



Friday
May 14, 1999

Part III

**Department of
Energy**

Federal Energy Regulatory Commission

18 CFR Part 2 et al.

**Revision of Existing Regulations
Governing the Filing of Applications for
the Construction and Operation of
Facilities To Provide Service or To
Abandon Facilities or Service Under
Section 7 of the Natural Gas Act; Final
Rule**

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission18 CFR Parts 2, 153, 157, 284, 375, 380,
and 385

[Docket No. RM98-9-000; Order No. 603]

Revision of Existing Regulations
Governing the Filing of Applications
for the Construction and Operation of
Facilities To Provide Service or To
Abandon Facilities or Service Under
Section 7 of the Natural Gas Act

April 29, 1999.

AGENCY: Federal Energy Regulatory
Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending the regulations codifying the Commission's responsibilities under the Natural Gas Act and Executive Order 10485, as amended. The Commission is updating its regulations governing the filing of applications for the construction and operation of facilities to provide service or to abandon facilities or service under section 7 of the Natural Gas Act. The changes are necessary to conform the Commission's regulations to the Commission's current policies.

DATES: These regulations become effective June 14, 1999.

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

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

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CIPS in ASCII and WordPerfect 6.1. User assistance is available at 202-208-2474 or by E-mail to cipsmaster@ferc.fed.us.

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

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations governing the filing of applications for certificates of public convenience and necessity authorizing the construction and operation of facilities to provide service or to abandon facilities or service under section 7 of the Natural Gas Act (NGA),¹ and amending the blanket certificate under subpart F of part 157. The Commission has determined that portions of its regulations need to be revised and/or eliminated in order to reflect the current regulatory environment of unbundled pipeline sales and open-access transportation of natural gas. The revisions would: (1) Bring the existing regulations up-to-date to match current policies; (2) eliminate ambiguities and obsolete language; (3) make the regulations more germane and less cumbersome; and (4) reduce the existing reporting burden by a total of 8,284 hours.

Additionally, the Commission is consolidating and clarifying its current practice concerning the reporting requirements needed for its environmental review of pipeline construction projects under the National Environmental Policy Act of 1969.² Generally, the Commission's existing requirements for the environmental review process are outdated, located in several different parts of the Commission's regulations, or, in practice, have been replaced with a preferred format that is not in the

Commission's regulations, but is now used routinely by jurisdictional companies. The new regulations will provide better guidance to the regulated industry concerning what particular information the Commission needs to conduct a timely environmental analysis.

II. Background

Since the enactment of the Natural Gas Policy Act of 1978 (NGPA)³ and the Natural Gas Wellhead Decontrol Act of 1989 (Decontrol Act),⁴ the natural gas industry has undergone significant changes. Historically, the Commission regulated natural gas producers and wellhead prices and interstate pipelines served as gas merchants. Pipelines now generally provide only open-access transportation services and the Commission no longer regulates producers and wellhead prices. The Commission implemented these changes through its rulemaking process⁵ and through issuing policy statements.⁶

On September 30, 1998, the Commission issued a Notice of Proposed Rulemaking (NOPR),⁷ proposing to amend the Commission's regulations to conform them to its existing policies and procedures.

This Final Rule serves four basic purposes. First, it will remove certain

³ 15 U.S.C. 3301-3432 (1978).

⁴ Pub. L. 101-60, 103 Stat. 157 (1989).

⁵ See Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 436, 50 FR 42408 (November 5, 1985) FERC Stats. and Regs. ¶ 30,665 (October 9, 1985) (Order No. 436 instituted open-access, non-discriminatory transportation to permit downstream gas users to buy gas directly in the production area and to ship that gas via interstate pipelines); Order Implementing the Natural Gas Wellhead Decontrol Act of 1989, Order No. 523, 55 FR 17425 (April 25, 1990) FERC Stats. and Regs. ¶ 30,887 (April 18, 1990) and Removal of Outdated Regulations Pertaining to the Sales of Natural Gas Production, Order No. 567, 59 FR 40240 (August 8, 1994) FERC Stats. and Regs. ¶ 30,999 (July 28, 1994) (in Order Nos. 523 and 567, the Commission generally amended its regulations to delete those pertaining to its jurisdiction over the sale of natural gas production); and Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636, 57 FR 13267 (April 16, 1992) FERC Stats. and Regs. ¶ 30,939 (April 8, 1992) (in Order No. 636, the Commission adopted regulatory changes to finally complete the evolution to competition in the natural gas industry by mandating the unbundling of interstate natural gas sales service from transportation service, requiring that those services be sold separately to natural gas purchasers).

⁶ Pricing Policy For New and Existing Facilities Constructed by Interstate Natural Gas Pipelines, 71 FERC ¶ 61,241 (1995).

⁷ Revisions of Existing Regulations Under Part 157 and Related Sections of the Commission's Regulations Under the Natural Gas Act, 63 FR 55683 (October 16, 1998), IV FERC Stats. and Regs. ¶ 32,535 (September 30, 1998).

¹ 15 U.S.C. 717b.

² 42 U.S.C. 4321-4370a.

regulations that are outdated and obsolete including, among other things, regulations that pertain to producer related activities made obsolete by the Natural Gas Wellhead Decontrol Act of 1989 and regulations that pertain to a pipeline's merchant function. Additionally, it will remove various regulations that pertain to certain activities that were performed under the blanket certificate issued in subpart F of part 157 that are now performed under part 284 of the Commission's regulations. The Final Rule will also remove certain outdated and/or unnecessary filing requirements and reports.

Second, the Final Rule clarifies and updates certain aspects of the regulations, for example §§ 2.55, 157.10 and 157.202, to conform them to the Commission's present policies. Third, it modifies certain existing regulations to aid in expediting the Commission's procedures for constructing certain facilities. Finally, the Final Rule replaces certain outdated environmental filing procedures with commonly followed industry practice.

In essence, the Final Rule makes numerous changes to the Commission's regulations in an effort to streamline the certificate process. First, it requires that pipelines file more complete applications by including the information described in the checklist in appendix A to part 380. The checklist specifies the minimum content of an acceptable environmental report. This information is important for a pipeline to include when it files an application because it ensures that the staff has the minimum environmental information necessary to begin its review. Since the environmental review is generally the most time consuming part of the certificate process, it is critical for pipelines to follow the checklist in appendix A to part 380. A pipeline can avoid rejection or unnecessary delays associated with requests for additional information by including the minimum checklist information in its initial application.

The Final Rule also incorporates a number of changes from the proposals in the NOPR in response to the comments filed. The following list details some of the changes in the final rule:

- Section 2.55(a) now recognizes that facilities installed along with new transmission facilities will qualify as auxiliary, as long as pipelines provide the Commission with a description of the auxiliary facilities at least 30 days in advance of their installation;
- Sections 153.21 and 157.8, now states that an application will be rejected if

it "patently fails to comply with applicable statutory requirements or with applicable Commission rules, regulations, and orders for which a waiver has not been granted," instead of if it "does not conform to the requirements of this part;"

- Section 157.10 allows pipelines five business days instead of two business days as proposed to provide voluminous or hard to reproduce materials to parties that request such information;
- Section 157.20 allows pipelines to notify the Commission of the reason that an end-user/shipper cannot flow gas within 10 days after the expiration of the time specified in the order, rather than 30 days before expiration of the date;
- Section 157.202(b)(2)(i) now includes certain compression replacements, in addition to mainline, and lateral replacements in the definition of eligible facilities;
- Section 157.202(b)(6) now includes situations involving natural forces beyond the pipeline's control in the definition of miscellaneous rearrangement;
- Section 157.208(f)(2) allows pipelines to use the prior notice procedures to increase the Maximum Allowable Operating Pressure of lateral lines that were originally certificated under both case-specific section 7(c) certificates and the Part 157 blanket certificate;
- Section 157.215 clarifies that injection, withdrawal and observation wells can be drilled for reservoir testing purposes; and
- Section 157.217 now clarifies that pipelines are able to switch customers from individually certificated section 7(c) transportation rate schedules to part 284 blanket certificate transportation rate schedules.

Additionally at the request of commenters, the Final Rule: (1) Provides more guidance on the Director of the Office of Pipeline Regulation's (OPR) ability to dismiss unsubstantiated protests to prior notice application; (2) clarifies that the environmental compliance in § 157.206(b) only applies to activities involving ground disturbance or changes to operational air and noise emissions; (3) reduces the reporting requirements contained in § 157.208(e); and (4) codifies the Commission's policy that prohibits pipelines from segmenting projects under their blanket certificates to meet the Commission's spending limits.

These changes will help clarify the regulations, bring them up to date and speed up the processing of pipeline

construction and abandonment applications.

III. Discussion

A. Part 2—General Policy and Interpretations

Part 2 contains the Commission's statements of general policy and interpretations regarding the NGA, National Environmental Policy Act (NEPA), the Economic Stabilization Act of 1970 and Executive Orders 11615 and 11627, the NGPA and the Public Utility Regulatory Policies Act of 1978.

Section 2.55—Definition of Terms Used in NGA Section 7(c)

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

Section 2.55 defines facilities that are excluded from the requirements of section 7(c) of the NGA and may, therefore, be constructed without additional certificate authority. Section 2.55(a) exempts auxiliary facilities, such as valves, drips, yard and station piping, and cathodic protection equipment, from NGA section 7(c) authority. The NOPR clarified that auxiliary facilities intended to be installed at the same time and related to newly proposed jurisdictional facilities do not qualify for the exemption under § 2.55(a) since the exemption is limited to installations which are designed specifically to improve the operation of an existing transmission system.

Comments: El Paso Energy Corporation (El Paso)⁸ states that the proposal creates arbitrary distinctions among facilities and would unduly restrict pipeline operations. El Paso contends that identical facilities would be considered jurisdictional or nonjurisdictional based solely upon when they were constructed. This would subject new jurisdictional yard and station piping to abandonment authorization, while identical existing facilities would need no such authorization. According to El Paso, Enron Interstate Pipelines (Enron)⁹ and Koch Gateway Pipeline Company (Koch Gateway), such a finding would increase the burden on pipelines by requiring them to keep records of all such facilities in order to abandon the jurisdictional ones when necessary. These parties believe that such facilities

⁸ El Paso consists of El Paso Natural Gas Company, East Tennessee Natural Gas Company, Midwestern Gas Transmission Company, Mojave Pipeline Company, and Tennessee Gas Pipeline Company.

⁹ Enron consists of Northern Natural Gas Company, Florida Gas Transmission Company and Black Marlin Pipeline Company.

should maintain their § 2.55(a) nonjurisdictional status. They argue that any other finding would be inconsistent with the objective of making the regulations less cumbersome and unnecessarily increase the administrative burden on both the pipeline and the Commission.

El Paso argues that the exemption in § 2.55(a) should apply to all auxiliary-type facilities, whether installed in connection with new or existing transmission facilities. It requests that pipelines, at a minimum, should not be required to obtain section 7(b) authority to remove or replace any auxiliary-type facility installed in connection with new transmission facilities.

Williston Basin Interstate Pipeline Company (Williston Basin) contends that auxiliary facilities associated with newly proposed facilities constructed under section 7(c) that do not cause ground disturbance should be exempt under § 2.55(a).

The Williams Companies (Williams)¹⁰ suggests that the following clause be added to the end of § 2.55(a):

Facilities constructed along with new transmission facilities do not qualify as auxiliary installations for the purposes of this section until such facilities and the related transmission facilities are complete and made available for service.

Williams believes that this would clarify that after this type facility is in service, it qualifies as an "auxiliary facility" for purposes of future modifications or abandonments.

Commission Response: As stated, the current § 2.55(a) limits the installation of auxiliary facilities to facilities installed to an existing transmission system. The NOPR proposed to exclude any auxiliary-type facilities constructed in conjunction with new pipeline facilities from the NGA exemption in § 2.55(a). As the commenters point out, this would establish dual classifications for similar facilities and would create uncertainty regarding the nonjurisdictional status of such facilities. Accordingly, in order to treat auxiliary facilities constructed in conjunction with new transmission facilities the same as auxiliary facilities constructed as part of an existing transmission system, the Commission will modify the definition of § 2.55(a) to include facilities constructed in conjunction with new pipeline facilities.

However, we are concerned that adding such facilities to the project after

certification but before service begins, without notice or identification of such facilities, will not allow the Commission to environmental review all facilities related to a project proposed for construction under section 7(c) of the NGA. We will add wording to §§ 2.55(a)(2) and 380.12(c)(2) to ensure that the Commission is aware of any facilities scheduled for installation on a newly certificated facility prior to it being put into service. We believe this is necessary because certain aboveground auxiliary facilities involve substantially different environmental impacts than a pipeline by itself. These impacts may be of great concern to affected landowners. Therefore, in order for the Commission to review all facilities related to a proposed construction project for new facilities, we will require that the pipelines include a description of the facilities in the environmental report required by § 157.14(a)(6-a) of the Commission's regulations. For newly authorized facilities not yet in service, we will require that the pipeline notify the Commission of the proposed installation of the auxiliary facilities at least 30 days prior to the installation of such facilities.

Section 2.55(b)—Construction Area for Replacement Facilities

The NOPR proposed to revise § 2.55(b)(1)(ii), concerning the replacement of existing facilities, to clarify that this section only applies to replacements that involve construction within the certificated right-of-way. It also proposed a new appendix A to part 2 which gave guidance on the size of the construction right-of-way (ROW) and extra workspace which could be used for construction under § 2.55(b). These guidelines apply only where there are no records or other tangible evidence of what areas were used in the original construction.

Comments: This proposal generated many comments from the industry, most expressing the concern that the proposal is too strict and does not take into account many realities that pipelines face with replacement construction projects. The Interstate Natural Gas Association of America (INGAA) contends that where a pipeline's existing right-of-way (ROW) does not cover the area outside the ROW proposed for use, pipelines will secure such additional ROW from affected landowners prior to commencing any construction activities. For example, INGAA states that access to a facility to be replaced will be different because original equipment bridges and other ROW accesses have been restored, or

construction may require working on the opposite side of the original ditch because loop lines may have rendered the original side unsafe. In addition, INGAA states that Occupational Safety and Health Administration (OSHA) rules require more workspace for safe construction. Great Lakes Gas Transmission Limited Partnership (Great Lakes), Questar Pipeline Company (Questar) and Williston Basin have similar concerns. These parties contend that the proposed regulations are not clear as to whether replacements are limited to the specific ROW historically attached to the facility being replaced or whether any existing, certificated ROW or previously disturbed on and off-site temporary work areas may be used for the replacement. They argue that pipelines should be able to use any previously disturbed areas because they would have already been reviewed environmentally by the Commission, or other federal, state or local agencies exercising jurisdiction. They urge the Commission not to set workspace limits based merely on the size of the replacement pipeline, since other factors such as construction technique, soil type and terrain are involved. In addition, these parties contend that since section 2.55 does not confer eminent domain, landowners would be protected.

Duke Energy Pipelines (Duke Energy)¹¹ contends that a one-size-fits-all approach fails to address additional work space needed for termination points, such as turn-arounds, which would not have been termination points during the original construction. It claims this approach also fails to address restrictions due to adjacent newer pipeline, larger diameter pipeline, new environmental restrictions such as topsoil segregation, and similar changes that have occurred since original construction.

El Paso and Enron argue that the appendix A limitation of a 75-foot ROW for pipelines larger than 12 inches is too restrictive. They propose that the Commission revise appendix A to implement a more flexible approach for determining the appropriate amount of ROW. El Paso suggests that appendix A provide that replacements involving 30 inch or larger pipeline can use up to 100 feet of ROW, while Enron proposes that 100 feet of ROW is appropriate for

¹⁰ Williams consists of Kern River Gas Transmission Company, Northwest Pipeline Corporation, Texas Gas Transmission Corporation, Transcontinental Gas Pipe Line Corporation, and Williams Gas Pipelines Central, Inc.

¹¹ Duke Energy includes Algonquin Gas Transmission Company, Panhandle Eastern Pipe Line Company (Panhandle), Texas Eastern Transmission Corporation, and Trunkline Gas Company (Trunkline). Duke Energy states that it recently announced the sale to CMS Energy of Panhandle and Trunkline.

replacements involving 16 inch or greater pipeline. According to El Paso, such space is needed because OSHA requires deeper and wider trenches for larger pipelines.

In order to obviate the Commission's concern that the replacement activities were not within the original certificated footprint, INGAA proposes to add a new paragraph (e) to new appendix A, part 2. New paragraph 2(e) is proposed to read:

If not located within the areas described above, pipe or equipment storage yards and temporary construction trailers should be located in previously graded or graveled areas.

INGAA argues that where multiple lines exist within an existing ROW corridor, siting of new replacement facilities should be allowed in any portion of the existing certificated or maintained ROW, whether or not that ROW was the one certificated for the replacement facility or not. Since the entire ROW has been disturbed and dedicated for use by the pipeline, use of any portion of such ROW would be consistent with the initial finding that construction was in the public convenience and necessity.

INGAA seeks clarification that replacement facilities not qualifying under § 2.55(b) because of the ROW issue would qualify as eligible facilities under § 157.208(a).

Michigan Gas Storage Company (Michigan Gas) asks that the Commission clarify or expand on the requirement in § 2.55(b)(1)(ii) that replacement facilities have a substantially "equivalent designed delivery capacity" as the facilities being replaced. Michigan Gas states that it is not clear whether, in the context of storage wells, the term refers to daily deliverability or seasonal cyclic capacity or both. Michigan Gas further states that for transmission facilities, it is not clear whether this term applies to daily design capacity or to maximum capacity as used in § 157.14(a)(7) and (8).

Commission Response. As stated, several commenters request that the Commission expand § 2.55(b) to allow pipelines to construct replacement facilities and/or use areas outside of the existing ROW for additional work space. However, we note that acquiring additional ROW from landowners raises issues associated with the Commission's landowner notification proceeding in Docket No. RM98-17-000. We do not believe it is appropriate to expand the pipeline's ability to acquire additional property from landowners outside of the Commission's review before we resolve the issues raised in the landowner

notification proceeding. Accordingly, we will continue to follow Commission policy and limit the pipeline's use of property to construct facilities under § 2.55 to the existing ROW.¹²

Appendix A to part 2 defines current policy for the workspace area.¹³ Current Policy requires that replacement facilities must be placed in the existing ROW. The Commission believes that the work spaces designated in the appendix A are adequate for the general case and will be adequate for most situations.

While we are not allowing additional ROW width under § 2.55, we are not limiting ROW width with respect to construction under any other part of the regulations. The staff's "Upland Erosion Control and Mitigation Plan" and "Wetland and Waterbody Mitigation Procedures" specify guidelines for ROW width, but the applicant can propose different ROW widths appropriate to the project. The Commission will determine if the proposed widths are justified on a case-by-case basis.

INGAA has filed a study concerning ROW needs. We will take this study under consideration when we review project-specific justification for proposed ROW widths.

Miscellaneous § 2.55 Issues

While we proposed no changes to the reporting requirements in § 2.55(b)(4), Williams contends that the one-time report in § 2.55(b)(4)(i) should be deleted, consistent with deletions of other obsolete reports. We agree. This report relates to replacements commenced between July 14, 1992 and November 9, 1992 and is no longer relevant and will be deleted.

Williston Basin asks the Commission to clarify whether very minor replacements need to be included in the annual report required in § 2.55(b)(4)(ii). We clarify that any facility, regardless of size needs to be reported, unless, as the regulation states, the facility is an above-ground replacement that did not involve compression or the use of earthmoving equipment.

Williston Basin also seeks a clarification that the reference to "earthmoving equipment" in § 2.55(b)(4)(ii) means mechanical equipment. We clarify that the term "earthmoving equipment" is intended to mean motor-driven equipment used for ground disturbance.

As to the clarification Michigan Gas seeks, the phrase "equivalent designed delivery capacity," in the context of

storage wells refers to both the daily deliverability and the seasonal cyclic capacity. In the context of transmission facilities, it refers to peak day design capacity, not maximum capacity.

