Footnote omitted.*) 47 FR 24254 (June 4, 1982). The Commission reaffirms this preference.

[44] AGA's Comments at 12 (January 17, 2005).

[45] The Commission has routinely allowed blanket certificate project costs to be rolled into a natural gas company's existing rate base. *See, e.g., Pricing Policy for New and Existing Facilities Constructed by Interstate Natural Gas Pipelines*, 71 FERC ¶ 61,241, 61917 (1995), stating that blanket ''projects will be presumed to qualify for the presumption in favor of rolled-in pricing upon a showing of system-wide benefits,'' and *Destin Pipeline Company, L.L.C.*, 83 FERC ¶ 61,308, 61,308 (1988), further clarifying ''the Commission has determined that such facilities qualify for the presumption of rolled-in rate treatment without a case-specific analysis of system-wide benefits because the resulting rate impact in such situations is usually *de minimis*.''

[46] For example, in 1982, in promulgating the blanket program, the Commission considered shielding existing customers from the impact of the costs of blanket certificate projects by imposing both a per-project cost cap and an annual cost cap, the latter at a suggested maximum of three percent of the certificate holder's net plant. In the end, the Commission elected not to impose any annual limit, reasoning that ''[g]iven the high costs of purchased gas relative to the customer's total gas bill, it is unlikely that the cumulative effect of the activities approved under this section will have any significant effect on ratepayers.'' 47 FR 24254 (June 4, 1982).

64. NiSource supports the petition, but cautions the Commission to guard against segmentation, *i.e.*, a series of small projects, each of which is within the blanket certificate cost limit, but each of which is also an integral part of a larger project that would otherwise exceed the cost limit. NiSource contends that when blanket certificate costs are afforded a presumption that they will receive rolled-in rate treatment, segmentation could result in existing customers subsidizing expansion costs. The Commission has previously cautioned against segmenting a large project into a daisy chain of smaller blanket-sized projects, and reiterates its intention to exercise close oversight when a certificate holder presents a series of potentially interrelated blanket certificate proposals. To the extent any person suspects a natural gas company is employing its blanket certificate authority to put in place projects that are not only interrelated but interdependent, such an abuse of the blanket certificate program should be brought to the Commission's attention.

65. APGA notes the Commission's Policy Statement on New Facilities declares that the threshold criterion for a proposed project is that revenues meet or exceed costs so that there will be no subsidization, and cautions this threshold calculation, and the Commission's assessment of the remaining public interest criteria articulated in its policy statement, are not considered when the costs of facilities added under blanket certificate authority are presumed to merit rolled-in rate treatment. To date, the Commission has not found cause to apply its Policy Statement on New Facilities to blanket certificate facilities,[47] and invites comments on whether this approach merits reconsideration in light of the proposed expansion of the blanket certificate program.

66. AGA observes that cost limits were imposed to ensure projects constructed under blanket authorization would have a *de minimis* impact on existing rates, and argues that if cost limits are raised, then rolled-in rate treatment for blanket certificate costs should be reconsidered. AGA suggests it may be prudent to require that all blanket certificate projects be subject to prior notice, in order to provide an opportunity to review the potential rate, service, and environmental impacts.

67. The Commission does not anticipate the relatively modest proposed increase in blanket certificate project cost limits will significantly shift the impact that costs of construction under blanket certificates now have on existing rates. However, recognizing that expanding blanket certificate authority to include types of projects heretofore excluded from the blanket certificate program may lead to additional expenditures on blanket certificate construction, the Commission is proposing all newly enfranchised blanket certificate projects be subject to prior notice. As noted above, concerns regarding rate impacts may be raised in response to a prior notice or in an NGA section 4 rate proceeding. To the extent the AGA has remaining concerns regarding rate impacts, the Commission welcomes comments on whether additional or alternative revisions to the blanket certificate regulations are necessary to ensure that projects constructed pursuant to blanket certificate authority will have no more than a *de minimis* impact on existing rates.

Notification Requirements

68. The Commission has previously emphasized the ''need for advance notification of landowners for blanket certificate activities'' so that landowners are able to air their views and concerns ''to make sure that our regulations provide for similar protections for similar activities.'' [48] If the scale or scope of blanket certificate-eligible activities is expanded, the Commission believes additional notice and compliance provisions are needed to guarantee that protections under the blanket certificate program remain comparable to those applicable to case-specific applications.

69. Section 157.203(d) describes the procedures for notice to landowners affected by a proposed project, and § 157.205 describes the public prior notice procedure applicable to blanket certificate projects that exceed the automatic authorization cost limit. Currently, § 157. 203(d)(1) requires that project sponsors must notify landowners affected by an automatic authorization project at least 30 days prior to construction.[49] The Commission proposes to extend this to 45 days. In view of the proposed expanded scope and scale of blanket certificate authority, which can be expected to increase number of automatic authorization projects undertaken and the number of people impacted, an additional 15 days offers greater assurance that there will be adequate time for landowners to state their concerns and for project sponsors and the Commission to respond.

70. In addition, the Commission proposes to modify §§ 157.203(d)(2)(iv) and 157.205(d) to extend the deadline to protest a proposed prior notice project from 45 to 60 days. This additional time will offer greater certainty that public notice of a proposed project reaches all potentially interested persons and that they have an adequate interval to reply. Further, the additional time will provide the Commission with a more reasonable period of time to conduct and conclude its environmental assessment (EA) of a proposal. This NOPR contemplates an increase the number, extent, kind, and complexity of facilities subject to blanket certificate authority, yet even for the types of projects currently permitted, 45 days has proved to be, on occasion, an unrealistically short time for the consultation and analysis required to complete an EA. The additional time will ensure the Commission is not forced to protest a prior notice project merely as a means to gain time to finish an EA. The Commission does not expect the extended landowner and public notice periods to unduly delay blanket certificate projects, since natural gas companies, in large part, can dictate when a blanket certificate project may begin construction by when the company elects to initiate the notice process.

71. To provide landowners with a more complete understanding of the blanket certificate program and the potential impacts of a particular blanket certificate project, the Commission proposes to expand the description of the program and project that is provided in the notice to landowners. The proposed new landowner notification requirements at §§ 157.203(d)(1)(iii) and 157.203(d)(2)(vii) will require the notice to include: A general map; a statement of the proposed project's purpose and timing; a discussion of what the project sponsor will need from the landowner and how to contact the project sponsor; a Commission pamphlet addressing basic concerns of landowners; a brief summary of the landowner's rights under the eminent domain rules of the relevant state; and the project sponsor's environmental complaint resolution procedure. While this suggested change

[47] 88 FERC ¶ 61,227, 61,737, note 3 (1999).

[48] *Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing Requirements,* Order No. 609, 64 FR 57374, 57383 (October 25, 1999).

