

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION  
102 FERC ¶ 61,053  
18 CFR Part 157  
[Docket Nos. RM03-4-000 and AD02-14-000]

Emergency Reconstruction of Interstate Natural  
Gas Facilities Under the Natural Gas Act

(January 17, 2003)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend Part 157, Subpart F, of its regulations to enable natural gas interstate pipeline companies to replace mainline facilities using a route other than the existing right-of-way, and to commence construction without being subject to the 45-day prior notice proceedings specified in section 157.205 of the Commission's regulations and without project cost constraints, when immediate action is required to restore service in an emergency due to a sudden unanticipated loss of natural gas or capacity in order to prevent loss of life, impairment of health, or damage to property. In addition, the Commission is proposing to revise reporting requirements so that a natural gas company, acting under Part 157 in responding to an emergency, would submit a description of its activities to the Commission prospectively, in advance of commencing construction, rather than retrospectively, as is currently the case. An important objective of the proposed rule is the reconciliation of the Commission's regulatory responsibilities under its enabling statutes and federal environmental and safety laws with the need to protect

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persons and property. The Commission requests that comments address the adequacy of the proposed expansion of pipeline companies' authority under their Part 157 blanket certificates in situations where immediate action is necessary to reconstruct interstate pipeline facilities that have been destroyed or compromised by a sudden unanticipated natural event or deliberate effort to disrupt the flow of natural gas or whether there is a need for further action by the Commission or Congress.

**DATES:** Comments are due **[insert date 30 days after publication in the Federal Register]**

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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Emergency Reconstruction	)	Docket Nos. RM03-4-000
of Interstate Natural Gas Facilities	)	and AD02-14-000
under the Natural Gas Act	)	

NOTICE OF PROPOSED RULEMAKING

(January 17, 2003)

1. The Federal Energy Regulatory Commission (Commission) is proposing to amend Part 157, Subpart F, of its regulations to enable natural gas interstate pipeline companies to replace mainline facilities using a route other than the existing right-of-way, and to commence construction without being subject to the 45-day prior notice proceedings specified in section 157.205 of the Commission's regulations and without project cost constraints, when immediate action is required to restore service in an emergency due to a sudden unanticipated loss of natural gas or capacity in order to prevent loss of life, impairment of health, or damage to property. In addition, the Commission is proposing to revise reporting requirements so that a natural gas company, acting under Part 157 in responding to an emergency, would submit a description of its activities to the Commission prospectively, in advance of commencing construction, rather than retrospectively, as is currently the case. An important objective of the proposed rule is the reconciliation of the Commission's regulatory responsibilities under its enabling

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statutes and federal environmental and safety laws with the need to protect persons and property.

### **Background**

2. On April 22, 2002, staff from the Commission and from the Department of Transportation (DOT) Office of Pipeline Safety (OPS) jointly convened a technical conference to consider whether to, or how to, clarify, expedite, and streamline permitting and approvals for interstate pipeline reconstruction following a sudden unanticipated service disruption.<sup>1</sup> Efforts to ensure the security of the nation's energy infrastructure have generally focused on maintaining the physical integrity of facilities and preparing to respond to accidents, such as excavation that breeches a buried pipe, natural disasters, such as earthquakes and landslides, and foreseeable equipment failure. The conference broadened this focus to consider how best to respond to damage due to a deliberate effort to disrupt the flow of natural gas.

3. At the conference, Commission and OPS staff provided an overview of current regulatory processes and presented examples of recent natural gas emergencies.

Conference participants – representing federal, state, and local agencies, energy industry sectors, trade groups, and interested individuals – suggested various means to speed the

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<sup>1</sup>On the following day, staff from the Commission and from the Department of Energy (DOE) jointly convened a technical conference to consider whether to or how to clarify, expedite, and streamline the reallocation of gas supplies in the event of a sudden unanticipated service disruption. That proceeding, in Docket No. AD02-15-000, is not addressed here.

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reconstruction of interstate gas facilities, including: revising existing legislative mandates, revising Commission regulations, and enhancing coordination among federal, state, and local entities. A transcript of the conference and the comments subsequently submitted are contained in the record in Docket No. AD02-14-000.<sup>2</sup>

4. In general, staff found the Commission's existing authorities and policies sufficient, and sufficiently flexible, to enable pipelines to respond to emergencies in a timely manner. However, following consideration of the April 2002 conference's presentations, discussions, and comments, the Commission has identified circumstances under which its present practices could constrain a pipeline from initiating a timely response. Accordingly, as discussed below, the Commission proposes to amend its regulations concerning blanket certificates.