B. Part 153—Application for Authorization To Export or Import Natural Gas

Although this part does not currently require that filings be made electronically, the Commission intends that this part will be subject to the electronic filing requirements currently being established in the proceeding in Docket No. PL98-1-000.

Section 153.21—Conformity With Requirements

Section 153.21(b) sets forth the criteria for the rejection of filings made under this subpart. The NOPR proposed to revise this section to authorize the Director of OPR to reject applications that do not conform to the requirements of this part within 10 days of filing, without prejudice to the applicant's refiling a complete application.

Comments: The Natural Gas Supply Association (NGSA) states that the proposed revision is silent as to whether rejection will have any bearing on acceptance of a subsequent application that does not conform with Commission regulations. NGSA states that the related § 157.8 allows for rejection without prejudice to refiling, and proposes that § 153.21(b) be modified by adding "without prejudice." NGSA also proposes that the Commission not dismiss an application under § 153.21(b) unless the applicant has been given notice of the defects and allowed an opportunity to cure those defects.

Commission Response: We intend for pipelines to file complete applications or face the prospect of having their proposal rejected. However, our intent is to reject such applications without prejudice to pipelines refiling completed applications. We will also clarify our standards for rejection so that an application will not be rejected unless it "patently fails to comply with applicable statutory requirements or with applicable Commission rules, regulations, and orders for which a waiver has not been granted."

¹² See NorAm Transmission Co., 70 FERC ¶61,030 (1995).

¹³ See, March 15, 1995 letter from the Director of OPR to Tennessee Gas Pipeline Company in Docket No. CP95-189-000.

C. Part 157—Applications for Certificate of Public Convenience and Necessity and for Orders Permitting and Approving Abandonment Under section 7 of the Natural Gas Act

Subpart A—Applications for Certificates of Public Convenience and Necessity and for Orders Permitting and Approving Abandonment of Service under section 7 of the Natural Gas Act, as Amended, Concerning any Operation, Sales, Service, Construction, Extension, Acquisition or Abandonment

Section 157.6—Applications; General Requirements

The NOPR proposed to add a new § 157.6(b)(8), which will require pipelines to file the information necessary to make an upfront determination on the rate treatment of new construction projects in accordance with the Commission's Statement of Policy in Docket No. PL94-4-000.¹⁴

Comments: Enron states that requiring information regarding the detailed rate impact analysis by rate schedule and zone is over broad and should be required only where an applicant is seeking rolled-in rate treatment.

INGAA and Koch Gateway submit that the requirement that "an analysis reflecting the impact of the fuel usage by zone resulting from the proposed expansion" should be clarified to reflect that not all pipelines employ a zoned fuel rate. Koch Gateway proposes that § 157.6(b)(8)(ii) be revised to read as follows: "* * * and an analysis reflecting the impact of the fuel usage resulting from the proposed expansion project (including by zone, if applicable)."

Commission Response: While the NOPR preamble is not specifically clear on when the detailed rate impact analysis should be filed, the proposed regulation states that the detailed information is needed only "if the applicant does not propose to charge incremental rates." We will clarify our position and the proposed regulation. We clarify that pipelines are required to file the information necessary to make an upfront determination on the rate treatment of new construction projects only when they propose rolled-in rates or when they propose incremental rates that are below the maximum part 284 rate. In both these cases, the same implications involving the initial rate established by the Commission and the prospective rate impact apply. Thus, the information required in § 157.6(b)(8) is necessary for the Commission to make

a proper determination regarding the proposed rate treatment in both these instances. However, pipelines need not file the information in proposals where it seeks incremental rates at or above the maximum effective part 284 rate.

Further, we note that Koch Gateway's revision is appropriate and will be adopted. The NOPR did not intend for pipelines to submit information that was not relative to their system's rate structure. To the extent that pipelines employ zoned rates, they must submit the requested information. If a pipeline employs a postage stamp rate or some other non-zoned rate structure, it does not need to submit such information on a zone basis.

Section 157.8—Acceptance for Filing or Rejection of Applications.

The NOPR proposed to amend this section to authorize the Director of OPR to reject applications that do not conform to the requirements of this part within 10 days of filing, without prejudice to the applicant's refiling a complete application.

Comments: Duke Energy and National Fuel Gas Supply Corporation (National Fuel) contend that the proposal is not consistent with the existing authority the Director of OPR has to reject filings. They argue that the existing authority to reject filings in § 375.307(b)(2) applies to tariff and rate schedule filings that automatically go into effect within 30 days unless the Commission takes action. Further, they argue that this rejection only applies if the filing "patently fails to comply with applicable statutory requirements and with all applicable Commission rules, regulations, and orders for which a waiver has not been granted." Similarly, they state that § 375.307(e)(6) provides for the rejection of prior notice applications which "patently fail to comply with the provisions of § 157.205(b)." However, they contend that the proposal to reject certificate applications contains no minimum legal standards, since rejection can occur if an application does not conform to the requirements of part 157.

Duke Energy, Great Lakes, Indicated Shippers,¹⁵ and National Fuel all contend that the Commission must identify any deficiencies in an application and allow for the deficiencies to be remedied before a filing is rejected. Duke Energy specifically proposes that instead of rejecting an application within 10 days, a deficiency letter should be issued

within 10 days, with a subsequent 10 days to cure. Duke Energy contends that this will not increase the burden on staff since § 385.2001 requires a rejection letter indicating the deficiencies. Thus, to the extent that there is some confusion in the requirements for filing an application, a deficiency notice will provide a reasonable opportunity for issues to be resolved.

Indicated Shippers states that if the proposal is adopted, the Commission should modify § 157.9, the notice provision, to require that the Commission issue a formal notice of the Director's rejection in lieu of the official notice of the application. In that way, interested parties will be notified promptly that there is no need to intervene and/or protest. Indicated Shippers also contends that the proposal intends for the Commission to assign the same docket number to a resubmitted application. Therefore, the Commission should establish a time limit for resubmission of an application, rather than leave the docket open.

Enron and INGAA are concerned that the proposed language could be interpreted to mean that a filing could be rejected for incomplete environmental reports, which are incomplete for any reason other than denial of access to lands, even if all of the minimum checklist items are provided. They propose that the Commission clarify in section 157.8 that a filing will not be rejected if the minimum checklist provisions have been met.

Commission Response: We will revise our proposal so that the standards for rejecting certificate filings are the same as those the Director of OPR applies in rejecting filings under § 375.307(b)(2) and (e)(6). Under those sections, a filing will not be rejected unless it "patently fails to comply with applicable statutory requirements and with all applicable Commission rules, regulations, and orders for which a waiver has not been granted." We will incorporate this language into §§ 153.21 and 157.8. In addition, we will view an application as "patently" deficient if it fails to include the minimum checklist of environmental information, as well as the information required in part 157. Thus, pipelines are put on notice that they must file the information requested or their applications will be subject to rejection. The Commission will not expend its resources on patently deficient applications.

Requests for a notice and cure period prior to rejecting any filing are denied. The minimum environmental checklist and the information required in part 157 do not include new or unique

¹⁴ Pricing Policy For New And Existing Facilities constructed By Interstate Natural Gas Pipelines, 71 FERC ¶61,241 (1995).

¹⁵ Indicated Shippers consists of Chevron U.S.A., Dynegey Corporation, Exxon Corporation, Marathon Oil Corporation, and Shell Offshore, Inc.

requirements. We are codifying our long-standing environmental procedures in order to help ensure more timely processing of applications by requiring that pipelines no longer file patently deficient applications. As such, we will no longer send deficiency letters seeking the minimum checklist information required of filings. However, if an application is rejected, the Director of OPR will send a letter indicating the deficiencies and reasons for rejection. In such a circumstance, an applicant will have full knowledge of the deficiencies in its application and the steps necessary to comply with the Commission's filing requirements. Also, the Director of OPR's rejection letter will be on CIPs and potential interveners should take notice.

We disagree with Indicated Shippers' belief that a resubmitted application be redocketed with the same number as the rejected application. We are conforming § 157.8 to the existing regulations in § 153.21(b) that require a new docket number for rejected applications that are resubmitted. The Commission prefers to have finality in its docketing system. In addition, the Commission's regulations give no administrative or other procedural benefit to applicants because of the docket number assigned to a particular project.

Finally, we note that INGAA proposes the following revision: However, an application will not be rejected solely on the basis of (1) environmental reports that are incomplete because the company has not been granted access by the affected landowner(s) to perform required surveys, etc., or (2) environmental reports that are incomplete, but where the minimum checklist requirements of part 380, appendix A have been met.

We agree with INGAA's proposed revision and will change § 157.8 accordingly. We recognize that not all environmental information is available at the time of filing. However, the information in the checklist is the minimum that must be submitted at the time of filing.

Section 157.9—Notice of Application

The NOPR proposed to issue a notice within 10 days of filing.

Comments: The Process Gas Consumers Group, the American Iron and Steel Institute, and the Georgia Industrial Group (Process Gas Consumers) are concerned that abandonment of laterals will strand end users behind LDCs. They want to strengthen the provisions to require that notices should be actually delivered to all of the pipeline's shippers who have taken service through the lateral or delivery point in the last five years. In

addition, they argue that notice should be posted on the pipeline's EBB and that applications subject to delegation orders have as complete a notice as abandonment applications going to the Commission, including maps of the facilities to be abandoned. They contend that such requirements will ensure due process rights of shippers which directly or indirectly, or through released capacity, take service through the pipeline.

Commission Response: We believe that the Commission's current procedure for noticing certificate applications, including prior notice applications filed under § 157.205, more than adequately identifies the nature and content of each filing. Requiring that notices be delivered to all shippers that have used certain facilities during the past five years would prove to be extremely unwieldy, burdensome, and administratively inefficient. We see no basis why shippers who are no longer on the pipeline system should be notified. We do not intend to create a separate class of applications that are treated differently than other filings. Moreover, notices of applications, and applications themselves are available for electronic viewing at the Commission's website at www.ferc.fed.us/online/rims.htm. Thus, Process Gas Consumers, and all others, will be able to view in total all applications filed with the Commission.

Section 157.10—Interventions and Protests

The NOPR determined that allowing parties to intervene in response to Draft Environmental Impact Statements (EIS) is appropriate. It also proposed to amend § 157.10 to clarify that pipelines do not have to serve voluminous or difficult to reproduce materials, such as copies of environmental information, upon all parties in a proceeding, except as specifically requested. The NOPR provided that any party requesting a complete copy of a filing must be served with one within two business days.

Comments: INGAA also seeks clarification that the pipeline need only keep voluminous or difficult to reproduce material, such as complete sets of environmental information, available to the public until the construction application is no longer pending Commission action. Similarly, Great Lakes states that it is not clear what constitutes a "central location" for keeping a complete filing. Great Lakes seeks clarification that this requirement is met if the pipeline maintains copies, either paper or electronic, at compressor stations located closest to the project site(s). Williston Basin wants to make

such information available in public building(s) or town(s) near the vicinity of the job site.

Duke Energy requests that the Commission extend the proposed two business day time period to provide voluminous or difficult-to-reproduce material to 10 days. Similarly, Great Lakes seeks to have the time frame extended from two days to five days. Both parties believe that numerous requests, the nature of the information, and the fact that outside consultants may be required to reproduce the material necessitates more than a two day time frame. The American Public Gas Association states that parties will need time to evaluate information once it is received and recommends that the Commission provide 45 days for interventions to be prepared. El Paso Energy seeks clarification that companies are not required to provide copies of confidential material to interveners and will still be able to request confidential treatment for information under section 388.112. Likewise, Great Lakes wants clarification that privileged and confidential data are not required to be provided with any electronic information kept near the job location.

Process Gas Consumers requests that all notices supply the name, address and telephone number of an applicant's knowledgeable contact to allow parties to request an applicant's voluminous material (only available upon request).

Great Lakes urges the Commission not to expand its current intervention procedures to allow non-utility agencies to intervene by notice. The Sempra Energy Companies (Sempra Energy)¹⁶ is concerned that pipelines will not provide voluminous material timely and thus, interveners may be not have time to evaluate a filing and face having their protest dismissed.

The Advisory Council on Historic Preservation (Council) states that the rule should allow for intervention based on section 106 of the National Historic Preservation Act (NHPA) the same as intervention is allowed for NEPA.

Commission Response: As to the Council's request, we note that we treat section 106 of the NHPA as part of the environmental process.

We agree with INGAA that a pipeline only need keep voluminous materials available to the public until the application is no longer pending Commission action, i.e., the order is final and not subject to rehearing. The

¹⁶Sempra Energy consists of various entities including Pacific Interstate Transmission Company, Pacific Interstate Offshore Company, Southern California Gas Company, and San Diego Gas and Electric Company.

reason the information is meant to be available to the public in the first place is so that parties will know all the details of a particular project in sufficient time to intervene and express any opinions they may hold.

The Commission will allow pipelines to keep electronic copies of voluminous material at a central location, such as libraries and like public buildings, in each county in the project area provided that the information is easily accessible. Williston Basin's proposal that such information be made available in public buildings or towns near the job site appears to present fewer access problems than keeping such material at the job location. There could be safety or other reasons that the interested public may not have easy access to materials kept on the job site. It seems preferable to locate such material in buildings open to the public with flexible business hours, i.e., libraries and like public buildings with evening and weekend hours, located in each county as close as practicable to the project area to provide for as much public access as possible.

Various parties object to the proposal that pipelines serve a full copy of such voluminous or difficult to reproduce material on requesting parties within two business days and seek a longer time period. Due to the nature of the material at issue, it seems reasonable to allow the pipelines more time to reproduce and distribute requested material. We will require that the pipeline have complete copies of its application at the above mentioned publicly available building location(s) in each county affected by the project, either in paper or electronic format, within three business days of filing an application. However, we will allow the pipeline five business days from the date of a request to supply a requesting party with a full copy of the filing. Since we are requiring that pipelines make complete copies of applications available publicly, we do not anticipate extensive individual requests for such copies. However, it is incumbent upon the pipeline applicant to serve copies of its application to parties seeking detailed information regarding the proposed project.

Pipelines do not have to supply privileged or confidential material when serving these copies, nor supply such material with copies provided near the job location. However, if at a later time, the Commission or its delegate determines that any claim to privileged or confidential treatment under § 388.112 is without merit, the pipeline must serve such material on requesting parties and include such material with

the copies provided near the job location.

We agree with Process Gas Consumers' request that all notices should supply the name, address and telephone number of the contact person to allow parties to request an applicant's voluminous material. We will modify §§ 157.6(b)(7) and 157.205(b)(5) accordingly.

As to Great Lakes' concern regarding non-utility interveners, the NOPR did not change the status or rights of any parties intervening in certificate proceedings. All parties have the same rights and status in a proceeding before the Commission as they had prior to issuance of the NOPR.

Sempra Energy's concern is misplaced. The intent in the NOPR was to limit the OPR Director's authority rejecting unsubstantiated protests to prior notices filed under the blanket certificate issued in subpart F of part 157. The Director of OPR's authority does not extend to rejection of protests to section 7(c) applications filed under subpart A of part 157. If a pipeline does not provide voluminous material timely, as required by the regulations, parties can protest and/or file a complaint. In such a situation, the pipeline risks delaying the timetable it has established for completing its proposed project. However, in order to prevent any further misunderstanding of our intent regarding rejection of protests, we will modify § 375.307(a)(10) to specifically state that this rejection authority is limited to unsubstantiated protests to prior notice applications.

Section 157.16—Exhibits Relating to Acquisitions

The NOPR proposed to revise § 157.16(c)(1) to require the pipeline to include a brief statement explaining the basis or methods used to derive the related depreciation, depletion and amortization reserves.

Comments: INGAA is concerned about the change requiring “* * * a brief statement explaining the basis or methods used to derive the related depreciation, depletion or amortization”. It contends that the proposed change is duplicative of other provisions in § 157.16 and should be deleted. It argues that the introductory text should provide the Commission with the information it seeks and that the proposed revision is unnecessary.

Commission Response: We disagree. The purpose of the change is to point out a specific area where additional information would facilitate the processing of an application. While the introductory text of § 157.16 requires the pipeline to provide a full and

complete explanation of all particulars of the acquisition, this requirement is very broad and often overlooked with respect to the accumulated depreciation, depletion and amortization reserve amounts. When this occurs, the application is delayed because this information must then be requested from the pipeline.

Section 157.17—Applications for Temporary Certificates in Cases of Emergency

The NOPR proposed to amend §§ 157.17(a) and (b) to remove as outdated the reference to the date the Commission initiated its electronic filing requirements.

Comments: Great Lakes urges the Commission to use the NOPR to clarify the circumstances which constitute an emergency under this section and § 284.262. Great Lakes wants the Commission to clarify that if an emergency exists, a temporary certificate can be authorized when construction is necessary to forestall an anticipated loss of capacity or when a foreseeable facility outage (or other emergency event) outside a pipeline's control is probable. As an example, Great Lakes cites naturally occurring changes such as a landslide or riverbed erosion. A pipeline may deem it prudent to relocate facilities away from the suspect area before damage occurs. Another example involves corrosion that will, in short time, breach the pipewall. A pipeline should be able to immediately repair such a situation as an emergency.

Great Lakes also proposes that § 284.262 be updated to reflect pipelines' transition from merchants to transporters. Great Lakes contends that such a change would redefine emergencies outside the context of a gas supply shortage and make allowances for emergency facility repairs. Great Lakes suggests that the Commission revise the self-implementing emergency provisions of § 284.262 to permit 60-day remedial construction to remedy facility problems which threaten interruption of transportation, followed by a 45-day prior notice-type filing for permanent approval to operate the emergency facilities. This change would allow pipelines to repair facilities over a 60-day period, and then file a prior notice to obtain permanent authority to operate emergency facilities.

Finally, Great Lakes states that the Department of Transportation (DOT) would view a pressure reduction, at least temporarily, as relieving certain emergency conditions. However, Great Lakes is concerned that this might not satisfy NGA requirements since the

pressure reduction could result in a loss of design-day throughput and an involuntary abandonment of service. Great Lakes seeks clarification that when a DOT-defined emergency transpires, for purposes of acquiring a temporary certificate, the emergency will continue until the pipeline has restored its system to its prior operating condition.

Commission Response: We agree that our emergency regulations should be updated to recognize that pipelines are now primarily transporters and not merchants of gas and that pipelines should be able to respond to imminent emergencies. However, the possibility still exists that a supply shortfall could precipitate an emergency. Therefore, we will amend § 284.262 to reflect that emergencies can occur due to diminution of pipeline supply or capacity, both anticipated and unanticipated. We clarify that pipelines can repair facilities affected by an emergency in order to restore capacity for a 60-day period (subject to an additional 60 day period) followed by a prior notice or section 7(c) application to obtain permanent authority to operate the emergency facilities.

We also clarify that in emergency instances where pipelines are required to reduce operating pressure to satisfy DOT safety standards, the underlying emergency continues to exist until the pipeline restores its regular operating conditions. Of course, the continued emergency status is contingent upon the pipeline complying with the requirements of sections 157.17 and 284.262.

Section 157.18—Applications To Abandon Facilities or Services; exhibits

The NOPR proposed to add an explicit statement that makes it clear that an environmental report is required for certain kinds of abandonments as specified in § 380.3(c)(2).

Comments: INGAA notes that the proposed regulations require an environmental report for the abandonment of facilities, except for categorical exclusions. INGAA and Enron believe that all facilities abandoned in-place should be excluded from the environmental reporting requirement. This would be consistent with the proposal in the NOPR in § 157.206(b) that environmental review should be commensurate with the amount of ground disturbance. The same principle should apply to facilities abandoned in-place. In the alternative, INGAA, Enron, and Questar suggests that any necessary clearances be provided for in-place abandonments rather than a full environmental report.