[49] A project sponsor's contact with a landowner to initiate easement negotiations qualifies as notice. A landowner may waive the 30-day notice requirement in writing, provided notice has been provided. For activity required to restore service in an emergency, the 30-day prior notice period is satisfied if a natural gas company obtains all necessary easements. These aspects of § 157. 203(d)(1) are unaffected by this NOPR.

will require that future notices include more information than they currently do, the more detailed new notice will still require a project sponsor to present considerably less information than would be necessary for a case-specific application. The Commission notes that all the activities this NOPR contemplates placing under the proposed expanded blanket certificate authority, but for the expanded blanket certificate authority, would require case-specific NGA section 7 certificate authorization.

Environmental Conditions

72. Commenters note, and the Commission concurs, that as the scope and scale of the blanket certificate program grows, so does the potential for a blanket certificate project to constitute a major federal action likely to have a significant impact on the quality of the human environment. A blanket certificate project must continue to meet the environmental conditions set forth in § 157.206(b) of the Commission regulations, and compliance with these conditions serves to reduce the potential adverse environmental impacts of a project to acceptable levels. To ensure that this continues to be the case with larger and more varied types of blanket certificate projects, the Commission proposes to modify the blanket certificate program's environmental compliance conditions as follows.

73. Section 157.6(d)(2)(i) will be revised to clarify that ''facility sites'' include wells and all other aboveground facility sites. Section 157.206(b)(5), describing noise attributable to compressor stations, will be revised to specify that the noise level is to be measured at the site property boundary. Also in § 157.206(b)(5), a goal is established that horizontal directional drilling (HDD) and well drilling noise not exceed a day-night level (Ldn) of 55 decibels (dBA) at the nearest noise sensitive area (NSA). In turn, § 157.208(c)(9) will be revised to require a description of the steps to be taken to comply with the revised § 157.206(b)(5) HDD and well drilling noise levels, or a description of the mitigation to be employed. Finally, the Commission proposes to revise § 157.208(e)(4) to require a noise survey verifying compliance with § 157.206(b)(5) for new or modified compression.

74. The Commission proposes to add a new § 157.208(c)(10), directing the certificate holder to include a statement committing to have the environmental inspector(s) report—as currently required by § 157.206(b)(3)(iv) under the Upland Erosion Control, Revegetation and Maintenance Plan—filed with the Commission on a weekly basis. This is necessitated by the proposed wider scope of prior notice projects, which present a greater potential for environmental harm, and consequently require a heightened vigilance to ensure environmental safeguards are not inadvertently overlooked. Moreover, this will allow the Commission, through its staff, to more efficiently monitor compliance; this may also reduce the need for the natural gas company to assist in routine staff field investigations.

75. Recently, in certain regions, the United States Fish and Wildlife Service has adopted a practice of not responding in writing if a determination of no effect on endangered or threatened species is reached; yet the Commission's current regulations require the certificate holder to provide copies of the agency's determination. To reconcile this regulatory incompatibility, the Commission proposes to modify § 157.208(c)(9) to allow the certificate holder to present substitute documentation of agency concurrence if no written concurrence is received. This substitute documentation may consist of telephone logs, copies of e-mails, or any other reliable means of identifying the agency personnel contacted from whom confirmation of the agency's determination is received.

76. In anticipation of an increase in the number and type of automatic authorization projects, and in view of the fact that automatic authorization projects are not identified by a docket number, the Commission proposes to modify § 157.208(e)(4) by adding new paragraphs (ii) and (iii) to require the annual report for automatically authorized projects to document the progress toward restoration, and a discussion of problems or unusual construction issues—including those identified by affected landowners—and corrective actions taken or planned.

Comments and Commission Response

77. Sempra contends that expanded blanket certificate authority could induce competitive inequities because a potential new entrant would have to undergo a *de novo* environmental review, whereas an incumbent could construct identical facilities as long as it is able to satisfy the § 157.206((b) environmental compliance conditions. This purported inequity is likely to be tempered by the additional notice and environmental compliance conditions proposed above. Moreover, a new entrant submitting an NGA section 7 application and a certificate holder relying on blanket authority for equivalent projects must both comply with the same set of environmental requirements.

78. Nevertheless, Sempra's objection to the blanket certificate environmental provisions remains, and in effect constitutes a collateral attack on the entire blanket certificate program. The Commission concedes that in terms of procedural efficiency, a new market entrant can be at a competitive disadvantage when pitted against a certificate holder able to act under blanket certificate authority. This disparity is inherent in the blanket certificate program, as the blanket certificate program provides for expedited authorization when compared to having to obtain case-specific section 7 authorization. The Commission is unaware of any systematic distortion of infrastructure development due to its blanket certificate program's providing incumbent certificate holders with this advantage over prospective, but as yet uncertificated, competitors. Comments on this are requested.

Clarification of Criteria Defining Just and Reasonable Rates

Rate Treatment for Foundation Shippers

79. Turning from requested revisions to the blanket certificate program and to NGA section 7 applications in general, Petitioners request clarification that it is not undue discrimination for a natural gas company to offer rate benefits to prospective customers who commit to a project before the company makes a public statement of its intent to build the project. Petitioners state that reaching bilateral agreements with as many of a project's potential customers as early as possible may be the most significant variable affecting the timing of infrastructure additions. Petitioners argue that project sponsors must have a critical mass of customers willing to commit early as ''foundation shippers'' to provide the financial support for a project before project sponsors commit to go forward with the project.

80. However, Petitioners state that there is an economic incentive for a potential customer to ''sit in the wings,'' and bet that the critical mass of support will evolve, and the project go forward, at which point the customer may then make a choice as to whether to take service. Petitioners assert that if enough potential customers adopt this ''wait and see'' approach, project sponsors may not be able to justify spending the capital required to initiate the environmental review and certificate application process. Petitioners desire to encourage early commitments by offering rates to customers that commit early which are more favorable than the

rates that will be available to those that seek service later.

81. Petitioners propose to divide the foundation shippers eligible for such favorable rates into two groups. ''Group I Foundation Shippers'' would receive the most favorable rates; this group includes all shippers who execute a binding precedent agreement by the deadline established in the open season for the project.[50] Petitioners subdivide Group I into three different types of shippers. First, those typically large shippers that reach agreements with the project sponsor through one-on-one negotiation in formulating the project and come forward hand-in-hand with the project sponsor when the project is announced. Second, shippers of multiple sizes that bid successfully in the public open season and execute binding precedent agreements by the deadline established by the project sponsor. Third, shippers that make their first contractual commitment to the project by the deadline established in the open season by the project's sponsor.[51] Petitioners state that such shippers, large and small, ultimately provide the critical mass of support for the project.

82. ''Group II Foundation Shippers'' would consist of shippers that do not execute binding commitments until after the deadline set in the open season, but do commit to the project prior to the point at which the project sponsor commits publicly to its willingness to build the project. Petitioners state that such shippers also provide essential support for a project, but should not necessarily be considered similarly situated with the Group I shippers because they did not commit to the project by the open-season deadline.