## **Discussion**

### **The Commission's Existing Authority**

5. In the normal course of events, an interstate gas pipeline seeking to build new facilities, or rebuild existing facilities, will file an application with the Commission

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<sup>2</sup>The conference comments are available on FERC's website at <http://ferc.gov> using the Federal Energy Regulatory Records and Information System (FERRIS) to access filings in Docket No. AD02-14-000. The Interstate Natural Gas Association of America (INGAA) submitted scenarios describing how interstate pipelines might respond to various types of facility-related emergencies. Because of security concerns associated with disclosing this information, these scenarios are not included in the public record in Docket No. AD02-14-000; however, while the particulars of the scenarios are not described in detail in the public record, the results are discussed in general.

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pursuant to section 7(c) of the Natural Gas Act (NGA) for authorization for the proposed construction. The Commission reviews the application, considers comments in favor of and opposed to the proposal, and assesses economic and environmental impacts. The time required to ensure that all views receive a full hearing, and all impacts are adequately assessed, varies with the complexity of the project proposed. The time needed to reach a final determination on an application is typically measured in months. Consequently, the standard NGA section 7(c) certification process is not suited to an emergency situation that requires an immediate response to prevent loss of life, impairment of health, or damage to property.

6. In establishing the initial framework for federal regulation of the natural gas industry, the NGA explicitly recognized the need to provide for a rapid response to an emergency. NGA section 7(c)(1)(B) states that “the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application of a certificate.” The Commission has issued temporary certificates in response to companies' requests for authorization to undertake various activities on an emergency basis, with temporary authorization valid until the Commission acts on an application for permanent authorization. Natural gas companies have received temporary emergency authorization to build new facilities, modify existing facilities, alter

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operational parameters, and change rates.<sup>3</sup> Section 2.57 of the Commission's regulations states that temporary certificates should be employed for minor enlargements or extensions of existing facilities, and not for construction "of major proportions."<sup>4</sup>

7. In addition to the NGA's statutory emergency provision, the Commission's regulations permit pipelines to undertake limited construction projects without waiting for NGA section 7(c) case specific certificate authorization. For example, section 2.55 of the Commission's regulations permits pipeline companies to replace or refurbish deteriorating facilities and make minor upgrades to facilities without first obtaining an NGA section 7(c) certificate. Thus, if facilities are damaged or become inoperable for any reason, a pipeline could, pursuant to section 2.55, undertake repairs or replacement as necessary to restore service. However, section 2.55 is limited to returning a facility to its original service capacity; it does not apply to efforts that will expand or eliminate existing services. Further, section 2.55 applies only to new facilities located within the same right-of-way or at the same site as the existing facilities. Finally, certain auxiliary

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<sup>3</sup>See, e.g., Texas-Ohio Pipeline, Inc., 58 FERC ¶ 61,025 (1992) (order issuing temporary certificate) and 69 FERC ¶ 61,145 (1994) (order issuing permanent certificate).

<sup>4</sup>In Pennsylvania Gas and Water Company v. FPC, 427 F.2d 568, 574 (D.C. Cir. 1970), the court reviewed the legislative history of the section 7 temporary certificate provision, and found it "was meant to cover a narrow class of situations, to permit temporary and limited interconnection, or expansion of existing facilities in order to meet such emergencies as breakdowns in the service of operating natural gas companies, or sudden unanticipated demands." Citing Algonquin Gas Transmission Company v. FPC, 201 F.2d 334 (1st Cir. 1953). See also Mississippi River Transmission Corporation, 40 FPC 190 (1968).

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facilities, and replacement facilities projected to cost more than \$7,500,000, are subject to a 30-day prior notice.<sup>5</sup>

8. If gas facilities are damaged, and a subsequent investigation of the event or contamination of the area restricts access to the damage site, we expect section 2.55 would prove ineffective if rapid reconstruction is required to restore service. In such circumstances, a company would be compelled to reroute around its damaged facilities, which would require construction outside the footprint of the existing facilities' right-of-way. Construction beyond the bounds of the existing right-of-way, and even construction within the existing right-of-way that uses temporary workspace other than that used to construct the original facility, is barred by section 2.55.<sup>6</sup>

9. Section 2.55 of the Commission's regulations serves, in effect, as standing authorization for pipelines to perform periodic maintenance and routine replacement. Given section 2.55's inherent limitations on the type of and location of facilities permitted, and the potential to trigger a 30-day prior notice delay, we believe that section

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<sup>5</sup>This amount is adjusted annually. See 18 CFR § 157.208(d) (2002), Table 1, column 1. Advance notice for replacement facilities that exceed the current \$7.5 million cost limit of 18 CFR § 157.208(d) must include maps and a description of the erosion control, revegetation and maintenance, and stream and wetland crossings procedures. This prior notice would not apply if DOT safety regulations required that the replacement activity be performed immediately.