Commission Response: We do not agree with INGAA that all facilities abandoned in place should be excluded from the environmental reporting requirement. For example, certain facilities may be contaminated with polychlorinated biphenyls (PCBs). Even facilities that are abandoned in place may have associated ground disturbance such as that required to cut and cap the pipeline segment. In addition, the Commission wants to determine if the landowner has any concerns with respect to having the pipeline removed. Clearly, this action warrants some level of environmental review. As has been our policy involving all projects that are minor in scope, pipelines can determine what environmental resource reports are not applicable to their project and identify them in the application along with the reasons they are not applicable. Thus, a detailed environmental report is not contemplated for a routine abandonment in place of a section of pipeline, but key environmental factors need to be addressed.

Section 157.20—General Conditions Applicable to Certificates

Section 157.20(b)

The NOPR proposed to revise § 157.20(b) to allow for facilities to be completed “and made available for service” instead of “in actual operation” within the period of time specified in a particular order.

Comments: INGAA and Enron support the concept, but have concerns about the notification requirement. Both parties state that pipelines may have no way of verifying, at the 30 day mark, whether the end-user/shipper will meet the time period to flow gas. Enron requests removal of the 30 day notification requirement. Facilities may be available to other shippers on a secondary basis, although the firm end-user/shipper has not taken service. INGAA and Williams propose that pipelines report within 10 days after the prescribed time if the end-user/shipper has not taken service through the new facilities. Enron suggests that a pipeline report within 30 days instead of 10 days after the date specified in order if the shipper has not taken service through new facilities.

Williams recommends that the phrase “shall be actually undertaken and regularly performed” be modified to read “shall be available for regular performance.” Williams contends that this is consistent with the proposed change in § 157.206(c), since the pipeline cannot control when the customer may be ready to start service.

Process Gas Consumers requests that the Commission clarify that it did not intend to continue applying a one-year completion period (“period of time to be specified”), since it is changing the regulation to allow for unintended delays in commencing service. They also want the Commission to clarify that it will continue to be flexible in granting waivers and/or extensions of time to complete facilities.

Commission Response: We agree that pipeline applicants may not be able to verify 30 days in advance that a shipper is unable to meet the timetable to commence service. It seems reasonable to allow a pipeline to report within 10 days after the prescribed time if the end-user/shipper has not taken service through the facilities. In addition, Williams’ proposal seems reasonable and consistent with the change proposed in the NOPR. However, Process Gas Consumers is incorrect in assuming that the Commission intends to discontinue determining a time frame for the facilities to be constructed. To the contrary, we intend to continue applying a specific time period for the completion of construction projects. While that time period is typically one year, the Commission has permitted other periods of time for completion of a project and will continue to exercise its discretion in acting on waivers and/or extensions of time to complete facilities.

Section 157.20(c) and (d)

We will revise § 157.20(c) and (d) to remove the requirement that quarterly reports be filed. Section 157.20(c)(2) requires applicants to file quarterly progress reports on authorized construction. We will remove this section because it duplicates information the Commission’s environmental staff already collects. Likewise, we will remove § 157.20(d)(1), which requires applicants to file quarterly progress reports on the status of facility acquisitions. However, pipelines are still required to notify the Commission of the date of acquisition of facilities and the beginning of authorized operations.

Subpart F—Interstate Pipeline Blanket Certificates and Authorization Under Section 7 of the Natural Gas Act for Certain Transactions and Abandonment

Section 157.202—Definitions

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

The NOPR proposed to expand the definition of “eligible facility” contained in § 157.202(b)(2)(i) to include mainline and lateral

replacement facilities that do not qualify under § 2.55(b) because they will have an impact on mainline capacity.

Comments: INGAA contends that any replacement project which would not qualify under the proposed § 2.55(b) regulations would or should qualify as an eligible facility under § 157.208(a), if it meets the spending limits and environmental constraints. Similarly, National Fuel, Questar and Williams are concerned that the change would not cover a mainline replacement not qualifying under § 2.55(b) because of the requirement that replacements must be within same ROW. They argue that replacements not in the same ROW should be covered under the blanket certificate instead of requiring a separate § 7(c) application. National Fuel suggests the following revision to proposed § 157.202(b)(2)(i):

Further, eligible facility includes mainline and lateral replacements that do not qualify under § 2.55(b) of this chapter because they will have an impact on the capacity of the mainline facilities, or because they will not satisfy the location or work space requirements of § 2.55(b).

Commission Response: We intend to allow replacement facilities that do not qualify under § 2.55(b) because of land requirements to be eligible facilities that can be constructed under § 157.208 of the blanket certificate. Further, to the extent that pipelines require more ROW than is provided for in appendix A to part 2 for replacement projects, including those not in the original footprint, such as river crossings, etc., those replacements would qualify as eligible facilities under our proposal. We reiterate that any such replacements are subject to the environmental requirements of this section and will be subject to whatever landowner notification procedures that may be adopted in Docket No. RM98-17-000.

Replacements for Sound Engineering Purposes and Incremental Capacity

Comments: The American Gas Association (AGA) states that the proposed regulations do not clearly reflect the Commission's intentions that replacements must be done for sound engineering purposes and not to create additional mainline capacity. AGA contends that the proposals will allow construction of facilities that can substantially increase capacity and result in bypass. AGA proposes that § 157.202(b)(2)(i) be amended to provide that replacements are done for sound engineering reasons and not to create additional mainline capacity. Similarly, El Paso and Michigan Gas Storage request the Commission clarify the regulation so that mainline and lateral

replacements are done only for "sound engineering reasons and not for the purpose of creating additional mainline capacity." They contend that this clarification in regulatory text will ensure that the limitation is clearly communicated to certificate holders, eliminating potential confusion and compliance issues.

El Paso contends that the Commission should remove the words "because they will have an impact on the capacity of the mainline facilities" from the definition replacements as eligible facilities. El Paso argues the proposed language defining replacement facilities is likely to create confusion because it refers to "impact on the capacity," whereas § 2.55(b) requires replacements to have a "substantially equivalent designed delivery capacity."

NGSA, on the other hand, opposes expanding eligible facilities to include any mainline and lateral replacements done automatically. NGSA contends that such replacements should only be allowed on a prior notice basis. This would allow parties to protest unnecessary replacements, which they believe are not being done for "sound engineering reasons," but solely to increase capacity. NGSA proposes that any facility replacement resulting in an increase of capacity be subject to a prior notice.

Similarly, Sempra Energy opposes inclusion of any mainline facilities within the blanket certificate. Sempra Energy is concerned with additional mainline capacity being constructed under the guise of "replacements." It believes that new or additional markets should be served through permanent capacity release, by another market entrant, or by LDCs or other non-FERC regulated services. Allowing construction of additional mainline capacity under the blanket provides pipelines a competitive advantage without Commission, state, consumer, and competitive reviews.

Indicated Shippers suggests that prior notice be required for construction of all mainline facilities that could affect capacity, regardless of cost. Indicated Shippers believes such a limit would help protect against pipelines circumventing cost caps by segmenting essentially integrated projects in order to keep each component below the automatic authorization cost cap.

Commission Response: As we stated in the NOPR and reiterate here, any replacement facilities must be done for sound engineering reasons. Our purpose is to allow replacements under the blanket certificate where the replaced facility is marginally larger than the existing pipeline. We recognize that this

may result in an incidental increase in mainline capacity. To the extent that additional capacity is created by the project, such capacity must be incidental and not intended to increase the point to point transportation capacity of the pipeline.¹⁷ As such, we will revise the definition of eligible facility in § 157.202(b)(2)(1) to include replacement facilities that result in an increase in the capacity of mainline facilities. The regulation will also specifically state that replacements must be done for sound engineering purposes and not for the primary purpose of creating additional mainline capacity.

NGSA and Sempra Energy oppose inclusion of replacements under the blanket certificate because they believe that pipelines will use the new regulations to increase mainline capacity at customer expense. We disagree. Revising the definition of eligible facility specifically puts pipelines on notice that any replacement must be done for sound engineering reasons and not for the purpose of creating additional mainline capacity. Parties believing that replacements are done for other than those reasons should inform the Commission and may want to consider filing a complaint. In addition, they can challenge the cost and intent of the replacement in the relevant rate proceeding. Finally, we find that parties have not presented any compelling reason why the Commission should specifically exclude all replacements that result in an incidental, incremental increase in capacity from being subject to the automatic authorization requirement.

Replacement Compression Facilities

Comments: Great Lakes proposes that the Commission include compressor replacements as eligible facilities, when such replacements cannot be constructed under § 2.55(b) because they will have an impact on mainline capacity. Great Lakes requests that the Commission clarify that replacement compression facilities which result in incidental changes in capacity, in addition to increases in replacement pipe size, are included in the proposed definition of eligible facilities. Great Lakes claims that certain compressor and engine models are no longer manufactured and most newer compressors have a greater horsepower rating and yield greater capacity. According to Great Lakes, a pipeline's option often is reduced to either

¹⁷ However, if usable capacity is created, it must be posted on the pipeline's EBB along with any other unused capacity.

donating a unit so it can replace obsolete or major damaged units immediately, or wait for separate section 7(c) approval to install replacement compression facilities which yield an unintended, but measurable, increase in capacity.

Great Lakes requests that the Commission recognize a pipeline's need for flexibility in terms of sizing replacement compression facilities under § 2.55(b). Great Lakes wants the Commission to clarify that pipelines are allowed to install under § 2.55(b) replacement compressor units or components which are the nearest, practical, commercially available match to the removed unit or component.

Commission Response: We agree that replacement compressors, as well as replacement mainlines and laterals that have an incidental impact on mainline capacity should be covered by the proposed change to the definition of eligible facilities because they do not qualify under § 2.55(b). The rationale for including replacement compressors is the same as that for replacement lines. To the extent that replacement pipeline or compression is marginally different than the original facilities and may result in an increase in capacity, the replacement must be done for sound engineering reasons and not for the primary purpose of creating additional mainline capacity.

However, we emphasize that replacement pipeline and compression *must* be the closest available size and horsepower rating to the facilities being replaced. While these replacement projects are subject to the spending limits in § 157.208, pipelines *must not* segment any such projects in order to circumvent the automatic or prior notice spending limits under the blanket certificate. We note that parties who either know or believe that a pipeline segmented replacement facilities to avoid cost caps can challenge recovery of those costs in the relevant rate proceeding and attempt to show a pattern by the pipeline of violating the Commission's regulations.¹⁸

Under § 2.55(b) replacements must have a "substantially equivalent design delivery capacity." Therefore, if the installation of the nearest, practical, commercially available compressor unit would result in an increase in capacity, the replacement would not qualify under § 2.55(b) and may be eligible to be installed under the pipeline's blanket certificate.

Storage Laterals and Miscellaneous Rearrangements

Comments: The KN Pipelines request that the Commission clarify that miscellaneous rearrangement of, and appropriate changes in diameter of storage laterals within the field meet the definition of "eligible facility."¹⁹ KN Pipelines contends that the practical process of rearranging a mainline pipe or storage pipe is the same, in both cases the pipeline would likely have to acquire a new easement. KN Pipelines states that a reasonable use of the blanket certificate for the relatively small laterals typically associated with storage fields will help alleviate an unnecessary burden on the Commission. Similarly, Questar seeks clarification that injection and withdrawal laterals connecting storage filed wells with central compression or transmission lines are eligible as small diameter laterals under § 157.208(a).

Michigan Gas also states that the reference in this subsection should be to facilities necessary to provide service within existing certificated levels, rather than certificated volumes. This would recognize that replacement storage field facilities may not be directly related to the existing certificated storage "volumes."

Commission Response: We agree with KN Pipelines that storage and other lateral lines as well as mainlines can be rearranged under § 157.208. Section 157.202(b)(6) contemplates miscellaneous rearrangement of facilities that does not result in any change in service, including changes in existing field operations or relocation of existing sales or transportation facilities. As to KN Pipelines clarification, as long as any change in the diameter of storage laterals does not result in any change in service such as increasing capacity, deliverability or the injection and withdrawal rate, and otherwise meets the definition for miscellaneous rearrangement in § 157.202(b)(6), we agree with KN Pipeline's request that such a change can be done under § 157.208.

Additionally, injection/withdrawal laterals connecting storage field wells with central compression or transmission lines are eligible as small diameter laterals under § 157.208(a). These type facilities are consistent with the intent of the regulations, as long as they do not result in any change in existing service or operation, or increase the capacity or deliverability of the

storage field. We see no reason to treat storage laterals any different than any other lateral covered under the blanket authority.

We also agree with Michigan Gas and will change the reference from "within existing certificated volumes" to "within existing certificated levels."

Automatic Abandonment

Comments: El Paso states that the NOPR does not address the issue of whether pipelines must obtain abandonment authorization for mainline or lateral facilities which are being replaced under the blanket certificate. The Commission should clarify that either no section 7(b) authority is needed for replacements constructed under this section or provide for blanket section 7(b) authority.

Commission Response: We note that under new § 157.216(a)(2), pipelines will have the authority to automatically abandon eligible facilities, subject to the pipeline obtaining written consent from existing shippers. However, there is no need to get shipper approval when the abandonment is for a facility that will be replaced and the pipeline will continue service.

Interconnecting Points

Comments: INGAA wants the Commission to expand the definition of interconnecting points to include the pipeline that connects the tap, meter, M&R and minor related piping identified in the NOPR. INGAA and Koch Gateway believe that excluding interconnecting pipeline segments from the blanket certificate unnecessarily restricts open access service and limits the ability of pipelines to quickly react to meet market demands for additional grid flexibility. According to INGAA and Koch Gateway, the spending limits under the blanket certificate effectively limits the length of any interconnecting pipeline. INGAA, KN Pipelines and Questar request that the Commission, as a minimum, include compression as part of the facilities involved in an interconnect. They state that compression is common, since the prevailing pressures of interconnecting pipelines usually differ.

Questar argues that allowing only approximately 200 feet of "minor related piping" is too restrictive. Questar contends that there is a clear need to allow piping that may be miles in length, even as much as 20 miles, to interconnect with other interstate pipelines. Regardless of length, Questar states that the function is the same—to connect the systems of two transporters operating under Part 284. Citing *KN Interstate Gas Transmission Company*

¹⁹ KN Pipelines consist of Natural Gas Pipeline Company of America, KN Interstate Gas Transmission Company, and KN Wattenberg Transmission Limited Liability Corporation.

¹⁸ Our authority to remedy cases of segmenting includes revoking the pipeline's blanket authority.

(KN Interstate),²⁰ Questar contends that many pipelines interpreted the term "interconnecting points" to include any facility necessary to connect the facilities of two open access pipelines, as long as the cost fell under the dollar ceiling in § 157.208. Questar proposes that the definition be expanded to include any facilities, including piping, compression, metering, etc., necessary to interconnect two open access transporters. Williams suggests that the Commission add "and associated piping" after "interconnecting points" to recognize in the regulations that some additional piping may be necessary.

Commission Response: We do not believe it is appropriate to expand the definition of eligible facilities to include interconnecting pipeline. In *KN Interstate*, we found that a 2-mile pipeline was not an interconnecting point. The order clarified that an interconnecting point under § 157.208(a) specifically refers to taps, meters, M&R facilities and minor piping. This is consistent with the intent of the blanket certificate, which is to allow pipelines to construct facilities so routine that they have relatively little impact on ratepayers or pipeline operations.

Among others, non-eligible facilities include main lines, extensions of a main line, and any facility, including compression and looping, which alters the capacity of a main line.²¹ Thus, while a proposed pipeline facility may be associated with an interconnecting point between open-access transporters, the facility nevertheless is not an eligible facility because it is a mainline connecting two interstate pipelines, not a supply or delivery lateral. The same rationale applies to compression located on any such pipeline. To specifically clarify this point, we will add a new definition as § 157.202(b)(12), Interconnecting point(s), to specifically limit the eligible facilities to the tap, metering, M&R facilities and minor related piping.

Storage Injection, Withdrawal, and Replacement Wells

Comments: Enron, INGAA and Michigan Gas contend that adding the word "storage" in the definition of eligible facility, "needed by the certificate holder to receive gas into its system for further transport or storage" permits storage injection/withdrawal and replacement wells and associated

piping to be constructed under the blanket certificate. They suggest that the Commission explicitly confirm this understanding in its final rule.

Commission Response: The proposal to include such wells under the blanket certificate is part of the "landowner notification" proceeding in Docket No. RM98-17-000. As noted there, the Commission is considering expanding the definition of eligible facilities to include replacement or observation wells. However, we expressed concern about whether and how pipelines should be required to acquire consent from the landowner prior to beginning construction.

Maximum Allowable Operating Pressure

Comments: El Paso and INGAA suggest that the Commission allow pipelines to use the prior notice procedures under § 157.205(b) to update or increase the Maximum Allowable Operating Pressure (MAOP) of a lateral when the lateral pressure is less than that of the upstream mainline. El Paso states that increasing the MAOP of a lateral typically is performed for the purpose of providing additional pressure to a distribution customer whose load at a particular delivery point has increased over the years to such an extent that, on cold days, the existing MAOP of the lateral is insufficient to ensure delivery of all of the shipper's volumes. El Paso and INGAA contend that allowing this will eliminate an arbitrary distinction between laterals constructed under section 7(c) and laterals constructed as eligible facilities under the blanket certificate. INGAA notes that any additional capacity created would be posted on the pipeline's EBB. Williams, however, suggests that § 157.208(f)(2) be rewritten to allow this change automatically, instead of under the prior notice procedure.

Commission Response: Currently, pipelines must file a certificate amendment in order to increase the MAOP of laterals constructed under case-specific section 7(c) authority (see § 157.20(g), which was redesignated § 157.20(f) in the NOPR). However, for laterals constructed as eligible facilities under § 157.208 of the blanket certificate, pipelines need only file a prior notice to increase the MAOP (see § 157.208(f)(2)). We agree that there need not be an artificial distinction between updating the MAOP of laterals constructed under individual section 7(c) authority and under § 157.208 blanket certificate authority. Therefore, we intend to modify § 157.208(f)(2) to permit pipelines to follow the prior

notice procedures in order to increase the MAOP of laterals constructed under section 7(c).

We disagree with Williams suggestion that any increase in lateral MAOP be allowed automatically instead of under the prior notice procedures. When this section was promulgated in Order No. 234, we required prior notice of any intent to change the MAOP because of the need for safety and reliability of service. These reasons have not changed. Increasing the MAOP of a lateral could have a detrimental effect on interconnections along the facility. For example, receipt point pressures may no longer be great enough to allow gas to enter the lateral. At the other end of the lateral, increased delivery pressures may cause problems for delivery customers' existing M&R facilities. For these reasons, we will not allow a prospective change in the MAOP to be done automatically.

Section 157.202(b)(2)(ii)(B)—Extension of a Main Line

Several parties seek changes to § 157.202(b)(ii)(B), which excludes extensions of mainlines from eligible facility status.

Comments: El Paso, Enron, and INGAA all propose that the Commission modify this section to permit pipelines to construct, as eligible facilities, mainline extensions which are designed to receive gas supplies from another pipeline. These parties submit that mainline extensions, as well as the interconnecting pipe in *KN Interstate* are no different than any supply lateral constructed as eligible facilities.

El Paso Energy recommends that the Commission revise this section so that mainline extensions which enable pipelines to receive gas supplies from a gatherer, intrastate pipeline, or interstate pipeline would become eligible facilities.

Commission Response: This is essentially the same argument earlier raised and rejected to expand the definition of interconnecting points to include any connecting pipeline. For the same reasons, we will not expand the definition of eligible facilities to include mainline facilities, other than the limited exception for replacements as discussed earlier. The Commission excludes mainlines and their extensions from the definition of eligible facilities because they alter mainline capacity and can have a substantial impact on the rates and services a pipeline provides. These facilities are not considered the type of routine construction the regulations contemplated for automatic

²⁰ 83 FERC ¶ 61,305 (1998).

²¹ We are adopting a limited exception to our definition of eligible facilities to allow replacement mainline, lateral, and compression facilities that may result in an incidental increase in mainline capacity.

authorization, without any review by the Commission.

Section 157.202(b)(ii)(D)—Minor Storage Operations

The NOPR revised § 157.202(b)(2)(ii)(D) to extend the blanket authority for tests or other minor storage operations which do not increase certificated, including grandfathered, storage capacity, deliverability or storage boundary.

