

Filings by Small Entities

The Commission reminds public utilities that have limited transmission facilities and that have previously been granted waiver of some or all of the requirements of Order Nos. 888 or 889, that an abbreviated filing is acceptable.⁴ The Commission does not wish to burden these small entities with extensive filings, but will find it useful to know the status of all transmission-owning public utilities with respect to regional participation.

By direction of the Commission.

David P. Boergers,

Secretary.

Appendix—Public Utilities Required to File on or before January 15, 2001

California Independent System Operator (ISO)

Pacific Gas and Electric Company
San Diego Gas & Electric Company
Southern California Edison Company

ISO New England, Inc.

Bangor Hydro-Electric Company
Boston Edison Company
Cambridge Electric Light Company
Central Maine Power Company
Central Vermont Public Service Corporation
Commonwealth Electric Company
Fitchburg Gas & Electric Light Company
Green Mountain Power Corporation
Montaup Electric Company
New England Power Company
Connecticut Light & Power Company
Western Massachusetts Electric Company
Holyoke Water Power Company
Holyoke Power and Electric Company
Public Service Company of New Hampshire
North Atlantic Energy Corporation
United Illuminating Company
Vermont Electric Power Company

Midwest ISO

Central Illinois Public Service Company
Cincinnati Gas & Electric Company
Commonwealth Edison Company
Commonwealth Edison Company of Indiana
Illinois Power Company
Kentucky Utilities Company
Louisville Gas & Electric Company
PSI Energy, Inc.
Union Electric Company
Wisconsin Electric Power Company

New York ISO

Central Hudson Gas & Electric Corporation
Consolidated Edison Company of New York, Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Corporation
Orange & Rockland Utilities, Inc.
Rochester Gas & Electric Corporation

PJM Interconnection, LLC

Atlantic City Electric Company
Baltimore Gas and Electric Company
Delmarva Power & Light Company

Jersey Central Power & Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
Pennsylvania Power & Light Company
Potomac Electric Power Company
Public Service Electric & Gas Company

Alliance Companies

Appalachian Power Company
Columbus Southern Power Company
Indiana Michigan Power Company
Kanawha Valley Power Company
Kentucky Power Company
Kingsport Power Company
Ohio Power Company
Wheeling Power Company
Consumers Energy Company
Detroit Edison Company
Cleveland Electric Illuminating Company
Ohio Edison Company
Pennsylvania Power Company
Toledo Edison Company
Virginia Electric and Power Company
[FR Doc. 00-18874 Filed 7-25-00; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM00-5-000; Order No. 615]

Optional Certificate and Abandonment Procedures for Applications for New Service Under Section 7 of the Natural Gas Act

Issued July 14, 2000.

AGENCY: The Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: On September 15, 1999, the Commission issued a policy statement to provide the industry with guidance with respect to how the Commission will evaluate new proposals for pipeline construction projects to take account of changes in the natural gas industry in recent years (Policy Statement). In view of the new framework for analyzing pipeline certificate applications announced in the the Policy Statement, the Commission is removing the optional certificate regulations because it believes that a uniform regulatory scheme applicable to all certificate applications will best accomplish the Commission's goals, as set out in the Policy Statement, of assuring that all relevant interests and circumstances are considered and balanced in assessing the public convenience and necessity.

DATES: This rule is effective September 25, 2000.

FOR FURTHER INFORMATION CONTACT: William L. Zoller, Office of Energy Projects, Federal Energy Regulatory

Commission 888 First Street, N.E., Washington, D.C. 20426, (202) 208-1203.

Joseph B. O'Malley, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, (202) 208-0088.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission is amending its regulations to remove its optional certificate regulations in Subpart E of Part 157 of the Commission's regulations.¹ The policies embedded in these regulations have been overtaken by subsequent policy developments, most particularly the Commission's September 15, 1999 statement of policy on certificating new pipeline construction (Policy Statement).² The optional certificate regulations, promulgated in 1985, established procedures whereby an eligible applicant may obtain, for purposes of providing new service, a certificate authorizing: the transportation of natural gas; sales of natural gas; the construction and operation of natural gas facilities; the acquisition and operation of natural gas facilities; and conditional pre-granted abandonment of such activities and facilities. The Commission's September 15, 1999 Policy Statement provides the industry guidance with respect to how the Commission will evaluate new proposals for pipeline construction projects to take account of changes in the natural gas industry in recent years. The Policy Statement provides that pipelines may not rely on existing customers to subsidize new projects that will not benefit them and that construction projects will be approved only where the public benefits outweigh any adverse effects. The optional regulations do not provide for consideration and weighing of public interest factors, and are thus inconsistent with current Commission policy.