<sup>6</sup>See 18 CFR § 2.55(b) (2002), Appendix A to Part 2, Guidance for Determining the Acceptable Construction Area for Replacements, specifies the criteria that must be met in order to proceed under section 2.55(b), and cautions that “[i]f these guidelines cannot be met,” and no exemption is applicable, “construction authorization must be obtained pursuant to another regulation under the Natural Gas Act.”

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2.55 cannot always serve to ensure a prompt response to sudden unanticipated service disruptions. In particular, section 2.55 is inapplicable if construction outside of the existing right-of-way is needed.<sup>7</sup> Section 2.55 is best suited to its intended use, that being the replacement of physically deteriorated or obsolete facilities and the installation of auxiliary or appurtenant facilities to enhance operations, such as valves, pigging facilities, or communication equipment.

10. The blanket authority conferred by Part 157, Subpart F, of the regulations provides another vehicle for reconstruction of facilities in an emergency, but this authority is also limited. Virtually all existing interstate gas pipelines hold blanket certificates allowing them to acquire, operate, abandon, replace, and rearrange certain facilities. Acting under blanket authority, a pipeline may install new facilities on a new right-of-way, which may be acquired through the pipeline's exercise of eminent domain. However, blanket authority is limited to projects costing no more than \$21,000,000.<sup>8</sup> Further, blanket authority does not apply to projects that alter or add mainline loop line, or extend a mainline, or increase compression to boost mainline capacity. An important

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<sup>7</sup>The scope of section 2.55 is expanded in section 2.60 to include the installation and modification of "defense-related facilities," such as emergency company headquarters, emergency communications equipment, and fallout shelters at compressor stations. However, as a practical matter, the Commission does not expect this particular provision to ameliorate the other section 2.55 constraints that render these regulations unsuitable as a vehicle to recover from accidental or intentional damage.

<sup>8</sup>This amount is adjusted annually. By way of contrast, section 2.55 has no such project cost cap.

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exception to this limitation applies to mainline, lateral, and compressor replacements that do not qualify under 2.55(b) because they will result in an incidental increase in capacity<sup>9</sup> or because they cannot satisfy the location or workspace requirements of section 2.55(b).<sup>10</sup>

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

12. In addition, Part 157 blanket authorization, although granted automatically, is subject to compliance with standard conditions, in particular, the environmental criteria specified in section 157.206(d) and the reporting requirements of section 157.207. Any

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

<sup>10</sup>18 CFR § 157.202(b)(2) (2002).

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project undertaken pursuant to blanket authority that will exceed \$7,500,000 in costs is subject to a 45-day prior notice requirement.<sup>11</sup> If a protest to a proposal is submitted during this time, and the project sponsor is unable to resolve the objection within another 30 days, then instead of proceeding under blanket authority, the prior notice filing is treated as an application for section 7(c) certificate authorization.

13. While section 2.55 and Part 157 of the Commission's regulations are commonly employed for routine business activities, Part 284, Subpart I, of the regulations applies only in an emergency.<sup>12</sup> Under Part 284, a pipeline may extend its facilities, interconnect with other pipelines, sell gas as needed to maintain adequate service or serve particular customers, and increase gas deliveries in order to meet weather-induced demand. However, approval for facilities and services under Part 284 is provisional; the regulations only apply to actions that are anticipated to last no longer than 60 days,<sup>13</sup>

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

<sup>12</sup>“Emergency” is defined as an actual or expected shortage of gas supply or capacity that would disrupt existing service; a sudden unanticipated loss of gas supply or capacity; an anticipated loss of gas supply or capacity due to a foreseeable facility outage resulting from a natural disaster beyond the company's control; or a situation in which the company determines that immediate action is needed or will be needed to protect life, health, or property.

<sup>13</sup>A single, additional 60-day extension may be requested. Although the section 284, Subpart I, regulations may exempt a gas company, Hinshaw pipeline, or intrastate pipeline from NGA section 7 jurisdiction in order to respond to an emergency, if

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since it is expected that the pipeline will be able to reconstitute service within this time frame or will seek another source of authorization for its actions.<sup>14</sup> Although Part 284 places no explicit limitation on the types of facilities or transactions covered, these regulations have not been viewed as applicable to long-term or large-scale undertakings. In practice, these emergency regulations have typically been used for small-scale efforts, such as installing a tap. Also, the Part 284 emergency regulations do not provide the pipeline with the right to acquire easements by means of eminent domain.