83. Petitioners assert that project sponsors and the foundation shippers currently risk their bargain being undone by the Commission, either by disallowing the preferential rate treatment afforded to shippers that signed up early or by extending the preferential rate to shippers seeking service later in time. Petitioners request the Commission confirm that it is not undue discrimination to provide rate benefits to foundation shippers and withhold the same benefits from later-generation shippers. Similarly, Petitioners request the Commission confirm that it is not undue discrimination to provide rate benefits to Group I shippers that are not available to Group II shippers. Petitioners state that their proposal does not address distinctions among foundation shippers within Group I, thus Petitioners do not ask the Commission to address whether rate preferences among the different categories of Group I shippers would be unduly discriminatory.

84. Petitioners assert that a Commission statement affirming the legitimacy of disparate rate offerings will allow project sponsors and foundation shippers to negotiate bilateral commitments confident that their agreements will be neither overturned nor conferred on later shippers. Petitioners argue that such a confirmation will provide a strong incentive for more potential shippers to become foundation shippers, thus enabling needed infrastructure projects to get underway earlier.

Comments

85. The AGA finds the proposal worthy of discussion and believes that shippers that commit early to new projects should be recognized for the risks they take. The AGA also states that it is important to clarify that all shippers should have the ability to become foundation shippers and that existing customers should not be made to subsidize the foundation shippers.

86. Duke endorses a policy to encourage relatively early commitments by potential shippers. In particular, Duke contends that shippers willing to sign up for capacity prior to a project's development should be able to rely on their contracted-for capacity without the risk of *pro rata* reallocation if additional shippers request capacity at a later time. Duke asserts that unless foundation shippers are protected against reallocations resulting from open seasons, there is little incentive to make an early commitment to a project. NiSource asserts that the Commission should not view the proposed differential rates as undue discrimination, but as a positive practical benefit that will prompt the development of needed infrastructure.

87. Illinois Municipal seeks assurance that if the foundation shipper proposal is accepted, the Commission will still continue to prohibit discount adjustments for discounts given on expansion capacity.[52] Illinois Municipal asserts that the Commission's discount policies do not prohibit project sponsors from granting special lower negotiated rates to foundation shippers. However, there should be no attempt to impose a discount adjustment on the rate to the pre-expansion shippers.

88. PSCNY asserts that the proposal is overly complicated and may cause more problems than it solves, but should be explored. PSCNY asserts that the qualifications for membership in the two groups of foundation shippers appear to be based upon arbitrary deadlines, which leads to concern over the criteria used to define a bid as binding and how project sponsors will designate deadlines. PSCNY states that the creation of rate distinctions will complicate Commission policies regarding the pricing of pipeline expansions and produce additional issues for litigation in subsequent rate cases. PSCNY also argues that it is not clear why customers that commit in a later open season should receive less favorable treatment than customers that commit in an earlier open season, especially when the reason or cause of a subsequent open season is within the control of the pipeline. Further, PSCNY argues that there is no assurance that this proposal will achieve its objective of providing an incentive for customers to make an early commitment to a new project. Finally, PSCNY claims that forcing shippers to commit early to a project may conflict with the public interest, since having binding commitments in hand might discourage the development of competing project proposals.

89. PSCNY states that the preferential rates given to the Group I Foundation Shippers may provide such shippers with a competitive advantage over later-committing shippers, and that this competitive advantage may discourage smaller marketers from entering retail open access markets. PSCNY asserts that policies that promote nondiscriminatory pricing are more likely to achieve the desired objective of establishing competitive retail as well as wholesale markets.

90. PSCNY appreciates the need for project sponsors to obtain binding commitments from prospective customers in order to obtain financial backing for projects, but argues that issues associated with the difficulties in obtaining such commitments go far

[50] To date, it has been the Commission's policy, developed through its orders and opinions, that all new interstate pipeline construction be preceded by a nondiscriminatory, nonpreferential public ''open season'' process through which all potential shippers may seek and obtain firm capacity rights.

[51] INGAA/NGSA Petition at 18–19 (November 22, 2005). However, at page 21, Petitioners describe their proposal somewhat differently, stating that the common defining criterion for Group I shippers is their execution of a binding commitment by the point at which a project sponsor makes the ''go/no go'' decision for the project. The Commission assumes that the point at which the project's sponsors make the ''go/no go'' decision is approximately the same time as the deadline established by the open season for a binding agreement to be signed.

[52] Illinois Municipal at 3, *citing, Policy For Selective Discounting By Natural Gas Pipelines*, 113 FERC ¶ 61,173 (2005).

beyond rate treatment. PSCNY insists that the way to keep the process as transparent and nondiscriminatory as possible is to establish clear guidelines for implementing a transparent open-season process that define the criteria for eligible bids and the binding nature of such bids. PSCNY claims this will ensure that all shippers, including those that commit in a secondary open season, have equal access to new capacity. Potential customers will have a built-in incentive to make binding bids before the end of an open season, because if they delay, they risk the capacity being fully subscribed.

91. Sempra states that preferential rate treatment for foundation shippers may pose no undue discrimination in most cases. However, it prefers for the Commission to develop undue discrimination policies through individual natural gas company adjudications because such determinations are necessarily fact specific, and a case-by-case approach allows the Commission to fully consider the implications of each individual proposal, including public interest considerations particular to a proposed project. Accordingly, Sempra rejects Petitioners' contention that the Commission issue a rulemaking or policy statement to address the foundation shipper rate issue on a generic basis.

92. Anadarko requests that the Commission clarify that its action regarding foundation shippers will have no effect on or application to an Alaska project authorized under ANGTA or the NGA.

Discussion

93. The Commission does not dispute the premise that a project sponsor is best positioned to secure financial backing and perfect an application if it has customer commitments in hand. Accordingly, the sooner a project sponsor can induce customers to sign up for firm service, the sooner a project can be expected to go forward. For the reasons discussed below, the Commission finds that its existing policies can accommodate the Petitioners' desire to offer rate incentives to obtain such early project commitments, and pursuant to these existing policies, rate incentives do not constitute undue discrimination.

94. The NGA contemplates individualized contracts for service.[53] Under the NGA, the Commission's role is to ensure that the rates offered and accepted as a result of individual negotiations are just and reasonable and not unduly discriminatory.[54] Further, the Supreme Court has held that the purpose of the NGA was not to ''abrogate private contracts to be filed with the Commission'' and that the NGA ''expressly recognized that rates to particular customers may be set by individual contracts.'' [55] Therefore, not all differentiations in rate treatment are unreasonable or illegal. Rather, ''[it] is only when a preference or advantage accorded to one customer over another is undue or a difference in service as between them is unreasonable that * * * [the undue discrimination provisions] of the Act come [ ] into play.'' [56]

95. Moreover, in *Cities of Bethany, et al* v. *FERC*,[57] the Court of Appeals found that the ''mere fact of a rate disparity [between customers receiving the same service] does not establish unlawful rate discrimination'' under the NGA, and that ''rate differences may be justified and rendered lawful by facts—cost of service or otherwise.'' [58] Relying on the Supreme Court's decisions in *Mobile* and *Sierra*, the court held that the anti-discrimination mandate of NGA section 4(b) should not be interpreted as ''obliterating the public policy supporting private rate contracts'' between natural gas pipelines and their customers.[59] Therefore, it is clear that pipelines may provide different rates to different customers based upon different circumstances.