II. Background

Before a pipeline may construct any natural gas facilities subject to the Commission's Natural Gas Act (NGA) jurisdiction, it must obtain a certificate of public convenience and necessity authorizing such construction under section 7 of the NGA. In conjunction with the open access transportation

¹ 18 CFR 157.100 *et seq.*

² Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,227 (1999) (Policy Statement), *order clarifying statement of policy*, 90 FERC ¶ 61,128 (2000).

⁴ See Order No. 2000-A, FERC Stats. & Regs. at 31,392-93.

program that the Commission established in 1985 in Order No. 436, the Commission adopted the optional certificate regulations as an alternative to the conventional certificate process.³ A key goal of the optional certificate program was to provide the full benefits of competition to consumers by facilitating easier pipeline entry and exit from markets.⁴ The optional certificate regulations establish a rebuttable presumption that, subject to review under the National Environmental Policy Act, a project is required by the public convenience and necessity if the applicant is willing to assume all the economic risk of a new service.⁵ To assure that the applicant shoulders the project risk, the optional regulations prohibit shifting costs originally allocated to the new service or facility to any other service. The optional regulations also prohibit any reduction in the certificated level of billing determinants used to design the initial rates for a project or service.

In view of continuing changes in the natural gas industry, the Commission revisited its NGA section 7 certificate policy, and on September 15, 1999, the Commission issued its Policy Statement to provide the industry with guidance regarding the process and criteria the Commission will employ in evaluating future proposals for certifying new pipeline construction. Rather than adopting new rules for filing applications, the Policy Statement provides an analytical framework for determining when a particular pipeline project is required by the public convenience and necessity. The threshold requirement of the new policy is that the pipeline must be prepared to develop the project without relying on subsidies from its existing customers.⁶ The Policy Statement also encourages pipelines seeking a certificate to resolve potential issues very early in the process by submitting applications designed to avoid or minimize adverse effects on such groups as existing customers of the applicant, existing pipelines serving the market and their captive customers, and affected landowners and other community interests. After the applicant makes efforts to minimize adverse effects, the Commission will authorize construction projects that have residual unresolved issues only where it finds that the public benefits of the projects outweigh the adverse effects. The Policy

Statement provides that an applicant may submit evidence of the public benefits to be achieved by the proposed project, such as contracts, precedent agreements, studies of projected demand in the market to be served, or other evidence of public benefit of the project.

On February 9, 2000, the Commission issued a Notice of Proposed Rulemaking (NOPR)⁷ proposing in the instant docket to amend the Commission's regulations by removing the optional certificate regulations. The Commission stated that a uniform regulatory scheme applicable to all certificate applications will best accomplish the Commission's goals, as set out in the Policy Statement, of assuring that all relevant interests and circumstances are considered and balanced in assessing the public convenience and necessity.

The Commission explained in the NOPR that its September 1999 Policy Statement established a core set of principles and considerations for evaluating new pipeline construction projects. By precluding subsidization of new projects, both the Policy Statement and the optional certificate program place the risk of a new project on the pipeline and the customers for the new project and protect existing customers from assuming the financial risk of a project that was not designed for their benefit. The Commission noted, however, that in other respects, current policy is inconsistent with the optional certificate program. The Commission explained that because the optional certificate program operates under a rebuttable presumption that proposals under which the pipeline applicant will assume the financial risks associated with the project are in the public interest, the Commission does not weigh the public benefits against the adverse effects in considering such applications. The Commission stated that it believes that it will be better to consider all certificate applications under the broader balancing criteria articulated in the Policy Statement.

In its order clarifying the Policy Statement,⁸ issued contemporaneously with the NOPR, the Commission determined that, on an interim basis until issuance of a final rule in this rulemaking proceeding, the presumption in favor of an application filed under the optional certificate regulations will continue, but that the presumption will be considered

rebutted if the adverse effects of the proposed project are found to outweigh its benefits.

III. Discussion

The Commission received only four comments in response to its NOPR, none of which disagreed with the proposal to eliminate the optional procedures. One commentor, El Paso Energy Corporation, believes that a uniform regulatory scheme employing the same standards and procedures for all certificate applications will improve the integrity and fairness of the regulatory process, and it supports the Commission's proposal to remove the optional certificate procedures. The other commentors, Sempra Energy Companies (Sempra), The Williams Companies, Inc. (Williams), and the Coastal Pipelines (ANR Pipeline Company, Colorado Interstate Gas Company, and Wyoming Interstate Company, Ltd.), express differing opinions regarding when removal of the optional certificate procedures should take effect. Williams also comments on the weight to be accorded an applicant's taking on the financial risk of a project.