#### **Issues Regarding the Commission's Existing Authority**

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

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<sup>13</sup>(...continued)

emergency conditions persist beyond 120 days (60 days plus a 60-day extension), then an NGA section 7(c) certificate would be required for permanent authority to continue operations.

<sup>14</sup>See, e.g., Northern Natural Gas Company, 64 FERC ¶ 61,187, at 62,562-63 (1993).

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

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sufficiently expansive response to such an emergency.

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

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

17. Several participants at the April 2002 conference stress the need to plan for and to coordinate the efforts of local, state, and federal authorities to respond to an emergency,

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

18. The Office of Energy Assurance's statement of mission and goals indicate that it will function as the federal managerial focal point for: activities involving the location and content of equipment stockpiles; overseeing industry mutual aid pooling and exchange programs; identifying critical facilities, equipment, and personnel; establishing communications protocol; and developing security and contingency plans.<sup>17</sup>

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

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

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

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

### **Proposed Regulations**

21. To allow pipelines to expedite recovery following an emergency due to a sudden

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unanticipated loss of gas or capacity that threatens life, health, or property, the Commission is proposing to expand the scope of construction permitted under the blanket certificate authority of Part 157, Subpart F, of its regulations. One issue conference participants raised repeatedly was the prospect that if mainline facilities are damaged, and the facility owner's access to the damaged site is temporarily restricted, no regulatory remedy now exists to ensure the rapid restoration of service. The logical alternative to repairing facilities at the point of damage would be to build around that point. The Commission's section 2.55 regulations do not allow replacement and repair activities to take place outside of facilities' original right-of-way, and so preclude any such rerouting. As explained, Part 157 is less restrictive, but still does not permit the extensive deviation from an existing right-of-way that would presumably be necessary to circumvent a restricted or quarantined area. Accordingly, we propose expanding Part 157 to permit pipeline companies to establish new rights-of-way around an accident site in order to reconnect a severed mainline or to construct other facilities as needed to restore service. Further, to the extent that a pipeline company could compensate for damage to one portion of its system by rearranging gas flows or increasing throughput on an unaffected portion of its system, we propose to place such system modifications within the category of "eligible facilities."

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

23. This proposal is not intended as an open-ended expansion of existing blanket authority. The enlargement of the scope of permissible actions under Part 157, Subpart

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<sup>18</sup>18 CFR §§ 157.202(b)(2)(ii)(B) and (C) (2002).

<sup>19</sup>Order No. 603, FERC Stats. & Regs. ¶ 31,073, at 30,791-94 (1999).

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

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

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

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facilities for the primary purpose of restoring service, and be defined as eligible facilities. Specifically, we propose to revise section 157.202(b)(2)(ii)(C) to read as follows: "A facility, including compression and looping, that alters the capacity of a main line, except replacement facilities covered under § 157.202(b)(2)(i)."

25. We believe this expanded blanket authority fills a gap that now confronts a pipeline unable to initiate recovery efforts when (1) section 2.55 of the regulations is inapplicable because of the need to construct outside the footprint of the existing facilities, (2) the Part 284, Subpart I, emergency provisions are insufficient because the anticipated duration of the reconstruction effort will be longer than 60 days, or (3) new facilities needed to restore service are not permitted under the existing Part 157, Subpart F, regulations because the new facilities would expand capacity on, extend, or loop a mainline. Although the proposed revisions enlarge the section 157.202 definition of eligible facilities, other constraints on construction under blanket authority remain.

26. Among these other applicable constraints are regulations governing prior notice requirements, project cost limits, reporting requirements, and the standard conditions of section 157.206, covering environmental compliance. While environmental compliance with certain statutory requirements lies beyond the Commission's jurisdictional purview, and is thus beyond our discretion to affect, we can act on our own to modify compliance with our own regulations. We propose to do so by removing prior notice and project cost limit requirements to permit a company to act under blanket authority to respond to an

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emergency caused by a sudden unanticipated loss of gas or capacity that threatens life, health, or property.

27. Provided a project meets the relevant Part 157 criteria, and will cost no more than \$7.5 million,<sup>21</sup> blanket authorization is automatic, and construction can commence at the sponsoring company's discretion. However, projects expected to exceed \$7.5 million are subject to a 45-day prior notice provision, pursuant to section 157.205(a). We propose to modify section 157.205(a) to provide an exception to these prior notice proceedings for emergency reconstruction, inserting the phrase "except for activity required to restore service to prevent loss of life, impairment of health, or damage to property in an emergency due to a sudden unanticipated loss of natural gas supply or capacity," as follows: "No activity described in §§ 157.208(b), 157.211(a)(2), 157.214 or 157.216(b), except for activity required to restore service in an emergency due to a sudden unanticipated loss of natural gas supply or capacity, is authorized by a blanket certificate granted under this subpart, unless, prior to undertaking such activity" notice requirements are fulfilled. This proposed qualification presumes that in an emergency, the public interest in rectifying service at the earliest possible date will outweigh the public benefit of providing 45-day advance notice of planned reconstruction.