96. Consistent with this statutory scheme, in both its discounted rate and negotiated rate programs, the Commission has authorized natural gas companies to negotiate individualized rates with particular customers. Section 284.10(c)(5) of the Commission's open access regulations permits a pipeline to offer discounted rates in a range between its maximum and minimum tariff rate; discounted rates must reflect the same rate design as the tariff rate. In its 1996 negotiated rate policy statement,[60] the Commission allowed pipelines to negotiate individualized rates that are not constrained by the maximum and minimum rates in the pipeline's tariff and need not reflect the same rate design.[61]

97. The Commission has permitted pipelines to use both discounted and negotiated rates in establishing rates for the participants in new projects. In fact, in the Commission's Policy Statement on New Facilities, the Commission encouraged pipelines to negotiate risk sharing agreements with shippers participating in a new project regarding the effect of cost overruns and underutilized capacity on rates for the proposed facilities.[62] Negotiated rates that will remain fixed regardless of actual construction costs are an obvious way of accomplishing such risk sharing. In recent years, many project sponsors have entered into such negotiated rate agreements with their foundation shippers, and the Commission has approved the rates.[63]

98. It is within this regulatory framework that the Commission considers whether to confirm that it is not unduly discriminatory to provide rate benefits to foundation shippers and withhold the same benefits from later-generation shippers [64] or to provide rate benefits to Group I shippers and withhold the same benefits from Group II shippers. The Commission finds, as a general matter, that rate differentials between foundation shippers that sign

[53] *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp. (Mobile)*, 350 U.S. 332 at pp. 338–9 (1956); *FPC* v. *Sierra Pacific Power Co. (Sierra)*, 350 U.S. 348 (1956).

[54] *Id.* NGA section 4 prohibits natural gas companies subject to the Commission's jurisdiction from: (1) Making or granting any undue preference or advantage to any person or subjecting any person to any undue prejudice or disadvantage, or (2) maintaining any unreasonable difference in rates, charges, service, facilities or in any other respect, either as between localities or as between classes of service.

[55] *Mobile*, 350 U.S. 332 at pp. 338–339.

[56] *Michigan Consolidated Gas Co.* v. *FPC*, 203 F.2d 895, 901 (3d Cir. 1953).

[57] 727 F.2d 1131 (D.C. Cir. 1984).

[58] *Id.* at 1139. Thus, the court observed that fixed rate contracts between the parties may justify a rate disparity, *citing Town of Norwood* v. *FERC*, 587 F.2d 1306, 1310 (D.C. Cir. 1978); *Boroughs of Chambersburg, et al.* v. *FERC*, 580 F.2d 573, 577 (D.C. Cir. 1978) (*per curium*)). *See also*, *United Municipal Distributors Group* v. *FERC*, 732 F.2d 202 (D.C. Cir. 1984).

[59] *Id.*

[60] *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, Regulation of Negotiated Transportation Services, Statements of Policy and Comments*, 74 FERC ¶ 61,076 (1996), *order on clarification*, 74 FERC ¶ 61,194 (1996), *order on reh'g*, 75 FERC ¶ 61,024 (1996).

[61] *See Northern Natural Gas Co.*, 105 FERC ¶ 61,299 at P12–16 (2003) (discussing the distinction between discounted and negotiated rates).

[62] 88 FERC ¶ 61,128 at 61,747 (1999), stating ''should reach such agreements with new shippers concerning who will bear the risks of underutilization of capacity and cost overruns.''

[63] In some instances, the negotiated rates have been lower than the ultimate recourse rate for the service provided. *See e.g. Natural Gas Pipeline Co. of America*, 110 FERC ¶ 61,341 (2005) (''Natural executed three precedent agreements with shippers for the full capacity of the proposed project. The $4,911,988 in revenue generated by the fixed $3.07 per Dth monthly negotiated rate under the precedent agreements will not fully recover the estimated $6.6 million cost of service for the project. Thus, Natural will be at risk for any revenue shortfall due to the lower negotiated contract rates with the incremental shippers.'') (*Footnote omitted.*) *Id. at* P 23–25.

[64] As discussed above, Petitioners do not ask the Commission to address distinctions among foundation shippers within the same group; thus, the Commission does not do so.

up for service early and shippers that sign up for service later are not unduly discriminatory, since the later shippers are not similarly situated to the foundation shippers. However, integral to this finding is the concept discussed below, that all potential shippers have an equal and open opportunity to become foundation shippers. The contractual commitments by the foundation shippers to purchase capacity on the new projects provide essential support for the sponsor to proceed with the project. For example, these contractual commitments help the project sponsor to obtain financing for the construction of the project, and may reduce the cost of that financing by reducing the perceived risk of the investment in the new facilities. Moreover, by committing to a particular project, foundation shippers may be giving up other competitive alternatives to obtain their needed capacity, either on an existing pipeline or by participating in a different new project. An essential component of the Commission's certificate policy has been to provide both the project sponsor and project participants the opportunity to obtain greater certainty concerning the rate that the participants will pay, so that all parties can make an informed decision as to whether to go forward. Approving negotiated rates that will remain fixed regardless of subsequent developments is consistent with this policy.[65]

99. The Commission's policies contain adequate safeguards to minimize the possibility of undue discrimination in permitting the use of rate incentives to obtain early commitments for construction projects. First, under the Commission's policies, all new interstate pipeline construction must be preceded by a nondiscriminatory, nonpreferential, open-season process through which potential shippers may seek and obtain firm capacity rights. The instant proposal contemplates the use of such an open season. Therefore, under the instant proposal all potential shippers would have an opportunity to become foundation shippers in a nondiscriminatory, nonpreferential open-season process, consistent with Commission policy. Second, as part of the open season, the project sponsor must offer a maximum recourse rate so that the bidder in the open season may have the option to choose between the recourse rate or a negotiated rate.[66] This recourse rate may be based upon an estimated cost of service for the proposed project where actual construction costs are not yet known.[67]

100. PSCNY raises various concerns about the procedures to be used in open seasons in which the proposed rate incentives are offered. The Commission believes such issues are best addressed on a case-by-case basis. Petitioners do not propose the Commission modify any aspect of its open-season policies, which require that pipelines conduct nondiscriminatory, nonpreferential open seasons for new projects.[68] To the extent any potential shipper believes that a pipeline's open season did not comply with this policy, it may raise that issue in the certificate proceeding or in an NGA section 5 complaint. The Commission will act as necessary to prevent, remedy, and penalize improper practices.