Comments: Market Hub Partners, L.P. (Market Hub Partners) states that the Commission must ensure that pipelines that own both storage facilities and pipeline facilities are not able to leverage the automatic authorizations to give an unfair advantage to the pipelines' storage facilities.

National Fuel supports the proposal to limit the exclusion of storage facilities from the definition of eligible facilities in § 157.202(b)(2)(ii)(D) because the current definition would exclude even an uprising or minor rerouting of a small diameter storage pipeline.

Commission Response: Initially, we modified § 157.202(b)(ii)(D) to allow minor changes in storage operations that do not alter the certificated capacity, deliverability, or the storage boundary. We did not intend this change to allow, for example, pipelines to drill additional injection/withdrawal wells automatically for the purpose of increasing field deliverability, even though such change would not affect the certificated capacity of the storage field.

We are concerned that "and" in the regulation instead of "or" will create situations for pipelines to test, develop, or utilize an underground storage field in any manner, as eligible facilities, so long as the action does not increase the certificated storage capacity or boundary of a field. Under existing § 157.215, pipelines can automatically construct and operate pipeline and compression facilities and drill wells for the testing and development of reservoirs, subject to specified spending limits. In modifying this regulation, we intended to allow minor changes to field operations and facilities, such as rerouting or changing storage field lines. We did not intend for pipelines to be able to use this section to drill additional wells as eligible facilities, even if such wells would not change the capacity of a field. As noted above, we are currently exploring the option of allowing pipelines to drill replacement or observation wells under § 158.208 as part of the landowner notification proceeding in Docket No. RM98-17-000. Since we also clarified above that minor storage field changes, including

rerouting or changing storage lines, can currently be done under the blanket certificate, we will change our proposal here so that wells must still be drilled under § 157.215. Accordingly, we will revise § 157.202(b)(2)(ii)(D) to state:

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

Section 157.202(b)(5)—Small Diameter Laterals

The NOPR proposed to revise § 157.202(b)(5) to remove the phrase "small diameter lateral" and add, in its place, the words "small diameter supply or delivery lateral" to further clarify what facilities are not considered main line facilities.

Comments: Williams contends that the Commission should adopt a flexible but more definitive description such as replacing "small" with "laterals which have a diameter which is equal to or less than four-fifths the diameter of the mainline to which it connects or from which it extends."

Commission Response: We decline to adopt Williams' suggestion to modify the definition of "small diameter lateral." The proposed regulation makes it clear that lateral lines are eligible facilities that can be constructed under § 157.208.

Section 157.202(b)(6)—Miscellaneous Rearrangement

While the NOPR proposed no changes to § 157.202(b)(6), Miscellaneous rearrangement of any facility, we received comments suggesting various changes.

Comments: INGAA seeks clarification that replacements done to ensure safety, e.g., when residential, commercial or industrial development has encroached on the pipeline, to comply with environmental regulations, maintain operational integrity or because of erosion, changes in river or stream courses or other forces beyond the pipeline's control, would qualify as eligible facilities. Since these situations require prompt action, INGAA believes that the list of examples should be expanded to include these situations. National Fuel shares the same concern. El Paso wants the Commission to expand the definition to recognize the range of factors beyond a pipeline's control which might require a rearrangement of facilities. El Paso believes that the definition should include any forces, including natural

causes, which are outside a pipeline's control, as well as rearrangements conducted at the request of a landowner. El Paso contends that this change would increase flexibility and clear-up the confusion that exists regarding the applicability of the provision.

El Paso Energy recommends that the definition be revised as follows:

Miscellaneous rearrangement of any facility means any rearrangement of a facility that does not result in any change of service rendered by means of the facilities involved, e.g., changes in existing field operations or relocation of existing facilities when (1) requested by the landowner, (2) when required by highway construction, dam construction, erosion, or the expansion or change of course of rivers, streams or creeks, or (3) to respond to other forces beyond the certificate holder's control when necessary to ensure safety, comply with environmental regulations or maintain the operational integrity of the certificate holder's facilities.

Great Lakes argues that off ROW replacement facilities should be allowed under this section. According to Great Lakes, topographical changes due to floods, landslides and other naturally occurring events should qualify under this section. The Commission should clarify that construction resulting from acts of nature are authorized.

Commission Response: We intend that "other similar reasons" for miscellaneous rearrangements includes such reasons as maintaining operational integrity or problems due to natural causes such as changes in river or stream courses or other natural forces beyond the pipeline's control. We are excluding encroachment of residential, commercial or industrial development in the definition of miscellaneous rearrangement of facilities because it involves landowner issues. These issues are better addressed in the proceeding in Docket No. RM98-17-000, which discusses many landowner issues in detail. Rearrangement in these instances still require appropriate NEPA review. We will revise § 157.202(b)(6) accordingly.

Section 157.202(b)(10)—Sales Taps/Delivery Points

The NOPR modified § 157.202(b)(10) to remove the words "Sales tap(s)" and add in their place, the words "Delivery points." The NOPR also proposed to amend the related § 157.202(b)(2)(ii)(E) to remove the words "Sales Tap" and add, in their place, the words "Delivery points under § 157.211." To implement the change to these sections, the NOPR proposed removing existing § 157.212—Changes in delivery points—and revising § 157.211—Sales taps—to become new § 157.211—Delivery points.

Comments: INGAA contends that the definition in § 157.202(b)(10) limits pipelines because it does not include the pipeline associated with the delivery point. INGAA is concerned that the definition limits construction only to facilities at the actual point of delivery, and not to a lateral facility extending to or from those points, which drastically reduces the usefulness of this option. It argues that since delivery points are not installed without any associated piping of some length, the limited definition will reduce a pipeline's flexibility to add new customers, such as electric generation, to the grid, because any such addition will require a section 7 filing.

Duke Energy and Great Lakes propose that the Commission clarify the regulation to avoid confusion so that heaters, minor gas conditioning facilities, treatment, odorization, and similar equipment that may be required on delivery facility installations is covered by the phrase "appurtenant facilities".

Great Lakes states that this section should also permit new delivery points for existing customers, not just to attach new customers.

National Fuel states that the definition in § 157.202(b)(10) should be changed to replace "any customer" with "any party." In many cases, the owner of the facility to be interconnected with the pipeline is not a customer of the pipeline, but another entity transporting gas for the customer of the pipeline.

Commission Response: Commenters are concerned that the new definition of delivery point either changes the way such facilities can be constructed or changes or limits the type of facilities, i.e., related delivery laterals, that can be constructed. Currently, pipelines must file a prior notice to construct a sales tap under § 157.211 or a delivery point under § 157.212. Since the related delivery lateral is considered an eligible facility, pipelines currently can construct this connecting line automatically under § 157.208, subject to the spending limits in that section. These laterals are eligible facilities because they are specifically excluded from the definition of main line in § 157.202(b)(5).

The Final Rule creates a new § 157.211 to encompass the construction of all delivery points, rather than have two confusing sections to choose between. New § 157.211 allows pipelines to construct virtually any delivery point for both new and existing customers, with the exception of bypass facilities, on an automatic basis, subject to the spending limits in § 157.208. However, the authority for pipelines to

construct related delivery laterals remains unchanged, i.e., they are eligible facilities. Prospectively, a pipeline will be able to construct both the delivery point and the related upstream delivery lateral on an automatic basis, subject to the limitations in §§ 157.208 and 157.211. Thus, for projects that meet the spending limits and do not involve bypass, pipelines are relieved of the burden of making an upfront filing prior to constructing the delivery facilities.

As to Duke Energy and Great Lakes proposal to clarify the definition of "appurtenant facilities" in § 157.202(b)(10) to include minor gas conditioning and similar facilities, we agree and will modify the section. We also agree that the reference to "any customer" should be modified to refer to "any party" to recognize the reality of transportation today.

Section 157.203—Blanket Certification.

The NOPR proposed minor editorial changes.

Comments: The Council questions whether the issuance of a blanket certificate under this subpart constitutes an "undertaking" as defined under the NHPA.

Commission Response: The creation of the blanket certificate program was covered by the environmental assessment issued in 1981, which concluded that projects which meet the standard environmental conditions would not have a significant effect on the human environment. The blanket certificate only authorizes projects which adhere to these procedures which, among other things, protect historic properties. The Commission determined that projects which were required to adhere to these procedures would not have an effect on historic properties eligible for the National Register of Historic Places. Therefore, while these individual projects may be undertakings, they do not require the Council's comment.

Section 157.205—Notice Procedures

Section 157.205(d)—Publication of Notice of Request

The NOPR proposed to require that the Commission would issue a notice within ten days of the filing of an application in redesignated § 157.205(d). Process Gas Consumers requests that, among other things, the Commission require pipelines provide more specific notice directly to its customers, as specified in the discussion of § 157.9 above. As stated in our response in § 157.9, we believe the existing notice requirements provide

sufficient opportunity for all parties to receive adequate notice of filings with the Commission.

Section 157.205(e)—Protests

The NOPR proposed to amend redesignated § 157.205(e)(2) to add that parties protesting an application in a prior notice filing specifically set out the reasons and rationale for their protest.

Comments: The American Public Gas Association states that the request is reasonable if the potential protestor has all the filed material well before the protest deadline. It argues that it is critical that protestors have the relevant data and the time to analyze the data if they are to file substantive protests.

Commission Response: The NOPR proposed a number of changes, most of which are designed to speed up the processing time for certificate filings by requiring pipelines to file substantially complete applications or face the prospect of having such filings rejected. We note that prior notice applications are usually non-controversial and involve routine activities. It is incumbent upon the pipeline to include all relevant material with the application to ensure that the application will not be rejected. The extended time frame for pipelines to supply voluminous or hard to reproduce materials generally applies to significant transmission facilities that require a separate section 7(c) application. Thus, prior notice filings, by their nature, should be substantially complete when filed, which should allow ample time for interested parties to timely intervene.

In the event that a potential protestor believes that an application does not contain sufficient information for it to justify a protest, it should explain specifically what information is missing and how that affects its ability to protest. If such a situation were to occur, the proposal in the NOPR is not intended to deprive any party of the opportunity to point out the defects in an application.

Section 157.205(g)—Withdrawal or dismissal of protest

The NOPR proposed in redesignated § 157.205(g) to allow the Director of OPR to dismiss any protest to a prior notice filing which does not raise a substantive issue and fails to provide any specific reason or rationale for the objection.

Comments: AGA wants the Commission to clarify that protests alleging that the pipeline's activity will result in a bypass of the LDC will not be dismissed for lack of substance. AGA

proposes that § 157.205(g) and the related § 375.307(a)(10) be revised to state that any protest that alleges bypass will not be dismissed. AGA suggests that the following language be added at the end of each regulation:

However, the Director of the Office of Pipeline Regulation may not dismiss a protest that alleges bypass. Such a protest will subject the request of the certificate holder to the full procedural requirements of the Natural Gas Act under section 7 authorization for the particular activity.

American Public Gas Association expresses two concerns: (1) That the term "substantive" is too vague and gives the Director of OPR excessive discretion; and (2) that the relationship of a dismissal of a protest and the effect of a protest is unclear. APGA states that it is not clear that dismissal of a protest prevents conversion of the proceeding to NGA section 7 status. APGA suggests that the Commission forgo these changes.

Duke Energy states that the regulation should be clarified so that a notice of dismissal of protests is issued within the 30 day resolution period. Duke Energy contends that this will eliminate the need for any further order and helps ensure that the prior notice process cannot be used by protestors seeking other unrelated consideration from the pipeline.

Indicated Shippers contends that the proposal inappropriately delegates one of the Commission's most fundamental responsibilities under the NGA to the Director of OPR. It contends that all interested parties must be given a meaningful opportunity to present their positions to the Commission, including the ability to seek a hearing. The Director of OPR must not be placed in position of establishing policy and precedent. Indicated Shippers and NGA both argue that dismissal of a protest would effectively permit a prior notice to become effective long before the Commission could act on a protesting party's appeal or motion for stay of the dismissal. According to Indicated Shippers, if the Director of OPR keeps this authority, the Commission needs to amend § 375.307(a) because it only authorizes action on uncontested filings. If a protest is filed, a prior notice is contested. Market Hub Partners states that protestors should not have their protest rejected because of deficiencies in pipeline filings or because of delays in noticing filings.

El Paso contends that the standard for determining which protests will be dismissed is vague and expresses concern with how it will be applied. El Paso requests that the Commission

clarify that protests which merely raise conclusory allegations without specific factual support may be dismissed by the Director. For example, protests which allege unfair competition or undue discrimination without support should be dismissed. El Paso states that this clarification is necessary to assure that protestors cannot delay projects by merely raising arguments which lack factual support or legal merit.

INGAA and El Paso recommend that § 157.205(g) be revised as follows:

The Director of OPR may make a determination whether protests raise a substantive issue or set forth specific reasons and rationale for the objection, and dismiss the protest for failure to either raise a substantive issue or set forth specific reasons and rationale for the objection.

INGAA states that the authority to dismiss protests for either reason will give the Director broader discretion to dismiss protests while still applying the standards set forth.

Commission Response: The intent of the proposed regulation is to allow the Director of OPR to dismiss any unsubstantiated protest to a prior notice application. Protests that raise legitimate issues will not be dismissed. However, "no issue" protests, those that offer no support for the protest, are subject to dismissal. For example, AGA requests that any protest alleging bypass not be dismissed. Simply stating an objection is not enough reason to impede the progress of a prior notice filing. However, if, for example, an allegation of bypass is accompanied by specific reasons and rationale for the objection, then such a protest will not be dismissed. A protestor does not necessarily have to prove that its allegation is true, but it does have to substantiate its objection. This will not deprive any party of an opportunity to present its position to the Commission for consideration. We reiterate, the dismissal pertains only to protests that do not raise a substantive issue and fail to provide any specific detailed reason or rationale for the objection.

As stated, APGA contends that it is not clear how the dismissal of a protest will effect the conversion of the proceeding to a NGA section 7 proceeding. Also, Duke requests that the Commission clarify that the protest will be dismissed during the 30 day resolution period. We clarify that the Director of OPR will dismiss an unsubstantiated protest within 10 days of its filing. However, we will continue to require that the 30 day reconciliation period run for the entire 30 days to allow the protesting party time to pursue other alternatives.

Section 157.206—Standard Conditions

Section 157.206(b)—Environmental Compliance

The NOPR proposed to create a lead-in to the environmental conditions of subpart F in redesignated § 157.206(b) to indicate that the conditions apply only to activities under the blanket certificate that involve ground disturbance or changes to operational air and noise emissions.

Comments: Enron and Williams agree with the proposed clarification, but request that it be codified in § 157.206(b).

Sempra Energy states that it cannot imagine a situation in which blanket activity will not "involve ground disturbance or changes to operational air and noise emissions." It contends that any ambiguity will provide pipelines with incentive to characterize projects as non-ground disturbing to eliminate the notice and protest process and construct facilities. Sempra Energy proposes that the Commission either: (1) eliminate the proposed revision; or (2) clarify that standard environmental conditions continue to apply to all construction, installation, removal, re-work, or repair of facilities.

Commission Response: We agree with Enron and Williams and will modify § 157.206(b) to reflect this clarification. As to Sempra Energy's concern, we reiterate that these conditions apply to all activities performed under the blanket certificate, regardless of cost. Thus, they apply to facilities constructed under the automatic and prior notice procedures. However, we will clarify that the standard environmental conditions continue to apply to all construction, installation, removal, re-work, or repair of facilities performed under the blanket certificate.

Section 157.206(b)(5)

The NOPR proposed to revise redesignated § 157.206(b)(5) to bring it into line with current usage concerning limitations on compressor station noise levels.

Comments: Duke Energy, El Paso Energy, INGAA, and Williams all want the Commission to clarify whether any change to a single compressor unit or adding a new unit requires the noise level of the entire compressor station to be reduced to 55 dB(A). They are concerned about the terms "modified, upgraded, or updated." These parties contend that the language implies that almost any modifications to individual compressor units will force other previously approved units in the same station to meet the 55 dB(A) noise limits, even if no modifications to these

units are performed. They believe such a result would be at odds with current Commission policy, which requires pipelines to maintain compressor stations at existing levels when any changes are made. These parties request that the Commission clarify the 55 dB(A) noise level is applicable only to the individual unit being added, modified, upgraded, or uprated and not to the entire compressor station which was previously installed.

Commission Response: Our intent was to have the noise limit apply to the new or modified compressor units. We will modify § 157.206(b)(5) to reflect this intent.

Section 157.206(c)—Commencement

The NOPR proposed to revise redesignated § 157.206(c) to allow for facilities to be completed “and made available for service” instead of “in actual operation” within one year of authorization.²²

Comments: El Paso Energy and INGAA agree with the proposal, but request that the annual report required in § 157.208(e)(2) be modified to reflect the change here.

Commission Response: The Commission is concerned with the actual completion date of projects constructed under the blanket certificate for, among other things, environmental review purposes. However, we are also concerned with the date service commences. Changing the reporting requirements so that facilities will not be reported until they are “available for service” could result in delays in both reporting and review. While facilities could be “completed and made available for service” within the specified timetable, service may not commence at that time if the end-user/shipper is not ready to flow gas. Since the annual report in § 157.208(e)(2) currently requires the actual date that construction was completed, we will modify the report to also require the date service commenced.

Section 157.208—Construction, Acquisition, Operation, and Miscellaneous Rearrangement of Facilities.

Section 157.208(a) and (b)

Consistent with our proposed change to the definition of an eligible facility in § 157.202(b)(2)(i), the NOPR clarified that §§ 157.208(a) and (b) will now include certain replacement facilities that do not qualify under revised § 2.55(b).

Comments: INGAA requests clarification that rearrangements of storage lines will also be included in this section as the practical process is the same whether a pipeline is rearranging mainline pipe or storage pipe.

Commission Response: It appears that INGAA wants a clarification of the definition of miscellaneous rearrangement of any facility. The definition does not specifically limit the rearrangement to mainline versus lateral or storage lines. It limits the reasons for the rearrangement. Storage lines, as well as mainlines can be rearranged as eligible facilities under this section, so long as the rearrangement qualifies under the definition in § 157.202(b)(6).

Section 157.208(c)(9)

The NOPR proposed to amend redesignated § 157.208(c)(9) to add the specification that a copy of consultations for the Endangered Species Act, the National Historic Preservation Act, and the Coastal Zone Management Act be included in any prior notice filing made under this section.

Comments: The Council asks the Commission to describe what constitutes “clearance” and how can it be obtained by the certificate holder given the Commission’s nondelegable responsibility.

INGAA states that the preamble to the NOPR requires a copy of consultations, while the regulation requires a copy of the clearance received at the time a prior notice is filed. INGAA wants the Commission to clarify whether the final clearance is required or whether just the copy of consultations is required. If the final clearances are required, INGAA contends that this does not reflect the realities of dealing with the various permitting agencies involved. While understanding the Commission’s need to verify that clearances have been obtained before the prior notice period runs, INGAA suggests that pipelines file requests for clearances at the time of the prior notice and supplement with actual clearances when received. Enron and Great Lakes raise the same concern and request that actual clearances be filed within 30 days. If clearances are not received by the close of the protest period, the Commission could deem the prior notice protested. INGAA proposes the following language:

A copy of the clearance received or the request for clearances for Endangered Species Act, the National Historic Preservation Act and the Coastal Zone Management Act shall be included in any prior notice filing. If a request for clearance is filed, then a copy of the final clearance must also be filed, when

received. Failure to file the final copy by the end of the protest period will deem the prior notice filing protested.

Commission Response: As to the Council’s request, we will change the word “clearances” to “agreements.” We have already addressed the issue of delegation when we said that projects which comply with the standard conditions do not constitute undertakings which would affect historic properties.

As to INGAA’s request, we clarify that the reference to a copy of consultations means a final agency agreements. Prior notice filings, by definition, are for those projects on which the company could begin construction within 45 days from the filing date. As a result there is no justification for allowing the company to file a prior notice without already having the agreements.