28. We note that although this proposed amendment will omit the prior 45-day *public*

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<sup>21</sup>As previously noted, this amount is adjusted annually, and appears in Table 1, column 1, of 18 CFR § 157.208(d) (2002).

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notice requirement of section 157.205(a) in an emergency, we retain the separate prior *landowner* notice requirement of section 157.203(d). Section 157.203(d) directs a company to make a good faith effort to notify all affected landowners 30 days prior to commencing construction. We expect a company that seeks to build around an accident site, as part of the process of considering alternative routes, will make a good faith effort to identify and inform affected landowners in advance of any new construction. Given the process involved in acquiring new easements, and given that landowners, to which pipeline companies must give 30-days notice pursuant to the Commission's landowner notification requirements, may agree to waive the remainder of that 30-day notice period, we do not expect this prior landowner notice provision to impede a company's capability to commence emergency reconstruction activities. The Commission recognizes that there may be instances where timely reconstruction of facilities could be delayed by companies' inability to obtain landowners' agreement to waive the remainder of the 30-day notice period. In such instances, the Commission will consider requests to waive the remainder of the 30-day notice period.

29. Even with mainline rerouting without prior notice, action under blanket authority would be thwarted if emergency reconstruction expenses were to exceed the Part 157 project cost limit. Accordingly, we propose to lift the project cost cap for emergency response efforts. This proposed exemption is not to be interpreted as an invitation to undertake open-ended system expansions; it applies exclusively to emergency response

projects, and extends only as far as is necessary to restore service to pre-emergency capacity levels.<sup>22</sup> Therefore, we propose to amend section 157.208(a) to provide for automatic authorization for emergency reconstruction, without any restriction on project cost, by interjecting the phrase "or if the project is required to restore service to prevent loss of life, impairment of health, or damage to property in an emergency due to a sudden unanticipated loss of natural gas supply or capacity" as follows:

If the project cost does not exceed the cost limitations set forth in column 1 of Table I, under paragraph (d) of this section, or if the project is required to restore service in an emergency due to a sudden unanticipated loss of natural gas supply or capacity, the certificate holder is authorized to make miscellaneous rearrangements of any facility, or acquire, construct, replace, or operate any eligible facility.

30. In an emergency, the Commission expects to make, and expects affected pipelines

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<sup>22</sup>In an effort to encourage pipeline companies to quickly add capacity to meet pressing market needs in the Western United States (particularly California), we adopted several temporary measures. Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States, 94 FERC ¶ 61,272 (2001), further order and reh'g dismissed, 95 FERC ¶ 61,225 (2001), order on requests for clarification and reh'g, 96 FERC ¶ 61,155 (2001). *Inter alia*, for the period May 14, 2001, through April 30, 2002, we increased the dollar limitations on blanket certificate projects under both the automatic provisions and the prior notice provisions for construction of facilities to deliver additional gas into the western region, expanded the scope of eligible facilities for such projects, and provided, upon request, for shortening of the 45-day prior notice time frame. We propose an analogous approach here, not to encourage additional construction, but to establish authority to be held in reserve, to be called upon to meet a specific need.

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to make, every reasonable effort to restore essential service as rapidly as possible. We believe these proposed amendments to Part 157 offer the best way to authorize emergency reconstruction, particularly in view of the comparatively sparse use of and ambiguities that remain regarding the scope of the Part 284 emergency provisions. As noted , this proposed expanded blanket authority will apply only when acting in response to an emergency due to a sudden unanticipated loss of gas supply or capacity that threatens life, health, or property.<sup>23</sup>

31. Under the standard Part 157.207 reporting requirements, a company submits an annual report – a compilation describing projects completed pursuant to blanket authority during the year. Since we are proposing to provide self-implementing automatic authorization for emergency reconstruction and to omit prior notice for emergency reconstruction, we find it prudent to require, in addition to an annual report, that companies relying on automatic authorization for emergency activities report to the Commission their preparations and plans before breaking ground for reconstruction. Therefore, we propose to amend section 157.207, which provides for an annual

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<sup>23</sup>Emergency circumstances are extraordinary circumstances, and but for emergencies, we expect companies to proceed, as they have to date, to manage gas flows, system maintenance, and construction on their systems under the current authorities. Because we do not anticipate any need for the Commission to arbitrate what constitutes an emergency, we decline to adopt INGAA's proposal that the Commission declare that an emergency exists in order to trigger exemptions and actions. We believe pipeline companies will be able to identify emergencies conditions on their systems and invoke the proposed expanded blanket authority, as appropriate, without any preliminary determination from the Commission.