101. Here, Petitioners posit an open-season process that will produce in two distinct sets of foundation shippers. Group I shippers sign a binding agreement either by the date established in the open season for executing contracts or by the date the project sponsor makes a ''go/no go'' decision for the project; Group II shippers sign a binding agreement prior to the time the project sponsor commits publicly to build the project. Under the Petitioners' proposal, the rate incentives a project sponsor offers to obtain early commitments to a project will be based solely on the timing of each shipper's contractual commitment to the project. However, the Commission can envision that different project sponsors may prefer to offer rate incentives based on something other than the timing of contractual commitments. Because Commission policies permit rate differentials among customers based on a number of grounds[69]—including differing elasticities of demand, volumes to be transported, and length of service commitments—a project sponsor might wish to offer preferential rates to shippers who contract for larger volumes of service.

102. Given the variety of rate incentives that might be offered consistent with Commission policy, the Commission believes it would be premature to go beyond our general finding above and seek to itemize every rate incentive that might be offered in an open season without risk of undue discrimination. Instead, the Commission prefers to review different rate incentives on a case-by-case basis. The Commission observes that the risk of undue discrimination would be reduced to the extent that the rate incentives offered are clearly defined in the announcement of the open season, publicly verifiable, and equally available to all potential shippers. For example, Petitioners have described the eligibility standard for Group I foundation shippers variously as (1) the date established in the open season for executing contracts or (2) the date the project sponsor makes a ''go/no go'' decision for the project. The first date would appear to involve less risk of discrimination, since it would be publicly available from the start of the open season, whereas the second date appears to give the project sponsor considerable discretion as to when to terminate eligibility for Group I.

103. AGA and Illinois Municipal are concerned that existing customers not subsidize the foundation shippers. We find these concerns are adequately addressed by our Policy Statement on New Facilities, which requires that existing pipelines proposing new projects must be prepared to financially support the project without relying on subsidies from existing customers. Moreover, the Commission has stated that when an expansion project is incrementally priced, there will be no discount adjustment for service on the expansion that affects the rates of the current shippers, since rates for the expansion service will be designed incrementally.[70]

104. Duke submits that shippers willing to sign up for capacity prior to pipeline development (when the project is being sized) should be able to rely on their contracted-for capacity without the

[65] However, rate distinctions based on the timing of a customers' commitment are inapplicable to the blanket certificate program. The streamlined blanket certificate process is intended for relatively small projects; financing such small scale projects should not entail finding customers willing to provide an economic incentive.

[66] *Natural Gas Pipeline Co. of America,* 101 FERC ¶ 61,125 (2002).

[67] *Id.* at P 39. ''In the certificate proceeding for any such project the Commission will approve an initial recourse rate for the project which the pipeline must file before the project goes into service. Moreover, in this proceeding, the Commission may ensure that pre-expansion shippers on a pipeline will not subsidize a proposed expansion project. However, the Commission will permit a newly constructed pipeline to employ the same discounting policies as an existing pipeline.'' *See Policy for Selective Discounting By Natural Gas Pipelines,* 113 FERC ¶ 61,173 P 96–99 (2005). The pipeline will have to offer available capacity for sale to new shippers that offer to pay the maximum just and reasonable recourse rate, and this rate may change from time to time pursuant to sections 4 and 5 of the NGA.

[68] The Commission endorses the Petitioners' clarification of this policy as follows: ''As long as potential shippers received the same notice and ability to acquire capacity created by a * * * [new] expansion as they do on any existing capacity that becomes available, any risk of undue discrimination should be avoided'' INGAA/NGSA Petition at 8 (November 22, 2005).

[69] *Policy For Selective Discounting By Natural Gas Pipelines,* 113 FERC ¶ 61,173 (2005).

[70] *Id.* at P 98.

risk of *pro rata* reallocation if additional shippers request capacity at a later time. As Petitioners state, the instant proposal does not apply to non-rate issues such as capacity allocation. The Commission requires that capacity be allocated on a basis that is not unduly discriminatory, but the Commission has not prescribed any particular capacity allocation method that must be used. Thus, the Commission has permitted pipelines to use a first-come first-served allocation method, and has not required the use of a *pro-rata* allocation method. For example, in approving certain new projects, the Commission found that the finite nature of capacity and the anchor shippers' reliance on receiving the full capacity for which they had bargained justified giving the anchor shippers their required capacity, while open-season shippers were subject to an allocation of available capacity.[71] The instant proposal does not contemplate any change from existing Commission policy and precedent in these non-rate areas.

105. APGA claims that by far the largest group of potential new customers that may seek rate inducements to contract for capacity on new projects, if not the only potential new customers of any size, are electric generators.[72] APGA sees no justification for a policy that would act as an incentive to increase demand during a period of supply constraints. PSCNY and Sempra also question whether rate incentives based on timing might distort infrastructure development. Petitioners and commentors supporting the petition argue the opposite.

106. The Commission seeks to promote new infrastructure in order to help relieve existing supply constraints. The Commission agrees that new facilities should not be added unless they fulfill a demonstrated need. However, in the Commission's view, this showing of need is satisfied by the willingness of companies and customers to take on the economic risk of the cost of constructing and operating new facilities. The Commission proposes no changes in its existing policy that pipelines must be willing to financially support a project without subsidies from its existing customers.

107. Anadarko requests that the Commission clarify that its action regarding foundation shippers will have no effect on or application to an Alaska project. The Commission recognizes the unique nature of an Alaska natural gas pipeline project and will consider the applicability of its rate policies, both in general and with respect to blanket facilities, to an Alaska project in any future proceeding authorizing such a project.

Information Collection Statement

108. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, recordkeeping, and public disclosure requirements (collections of information) imposed by an agency.[73] Therefore, the Commission is providing notice of its proposed information collections to OMB for review in accordance with section 3507(d) of the Paperwork Reduction Act of 1995.[74] Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. The only entities affected by this rule would be the natural gas companies under the Commission's jurisdiction.

109. FERC–537, ''Gas Pipeline Certificates: Construction, Acquisition and Abandonment,'' identifies the Commission's information collections relating to part 157 of its regulations, which apply to natural gas facilities for which authorization under NGA section 7 is required, and includes all blanket certificate projects. FERC–577, ''Gas Pipeline Certificates: Environmental Impact Statement,'' identifies the Commission's information collections relating to Part 380 of its regulations implementing the National Environmental Policy Act of 1969 (NEPA),[75] which include the environmental compliance conditions of § 157.206(b).

110. The proposed revisions to the Commission's regulations, as contained in the NOPR, and the resulting change in collections of information burdens, are as follows.

111. The NOPR proposes to provide an additional 15 days for notice to landowners and the public. This will have no impact on the collections of information.