Section 157.208(e)

Section 157.208(e) details the annual reporting requirements for facilities completed under this section. The NOPR proposed to revise this section to require complete reports only for facilities constructed under the automatic authority conferred by § 157.208(a).

Comments: INGAA requests that the Commission clarify whether pipelines are required to identify facilities constructed under prior notice procedures and the cost levels of such facilities in their annual report in § 157.208(e).

Commission Response: Pipelines are still required to identify such facilities and to provide the complete cost information required in § 157.208(e)(3). However, because the prior notice application includes all the information regarding the facility, the only identification necessary would be the docket number of the prior notice that authorized construction. We note that this action reduces the reporting burden on all pipelines.

Section 157.209—Temporary Compression Facilities

The NOPR proposed to create a new § 157.209 to allow blanket certificate holders to install temporary compression for the limited purpose of maintenance or repair of existing permanent compressor unit(s).

Comments: El Paso Energy and INGAA want the Commission to clarify that pipelines can operate temporary compressors occasionally for maintenance purposes to ensure that the compressors will perform up to specifications when needed, including complying with the 55 dB(A) noise level. INGAA argues that, in cases of

²² See the related discussion of a similar change in § 157.20(b).

routine maintenance, pipelines should be able to install a temporary engine while repairing a permanent engine, or install a spare engine in place of the engine that is removed for repair. INGAA recommends that these activities be permitted as maintenance under this section.

Commission Response: We will grant the clarification. It is consistent with the intent of this section and will help ensure the reliability of certificated entitlements in the event of compressor problems.

Section 157.211—Sales Taps

The NOPR proposed to redefine this section as Delivery points and provide for automatic and prior notice authorization to acquire, construct, replace, modify, or construct any delivery point.

Construction of Delivery Points

Comments: Enron and INGAA state that the NOPR describes receipt points as being constructed under § 157.211, while the proposed regulations indicate that receipt points are eligible facilities to be constructed under § 157.208.

Commission Response: The Commission agrees with Enron and INGAA that the intent is for receipt points to be constructed automatically as eligible facilities under § 157.208, subject to the spending limits. Section 157.211 would cover receipt points that prospectively will function as delivery points as a result of unbundling. The “and vice versa” in the preamble to the NOPR was inadvertent. We clarify that delivery points will not actually be converted into receipt points under § 157.211.

Definition of End-User

In § 157.211(a)(2), the NOPR required prior notice of the construction of a delivery point where the gas is being “delivered to, or for the account of, an end-user that is currently being served by an LDC.”

Comments: National Fuel requests that the Commission revise § 157.211(a)(2)(i) to read instead where the gas is being “delivered directly to an end user” to clarify that delivery into an LDC facility that feeds an end user could be undertaken automatically under § 157.211(a)(1).

Commission Response: In a situation where a pipeline delivers gas directly to an LDC, which then redelivers the gas to an end-user, the LDC performs a transportation function and is not bypassed in such a transaction. Accordingly, under that situation, automatic authorization is appropriate.

Prior Notice Requirement for Bypass

Comments: AGA and Sempra Energy note that the regulations do not specifically mention “bypass” and that a prior notice is only required when a customer is “currently being served” by an LDC. AGA believes that “currently being served” is sufficiently ambiguous that pipelines could evade the prior notice requirements, even where an LDC is being bypassed. AGA suggests that the Commission change § 157.211(a)(2)(i) to add: “currently being served” includes circumstances where the customer is attached to the LDC even if it is not currently taking gas. AGA also requests that the Commission modify § 157.205 to require that the pipeline notify both the LDC and the state utility commission of any bypass activity. AGA also requests that the Commission define bypass to include situations where the pipeline proposes to serve a customer within the LDCs’ service area, even if the LDC previously has not served that customer.

On the other hand, Process Gas Consumers (PGC) argues that the Commission should eliminate the use of prior notice for all delivery points, including new delivery points for end users served by LDCs. PGC states that the Commission’s policy is well established and consistent with principles of nondiscriminatory access. According to PGC, end users and LDCs are equally entitled to new delivery points, including ones that bypass traditional suppliers. If a pipeline violates a Commission policy, PGC states that it is subject to a complaint under NGA section 5. PGC further states that if the customer violates any contract with an existing supplier, it faces a contract remedy. PGC also argues that direct service to an end user should also be automatic if the contract has expired or will expire by the time service from the new delivery point commences.

PGC also wants the definition of delivery point in § 157.202(b)(10) expanded to include new and additional service to a customer, whether or not at the same location. For example, an industrial user installing a second plant should be entitled to treat the new installation as new service and should be able to obtain a delivery tap automatically. The end user should not be subject to protests and delays because it continues to receive service for the remainder of its operations from its existing LDC. New service, beyond the existing LDC service should entitle the end user to obtain a delivery tap under the automatic procedures.

Commission Response: The Commission has previously determined that a bypass does not occur when a pipeline proposes direct service to a new customer that is not currently being served by an LDC under an LDC contract.²³ The purpose of 157.211(a)(2)(i) is to provide notice to an LDC of a potential bypass. This is consistent with our current bypass policy, which we apply on a case by case basis, and see no basis to change that policy. This policy requires that a nexus be shown between the LDC’s obligation to purchase service from the pipeline and the pipeline’s proposed service to the end-user. Our policy is not to engage in speculation as to an LDC’s market, nor second guess end-users’ choices.

As stated, PGC argues that adding delivery points to serve end-users should be allowed under the automatic authorization. We disagree. We see no reason to modify our policy to provide an LDC currently providing service to an existing customer notice of a potential bypass. To the extent that a pipeline wishes to add a delivery point for a customer where the affected contract with the LDC has expired, the pipeline may add the delivery point under the automatic authorization. However, the existing firm contract must expire prior to the construction of new delivery facilities in order not to constitute a bypass.

Further, we note that the regulation requires prior notice whenever the facilities are constructed to serve a customer currently being served by an LDC. This includes a delivery point to provide additional volumes to that customer. We believe that the LDC should have notice that such facilities are proposed to be built.

CD Reductions

Comments: AGA, the Joint Consumer Advocates,²⁴ and Rochester Gas and Electric Corp. (Rochester) urge the Commission to permit LDCs to reduce their contract demand to the extent pipelines bypass their facilities. The current policy predicates any CD reduction on a contractual nexus between the capacity and the bypassing LDC customer. However, these parties contend that LDCs often do not have service agreements with their customers

²³ See K N Interstate Gas Transmission Company, 85 FERC ¶ 61,327 (1998), Texas Eastern Transmission Corporation, 71 FERC ¶ 61,020 (1995), and Mojave Pipeline Company, 69 FERC ¶ 61,921 (1994).

²⁴ The Joint Consumer Advocates consist of the Pennsylvania Office of Consumer Affairs, the Iowa Office of Consumer Advocate, and the West Virginia Consumer Advocate Division.

and most do not deliver specific quantities to end-users. Instead, LDCs provide retail service for whatever requirements the customer needs. The LDC tariffs become the contract when service commences. Moreover, they claim that the Commission's standard is overly restrictive and fails to reflect current market realities.

Commission Response: In Order No. 636, the Commission stated that it would consider requests by LDCs for relief from pipeline bypass. Where an LDC could show a nexus between the bypass and the costs at issue, the Commission stated that it would consider reducing the LDC's contract demand and reservation charges.²⁵ Determining if CD reductions are justified is dependent on the facts and circumstances in each particular case. Any challenges to the Commission's current policy should be made on a case by case basis. The parties have not provided any compelling reason that would warrant the Commission's changing its current policy in the context of this rulemaking proceeding. We note that the proposed regulation keeps the existing policy in place, so if a prior notice is protested on the issue of bypass, these points can be examined as they are now.

Tariff Must Permit Addition of Delivery Point

Comments: PGC also seeks to have the Commission eliminate the requirement in §§ 157.211(a)(1)(ii) and (a)(2)(iii) that the certificate holder's tariff does not prohibit addition of new delivery points. PGC contends that since Order No. 636, no pipeline's tariff should prevent the construction of delivery points. The proposed language is so broad that, notwithstanding creditworthiness provisions, pipelines could refuse to construct for policy or other reasons, which PGC argues is against open access provisions.

Commission Response: A pipeline's tariff sets the parameters under which it will construct delivery points. Any construction of new delivery points need to be consistent with the terms of the pipeline's tariff. Pipelines cannot structure their tariffs to impede constructing delivery points and are required to provide non-discriminatory, open access service. Part of this service is constructing delivery points for shippers. While we never said that pipelines had to build facilities, if a pipeline does build facilities for one customer, it must build facilities for other similarly situated customers on a

non-discriminatory basis.²⁶ We recognize that there may be certain economic parameters in a tariff, including creditworthiness, that shippers may need to comply with in order for a pipeline to construct a new delivery point. However, a pipeline must have a legitimate reason not to construct facilities for shippers that request them. While we will not eliminate the requirement in §§ 157.211(a)(1)(ii) and 157.211(a)(2)(iii) that "the certificate holder's tariff does not prohibit the addition of new delivery points," pipelines must not use their tariffs as a shield when they are requested to construct facilities. Shippers that believe that they have been unfairly denied a new or additional delivery point can file a complaint with the Commission detailing the adverse action.²⁷

Prior Notice Requirement for Full Pipelines

Comments: According to APGA, attaching new customers to a full or nearly full pipeline potentially affects the operating flexibility and service to all existing firm customers. APGA does not object to construction of new delivery points for existing customers where overall pipeline firm obligations are not increased. However, before new customers are added to a pipeline, APGA contends that there should be prior notice and opportunity to protest, because the quality of existing service is at issue when new customers are added.

Commission Response: APGA wants to limit the automatic construction of delivery points to existing customers, not new customers being added to the system because of the potential service impact on others. One of the purposes of the blanket certificate is to expedite construction of minor facilities that will not have a significant impact on ratepayers. This is accomplished in part by limiting the cost of certain facilities and requiring that service through such facilities is provided within existing certificated volumes. However, the Commission recognized that the blanket certificate issued under part 284 certificates transportation of gas using available capacity on a first-come, first-serve basis. In other words, transportation provided under a part 284 blanket certificate is within certificated volumes and pipelines holding a part 157 certificate are authorized to construct any eligible

facilities to provide transportation authorized under a part 284 blanket certificate. Thus, nothing prevents a pipeline from constructing new delivery points in accordance with this section to accommodate additional service to any customer, so long as the service is supported by a related transportation agreement under part 284. However, pipelines cannot contract for service that depends on firm capacity reserved for others.

Meter Facilities

Comments: Williams suggests that § 157.211(a)(1) be revised to recognize situations where a replacement or modification to meter facilities involves a reduction in measurement capacity to accommodate the need for greater accuracy. This would avoid confusion when a customer's load is reduced at one delivery point, but there is no overall reduction in customers total capacity.

Commission Response: This section already allows pipelines to "modify" any delivery point, which would apply to the situation Williams describes.

Lateral Associated with Delivery Points

Comments: Great Lakes states that the new definition of delivery point precludes construction of associated lateral lines. According to Great Lakes, this is a step backwards since certain limited-length lateral lines can now be constructed as part of the delivery point prior notice procedure. Great Lakes contends that the Commission should allow lateral lines associated with new delivery points to be constructed on a self-implementing basis, unless bypass is involved.

Commission Response: We addressed this argument in our discussion of § 157.202(b)(10). There we explained that the delivery point itself and related facilities can be constructed under § 157.211, while the connecting lateral would qualify as an eligible facility and generally be constructed automatically under § 157.208.

Section 157.215 Underground Storage Testing and Development.

This section provides automatic authorization, subject to certain conditions, for the construction and operation of pipeline and compression facilities to be used for the testing and development of underground reservoirs for the possible storage of gas.

The NOPR proposed to require the certificate holder to identify the date construction began in revised § 157.215(b)(1)(iii).

Comments: INGAA and National Fuel propose that the section be revised to

²⁶ See *Missouri Gas Energy v. Panhandle Eastern Pipe Line Company*, 75 FERC ¶ 61,166 at 61,550 (1996).

²⁷ See *Arcadian Corporation v. Southern Natural Gas Company*, 55 FERC ¶ 61,207 (1991), reh'g 61 FERC ¶ 61,183 (1992).

²⁵ See *Texas Gas Transmission Corp.*, 70 FERC ¶ 61,207 (1995).

reflect the Commission's current policy, which allows pipelines to acquire facilities and recognizes that they can currently drill injection/withdrawal and observation wells when testing and developing storage fields.

Petal Gas Storage Company (Petal) states that the Commission should clarify that the scope of the blanket certificate allows for the construction of salt dome storage caverns under the automatic and prior notice provisions of § 157.208. Alternatively, if both the construction and operation of a new salt dome cavern currently requires formal section 7(c) authorization, Petal argues that the Commission should at least permit the construction of the cavern (drilling and leaching) and installation of related facilities (flow lines) under blanket authorization, while operation of the additional facilities is considered in a separate section 7(c). If the Commission does grant either of these requests, the Commission should clarify that salt dome storage facilities are included within the scope of storage facilities eligible for automatic authorization under § 157.215, or create a new provision to allow for automatic authorization for certain activities, such as drilling a well, leaching, and testing a cavern, that are necessary to develop a salt dome storage cavern.

Commission Response: We agree with INGAA that specifically including well work and acquisition of facilities would clarify the scope and intent of this section. We will modify § 157.215(a) accordingly. We note that whatever policy might be adopted in the landowner notification proceeding in Docket No. RM98-17-000 would apply to any construction under the blanket certificate, including this section.

We do not agree with Petal about automatic or prior notice authorization for the construction and development of solution-mined salt cavern storage. Construction, testing, and development of conventional storage fields (depleted gas or oil field and aquifer) generally requires more than three years for different testing and development phases to verify various storage parameters. Moreover, a conventional storage field developed pursuant to this authorization cannot be placed in operation to render storage services in interstate commerce without further Commission evaluation and authorization.

In contrast to a conventional storage field development, all aspects of a solution-mined underground gas storage facility, which will be created through the planned leaching of a naturally bedded or domal salt formation, is designed before drilling and leaching.

This includes selecting an appropriate site, physically developing the cavern and testing and commissioning the cavern. It also involves environmental impacts different than those related to the construction, testing, and development of conventional storage fields. Therefore, certification of salt cavern storage facilities is more similar to construction of mainline pipeline transportation facilities than to the development of a conventional underground storage facility. This section will not provide for either automatic or prior notice authorization for the construction and development of solution-mined salt cavern storage.

Section 157.216 Abandonment

Section 157.216(a)

The NOPR proposed a new § 157.216(a)(1) to specifically reference that receipt point facilities are eligible for automatic abandonment authorization under the subpart F blanket certificate.

The NOPR also proposed to expand the automatic authority under § 157.216 to allow abandonment of: (1) Delivery points used to provide firm and interruptible service, if the points are unused for 12 months and no longer under a firm contract, and (2) any eligible facility constructed under automatic authority, subject to customer consent.

Customer Consent and Automatic Authorization

Comments: INGAA is concerned about the requirement to obtain written consent from all customers who have received service in the past 12 months. Abandonment of a tie-over on a mainline or some facilities at an interconnection with another pipeline could be very burdensome because of the sheer number of customers that could be affected. INGAA proposes to allow abandonment of eligible facilities if it will not terminate or degrade service to such existing customers. This protects customers without an unnecessary administrative burden.

National Fuel states that receipt and delivery points should qualify for automatic abandonment if affected customers consent, regardless of whether the facility was used in the past 12 months.

AGA wants the Commission to clarify that primary delivery points under contracts are not eligible for automatic abandonment, even if they have not been used in the past 12 months.

Indicated Shippers and NGSAs state that the proposals to allow pipelines to abandon receipt points automatically

and by prior notice could permit pipelines to abuse the ability to abandon service to a point. They suggest that the abandonment of all supply facilities be subject to prior notice, regardless of cost. They contend that without prior notice, upstream suppliers and other parties behind the facilities could become stranded, causing shut-in and possible loss of reserves. According to Indicated Shippers and NGSAs, the proposed written consent applies only to transportation customers, not upstream supply parties, including producers, pooling parties, balancing parties and point operators that may also deliver gas into the subject facilities. These parties may have Operational Balancing Agreements (OBA) or other agreements with the pipeline that conform to a pro forma agreement in the pipeline's FERC Gas Tariff. Given the cost level for automatic abandonment, Indicated Shippers requests that the Commission clarify how it intends to determine the cost of eligible facilities serving a supply function for purposes of automatic abandonment. Indicated Shippers and NGSAs argue that prior notice for such facilities protects against inappropriate abandonment of jurisdictional facilities.

Both Indicated Shippers and NGSAs request that the Commission clarify that the term "customers" (for purposes of abandonment under the blanket certificate) includes: (1) Upstream producers and other suppliers that (a) have confirmed a nomination at the point in the previous 12 months or (b) are not currently using the facilities, but have within the previous 12 months made a request to the pipeline in writing for firm or interruptible service using specific supply facilities; (2) point operators; (3) gatherers; (4) pooling parties; or (5) OBA parties. Indicated Shippers argues that the Commission should require written consent of these affected upstream parties in addition to the capacity holders in the facilities.

These parties contend that without this clarification, the new regulations could be interpreted to allow a pipeline to abandon those facilities using prior notice without the consent of the affected parties behind the upstream supply facilities, if those parties do not ship gas from the point under their own transportation agreements with the pipeline. Unless upstream parties are considered customers, even a protest would be illusory since consent is only needed from "customers".

Commission Response: INGAA believes that seeking customer consent will be administratively burdensome if numerous customers use a facility proposed to be abandoned. INGAA

suggests that abandonment be allowed as long as it will not terminate or degrade service to existing customers. However, INGAA does not specify how it will determine that abandonment of any facility will not terminate or degrade existing service.

It is the Commission's statutory responsibility to ensure that abandonment of any facility is permitted by the present or future public convenience and necessity. In order to meet this responsibility, the Commission will require pipelines to demonstrate that service will not be degraded or terminated, or that service is no longer needed through a specific facility by providing consent from customers that have received service during the past 12 months. While there may be certain instances where this requirement could create a burden, we believe that our statutory responsibility under NGA section 7(b) outweighs any such potential administrative inconvenience.

National Fuel argues that abandonment should be automatic for receipt and delivery points, if the affected customers agree, regardless of when the facilities were last used. National Fuel can use § 157.216(a)(2) to abandon receipt points automatically, since they are eligible facilities, as long as it has all the customers' consent, regardless of whether the receipt point was used in the past 12 months. However, delivery points are not eligible facilities because of potential bypass situations and therefore, are not covered by § 157.216(a)(2). The Commission determined that expanding the automatic abandonment authority was appropriate only if the customer who used the facilities during the preceding 12 months consented to such action. Therefore, we will continue to require a prior notice filing for delivery point facilities which were in use during the last 12 month period specifically because we are concerned with the potential for existing customers to lose access to facilities. We believe that any perceived delay involved in filing a prior notice is offset by the protection the procedure gives customers.

As we stated in the NOPR, the Commission does not intend to allow automatic abandonment of delivery points used for firm service that are under contracts that are in force and effect, because parties paying demand charges should retain the availability of those points.

As stated, Indicated Shippers argues that gas suppliers, point operators, gatherers, pooling parties, and OBA parties upstream of receipt points and

gas supply facilities should be included as customers from whom consent is required prior to facilities being abandoned automatically. The Commission believes that its proposal to allow automatic abandonment of receipt or delivery points that have not been used for a one year period provided it is no longer controlled by a firm contract is appropriate. Pipelines should have the flexibility to abandon facilities that are no longer used and useful. To the extent that upstream suppliers do not have contract agreements with the pipeline but, instead, have gathering, pooling, balancing, or some other type agreement with the pipeline's shippers, they should seek the appropriate remedy under those contracts. We note that pipelines are not designed to stand by without charging for service.

Sections 157.216(d) (4) and (5)

The NOPR proposed to modify § 157.216(d)(4) and add new § 157.216(d)(5) to require that pipelines supply: (1) The date earth disturbance related to an abandonment began, and (2) the date clearances were actually received under the Endangered Species Act, the National Historic Preservation Act, and the Coastal Zone Management Act.