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retrospective report, listing all blanket projects completed in the prior year. We propose to modify this to require prospective reporting for activities intended to restore service in response to an emergency, with the pipeline company informing the Commission of its intended activities in advance of reconstruction.

32. We propose to include an emergency reporting requirement in section 157.207 by revising the introductory paragraph of that section to read as follows: "In the case of an emergency due to a sudden unanticipated loss of natural gas supply or capacity, the certificate holder must file, in the manner prescribed in §§ 157.6(a) and 385.2011 of this chapter, a report describing activity to be undertaken to restore service in advance of such activity in accordance with subparagraph (i) of this section. In addition, on or before May 1 of each year, the certificate holder must file, in the manner prescribed in §§ 157.6(a) and 385.2011 of this chapter, an annual report of all blanket certificate activities, including all activities undertaken to restore service following a sudden unanticipated loss of natural gas supply or capacity."

33. We recognize that in filing a report of an intended emergency activity, a company will be unable to supply all the information routinely set forth in a standard annual blanket report. For example, although it will not be possible to provide, before the fact, the section 157.208(e)(3) statement of the "actual installed cost of each facility item," a company planning to proceed under blanket emergency authorization should nevertheless be able to provide projected costs. Thus, a proposed new subparagraph (i) of section

157.207 would require companies' reports of intended emergency activities to provide to the extent practicable the information required by the regulations cross-referenced by section 157.207 for the type of facilities involved. We do not expect this reporting requirement will retard efforts to restore interrupted service, since the report can be prepared coincident with a company's compliance with landowner notification and environmental requirements. Note that the advance report to the Commission is not an application awaiting a Commission response or a prior notice type of proceeding with a requisite waiting period. The report serves only to apprise the Commission of pending activity, and the submission of the description of the intended activity and location constitutes satisfaction of this reporting requirement.

34. We do not view the proposed amendments to our regulations as a significant departure from our past practices. We routinely receive requests for exceptions from full regulatory compliance, and we routinely grant such requests when a company demonstrates good cause therefor. Further, implicit in the NGA section 7 temporary certificate, the section 2.55 replacement and repair regulations, and the Part 284 emergency provision, is the presumption that certain categories of equipment failure, human error, and natural disaster require immediate action. The Commission stands willing to grant pipeline companies latitude to construct, reconstruct, and rearrange facilities in an emergency due to a sudden unanticipated loss of gas or capacity that threatens life, health, or property. Finally, we do not expect the proposed amended

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provisions will be put to use with any regularity, since unlike the standard Part 157 regulations, which are employed for routine or relatively minor system modifications, the emergency blanket provisions, by their nature, are only applicable in unexpected and atypical events.

35. Although the Commission can determine that in certain circumstances the public convenience and necessity favor construction and transportation without full adherence to each existing certificate condition, the Commission cannot compromise compliance with statutory or regulatory requirements over which it has no jurisdictional authority. For example, regardless of any circumstances or any Commission finding, the environmental provisions of the National Environmental Policy Act (NEPA) and the safety provisions of DOT must be met. Thus, here, as in our 2001 temporary modification of Part 157, “[w]e emphasize that projects under the expanded blanket authority will remain subject to our existing environmental regulations and compliance provisions”<sup>24</sup> as set forth in section 157.206(d) of our regulations.

36. In an emergency, in addition to the need to identify and resolve environmental and safety issues promptly, easements for a new right-of-way may be needed promptly. If affected landowners agree, it may be possible to obtain the right-of-way without undue delay. Otherwise, even with the right to exercise eminent domain that is available to a pipeline company acting under Part 157 blanket certificate authority, securing land rights

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<sup>24</sup>Id., 95 FERC ¶ 61,225, at 61,776.

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may extend the duration of the service interruption.

37. Since the Commission lacks the authority to modify certain environmental, safety, and land acquisition procedures, we will, as noted, compile and maintain a list of agencies that hold relevant permitting authorities. (A state's governor, for example, may have the authority to acquire easements expeditiously in the case of a state-declared emergency.) Promptly alerting entities that will be involved in an emergency response should speed the planning, permissions, and reconstruction process.

38. We expect these proposed amendments to Part 157 will provide pipeline companies confronting an emergency outage with the flexibility to act on their own initiative, without the delay inherent in the process of applying for case specific authorizations from the Commission. At the same time, the Commission will retain regulatory oversight through the existing blanket certificate procedures sufficient to safeguard the public interest by ensuring pipelines respect landowner property rights and adhere to environmental and safety requirements. Any waiver of the regulatory requirements to restore service in an emergency will be subject to review by the Commission or its delegated agent.