112. The NOPR proposes specific additional information to be included in the notice to landowners located along the route of a proposed blanket certificate project and in the prior notice to the public of a proposed project. This should have a minor impact on blanket certificate project sponsors, since the additional information is already required for the landowner notification for case-specific NGA section 7 applications. Expanding the blanket certificate program to include mainline, certain LNG and synthetic gas facilities, and storage facilities is expected to allow approximately 62 projects per year to proceed under blanket certificate authority that would otherwise be required to obtain case-specific NGA section 7 certificate authorization. Thus, these 62 projects will be removed from FERC–577 and shifted to FERC–537. Project sponsors permitted to rely on the proposed expanded blanket certificate authority to undertake projects that currently require case-specific NGA section 7 certificate authorization will not need to submit any additional information to meet the proposed blanket certificate notice requirements. The exception to this is the proposal to require a description of a natural gas company's environmental complaint resolution procedure in the blanket certificate program notice. However, this information is also frequently required for case-specific NGA section 7 projects and may be satisfied by a generic description of the complaint resolution process applicable to all projects along with individual contact information applicable to each project.

113. The NOPR proposes to specify additional information to be included in the prior notice to the public and in the annual report. This should result in a minor increase in the existing burden. Only proposed prior notice blanket certificate projects that involve HDD and well drilling will be required to include a description of how noise limits will be achieved. Prior notice projects will also need to commit to file weekly environmental inspector reports. The annual reports covering projects subject to automatic blanket certificate authority will require discussions of the progress of restoration efforts, problems, and corrections. Where applicable, noise surveys are also required in annual reports, but such surveys are normally done to verify compliance with the standard environmental conditions, so this requirement adds only a minimal burden.

114. The NOPR proposes to revise the environmental compliance conditions to apply the noise standard to the site property boundary instead of the noise-sensitive areas, and as a goal, to apply the noise standard to drilling. Neither of these changes involves a change in the reporting burden.

115. Because the proposed expansion of the blanket certificate program will

[71] *See, e.g.*, *Garden Banks Gas Pipeline, LLC,* 78 FERC ¶ 61,066 (1997); *Green Canyon Pipe Line Co.,* 47 FERC ¶ 61,310 (1989); *Destin Pipeline Co. L.L.C.,* 81 FERC ¶ 61,211 (1997); *Maritimes & Northeast Pipeline, L.L.C.,* 76 FERC ¶ 61,124 (1996), *order on reh'g,* 80 FERC ¶ 61,136 (1997).

[72] APGA's Comments at 11. APGA adds that there is no need to offer rate inducements to local distribution companies, as they are captive customers subject to a public interest mandate to contract for capacity as necessary to meet demand.

[73] 5 CFR 1320.11 (2005).

[74] 44 U.S.C. 3507(d) (2000).

[75] 42 U.S.C. 4321, *et seq.* (2000).

permit projects that are now processed under the case-specific NGA section 7 procedures to go forward under the streamlined blanket certificate program, while the burden under the expanded blanket certificate program will increase, the overall burden on the industry will decrease. The Commission estimates that the total annual hours for the blanket certificate program burden will increase by 7,727, whereas the total annual hours associated with case-specific application projects will decrease by 11,997. This represents an overall reduction of 4,270 hours.

Data collection	Number of respondents	Number of responses/filings	Number of hours per response	Total annual hours
FERC–537 (Part 157)	76	206	−42.02	7,727
FERC–577 (Part 380)	76	−62	193.50	−11,997

Information Collection Costs: The above reflects the total blanket certificate program reporting burden if expanded as proposed. Because of the regional differences and the various staffing levels that will be involved in preparing the documentation (legal, technical and support) the Commission is using an hourly rate of $150 to estimate the costs for filing and other administrative processes (reviewing instructions, searching data sources, completing and transmitting the collection of information). The estimated cost is anticipated to be $2,748,900, an amount that is $640,500 less than the current estimated cost.

Title: FERC–537 and FERC–577.

Action: Proposed Data Collection.

OMB Control Nos.: 1902–0060 and 1902–0128.

Respondents: Natural gas pipeline companies.

Frequency of Responses: On occasion.

Necessity of Information: Submission of the information is necessary for the Commission to carry out its NGA statutory responsibilities and meet the Commission's objectives of expediting appropriate infrastructure development to ensure sufficient energy supplies while addressing landowner and environmental concerns fairly. The information is expected to permit the Commission to meet the request of the natural gas industry, as expressed in the INGAA and NGSA petition to improve industry's ability to ensure the adequacy of the infrastructure to meet increased demands from consuming markets, to expand the scope and scale of the blanket certificate program to provide a streamlined means to build and maintain infrastructure necessary to ensure all gas supplies are available to fulfill market needs.

116. The Commission requests comments on the accuracy of the burden estimates, how the quality, quantity, and clarity of the information to be collected might be enhanced, and any suggested methods for minimizing the respondent's burden. Interested persons may obtain information on the reporting requirements or submit comments by contacting the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, 202–502–8415 or e-mail *michael.miller@ferc.gov*). Comments may also be sent to the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: 202–395–7285 or e-mail: *oira_submission@omb.eop.gov.*)

Environmental Analysis

117. The Commission is required to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) for any action that may have a significant adverse effect on the human environment.[76] In 1982, in promulgating the blanket certificate program, the Commission prepared an EA in which it determined that, subject to compliance with the standard environmental conditions, projects under the blanket program would not have a significant environmental impact. As a result, the Commission determined that automatic authorization projects would be categorically excluded from the need for an EA or (EIS) under § 380.4 of the Commission's regulations. However, the Commission specified that prior notice projects should be subject an EA to ensure each individual project would be environmentally benign. For the reasons set forth below the Commission continues to believe this would be the case under the blanket certificate program as modified in this NOPR.

118. First, the monetary limits on projects are simply being adjusted to account for inflationary effects which were not completely captured under the mechanism specified in the regulations (the gross domestic product implicit price deflator as determined by the Department of Commerce). As a result, the scale of projects which will be within the new cost limits will be comparable to those projects that were allowed when the blanket program was first created. Second, the proposed additions to the types of projects which are acceptable under the blanket program will be subject to the prior notice provisions and will be subject to an EA. Finally, the Commission is proposing to strengthen the standard environmental conditions applicable to all blanket projects. Therefore, this proposed rule does not constitute a major federal action that may have a significant adverse effect on the human environment.

Regulatory Flexibility Act Analysis

119. The Regulatory Flexibility Act of 1980 (RFA)[77] generally requires a description and analysis of proposed regulations that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such an analysis if proposed regulations would not have such an effect.[78] Under the industry standards used for purposes of the RFA, a natural gas pipeline company qualifies as ''a small entity'' if it has annual revenues of $6.5 million or less. Most companies regulated by the Commission do not fall within the RFA's definition of a small entity.[79]

120. The procedural modifications proposed herein should have no significant economic impact on those entities—be they large or small—subject to the Commission's regulatory jurisdiction under NGA section 3 or 7, and no significant economic impact on state agencies. Accordingly, the Commission certifies that this notice's proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities.