Comments: Michigan Gas Storage contends that clearances under the National Historic Preservation Act should not be required where the same earth that was disturbed for construction is redisturbed for abandonment. It states that paragraphs (d) (4) and (5) should be limited to abandonment of facilities where there is earth disturbance beyond the earth disturbance involved in the original construction.

Commission Response: If there is no ground disturbance or if the disturbance is similar to the previous ground disturbance, the report might consist simply of the applicant's statement that there is no ground disturbance or the SHPO agreement that the ground disturbance does not constitute a concern. However, since it is difficult to ascertain the many situations that could arise and the many exceptions possible, the Commission will still require that the applicant obtain agreement from the appropriate SHPO in order to avoid the requirement for a more detailed report. Of course, as with all the resource reports, the option is there to explain the absence of material based on the nature of the project. It will then be up to the staff to determine if the reason is adequate.

Section 157.217—Changes in rate schedules

The NOPR proposed to remove this section, which provides pipelines with automatic authority to permit customers to change rate schedules.

Comments: Duke Energy believes that if a pipeline and its customer both desire to convert to part 284 service, they should be able to do so on an automatic and mutually agreeable basis, so long as it is non-discriminatory. Duke Energy understands that the Commission has limited its interpretation of this section in the past, citing *Northwest Pipeline Company*.²⁸ However, it believes that the regulation should continue and be clarified to allow section 7(c) customers to convert to part 284 service. Such a conversion would be consistent with Order No. 636.

Commission Response: We agree. The Commission's policy is to foster conversion from individually certificated transportation and storage to open access transportation and storage. Therefore, we will revise § 157.217 to specifically provide that pipelines can change rate schedules, at a customer's request, for the purpose of converting part 157 transportation or storage service to a complementary part 284 service. This section will provide automatic abandonment authorization for the part 157 transportation service, obviating the need for pipelines to file separate abandonment applications. However, pipelines will need to make a filing to reflect removal of the part 157 rate schedule from their tariff. We will also grant a generic waiver, to the extent necessary, to allow the converting shipper to retain its existing capacity through the conversion. We will also require that the rate the shipper will pay after conversion to part 284 will reflect all the maximum rates and charges associated with the service.

Appendix II to Subpart F—Procedures for compliance with the National Historic Preservation Act of 1966 under § 157.206(d)(3)(ii)

The NOPR proposed minor editorial revisions, such as changing the reference in the title from "§ 157.206(d)(3)(ii)" to "§ 157.206(b)(3)(ii)".

Comments: The Council made several comments relating to the inclusion of interested persons in the regulations for complying with cultural resources requirements. Specifically, it said that involvement of interested persons needs to be clarified in Appendix II. It said that appendix II does not offer any

²⁸ 49 FERC ¶ 61, 162 (1989), reh'g denied, 50 FERC ¶ 61, 200 (1990).

explicit guidance on consultation with interested persons. In particular it doesn't specifically refer to the authority given to certain tribes to take over the function of the SHPO on their lands. Further, in reference to § 380.12(f), since the rule does not explicitly provide for the involvement of interested persons in the development of mitigation/treatment, the project sponsor could propose a Treatment Plan, inappropriately, without consultation with any interested persons. Finally, the Council argues that the rule does not go far enough in providing a consultative role for interested persons, since § 380.14(a) states only that the Commission will "take into account views of interested parties."

Commission Response: With respect to appendix II, to better indicate tribal authority we will modify the first sentence of paragraph 1(a) to read: "* * * procedures used by the appropriate Tribal or Federal land managing agency * * *" In addition reference to the Tribal Historic Preservation Officer (THPO) should be added in most parts of the regulation referring to the SHPO. We will add reference to the THPO as appropriate, including a new definition of THPO in appendix II: "(d) 'THPO' means the Tribal Historic Preservation Officer." And in paragraph 1(b) "If there is no SHPO or THPO, if appropriate, or if the SHPO or THPO, as appropriate, decline to * * *". Similar changes have been made to paragraphs (3) through (9).

We disagree with the Council and believe that the rule, in general, adequately provides for the involvement of interested parties. The rule references OPR's "Guidelines for Reporting on Cultural Resources Investigations" and the pertinent sections—III.B.2., IV.A, V.B.12, VI.B.3., VI.C., VII.C., VIII.D., which provide for public participation throughout the process. In addition, the Commission's environmental process, which includes sending out Notices of Intent, holding scoping meetings, and issuing Environmental Assessments or Environmental Impact Statements, allows us to explicitly solicit comments from any potentially interested persons regarding cultural resources.

With respect to Treatment Plans, as we have already stated, the guidelines do indicate the need to involve interested persons. However, there would be nothing wrong with an applicant proposing such a Treatment Plan since the Commission's environmental process would ensure the involvement of interested persons in the formulation of the ultimate Treatment Plan to be used. The

applicant's plan is merely a starting point.

While a company can file a Treatment Plan in resource report 4 (§ 380.12(f)), they don't have to. The guidelines at section VIII.D provide for review of a Treatment Plan by interested persons even if the Treatment Plan is filed with the Commission early in the process.

Appendix II—Paragraph (7)

Comments: The Council contends that the citation in paragraph (7) to 36 CFR § 800.3(a) should be to 36 CFR § 800.9 instead.

Commission Response: We agree the reference should be changed. However, we believe a more appropriate reference is to 36 CFR § 800.5 rather than 36 CFR § 800.9. Under the current Council regulations, § 800.5 "Assessing effects" references § 800.9 applying the "Criteria of Effect and Adverse Effect," accomplishing the effect the Advisory Council is seeking.

Appendix II—Arbitration

Comments: The Council states that Appendix II does not provide for arbitration of disputes or cases where the SHPO may choose not to consult with the project sponsor.

Commission Response: This is not correct. Paragraph 1(b) specifically deals with the case where the SHPO declines to consult. If there is a dispute that can't be resolved, then the project is not authorized under this program, and the only way it can proceed is through the standard certificate process (see paragraph (9)). There was no intent to provide for arbitration of a project the Commission may not be aware of prior to construction.

D. Part 284—Certain Sales and Transportation of Natural Gas Under the Natural Gas Policy Act of 1978 and Related Authority

Part 284 sets forth the general provisions and conditions that govern certain sales and transportation of natural gas under the NGA and the NGPA.

Subpart J—Blanket Certificates Authorizing Certain Natural Gas Sales by Interstate Pipelines

Section 284.288—Reporting Requirements

This section sets forth the annual reporting requirements for an interstate pipeline making sales under this subpart. Blanket sales certificates were issued to interstate pipelines in Order No. 636. The NOPR sought comment on whether the information required by this section is still necessary or whether it has become obsolete, leading to

removal of the section from the regulations.

Comments: Indicated Shippers argues that the requirement is far from obsolete and should be retained, since the circumstances leading to imposing the reporting requirements remain a reality. Interstate pipelines continue to maintain monopoly control over gas transportation. Thus, there is no basis for eliminating this requirement. Indicated Shippers contends that the information is necessary to determine if the pipeline is exercising market power. The requirement acts as a deterrent to unlawful conduct that otherwise would go unreported.

Conversely, National Fuel and Williston Basin support discontinuing the reporting requirement.

Commission Response: We no longer place the same emphasis on this report as we did when it was implemented. We believe that eliminating this report will not have a detrimental impact on the customers of any pipeline engaging in unbundled sales under subpart J of part 284. Pipelines engaging in such sales are fully unbundled and have in place system transportation rates that reflect their cost of service. These transportation rates will not be affected by any unbundled sales a pipeline makes under subpart J. Therefore, in the interim, the volume of any such sales and the associated revenue will not impact the rates customers currently pay for service. When a pipeline files a section 4 proceeding, the information related to subpart J sales will be set out in the pipeline's Statement G, §§ 154.312(j) (i) and (ii), which require, among other things, revenues and billing determinants by rate schedule and customer name. It is in the context of a rate case that the costs associated with any unbundled sales can be scrutinized.

E. Part 375—The Commission

Part 375 sets forth the general provisions of the Commission, the procedures for Sunshine Act meetings and delegations of authority.

Subpart C—Delegations

Section 375.307 Delegations to the Director of the Office of Pipeline Regulation.

Sections 375.307(a)(1) and (a)(4)

The NOPR proposed to increase the \$5,000,000 spending limit to match the prior notice limits set forth in § 157.208(d).

Comments: AGA requests that the Commission expressly preclude pipelines from segmenting their projects to meet this spending threshold. AGA

suggests that this section be revised to include:

"An applicant must certify that the proposed project has not been improperly segmented in order to meet the spending limit specified in § 157.208(d)."

Commission Response: We reiterate that updating and broadening the certificate regulations is designed to facilitate the filing of more complete applications and to provide faster processing of applications once they are filed. We do not intend for these changes to provide opportunities for pipelines to circumvent the intent of our regulations and policies. However, rather than revise the delegation of authority regulations, we will instead revise the blanket certificate regulations. Therefore, we will revise section 157.208 to specifically state that pipelines shall not segment projects in order to meet the spending limits in § 157.208(d).

Section 375.307(a)(3)

The NOPR proposed to remove an obsolete condition in § 375.307(a)(3), which delegates abandonment authority to the Director of OPR for gas purchase facilities with a construction cost of less than \$1 million or the deletion of delivery points.

Comments: NGSa requests that this section be modified to take into account the financial and operating interests of upstream producers, gatherers and point operators attached to facilities proposed to be abandoned. NGSa raises the same argument it raised regarding a similar proposal to modify the abandonment of receipt points under § 157.216.

Commission Response: For the same reasons set forth in our answer in § 157.216, we will deny this request.

Section 375.307(a)(10)

The NOPR proposed new § 375.307(a)(10) to delegate to the Director of OPR the authority to dismiss protests to prior notice filings that the Director determines do not raise a substantive issue and fail to provide any specific detailed reason or rationale for the objection.

Comments: Sempra Energy states that the Commission should recognize that not all applications have merits and that opponents or protestors may not have adequate information at the time of protest to prevent dismissal of their protest. This delegation calls for legal conclusions by the OPR Director rather than factual holdings or ministerial action on routine matters and is not truly appropriate for delegation.

Commission Response: As we noted earlier, the authority delegated to the

Director of OPR to dismiss protests is intended to apply only to situations where unsubstantiated allegations are raised, and only applies to such protests filed in response to prior notice applications filed under § 157.205.

F. Part 380—Regulations Implementing the National Environmental Policy Act

The regulations in Part 380 implement the Commission's procedures under the NEPA. These regulations supplement the regulations of the Council on Environmental Quality (CEQ), 40 CFR parts 1500 through 1508 (1986). Part 380 essentially follows the CEQ procedures concerning early and efficient review of environmental issues, public notice and participation, scoping, interagency cooperation, comments, and timing of decisions on proposals.

Section 380.12—Environmental Reports for Natural Gas Act Applications

The NOPR proposed to replace part 380 appendix A (guidelines for the environmental report), which is out of date and contains numerous errors, with the currently optional appendix G resource reports in the electronic filing requirements, which virtually all companies are now using instead of appendix A. In § 380.12 the NOPR listed, in detail, the information the Commission needs to conduct an environmental review of a proposal under NEPA. The NOPR proposed that applications not meeting a minimum specified portion of these requirements will be rejected.

Mileposts and Map Checklist

Comments: National Fuel states that all references to mileposts in this section should be revised to permit the use of conventional survey centerline stationing if available. Most companies use field survey, stake and mark pipeline centerlines using conventional survey stationing, which National Fuel contends is far more accurate than mileposts. They assert that survey stationing provides a discrete location identified for each feature within each milepost. National Fuel argues that companies should not be required to convert conventional survey stationing references to mileposts merely to file applications. In addition, National Fuel states that it would be helpful if the Commission included a mapping summary table or checklist in § 380.12, since the mapping requirements are spread throughout the section.

Commission Response: The intent of all the "mileposting" requirements is to have a unique and uniform method of identifying the position of resources on

the route of the proposed pipeline. We will accept any method that accomplishes this goal; therefore we add a new § 380.12(b)(6) to read:

Whenever this section refers to "mileposts" the applicant may substitute "survey centerline stationing" if so desired. However, whatever method is chosen should be used consistently throughout the resource reports.

Rather than cluttering the regulation with a listing of where things can be found, we will provide a guidance list of the Commission regulations that require maps and post it on our INTERNET website. The following sections include references to maps or plat plans in the regulations: 380.12(c)(1); 380.12(c)(2)(i)(C); 380.12(c)(3)(i); 380.12(c)(3)(iii); 380.12(c)(4); 380.12(d)(4); 380.12(k)(2)(iv); 380.12(l)(2); 380.12(l)(3); and 380.12(o)(1, 2-4, & 6).

Minimum Checklist Requirement

The NOPR proposed to add a checklist of minimum filing requirements for environmental reports (§ 380.12) as appendix A to part 380; missing items will result in an application being subject to rejection under § 157.8.

Comments: Great Lakes and INGAA state that some of the information required in the checklist is not available at the time of filing. For example, information on all access roads and contractor staging yards by milepost can not be finalized until after a project is bid out and the contractor is able to assess the project. Some information, such as description of proposed compressors, including manufacturer name, model number and horsepower rating will harm the bidding processes to the detriment of ratepayers. Other information such as wildlife resource surveys is seasonally dependent. INGAA asks the Commission to consider these realities when deciding whether to reject an application. INGAA recommends that the Commission modify the checklist to allow more general information to be provided at the time of filing, along with a schedule of when more detailed info will be provided.

Great Lakes requests that the Commission modify the checklist to designate certain data (including data regarding wetlands, T&E surveys, and cultural resource surveys) which, although preferred at the time of filing, may be omitted without the filing being rejected provided that the pipeline includes an acceptable schedule for filing any omitted material. The new regulations should recognize both failure to obtain landowner consent to

entry and seasonal considerations such as weather as excusing a pipeline from supplying environmental information at the time of filing.

Enron agrees with INGAA that some information is not available at the time of filing. Enron suggests that the following items be removed from the checklist: Wetland maps and delineation, § 380.12(d)(4); contractor and pipe storage yards, § 380.12(j)(1)(iv); hydrostatic test data, § 380.12(d)(6); planned residential and commercial business development, § 380.12(j)(3); and manufacturer's name and model numbers for compressor units, § 380.12(k)(4). Enron contends that a filing should not be rejected based on environmental information that is not available at time of filing.

INGAA recommends that the following be added to the end of § 380.12(a)(2):

Each topic of the checklist should be addressed or its omission justified. Any information missing at the time of filing shall be identified as to why it is missing and when the applicant anticipates it will be filed. The Director shall consider the proposed timing of the filing of missing information in concert with that of other competing applications, if any. If this missing information is needed to complete a NEPA analysis of a competing application within a reasonable time frame, the Director will notify the applicant of a revised time schedule for the needed information. Failure to provide the data within the time schedule may result in the delay of processing or rejection of the application.

Process Gas Consumers opposes the proposal to reject outright filings that fail to provide the items in the checklist. Pipelines may only be able to file interim or conditional approvals from relevant environmental agencies at time of filing. Commission should remain flexible in accepting applications for which the pipeline demonstrates that it is actively pursuing all required environmental permits and data.

Commission Response: As stated in § 380.12(a)(2), the applicant should explain the absence of any material specified in the resource report description in the regulation and provide a schedule for filing the missing information. If the missing material is part of the minimum filing requirements, then the filing may be rejected if the material is missing because of inadequate planning. It is up to the applicant to prepare for the filing for its project far enough in advance to maximize the level of detail in the reports. While it may not be possible to initially determine all the access roads or staging yards required by a project, companies with the expertise to build pipeline projects are certainly capable of

outlining a reasonable set of roads and staging areas that will cover most of the needs of the project. In fact, most current applications include this information when they are filed. As for wildlife surveys, there are widely available lists of the sensitive species for which surveys may be needed in a project area, and every effort should be made to plan for these surveys in time to meet project needs. In many cases, it will still be possible to survey for habitat even if the species will not be there. The wetlands list can be provided based on NWI maps or similar sources if delineations have not been done by the time of filing of the application. Nevertheless, the staff will review the reasons given for the absence of required material when determining whether an application should be rejected.

As to INGAA's suggestion, the presence or absence of a competing application is irrelevant to whether an incomplete application should be accepted. However, to make it clear that there is room for discretion in the event a good reason is provided by the applicant, we will add the following wording to § 380.12(a)(3): “* * * will result in rejection of the application unless the Director of OPR determines that the applicant has provided an acceptable reason for the item's absence and an acceptable schedule for filing it. Failure to file within the acceptable schedule will result in rejection of the application.”

Finally, contrary to Process Gas Consumers' comment, permits are not required by the checklist.

Cumulative Effects

New § 380.12(b)(3) requires the pipeline to identify the effects of construction, operation and termination of a project, including the cumulative effects resulting from existing or reasonably foreseeable projects.

Comments: INGAA is concerned that a new, more detailed level of analysis is proposed by requiring identification of “cumulative effects” resulting from existing or reasonably foreseeable projects. INGAA contends that this is more appropriate on the Environmental Impact Statement (EIS) level and is excessive for environmental report analysis. It argues that the provision should be clarified or deleted.

Commission Response: The CEQ regulations include “cumulative” effects in the definition of “effects” or impacts. Cumulative effects are, in fact, part of the current specification in appendix G.²⁹

²⁹ See the introductory paragraph (c) in the appendix.

Location Maps

New § 380.12(c)(1) is part of Resource Report 1 and requires pipelines to describe and provide location maps of all facilities.

Comments: INGAA's comments here mirror its comments to § 380.12(a)(2). It states that certain of the specific requirements in paragraph (c)(1) will be difficult to provide at the beginning of a project.

Response: Our response is the same as stated for § 380.12(a)(2). If the material is part of the minimum filing requirements, then the filing may be rejected if the material is missing because of inadequate planning.

Nonjurisdictional Facilities

Proposed § 380.12(c)(2) lists the information the Commission needs to consider the environmental impact of related nonjurisdictional facilities that would be constructed upstream or downstream of the jurisdictional facilities for the purpose of delivering, receiving, or using the proposed gas volumes.

Comments: Enron, INGAA, Koch Gateway, and Williams state that requiring information relative to the four-factor test creates conflict between the pipeline and the nonjurisdictional customer building related facilities. They argue that nonjurisdictional companies may be unable or unwilling for competitive reasons to provide such information to the pipeline. The environmental review and permitting process for these nonjurisdictional facilities does not encompass the same filing requirements as the Commission's process. Thus, they contend, information required by this proposed regulation may have to be created specifically for the Commission before the status of the facilities is reviewed under the four-factor test.

Duke Energy shares the same basic concern. It requests that pipelines not be placed in peril of rejection with respect to this requirement. Duke Energy proposes that the requirement be deleted from the minimum requirements list, or alternatively, the Commission clarify that: (1) A good faith statement that the information being provided is all that is available to the applicant at the time of filing; or (2) a statement that the pipeline has reached the conclusion that the nonjurisdictional facilities are not subject to Commission environmental review, will suffice to avoid rejection.

AGA is concerned that the Commission intends to impose conditions upon facilities that are not within its jurisdiction. AGA does not

want to subject nonjurisdictional facilities to duplicative environmental reviews by both the Commission and state agencies. It requests that the Commission clarify that it will not impose conditions on nonjurisdictional facilities or duplicate existing state environmental requirements.

Commission Response: The information requested for nonjurisdictional facilities is almost exclusively descriptive and deals with the type of facility and its location. This is not information that the applicant should have any trouble obtaining from the customer. The only detailed environmental material relates to cultural resources and endangered species. Once the applicant knows what nonjurisdictional facilities are intended and their location, it will not be difficult to get determinations from the appropriate agencies on whether additional information is needed. At the point the nonjurisdictional company indicates it is, or is not, going to do surveys the applicant will be able to so inform the Commission. Sections 380.12(a)(2) and (a)(3) will allow the applicant to show why the information could not be provided.