39. Finally, despite the advance report we are proposing in new subparagraph (i) of section 157.207, we are concerned that emergency projects under expanded blanket authority should not proceed without Commission awareness of the details of the project as it goes forward. Accordingly, we will also propose to require any pipeline company

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that undertakes to replace facilities under the expanded blanket certificate authority proposed herein to consult with Commission staff during the period that the facilities are under construction and we shall require the Director of the Office of Energy Projects (OEP) to designate a staff member to be available to advise and consult on any such project. A staff member designated by the Director of OEP shall be present on the construction site as necessary or appropriate based on the nature of the project and shall have delegated authority to take whatever steps are necessary to insure the protection of all environmental resources during activities associated with construction of the project. This authority shall allow the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction.

### **REQUEST FOR COMMENTS**

40. The Commission requests that comments on this proposal specifically address whether the proposed expansion of pipeline companies' authority under their Part 157 blanket certificates will be sufficient in scope to adequately address situations where immediate action is necessary to restore gas service to prevent loss of life, impairment of health, or damage to property, and to provide for reconstruction of interstate pipeline facilities that have been destroyed or compromised by a sudden, unforeseen natural event or deliberate effort to disrupt the flow of natural gas. Commenters are invited to submit

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their views and comments on the need for further or broader action by the Commission or Congress.

41. The Commission seeks comment on whether the blanket certificate authorization to construct mainline facilities outside an existing right-of-way should be self-implementing or, rather, subject to a finding by the Commission that an emergency exists and the pipeline's proposed actions are appropriate. Specifically, is INGAA's suggested approach sufficient in scope to address situations where immediate action is necessary to restore gas service lost due to a sudden unanticipated loss of gas or capacity? In the alternative, should there be a short review period in advance of commencing construction to provide the Commission an opportunity to review the actions proposed to be taken by the pipeline? For example, should the regulations provide that unless the Commission does not act to prohibit or modify the pipeline's replacement construction proposal within three days of a pipeline's advance report of intended reconstruction, then the pipeline may commence reconstruction (compare section 284.264(b)(ii) of the regulations)? Lastly, we seek comment on whether the proposed expanded emergency blanket authority should be restricted to include activities undertaken in response to a sudden unanticipated loss of gas or capacity due only to a natural disaster or act of deliberate damage.

#### **INFORMATION COLLECTION STATEMENT**

42. The Office of Management and Budget (OMB) regulations require that OMB

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approve certain information collection requirements imposed by agency rule.<sup>25</sup> This proposed rule will not impact information collection. Accordingly, there is no cause to submit this proposed rule to OMB for review under Section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d).

## **ENVIRONMENTAL ANALYSIS**

43. The Commission is required to prepare an EA or EIS for any action that may have a significant adverse effect on the human environment.<sup>26</sup> The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.<sup>27</sup> Section 380.4(a)(21) provides that neither an environmental assessment nor an environmental impact statement will be prepared for the approval of blanket applications pursuant to prior notice filings under sections 157.209 through 157.218 of the blanket certificate regulations. The actions proposed herein provide for the emergency reconstruction of previously authorized facilities and thus fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for the sale, exchange, and transportation of natural gas that requires

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<sup>25</sup>5 CFR Part 1320 (2002).

<sup>26</sup>Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987).

<sup>27</sup>18 CFR § 380.4 (2002).

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no construction of facilities.<sup>28</sup> Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

### **REGULATORY FLEXIBILITY ACT CERTIFICATION**

44. The Regulatory Flexibility Act of 1980 (RFA)<sup>29</sup> requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have significant economic impact on a substantial number of small entities. Agencies are not required to make such an analysis if a rule would not have such an effect. The Commission does not believe that this proposed rule would have such an effect on small business entities, since the proposed amendments to our regulations would apply only to interstate pipelines, most of which are not small businesses. Accordingly, pursuant to section 605(b) of the RFA, the Commission proposes to certify that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

### **COMMENT PROCEDURES**

45. The Commission invites interested persons to submit written 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. An original and 14 copies of comments must be filed with the Commission no later than **[insert date 30 days after publication in the Federal Register]** and may be filed either in electronic or paper

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<sup>28</sup>See 18 CFR §§ 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27) (2002).

<sup>29</sup>5 U.S.C. 601-612.

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format. Those filing electronically do not need to make a paper filing.