Sempra supports the Commission's proposal to remove the optional certificate rules, and it urges that all new and pending applications filed under the optional procedures be converted to conventional NGA 7(c) applications and considered under the analytical framework set out in the Commission's Policy Statement. Sempra avers that, inasmuch as the Commission has determined that the optional procedures are inconsistent with the Policy Statement, the optional procedures should be eliminated as soon as possible. What it calls "the accident of an early filing date" should not result in applications filed under the optional procedures avoiding review under the interest balancing standards of the Policy Statement.

Williams and the Coastal Pipelines, on the other hand, while stating that they have no objection to the Commission's elimination of the optional certificate procedures, argue that elimination of the regulations should be prospective only. That is, they aver that the Commission should apply the optional certificate rules to applications filed under those procedures prior to the issuance of the NOPR. Williams urges, moreover, that, after the optional procedures are removed, the Commission should consider an applicant's willingness to assume the financial risk of a project as a major factor in assessing the public convenience and necessity under the Policy Statement's balancing test. It

³ See Order No. 436, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 FR 42408 (Oct. 18, 1985), 50 FR 45907 (Nov. 5, 1985); FERC Stats. & Regs. ¶ 30,665 (1985).

⁴ *Id.* at p. 31,570.

⁵ *Id.* at p. 31,584.

⁶ Policy Statement, 88 FERC, at p. 61,750.

⁷ Optional Certificate and Abandonment Procedures for Applications for New Service Under Section 7 of the Natural Gas Act, 65 FR 7803 (Feb. 16, 2000), FERC Stats. & Regs. ¶ 32,551.

⁸ 90 FERC ¶ 61,128 (2000), at p. 61,391.

remains true today, asserts Williams, just as the Commission found when it adopted the optional certificate procedures, that an applicant's willingness to bear all the risk of a project's failure is strong evidence that there is a public need for a project inasmuch as a reasonable company would not invest in a project unless it believes that it will be able to attract sufficient business to recoup its investment.

Commission Response

We find that all comparable pipeline projects should be evaluated under the same criteria, and we adopt our proposal set forth in the NOPR to remove the optional certificate regulations. As the Commission stated in the NOPR, a regulatory approach that determines the public convenience and necessity on a uniform basis for all project applicants will best assist the Commission in meeting its goal, as set forth in the Policy Statement, that all interests and circumstances that are relevant to a particular pipeline project will be accorded appropriate consideration and weight.

The Commission agrees with Williams that an applicant's willingness to assume the financial risk of a project without subsidies from existing customers should be an important factor in determining the public convenience and necessity. We in fact explained in the Policy Statement that this is the threshold issue in that determination. However, analysis of the public convenience and necessity under the Policy Statement does not end with a determination that the project can proceed without subsidy from existing customers. The Policy Statement explained that the requirement that a project be able to stand on its own without subsidies "will be the predicate for the rest of the evaluation of a new project by an existing pipeline."⁹ Thus, the Commission stated, "if an applicant can show that the project is financially viable without subsidies, then it will have established the first indicator of public benefit."¹⁰ Once the applicant satisfies the threshold test, the Commission will proceed pursuant to the Policy Statement to evaluate and balance the public benefit from a proposed project against any residual adverse effects on existing customers, other pipelines and their captive customers, and landowners and communities affected by the route proposed for the pipeline. Because the optional certificate regulations

undertake this interest balancing only if the presumption in favor of the application is challenged, they conflict with a significant goal under the Policy Statement, and we will remove them as an alternative means of certifying a project.

As noted above, in its order clarifying the Policy Statement, the Commission addressed the matter of the appropriate standard to be applied to applications filed under the optional certificate procedures pending a final determination in this rulemaking proceeding. The Commission announced that it would continue to apply the presumption in favor of financially viable proposals that did not rely on contributions from existing customers, but that it would consider the presumption successfully rebutted, pursuant to a Policy Statement analysis, if the adverse effects from the project outweigh the public benefits. We continue to believe that this is the appropriate approach to optional certificate applications filed prior to the effective date of this final rule, which will be 60 days after its date of issuance.

The optional procedures' regulatory presumption has always been one that is subject to rebuttal. The Commission has now explained that the presumption favoring an optional certificate proposal may be addressed by applying a Policy Statement analysis. While procedurally this places the burden on those parties that find themselves adversely affected by a proposal, the Commission believes that, as a practical matter, the end result will be the same. We explained in the NOPR that this is an interim solution only until the optional certificate procedures are eliminated and all proposals are evaluated directly under the Policy Statement considerations.

IV. Environmental Analysis

Commission regulations describe the circumstances where preparation of an environmental assessment or an environmental impact statement will be required.¹¹ The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.¹² No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural, or that does not substantially change the effect of legislation or regulations being amended.¹³

¹¹ Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), *codified* at 18 CFR Part 380.