The Commission is not expanding its jurisdiction beyond its current boundaries. The wording says "the extent to which the project is under Commission jurisdiction." For the purposes of the four factor test, "project" means all the facilities that are associated with the jurisdictional proposal and that which as a whole define the reason for the application.

Electronically Generated Maps

New § 380.12(c)(3)(i) requires the pipeline to file current, original United States Geological Survey (USGS) topographical maps or equivalent maps covering the route of the proposed project.

Comments: Enron and INGAA state that electronically generated USGS maps are currently accepted by the Commission. They request that the Commission clarify that electronically generated equivalent maps will continue to comply with this requirement.

Commission Response: The requirement is for "original" USGS maps or "maps of equivalent detail." If the electronically generated maps can provide the "equivalent" level of detail, then they are acceptable.³⁰

³⁰ See the discussion of § 380.12(c)(3)(ii) concerning up-to-date material.

Aerial Photographs

New § 380.12(c)(3)(ii) requires the pipeline to file original aerial photographs or photo-based alignment sheets not more than one year old showing the route of the proposed project and the location of major aboveground facilities.

Comments: Duke Energy, El Paso, Enron, INGAA, and National Fuel argue that when there has not been a change in land use, aerial photographs a few years old still accurately depict current conditions. They contend that to require new photographs could cause significant delays since they can only be taken when weather and foliage do not inhibit clear shots. These parties suggest that the regulation not prescribe a set time frame for when the photograph must have been taken, but require that the photograph, regardless of age, reasonably depict the current land usage. El Paso suggests allowing photographs not more than three years old.

Enron states that the requirement to provide a 0.5 mile-wide corridor is burdensome. It suggests no set distance be required, in order to allow enough flexibility that the width and scale depicted on aerial photographs can be based on the land use the proposed facilities will impact.

Williston Basin wants the Commission to clarify that digital photographs are acceptable as a more economical and efficient alternative to aerial photographs.

Commission Response: Upon reconsideration, we believe it is appropriate to allow older aerial photos as long as the pipeline certifies that the aerial photographs accurately depict current land use and development in the project area. Further, the applicant should draft locations of any new houses on the photographs.

At the requested scale a one-half mile wide corridor is about 5 inches wide. The aerial photographs that are currently filed are commonly 24 inches square. USGS topographic maps are substantially more than 1 foot wide in each dimension with each inch of map covering 2,000 feet or almost 0.5 mile. This requirement will only require obtaining adjacent maps where the proposed facilities are parallel and adjacent to the border or cross a corner of the map or photograph.

We will change the wording of § 380.12(c)(3)(ii) and appendix A to clarify that the Commission requires aerial images, not necessarily emulsion based photographs. We will allow older images as long as they are still an accurate representation of the current

conditions. Older images should be modified to show any residences constructed since the image/photograph was made. The new wording is: "Original aerial images or photographs or photo-based alignment sheets based on these sources, not more than one year old (unless older ones accurately depict current land use and development) * * * and including mileposts. Older images/photographs/alignment sheets should be modified to show any residences not depicted on the originals." In Resource Report 1 in appendix A, the text of the fourth requirement should read: "Provide aerial images or photographs or alignment sheets based on these sources with mileposts showing the project facilities; (§ 380.12(c)(3))."

Construction and Restoration Methods

New § 380.12(c)(6) requires that the proposed construction and restoration methods be described and identified by milepost.

Comments: Enron and INGAA state that construction and restoration methods can be categorized based on the existing land use, which is required, and by milepost in Resource Report 8 and § 380.12(j)(2). Therefore, it is not necessary to provide the information in § 380.12(c)(6). INGAA proposes to remove the phrase "and identify by milepost." Further, Enron requests an explanation of the phrase "longitudinally under roads."

Commission Response: We disagree with INGAA's comment. The discussion in § 380.12(c)(6) deals with special construction techniques that would be used in certain areas. These areas may or may not correspond to the land use areas described in § 380.12(j)(2). For instance, "rugged topography" does not correspond to any particular land use category.

As to Enron's request, "longitudinally under roads" means under the road and parallel to its length. This is in contrast to crossing the road. We will replace the above words in § 380.12(c)(6) with: "parallel to and under roads."

Estimated Workforce Requirements

New §§ 380.12(c)(7) and (g)(3) require the pipeline to provide the estimated workforce requirements for each project.

Comments: Enron and INGAA are concerned with having to describe workforce requirements at the time of filing. They contend that this is not currently required by appendix G. At time of filing, pipelines have not bid out the project and any estimate could impact the labor component of bid responses. They argue that the Commission should allow applicants to

submit such data after a contractor has been selected.

Commission Response: Contrary to INGA's belief, Resource Report 5 in the current requirements in appendix G does, in fact, ask for workforce requirements. The Commission believes that the pipelines are familiar enough with the requirements for building pipelines that they can adequately estimate the workforce requirements needed to comply with this requirement without having chosen a contractor.

Names and Addresses of Landowners

New § 380.12(c)(10) requires the pipeline to provide the names and addresses of all landowners whose land would be crossed by the project facilities.

Comments: INGA contends that this requirement involves the landowner notification issue in the proceeding in Docket No. RM98-17-000. INGA proposes to notify landowners the following business day after FERC assigns a docket number and notices the application. When the Commission notifies the pipeline of its intent to prepare an EA or EIS, the pipeline would then provide the Commission with a list of landowners of record (landowners receiving most recent tax notice) that may be subject to eminent domain within 10 days of the Commission's request. INGA requests that the Commission adopt this proposal.

Commission Response: While it is true that the landowner notification issue is being considered under Docket No. RM98-17-000, that docket concerns whether, when, and how, the pipelines should notify landowners of a project (including which landowners should be notified) separate from the Commission's notification of scoping under the NEPA process. The Commission will still need to be able to notify certain landowners as part of the NEPA notification process and that is the purpose behind this requirement. Since INGA has proposed and most of the pipelines which commented on the notice in the Docket No. RM98-17-000 agreed to notify landowners very shortly after filing, there should be no difficulty in providing these names and addresses to the Commission at the time of filing. Any other method can only slow up the processing of applications by delaying the issuance of the scoping notice.

Resource Report 2—Water Use and Quality

Comments: The Department of Interior (Interior) contends that the first sentence of § 380.12(d)(1) should be modified to read:

Identify and describe by milepost, perennial waterbodies and municipal water supply or watershed areas, especially designated surface water protection areas and sensitive water bodies, and both seasonal and permanent wetlands that would be crossed.

Commission Response: The change to § 380.12(d)(1) is unnecessary. U.S. Army Corp of Engineers (COE) jurisdictional wetlands encompass both types of wetland. Section 380.12(d)(4) makes it clear that delineations using the current Federal methodology are required and these delineations will identify all COE-jurisdictional wetlands.

Wetland and Waterbody Mitigation Measures

New § 380.12(d)(2), in Resource Report 2, Water use and quality, requires pipelines to compare proposed mitigation measures with the staff's current "Wetland and Waterbody Construction and Mitigation Procedures" (WWCMP or Procedures).

Comments: Enron and INGA argue that there may be methods approved by state and local agencies that accomplish the same goal as the WWCMP, but that are not the same as the Procedures. They ask the Commission to clarify that pipelines can show that certain procedures are not necessary for a particular project and thus not required. Enron wants the Commission to clarify that reference to the Procedures is not intended to change the status of this document as a guideline. It does not believe these Procedures should be cited in regulations and proposes that they be removed from § 380.12(d)(2).

National Fuel seeks extensive revision to the Procedure's manual, particularly sections V.B.2.c, V.B.6.b & c, V.B.7.c, VI.B.3.

Williams states that the requirement in paragraph (d)(1) to identify waterbodies is the same requirement as in (e)(2). Williams states that the requirements should only be included in one resource report.

Interior states that placing barriers in pipeline trenches to ensure that surface or ground water is not diverted or drained from wetlands should be a required mitigation measure.

Commission Response: The reference to the WWCMP does not create a requirement that these procedures be used. They are simply a set of procedures that the Commission believes will adequately protect these resources during construction. Therefore, if the applicant indicates that they will be used for its project the staff's review time will be minimized for these resources. There will certainly be situations where portions of the procedures are not applicable. The

applicant is required to inform the Commission of those project-specific situations in order for the Commission to better understand the project's potential for environmental impact.

Since the Procedures are not being codified by this rulemaking we will not modify or update them here. The staff of the Office of Pipeline Regulation is continually looking at the Procedures to see if modification is in order. As changes are made to the current guidelines, they will be noticed and the revised version will be made available.³¹

The references to wetlands in §§ 380.12(d)(1) and 380.12(e)(2) are not the same. Section 380.12(d)(1) requires a listing of the wetlands that are identified on the maps discussed in § 380.12(d)(4). Section 380.12(e)(2) requires a discussion of the fish, wildlife or vegetation of significance in the wetlands. The difference is in classification of wetlands versus their habitat use. Nevertheless, the applicant can always indicate that the material required in one resource report can be found in another by cross-referencing it, if it is, in fact, duplicative.³²

As to Interior's comments, there are a number of mitigation measures that are identified in the Procedures, among them a requirement to maintain the hydrology of wetlands. Applicants are required to compare their proposals to these procedures. Our staff will review the proposals to make sure wetlands are properly protected.

Staging Areas

New § 380.12(d)(3) requires applicants to describe typical staging areas need at waterbody and wetland crossings.

Comments: Interior states that § 380.12(d)(3) should be worded to ensure that staging areas are not placed in wetlands.

Commission Response: There are a number of mitigation measures that are identified in the Wetland and Waterbody Construction and Mitigation Procedures, among them a requirement to keep extra work space away from wetlands. Applicants are required to compare their proposals to these procedures. It is important to note that it may not always be possible to keep staging or other work areas entirely out of wetlands.

Wetlands Maps

New § 380.12(d)(4) requires identifying wetlands by either using

³¹ The WWCMP are currently available on our Internet website at <http://www.ferc.fed.us/gas/environment/gidlines.htm>.

³² See section 380.12(a)(2).

National Wetlands Inventory (NWI) maps or the alternative USGS maps.

Comments: INGAA states that the minimum checklist only allows filing of NWI maps and should accommodate the use of both types of maps. Enron states that wetland maps should not be a minimum checklist item, or the checklist should be revised to allow the alternative of initially filing the best available information, supplemented at a later date when delineation is completed.

Interior states that § 380.12(d)(4) allows filing of NWI maps to show wetland crossings. Because these maps may not show all jurisdictional wetlands, Interior argues that the applicant should be required to verify wetland locations by conducting field delineations verified by the COE.

Commission Response: We intended § 380.12(d)(4) to require applicants to obtain NWI maps in all cases where they are available. State wetland maps, not USGS maps, should be provided if NWI maps are not available. As the checklist states, these maps are needed at the time of filing for general routing and alternative routing considerations. This section has been modified to make it clear that the Commission wants a field delineation of wetlands. Although actual wetland delineations are required, they can be filed later if necessary. In any event, they must be filed before the staff's EA or EIS can be completed. Section 380.12(d)(4) and the checklist will be reworded as follows:

Include National Wetland Inventory (NWI) maps. If NWI maps are not available, provide the appropriate state wetland maps. Identify for each crossing, the milepost, the wetland classification specified by the U.S. Fish and Wildlife Service and the length of the crossing. Include two copies of the NWI maps (or the substitutes, if NWI maps are not available), directed to the environmental staff, clearly showing the proposed route and mileposts. Describe by milepost, wetland crossings as determined by field investigations using the current Federal methodology.

The seventh requirement in the checklist (appendix A) for Resource Report 2 will have the following parenthetical added after the word "maps":

(or the appropriate state wetland maps, if NWI maps are not available).

Hydrostatic Test Water

New § 380.12(d)(6) relates the information required when pipelines discharge hydrostatic test water.

Comments: Enron and INGAA contend that a permit is required from state and federal agencies other than the Commission and that such testing is not

done until a pipeline is installed. They argue that such information is not necessary, is not the Commission's responsibility and that the requirement should be deleted from Resource Report 2. Alternatively, Enron requests that such information not be included in the minimum checklist, since such testing does not generally occur until just prior to placing facilities in-service.

Commission Response: While it is true that there are other agencies which have responsibilities with respect to hydrostatic test water, that does not alleviate the Commission's responsibility under NEPA to know the effects of projects under its jurisdiction. Further, the Commission can not simply defer to what another agency will do in a particular case unless it has some independent knowledge of the potential impact. Further, we note that the minimum filing requirements do not include any information related to hydrostatic test water, although such information is needed to complete the EA or EIS.

Terrestrial Habitats

New § 380.12(e)(2), part of Resource Report 3, Fish, wildlife, and vegetation, requires a description of terrestrial habitats, including wetlands, that might be affected by a proposed project.

Comments: Interior states that the first sentence of § 380.12(e)(2) should be modified to read: "Describe terrestrial habitats, including wetlands, typical wildlife habitats, and rare or unique habitats, that might be affected by the proposed action."

Commission Response: We agree and will modify section 380.12(e)(2) to read: "* * * typical wildlife habitats, and rare, unique or otherwise significant habitats, that might * * *".

Aquatic and Terrestrial Species

New § 380.12(e)(4), part of Resource Report 3, Fish, wildlife, and vegetation, requires a description of the impact of construction and operation on aquatic and terrestrial species and their habitats.

Comments: INGAA states that while general information can be provided at the time of filing, detailed information cannot be furnished until all state and federal agency work is done and field survey work is completed. It contends that requiring detailed information at the time of filing could delay a project by more than one year. INGAA recommends that the checklist require general information at the time of filing and the submission of more detailed information at a later date.

Response: The only site-specific information required by § 380.12(e)(4) deals with significant habitats and

communities. These areas will normally be known to state and local agencies which must be consulted by the applicant. In most cases, surveys are not needed to satisfy the requirements of this paragraph, general information will suffice. However, surveys should be done where the state or local agencies identify species with which they are concerned. While, the checklist does not require these surveys to be complete at the time of filing, the Commission sees no reason why the pipeline should not have that information available at the time of filing. We will modify the last sentence of this paragraph by replacing the comma after "vegetation" with a period and the remainder of the sentence will read:

Surveys may be required to determine specific areas of significant habitats or communities of species of special concern to state or local agencies.

Endangered or Threatened Species

New § 380.12(e)(5) requires an applicant to identify all federally listed or proposed endangered or threatened species that potentially occur in the vicinity of a proposed project.

Comments: Interior states that the first sentence of § 380.12(e)(5) should be modified to read:

Identify all federally-listed or proposed endangered or threatened species and critical habitat that * * *

Commission Response: We agree and will also remove the reference to state species in this section, since it duplicates the reference in § 380.12(e)(4). We will modify § 380.12(e)(5) to read:

* * * or threatened species and critical habitat that potentially occur in the vicinity of the project.

Cultural Resources:

New § 380.12(f), Resource Report 4, sets forth guidelines for pipelines relating to filing cultural resource information.

Comments: Enron wants the Commission to remove reference to "OPR's Guidelines for Reporting on Cultural Resources Investigations," stating that the guidelines should not cited in the regulations.

INGAA contends that the report should not be required for projects within previously disturbed areas, such as an existing yard, consistent with current appendix G. Williams agrees and states that segmented projects should allow phased completion of reports.

Williams states that § 380.12(f)(2)(ii) discusses procedures if landowners deny access to private property and

certain areas are not surveyed. In that event, the unsurveyed area must be identified and supplemental surveys or evaluations conducted after access is granted. INGAA believes that § 157.8 provides the same procedures for all Resource Reports, i.e., if a landowner denies access, there is no requirement to supply the info at the time of filing and the applicant may supplement reports when access is granted. INGAA seeks clarification on this point.

Section 380.12(f)(2) states that SHPO and land management agency comments must be filed with the initial application. Subsection(f)(2)(i) states that any SHPO and land management agency comments not available at the time of filing may be filed separately. Enron suggests adding the phrase "if available" at the end of that section.

National Fuel asks that Section IX.A of OPR's Guidelines for Reporting on Cultural Resources Investigations be modified to eliminate the need for at least 25 feet separation between a bore or directional drill and the resource to qualify as avoiding the resource.

Williston Basin believes that the unanticipated discovery plan required in § 380.12(f)(1)(i) should only be provided if consultation with the local SHPO indicates likelihood of a discovery. Williston Basin states that this is consistent with the Historic Preservation requirements of § 800.11(a) of Title 36 of the Code of Federal Regulations.

The Council states that § 380.12(f)(2)(ii) indicates that a certificate can be issued even though access has been denied to certain project lands. It argues that the rule need to make an unequivocal statement that issuance of the certificate will not preclude consideration of a range of alternatives where access has been denied to certain lands.

The Council also contends that there is no mechanism to carry the initial consultations mentioned in § 380.12(f)(3) through to consideration of avoidance or mitigation.

Commission Response: The reference to the Guidelines for Reporting on Cultural Resources Investigations does not create a requirement that these procedures be used. They are simply a set of guidelines to assist the applicant in preparing material for the Commission, the SHPO, and others. The Commission believes that if the applicant follows these guidelines the entities being consulted will likely have all they need to complete their statutory obligations in a timely fashion. There will certainly be situations where portions of the guidelines are not applicable. However, what is ultimately

required will be decided by the Commission and the consulted entities.

INGAA's comment concerning previously disturbed areas is consistent with the change to § 157.206, which indicates that the standard environmental conditions for blanket filings are not required if there is no ground disturbance, among other things. If there is no ground disturbance, the report might consist simply of the applicant's statement that there will be no ground disturbance.

If the disturbance is similar to the previous ground disturbance, the report might consist of photographs of the area and SHPO agreement that the ground disturbance does not constitute a concern. However, since it is difficult to encompass the many situations that could arise dealing with prior disturbance and the many exceptions possible, the Commission will still require that the applicant obtain the appropriate SHPO's agreement in order to avoid the requirement for a more detailed report. Of course, as with all the resource reports, the pipeline has the option to explain the absence of material based on the nature of the project. It will then be up to the staff to determine if the reason is adequate.

Generally, segmented projects are not allowed under NEPA or the National Historic Preservation Act (NHPA). There is either one project or a group of independent, largely unrelated projects. The reason in the case of NEPA is to keep other agencies from splitting a project into several isolated parts so that the individual impacts will be minimal for each part of a project but the aggregate impact of all the parts might be significant. If the applicant can show that the filing is for a group of individual projects, then it might be possible to accept filings in stages. However, even in this case, it will generally depend on the requested timing of the approval. It is the Commission's experience that this is rarely acceptable. Of course, reports for the areas for which access is denied will come in later.

Requiring survey reports to be filed with the application is intended to ensure the speediest review possible.

Section 157.8 provides that a filing will not be rejected if surveys or other information can not be obtained because access was denied to the property. This applies to all of the information, not just cultural resources. Section 380.12(f)(2) should read: "* * * written comments from SHPOs, THPOs, and land-management agencies, if available, must be filed with the initial application."

We will not change the requirement that a bore be at least 25 feet from all

portions of a site in order to qualify as an "avoidance." There have been enough instances of directional drills or bores failing to miss or otherwise adversely affecting cultural resources that this distance represents the minimum we are willing to accept. This does not mean a directional drill that is closer cannot be done, it simply means that we want to retain the option of providing the Advisory Council on Historic Preservation an opportunity to comment on the effects that might result from a failed drill.

We agree with Williston Basin and will remove § 380.12(f)(1)(i). Section 380.12(f)(2) should begin: "The Documentation of initial cultural resource consultation, * * *". In appendix A, the box for Resource Report 4 should be modified by deleting the checklist item for "Unanticipated Historic Properties and Remains."

As to the Council's comment regarding issuing certificates even though access has been denied to certain lands, we will change the end of the first sentence in § 380.12(f)(2)(ii) to read: "* * * supplemental surveys or evaluations shall be conducted after access is granted."