[76] Order No. 486, *Regulations Implementing the National Environmental Policy Act,* 52 FR 47897 (December 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[77] 5 U.S.C. 601–612 (2000).

[78] 5 U.S.C. 605(b) (2000).

[79] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 623 (2000). Section 3 of the Small Business Act defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation.

Public Comments

121. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due by August 25, 2006. Comments must refer to Docket No. RM06–7–000, and must include the commenter's name, the organization represented, if applicable, and address in the comments. Comments may be filed either in electronic or paper format. The Commission encourages electronic filing.

122. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats and requests commenters to submit comments in a text-searchable format rather than a scanned image format. Commenters filing electronically do not need to make a paper filing. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

123. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

Document Availability

124. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

List of Subjects in 18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to amend part 157, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

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

1. 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.

2. In § 157.6, paragraph (d)(2)(i) is revised to read as follows:

§ 157.6 Applications; general requirements.

* * * * *

(d) * * *

(2) * * *

(i) Is directly affected (*i.e.,* crossed or used) by the proposed activity, including all facility sites (including compressor stations, well sites, and all above-ground facilities), rights of way, access roads, pipe and contractor yards, and temporary workspace;

* * * * *

3. In § 157.203:

a. In paragraph (d)(1), the phrase ''30 days'' is removed and the phrase ''45 days'' is added in its place, and the phrase ''30-day'' is removed and the phrase ''45-day'' is added in its place;

b. In paragraph (d)(1)(ii), the phrase ''; and'' is removed and the phrase '';'' is added in its place;

c. Paragraph (d)(1)(iii) is redesignated as paragraph (d)(1)(iv)and a new paragraph (d)(1)(iii) is added;

d. Paragraphs (d)(2)(i) and (d)(2)(ii) are revised;

e. In paragraph (d)(2)(iii), the word ''and'' is removed;

f. Paragraph (d)(2)(iv) is redesignated as paragraph (d)(2)(vi), and the phrase ''45 days'' is removed and the phrase ''60 days'' is added its place, and the period at the end of the paragraph is removed and the phrase ''; and'' is added in its place;

g. New paragraphs (d)(2)(iv), (d)(2)(v) and (d)(2)(vii) are added to read as follows:

§ 157.203 Blanket certification.

* * * * *

(d) *Landowner notification.* * * *

(1) * * *

(iii) A description of the company's environmental complaint resolution procedure that must:

(A) Provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems and concerns during construction of the project and restoration of the right-of way;

(B) Provide a local contact that the landowners should call first with problems and concerns and indicate when a landowner should expect a response;

(C) Instruct landowners that if they are not satisfied with the response, they should call the company's Hotline; and

(D) Instruct landowners that, if they are still not satisfied with the response, they should contact the Commission's Enforcement Hotline.

(2) * * *

(i) A brief description of the company and the proposed project, including the facilities to be constructed or replaced and the location (including a general location map), the purpose, and the timing of the project and the effect the construction activity will have on the landowner's property;

(ii) A general description of what the company will need from the landowner if the project is approved, and how the landowner may contact the company, including a local or toll-free phone number and a name of a specific person to contact who is knowledgeable about the project;

* * * * *

(iv) The most recent edition of the Commission pamphlet that explains the Commission's certificate process and addresses basic concerns of landowners;

(v) A brief summary of the rights the landowner has in Commission proceedings and in proceedings under the eminent domain rules of the relevant state(s); and

* * * * *

(vii) The description of the company's environmental complaint resolution procedure as described in paragraph 157.203(d)(1)(iii) of this section.

* * * * *

§ 157.205 [Amended]

4. In § 157.205, paragraph (d)(1), the phrase ''45 days'' is removed and the phrase ''60 days'' is inserted in its place.

5. In § 157.206, paragraph (b)(5) is redesignated as (b)(5)(i) and revised, and paragraph (b)(5)(ii) is added to read as follows:

§ 157.206 Standard conditions.

* * * * *

(b) * * *

(5)(i) The noise attributable to any new compressor station, 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 the site property boundary.

(ii) Any horizontal directional drilling or drilling of wells which will occur between 10 p.m. and 6 a.m. local time must be conducted with the goal of keeping the perceived noise from the

drilling at any pre-existing noise-sensitive area (such as schools, hospitals, or residences) at or below 55 Ldn dBA.

* * * * *

6. In § 157.208:

a. Paragraph (c)(9) is revised;

b. Paragraph (c)(10) is added;

c. in paragraph (d), Table I, ''Year 2006,'' in column 1, titled ''Automatic project cost limit,'' the figure ''8,200,000'' is removed and the figure ''9,600,000'' is added in its place, and in column 2, titled ''Prior notice project cost limit,'' the figure ''22,000,000'' is removed and the figure ''27,400,000'' is added in its place; and

d. paragraph (e)(4) is redesignated as (e)(4)(i) and paragraphs (e)(4)(ii) through (e)(4)(iv) are added to read as follows:

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

* * * * *

(c) * * *

(9) A concise analysis discussing the relevant issues outlined in § 380.12 of this chapter. The analysis must identify the existing environmental conditions and the expected significant impacts that the proposed action, including proposed mitigation measures, will cause to the quality of the human environment, including impact expected to occur to sensitive environmental areas. When compressor facilities are proposed, the analysis must also describe how the proposed action will be made to comply with applicable State Implementation Plans developed under the Clean Air Act. The analysis must also include a description of the contacts made, reports produced, and results of consultations which took place to ensure compliance with the Endangered Species Act, National Historic Preservation Act and the Coastal Zone Management Act. Include a copy of the agreements received for compliance with the Endangered Species Act, National Historic Preservation Act, and Coastal Zone Management Act, or if no written concurrence is issued, a description of how the agency relayed its opinion to the company. Describe how drilling for wells or horizontal direction drilling would be designed to meet the goal of limiting the perceived noise at NSAs to an Ldn of 55 dBA or what mitigation would be offered to landowners.

(10) A commitment to having the Environmental Inspector's report filed every week.

* * * * *

(e) * * *

(4)(i) * * *

(ii) Documentation, including images, that restoration of work areas is progressing appropriately;

(iii) A discussion of problems or unusual construction issues, including those identified by affected landowners, and corrective actions taken or planned; and

(iv) For new or modified compression, a noise survey verifying compliance with § 157.206(b)(5).

* * * * *

7. Section 157.210 is added to read as follows:

§ 157.210 Mainline natural gas facilities.

Prior Notice. Subject to the notice requirements of §§ 157.205(b) and 157.208(c), the certificate holder is authorized to acquire, abandon, construct, modify, replace, or operate natural gas mainline facilities. The cost of a project may not exceed the cost limitation set forth in column 2 of Table I of § 157.208(d). The certificate holder must not segment projects in order to meet this cost limitation.