¹² 18 CFR 380.4(a)(2)(ii).

¹³ 18 CFR 380.4.

This Final Rule merely eliminates optional procedures for the filing and processing of pipeline certificate applications; the Rule makes no substantive change to, or has any substantive effect on, the environmental requirements and conditions with respect to any pipeline project. Applicants for pipeline construction authority have had to satisfy the same environmental requirements under the optional or traditional procedures, as well as under the Policy Statement. Thus, issuance of this Final Rule does not represent a major federal action having a significant effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act, and no environmental assessment or environmental impact statement is necessary for the action taken here.

V. Regulatory Flexibility Impact Statement

The Regulatory Flexibility Act of 1980 (RFA)¹⁴ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analysis if a rule would not have such an effect.¹⁵

Removal of the optional certificate rules will not have such an impact on small entities. The proposed removal of regulations would have impact only on interstate pipelines, which generally do not fall within the RFA's definition of small entity.¹⁶ Accordingly, pursuant to section 605(a) of the RFA, the Commission certifies that the removal of regulations proposed here will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis is required.

VI. Information Collection Statement

The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule.¹⁷ Upon approval of a collection of information, OMB shall assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this Final Rule shall not be penalized for failure to respond to this collection of information

¹⁴ 5 U.S.C. 601-612.

¹⁵ 5 U.S.C. 605(b).

¹⁶ 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. 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 operations.

¹⁷ 5 CFR 1320.11.

⁹ Policy Statement, 88 FERC, at p. 61,746.

¹⁰ *Id.* at p. 61,747.

unless the collection of information displays a valid OMB control number. The collection of information related to this Final Rule falls under FERC-537, Gas Pipeline Certificates: Construction, Acquisition, and Abandonment (OMB Control No. 1902-0060).¹⁸

The Commission is not establishing a new information burden. Rather, under this Final Rule, the Commission is merely removing a heretofore little used alternative to the conventional NGA section 7(c) application process. All pipeline project applicants will file the same information that the overwhelming majority of applicants for construction authority already file. As a practical matter, our action should not have any appreciable effect on the collection of data from the pipeline industry.

None of the comments received in response to the NOPR specifically addressed the reporting burden or cost estimates. As required under OMB's regulations, the Commission submitted the NOPR to OMB for review. OMB took no action on the NOPR.

Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202)208-1415, fax: (202)208-2425, e-mail: mike.miller@ferc.fed.us] or the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503. [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202)395-3087, fax: (202)395-7285]

VII. Document Availability

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 Home Page (<http://www.ferc.fed.us>) 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, N.E., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

¹⁸The current burden estimate for FERC-537 is 138,264 hours. This number is based on an average of 50 respondents (companies making filings), 11.2 responses (filings per respondent), and 246.9 hours of preparation time per response.

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room. User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208-2222 (E-Mail to WebMaster@ferc.fed.us) or the Public Reference at (202) 208-1371 (E-Mail to public.referenceroom@ferc.fed.us).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

VIII. Effective Date

This Final Rule will take effect September 25, 2000. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a "major rule" within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.¹⁹ The Commission will submit the Final Rule to both houses of Congress and the General Accounting Office.²⁰

List of Subjects in 18 CFR Part 157

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

By the Commission.

Linwood A. Watson, Jr.,
Acting Secretary.

In consideration of the foregoing, the Commission is amending Part 157 of Chapter I, Title 18, Code of Federal Regulations, as follows:

¹⁹ 5 U.S.C. 804(2).

²⁰ 5 U.S.C. 801(a)(1)(A).

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.

§§ 157.100-157.106 Subpart E—[Removed and Reserved]

2. Remove and reserve subpart E, consisting of §§ 157.100 through 157.106.

[FR Doc. 00-18499 Filed 7-25-00; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 270, 375 and 381

[Docket No. RM00-6-000; Order No. 616]

Well Category Determinations

Issued July 14, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to reinstate provisions for well category determinations for certain categories of high-cost gas under NGPA section 107. An NGPA determination will enable such gas to be eligible for a tax credit under Section 29 of the Internal Revenue Code (Section 29 tax credit). The final Rule extends the provisions to all wells, and tight formation areas that could qualify for the Section 29 tax credit.

EFFECTIVE DATE: This rule is effective September 25, 2000.

FOR FURTHER INFORMATION CONTACT: Marilyn Rand (Technical Information), Office of Pipeline Regulation, 888 First Street, NE., Washington, DC 20426, (202) 208-0444. Jacob Silverman (Advisory Attorney), Office of the General Counsel, 888 First Street, NE., Washington, D.C. 20426, (202) 208-2078.

SUPPLEMENTARY INFORMATION:

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hebert, Jr.