46. Documents filed electronically via the Internet can be prepared in a variety of formats, including WordPerfect, MS Word, Portable Document Format, Rich Text Format, or ASCII format, as listed on FERC's website at <http://ferc.gov>, under the eFiling link. The eFiling link provides instructions for how to log in and complete an electronic filing. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filing is available at 202-502-8258 or by e-mail to [efiling@ferc.gov](mailto:efiling@ferc.gov). Comments should not be submitted to the e-mail address.

47. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, and should refer to Docket Nos. RM03-4-000 and AD02-14-000.

48. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, N.E., Washington D.C. 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's website using the Federal Energy Regulatory Records Information System (FERRIS) link.

#### **DOCUMENT AVAILABILITY**

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49. 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/or print the contents of this document via the Internet through FERC's website at <http://www.ferc.gov> and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

50. From FERC's Home Page on the Internet, this information is available in FERRIS. The full text of this document is available via FERRIS in Portable Document Format (PDF) and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

51. User assistance is available for FERRIS and FERC's website during normal business hours. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or for TTY contact (202) 502-8659.

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List of Subjects

18 CFR Part 157

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

By direction of the Commission.

( S E A L )

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 §157.202, the last sentence in paragraph (b)(2)(i) and paragraph (b)(2)(ii)(C) are revised to read as follows:

§157.202 Definitions.

\* \* \* \* \*

(b) Subpart F definitions. \* \* \*

(2)(i) \* \* \* Replacements for the primary purpose of creating additional main line capacity are not eligible facilities; however, replacements for the primary purpose of restoring service to prevent loss of life, impairment of health, or damage to property due to sudden unanticipated damage to main line facilities are eligible facilities.

(ii) Exclusions: \* \* \*

(C) A facility, including compression and looping, that alters the capacity of a main line, except replacement facilities covered under § 157.202(b)(2)(i);

\* \* \* \* \*

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3. In § 157.205, paragraph (a) is revised to read as follows:

§ 157.205 Notice procedure.

(a) Applicability. No activity described in §§ 157.208(b), 157.211(a)(2), 157.214 or 157.216(b), except for activity required to restore service to prevent loss of life, impairment of health, or damage to property in an emergency due to a sudden unanticipated loss of natural gas supply or capacity, is authorized by a blanket certificate granted under this subpart, unless, prior to undertaking such activity:

\* \* \* \* \*

4. In § 157.207, the introductory text is revised and a new subparagraph (i) is added to read as follows:

§ 157.207 General reporting requirements.

In the case of an emergency due to a sudden unanticipated loss of natural gas supply or capacity, the certificate holder must file, in the manner prescribed in §§ 157.6(a) and 385.2011 of this chapter, a report describing activity to be undertaken to restore service in advance of such activity in accordance with subparagraph (i) of this section. In addition, on or before May 1 of each year, the certificate holder must file, in the manner prescribed in §§ 157.6(a) and 385.2011 of this chapter, an annual report of all blanket certificate activities, including all activities undertaken to restore service following a sudden unanticipated loss of natural gas supply or capacity. The annual report must be signed under oath by a senior official of the company and list for the

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previous calendar year:

\* \* \*

(i) Reports describing emergency activities to be undertaken to restore service following a sudden unanticipated loss of natural gas supply or capacity shall to the extent practicable contain the information for the facilities as required by the pertinent regulatory provisions cross-referenced above in this section. The report shall include the estimated costs of each activity and an updated USGS 7 1/2 minute series (scale 1:24000) topographic map (or map of equivalent or greater detail, as appropriate) showing the location of existing and proposed facilities, and indicating the location of any sensitive environmental areas crossed by either the existing or proposed facilities.

5. In § 157.208, paragraph (a) is revised to read as follows:

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

(a) Automatic authorization. If the project cost does not exceed the cost limitations set forth in column 1 of Table I, under paragraph (d) of this section, or if the project is required to restore service to prevent loss of life, impairment of health, or damage to property in an emergency due to a sudden unanticipated loss of natural gas supply or capacity, the certificate holder is authorized to make miscellaneous rearrangements of any facility, or acquire, construct, replace, or operate any eligible facility. For projects undertaken pursuant to this section to restore service to prevent loss

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of life, impairment of health, or damage to property due to a sudden unanticipated loss of natural gas supply or capacity, the Director of the Office of Energy Projects shall designate a staff member to advise and consult with the certificate holder, and the certificate holder shall consult with the designated staff member during the period that the construction is in progress. A staff member designated by the Director of the Office of Energy Projects shall be present on the construction site as necessary or appropriate based on the nature of the project and shall have delegated authority to take whatever steps are necessary to insure the protection of all environmental resources during activities associated with construction of the project. This authority shall allow the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction.

\* \* \* \* \*