8. Sections 157.212 and 157.213 are added to read as follows:

§ 157.212 Synthetic and liquefied natural gas facilities.

Prior Notice. Subject to the notice requirements of §§ 157.205(b) and 157.208(c), the certificate holder is authorized to acquire, abandon, construct, modify, replace, or operate natural gas facilities that are used to transport exclusively either synthetic gas or revaporized liquefied natural gas and that are not ''related jurisdictional natural gas facilities'' as defined in § 153.2(e) of this chapter. The cost of a project may not exceed the cost limitation set forth in column 2 of Table I in § 157.208(d) of this chapter. The certificate holder must not segment projects in order to meet this cost limitation.

§ 157.213 Underground storage field facilities.

(a) *Prior Notice.* Subject to the notice requirements of §§ 157.205(b) and 157.208(c) of this chapter, the certificate holder is authorized to acquire, abandon, construct, modify, replace, or operate natural gas underground storage facilities, provided the storage facility's total inventory, reservoir pressure, reservoir and buffer boundaries, certificated capacity, and compliance with environmental and safety provisions remain unaffected. The cost of a project may not exceed the cost limitation set forth in column 2 of Table I in § 157.208(d) of this chapter. The certificate holder must not segment projects in order to meet this cost limitation.

(b) *Contents of request.* In addition to the requirements of §§ 157.206(b) and 157.208(c), requests for activities authorized under paragraph (a) of this section must contain:

(1) A description of the current geological interpretation of the storage reservoir, including both the storage formation and the caprock, including summary analysis of any recent cross-sections, well logs, quantitative porosity and permeability data, and any other relevant data for both the storage reservoir and caprock;

(2) The latest isopach and structural maps of the storage field, showing the storage reservoir boundary, as defined by fluid contacts or natural geological barriers; the protective buffer boundary; the surface and bottomhole locations of the existing and proposed injection/withdrawal wells and observation wells; and the lengths of open-hole sections of existing and proposed injection/withdrawal wells;

(3) Isobaric maps (data from the end of each injection and withdrawal cycle) for the last three injection/withdrawal seasons, which include all wells, both inside and outside the storage reservoir and within the buffer area;

(4) A detailed description of present storage operations and how they may change as a result of the new facilities or modifications. Include a detailed discussion of all existing operational problems for the storage field, including but not limited to gas migration and gas loss;

(5) Current and proposed working gas volume, cushion gas volume, native gas volume, deliverability (at maximum and minimum pressure), maximum and minimum storage pressures, at the present certificated maximum capacity or pressure, with volumes and rates in MMcf and pressures in psia;

(6) The latest field injection/withdrawal capability studies including curves at present and proposed working gas capacity, including average field back pressure curves and all other related data;

(7) The latest inventory verification study for the storage field, including methodology, data, and work papers;

(8) The shut-in reservoir pressures (average) and cumulative gas-in-place (including native gas) at the beginning of each injection and withdrawal season for the last 10 years; and

(9) A detailed analysis, including data and work papers, to support the need for additional facilities (wells, gathering lines, headers, compression, dehydration, or other appurtenant facilities) for the modification of

working gas/cushion gas ratio and/or to improve the capability of the storage field.

[FR Doc. 06–5618 Filed 6–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

28 CFR Part 16

[AAG/A Order No. 010–2006]

Privacy Act of 1974: Implementation

AGENCY: Drug Enforcement Administration, DOJ.

ACTION: Proposed rule.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), proposes to exempt a new system of records entitled the El Paso Intelligence Center (EPIC) Seizure System (ESS) (JUSTICE/DEA–022) from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act of 1974 pursuant to 5 U.S.C. 552a(j) and (k). The exemption is necessary to avoid interference with the law enforcement, intelligence, counter-drug, counterterrorism functions and responsibilities of the DEA and its El Paso Intelligence Center (EPIC). Public comment is invited.

DATES: Comments must be received by August 7, 2006.

ADDRESSES: Address all comments to Mary E. Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building), Facsimile Number (202) 307–1853. To ensure proper handling, please reference the AAG/A Order No. on your correspondence. You may review an electronic version of this proposed rule at *http://www.regulations.gov.* You may also comment via the Internet to the DOJ/Justice Management Division at the following e-mail address: *DOJPrivacyACTProposed Regulations@usdoj.gov;* or by using the *http://www.regulations.gov* comment form for this regulation. When submitting comments electronically, you must include the AAG/A Order No. in the subject box.

FOR FURTHER INFORMATION CONTACT: Mary E. Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register,** the DEA provides a description of the ''El Paso Intelligence Center (EPIC) Seizure System (ESS), JUSTICE/DEA–022'' in compliance with the Privacy Act, 5 U.S.C. 552a(e)(4) and (11). The ESS is a system of records established to support the mission of the El Paso Intelligence Center to support criminal investigations conducted by Federal, state, local, tribal, and international law enforcement agencies. EPIC maintains information in databases obtained from contributing law enforcement agencies and provides information upon request from authorized law enforcement agencies and officers in support of criminal investigations. Additional information about EPIC and its operations is provided in the **Federal Register** notice referenced above.

Regulatory Flexibility Act

This proposed rule relates to individuals, as opposed to small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, the proposed rule will not have a significant economic impact on a substantial number of small entities.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the DEA to comply with small entity requests for information and advice about compliance with statutes and regulations within DEA jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT**. Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/laws/law_lib.html.*

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 793–78, it is proposed to amend 28 CFR part 16 as follows:

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. Section 16.98 is amended to add new paragraphs (g) and (h) to read as follows:

§ 16.98 Exemption of Drug Enforcement Administration Systems—limited access.

* * * * *

(g) The following system of records is exempt from 5 U.S.C. 552a (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g): EPIC Seizure System (ESS) (JUSTICE/DEA–022). These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1), and (k)(2). Where compliance would not appear to interfere with or adversely affect the law enforcement and counter-drug purposes of this system, and the overall law enforcement process, the applicable exemption may be waived by the DEA in its sole discretion.

(h) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would specifically reveal any investigative interest in the individual. Revealing this information would permit the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to determine whether he is the subject of investigation, or to obtain valuable information concerning the nature of that investigation, and the information obtained, or the identity of witnesses and informants. Similarly, disclosing this information could reasonably be expected to compromise ongoing investigatory efforts by notifying the record subject that he/she is under investigation. This information could also permit the record subject to take measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(2) From subsection (c)(4) because this system is exempt from the access and amendment provisions of subsection (d).

(3) From subsections (d)(1), (2), (3), and (4) because these provisions concern individual access to and amendment of records contained in this system, which consists of counter-drug and criminal investigatory records. Compliance with these provisions could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation, or the nature and scope of the information and evidence obtained as to his activities, of the identity of witnesses and informants, or would provide information that could enable the subject to avoid detection or apprehension. These factors would present a serious impediment to