The Council also comments that there is no mechanism to carry the initial consultations mentioned in § 380.12(f)(3) through to consideration of avoidance or mitigation. It misunderstands the intent of the rule. The Commission wants an applicant to obtain a certain level of information regarding cultural resources prior to filing the application. Once the filing is made, we will direct the further analysis and consultations as required on a case-by-case basis, including consideration of avoidance and mitigation.

Geological Resources

New § 380.12(h)(6), part of Resource Report 6, geological resources, requires various information with respect to underground storage facilities.

Comments: NGAA contends that this section requires certain information which expands what is currently required to be filed. For example, it refers to § 380.12(h)(6)(i), which requires information on how the applicant would control and monitor drilling activity of others within the storage field and buffer zone, and § 380.12(h)(6)(ii), which requires information on how the applicant would monitor potential effects of the operation of adjacent storage or production facilities on the proposed facilities. INGAA states that applicants have little control over information on the drilling activities of other operators within a storage field, since adjacent

facilities information would generally be highly confidential. Similarly, Enron states that the information required in these sections is beyond the control of the storage operator. INGAA recommends that this information be provided to the extent it is within the control of the applicant.

Commission Response: We note that the requirement is to provide a discussion of what steps the applicant would take to determine or ensure the security of its facility from the actions of others. It does not require any information about other producers or operators. We believe this is necessary to ensure that safe operation of the applicant's own facility.

Mitigation Measures

New § 380.12(i)(5), which is part of Resource Report 7, Soils, requires pipelines to describe proposed mitigation measures and compare them with staff's Upland Erosion Control, Revegetation and Maintenance Plan (Plan).

Comments: Enron and INGAA raise the same comments here as previously discussed in Resource Report 2, § 380.12(d)(2). They state that the Commission should accept a general description of the mitigation measures that will be employed and a schedule for providing more site-specific mitigation measures.

National Fuel proposes that Section VII.3(g) of the Plan be revised.³¹

Commission Response: The comments by INGAA and Enron track their comments with respect to the WWCMP in § 380.12(d)(2). Our response is the same.

Land Use

New § 380.12(j), Resource Report 8, sets out the requirements for Land use, recreation and aesthetics.

Comments: Enron and INGAA are concerned with the requirement to describe land use beyond the immediate adjacent property up to 0.25 mile from the project. They argue that the requirement should be revised to describe lands beyond the immediately adjacent lands only when they involve environmentally sensitive areas.

INGAA states that § 380.12(j)(3) requires an applicant to identify all planned development by milepost and the time frame for construction. It states that current appendix G only requires listing planned development, if known. INGAA and National Fuel request that the regulation be clarified to require information only on planned development on file with local planning

boards or recorded county records. They argue that it can be misleading to interview each affected landowner about possible development plans that have not progressed to the point of filing.

Enron requests that information on contract and pipe storage yards in § 380.12(j)(1) and planned residential and commercial business development in § 380.12(j)(3) be removed from the minimum checklist as not generally available at the time an application is filed.

Enron and INGAA object to the requirement in § 380.12(j)(10) to describe ROW compensation. They argue that this requirement is not currently required, and will have harmful effects. INGAA contends that most ROW issues are resolved on a mutually agreeable basis between the pipeline and landowner. Where agreement cannot be reached, compensation is set in state or federal court based on local valuation. INGAA contends that it is highly prejudicial for a pipeline to speculate on property compensation values at the time an application is filed. Such statements could make it more difficult to resolve ROW matters by settlement. This requirement could jeopardize negotiations with other landowners. INGAA recommends that this requirement be eliminated or clarified to discuss the general process to acquire easements by purchase or the exercise of eminent domain.

Duke Energy shares the same concern. It contends that compensation plans could be stated in general terms since actual compensation is site-specific. Duke Energy argues that the regulation should not require a company to select a forum (state or federal court) for the eminent domain process at such an early stage, nor should a detailed description of the process be required. This is because it may be unclear at time of filing if exercise of eminent domain will be required.

The Council states that § 380.12(j)(4) should specifically reference and include "traditional cultural properties."

Commission Response: The intent of the land use Resource Report is to describe land use adjacent to the ROW and to make sure the applicant and the Commission are aware of important areas which, although not crossed, might nonetheless be affected by the project. To clarify this intent, we will make several changes to the proposed language. We will change the second sentence in the introduction to § 380.12(j) as follows: "* * * describe the existing uses of land on, and (where

specified) within 0.25 mile of, the proposed project * * *". We will add the specifications to paragraphs (3), (4), (6), and (8) as follows: In (3): "Describe planned development on land crossed or within 0.25 mile of proposed facilities, the time frame * * *;" in (4): At the end: "* * * agencies or private preservation groups. Also identify if any of these areas are located within 0.25 mile of any proposed facility;" in (6): "Describe any areas crossed by or within 0.25 mile of the proposed pipeline or plant and operational sites which are included in, or are designated * * *;" in (8): "Describe the impact the project will have on present uses of the affected area as identified above, including * * *"

We accept INGAA's comment regarding planned development. The intent was to obtain the same material currently included in Appendix G. We will add a new sentence to the end of § 380.12(j)(3) that will read: "Planned development means development which is on file with the local planning board or the county." The following words should be added after the words "time frame" in the first sentence so it will read: "* * * time frame (if available) for such development * * *".

The applicant should provide its best estimate of what pipeyards and other areas would be required with the application and bring it up to date as better data becomes available. Since we are clarifying the requirement for development information to make it clear that the applicant need only check local and county records to determine whether such development is planned, we will not remove this requirement from the minimum filing requirements. The Commission needs this information to make a responsible decision on the proposed facility location.

Duke Energy and INGAA believe that § 380.12(j)(10) requires information on the specific dollar amounts of landowner compensation and that the requirement to provide this information is not currently in appendix G. The last sentence of § 380.12(j)(10) comes verbatim from appendix G. However, it does not ask for and there is no intent to have specific amounts of compensation provided. The applicant should provide a discussion of what would normally be compensated, and the process for determining the amount of compensation on a state-by-state-basis.

The Council states that § 380.12(j)(4) should specifically reference and include "traditional cultural properties." To the extent this information is readily available to the public we will make this addition.

³³ See National Fuel's comments, at 7.

However, since it is very likely that the information will not be available because of tribal concerns, we prefer to address this in Resource Report 4, where we have specified we expect privacy to be maintained for resources that are sensitive. We will modify § 380.12(j)(4) to read: “* * * or registered natural landmarks, Native American religious sites and traditional cultural properties to the extent they are known to the public at large, and reservations, * * *.”

Air and Noise Quality

New §§ 380.12(k)(2), (3) and (4), part of Resource Report 9, Air and noise quality, require information regarding the noise impact of compression and LNG facilities.

Comments: INGAA states that § 380.12(k)(2)(ii) requires a noise survey at the property line of the compressor, which is unnecessary and not required in current appendix G. It contends that the noise level restriction is only applicable to the nearest noise-sensitive area, which is the area of concern. Thus, no noise survey at the property line should be required. Enron agrees that this requirement should be eliminated.

Section 380.12(k)(3) requires detailed calculations for emission rates and the impact on air quality. INGAA is concerned that this requirement is duplicative of work done in obtaining air permits from the state and/or federal permitting agency. Such permits are not finalized until specific compressor models are selected. In many cases, all of the factors needed to obtain the necessary air permits are not known until after a certificate is issued by the Commission. Enron and INGAA requests that the Commission's current practice continue, which allows pipelines, at the time of filing, to provide estimates for a compressor unit's potential emissions of pollutants that may effect ambient air quality.

Williams states that providing full load noise data may not always be operationally feasible, and that the Commission should allow flexibility to accommodate limitations.

Enron and INGAA are concerned that § 380.12(k)(4)(i) does not appear to accommodate noise calculations generated by a computer model, such as AGA Sound. Compliance with this section would require pipelines to duplicate a computer-generated process with a redundant set of manual calculations. INGAA requests that the step-by-step supporting calculations be eliminated and instead allow for the generation of noise calculations using the latest available technologies.

Enron and INGAA both contend that § 380.12(k)(4)(ii) requests certain information, such as the manufacturers name and model number of new compressor units, that should be removed from the minimum checklist, since this information is not generally available at the time the application is filed. They suggest that the minimum checklist only require identification of a range of feasible units, since pipelines generally do not request bids for units so far in advance of construction. This section also requires pipelines to provide noise data with and without noise attenuators. Since some manufacturers provide this data and some do not, INGAA requests that the Commission clarify that the applicant is only obligated to provide the information available at the time of filing.

Enron raises the same concern about the 55dB(A) noise limit in § 380.12(k)(4)(v)(A) that it raised in § 157.206(b)(5). It requests that the Commission continue to apply the limit only to new or modified units.

Commission Response: INGAA's comment claims incorrectly that the requirement for a property line noise survey in § 380.12(k)(2)(ii) is unnecessary and not required in current appendix G. In fact this requirement is a direct quote from the third sentence in section (9)(b) of appendix G. The survey is needed to help in determining the directionality of the noise emitted by the station as well as its attenuation in the direction of the noise sensitive areas.

INGAA requests that § 380.12(k)(3) be modified to allow estimates of air pollutant emissions. This is, in fact, exactly what the paragraph does. The first word of paragraph 3 is “estimate.” However, even if the data are estimates the calculations involved in those estimates must be provided in detail so that the Commission can follow how the estimates were derived.

The estimates are required for both existing (where appropriate) and proposed units. The information for existing units is in the existing permits for those units. With respect to the comment pertaining to duplication of effort, as with many of the environmental issues addressed by NEPA there are agencies which have specific responsibilities under other statutes, but that does not reduce the Commission's responsibility to know what the environmental impact of a project will be. This need to know does not in any way usurp another agency's jurisdiction. To the extent that the applicant has already initiated whatever review process may be required at other

agencies, the Commission attempts to dovetail its analysis as a “lead Federal agency” with the review of the cooperating agencies.

Williams is concerned that it may not be operationally feasible to obtain full load data. If this is the case the applicant should provide data taken as close to full load as possible and extrapolate to full load. As with any material specified in the resource reports the applicant should provide the best information available and indicate the constraints it faced in attempting to provide what was required. If that is not acceptable the staff will so inform the applicant.

INGAA is concerned that § 380.12(k)(4)(i) may not allow computer modeling and may require manual computations. This is not the case. However, if a computer model is used the filing must specify the program used and include the input data and all assumptions made in the model. We will modify § 380.12(k)(4)(i) to read: “Include step-by-step supporting calculations or identify the computer program used to model the noise levels, the input and raw output data and all assumptions made when running the model, far-field sound level data for maximum facility operation, and the source of the data.”

INGAA claims that the applicant frequently does not have specific information on the compressor units to be used for the project. We have found that more and more applications do in fact have this information. In fact, the generally long lead time required to order compressors means that an applicant who is interested in obtaining quick approval so its project can be placed in service quickly will have to have ordered compressors, or at least decided on what it intends to order prior to filing. Consequently, we will not change the requirement. However, as with all of the resource report material the applicant may give reasons why certain information is missing and provide a schedule for its submittal and the staff will determine if the filing is still acceptable.

As to the 55dB(A) noise level, the intent is to have the noise limit apply to the new or modified compressor units. In order to clarify this, we will modify § 380.12(k)(4)(v)(A) to read: “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 sound level (L_{dn}) of 55dBA at any pre-existing noise-sensitive area (such as schools, hospitals, or residences).

Alternatives

New § 380.12(l), Resource Report 10, requires pipelines to describe alternatives to projects and compare the environmental impacts of such alternatives to those of the proposal.

Comments: INGAA and Williams object to the requirement in § 380.12(l)(3) that alternative route information be provided at the same level of detail as the proposed route at the time of the application. They want the Commission to clarify that generalized information on alternative routes can be provided at the time of filing while additional information is collected.

The Council states that the minimum filing requirements of Resource Report 4 (Cultural Resources) and Resource Report 10 (Alternatives) need to be coordinated.

Commission Response: The alternatives referred to in § 380.12(l) are alternatives the applicant considered in coming up with its proposal. The alternatives in § 380.12(l)(2) are not to be discussed in the same detail as the filed location since they were rejected in the initial screening. The applicant must, however, provide sufficient discussion for the Commission to understand why the alternatives were rejected. The alternatives in § 380.12(l)(3) should be discussed in more detail. Nevertheless, the only explicit requirement for material comparable to the proposed route is the maps showing the locations. The rest of the discussion does not require the same level of detail as long as tables of comparative environmental data can be provided. These tables should show the environmental reasons, if any, for not selecting the alternative and therefore should concentrate on the environmental features important to a comparison of the locations. The checklist clearly indicates that the same level of detail is not required at the time of filing.

As to the Council's request for coordination, none is needed. The contents of resource report 10 do not necessarily assume detailed on the ground survey work. The purpose is for the Commission to decide if more detailed review of an alternative is required. The Commission does expect that the applicant will have determined the proposed facility locations based on its knowledge of the presence or absence of cultural resources. In other words, the proposed route will already minimize the number of cultural resources affected. Under these circumstances there is no reason to

provide the same level of coverage to alternative routes.

If there are cultural resources that fall under the consideration of section 106 that will still be affected by the proposed locations, then the Commission will determine the need to address alternative routes to avoid the effects. Avoidance is just another, albeit very important, mitigation measure available for consideration.

Section 380.13 Compliance with the Endangered Species Act

New §§ 380.13(b)(2)(i) and (iii) set forth the consultation requirements for compliance with the Endangered Species Act.

Comments: Williams argues that the time frame for which the U.S. Fish and Wildlife Service (FWS) has granted blanket clearances should govern, rather than putting a one-year limitation on such clearances.

Interior states that § 380.13(b)(2)(iii) should be modified to read:

The consulted agency will provide a species and critical habitat list or concur with the species list provided within 30 days of its receipt of the initial request. In the event that the consulted agency does not provide this information within this time period, the project sponsor may notify the Director, OPR, and follow the procedures in paragraph (c) of this section.

Commission Response: The reason the specifications in §§ 380.13(b)(2)(i) and (ii) use a one-year expiration for FWS clearances is that the FWS regulations specify that informal consultation must be reinitiated within a year if the project hasn't started yet. The concern is that since new species are listed on a fairly regular basis, a clearance issued more than a year in advance may no longer be valid.

We agree with Interior's proposed change to § 380.13(b)(2)(iii) and will also clarify the intent of the last sentence by modifying the section to read:

(iii) The consulted agency will provide a species and critical habitat list or concur with the species list provided within 30 days of its receipt of the initial request. In the event that the consulted agency does not provide this information within this time period, the project sponsor may notify the Director, OPR, and continue with the remaining procedures of this section.

Section 380.13(b)(3)(ii)(B)

Comments: Interior requests that § 380.13(b)(3)(ii)(B) be modified to read:

"That the project is not likely to adversely affect a listed species or critical habitat."

Commission Response: It is not clear what the intent of this comment is,

since the NOPR did not propose a § 380.13(b)(3)(ii)(B). However, if Interior's intent was to remove the reference to a time frame for response from the consulted agency because it is redundant with the similar statement in § 380.13(b)(2)(iii), we will accept that comment. We will also modify § 380.13(b)(3) to clarify the effect of what the NOPR referred to as a "finding of no impact." Section 380.13(b)(3) will read as follows:

(3) *End of informal consultations.* (i) At any time during the informal consultations, the consulted agency may determine or confirm: (A) That no listed or proposed species, or designated or proposed critical habitat, occurs in the project area; or (B) that the project is not likely to adversely affect a listed species or critical habitat. (ii) If the consulted agency provides this determination or confirmation then no further consultation is required.

Informal Consultations

Comments: Interior states that § 380.13(b)(5)(i) should be modified to read:

If the consulted agency initially determines, pursuant to the informal consultations, that a listed species or its designated critical habitat may occur in the project area, the project sponsor must continue informal consultations with the consulted agency to determine if the proposed project may affect the species or designated critical habitat.

Commission Response: We agree with Interior and will modify the first sentence as suggested.

Formal Consultations

Comments: Interior states that § 380.13(d)(3) should be modified to read:

The Formal Consultation period concludes within 90 days of initiation, and the final biological opinion will be delivered within 45 days thereafter. The consultation can not be extended for more than 60 days without the consent of the project sponsor (50 CFR 402.14(e)).

Commission Response: We believe that this modification does not differ from the proposed wording of §§ 380.13(d)(3) and (4), therefore it will not be used.

Section 380.14 Compliance with the National Historic Preservation Act

New § 380.14 concerns compliance with the National Historic Preservation Act.

Comments: Duke Energy and INGAA state that the proposal requires pipelines to consult with State Historic Preservation Officers (SHPOs). They argue that if SHPOs issue blanket clearances for a certain time period, as are often issued by the FWS and

National Marine Fisheries Service for compliance with the Endangered Species Act, the rule should not require consultations. They contend that this position is consistent with the proposal in § 380.13(b)(2).

Williams shares the same concern and proposes that § 380.14(a)(3) provide for blanket clearances. Williams believes that five year clearances are appropriate in the context of cultural resources when it may not be valid in the context of endangered species. It states that the status of endangered species and their critical habitat can change with some frequency, but cultural resources are in-place and static.

The Council makes several comments specific to § 380.14. It claims that the proposed rule does not distinctly spell out the Commission's nondelegable responsibility for decision-making under the NHPA. It believes it is unclear if all reports listed in § 380.14 and the guidance, including the Treatment Plan, are required at filing. It also points out that § 380.14 fails to reference the Council's regulations at 36 CFR part 800. In line with its earlier comments concerning involvement of Indian tribes, it states that Indian tribes must be consulted whenever "an undertaking may affect properties of historic value to an Indian tribe on non-Indian lands." (36 CFR 800.1(c)(iii)). It suggests that terms of art such as "undertaking" should be defined. Finally, the Council asks the intent of § 380.14(d).

Commission Response: We do not currently, nor do we propose to set any time limits on the acceptability of letters demonstrating consultation with the SHPO unless the SHPO sets time limits. If the SHPO has provided consultation comments for a category of undertakings, the applicant may submit that letter as documentation of consultation. We will look at the letter and make sure it applies to the type of project proposed and that there are no circumstances which require Native Americans or others to be consulted, or other material to be filed.

We disagree with the Council that our responsibilities are not properly identified. In the first sentence of section 380.14 the regulation clearly states our responsibility to "take into account the effect of a proposed project on any historic property and to afford the Advisory Council on Historic Preservation (Council) an opportunity to comment on the undertaking." We go on to indicate that the project sponsor will assist us in this endeavor. We believe this is adequate recognition of our responsibilities under section 106.

We believe that the rule clearly identifies filing requirements in at least

two places. First, Appendix A, which contains the minimum filing requirements, clearly states that "Overview/Survey Reports" are required. This is also explicitly stated at § 380.12(f)(2). Second, § 380.12(f)(3) explicitly states that the Evaluation Report and Treatment Plan must be filed before a final certificate is issued.

We will add specific reference to the Council regulations in § 380.14(a) to read:

"* * * obligations under NHPA section 106 and the implementing regulations at 36 CFR part 800 by following the procedures at* * *"

We already have included Indian tribes in § 380.14 (a) and § 380.14(d)—and not just for tribal lands, but as interested parties.

"Undertaking" is really the only term of art used in the rule itself. All of the terms which may need definition are found in the guidelines and are either defined there or are stated to be as defined in 36 CFR part 800. We will replace the term "undertaking" in the rule since it may be unclear and implies, incorrectly, that all projects filed at the Commission are undertakings as defined in 36 CFR 800.2. We will modify § 380.14(a) to read:

"* * * opportunity to comment projects if required under 36 CFR part 800. The project sponsor,* * *"

The comment questioning the intent of § 380.14(d) refers to proposed § 380.14(a)(4) and overlooks the fact that it lists the Council as one of the parties to the kind of "agreement document" under consideration. There is no reason to refer to the Council's comment when, in fact, such a document could very well incorporate the Council's comments implicitly. If it didn't, we presume that the Council would have made sure that getting such comments was explicitly mentioned. We contemplated that the Council would be a signatory to such an agreement.

Section 380.15 Siting and maintenance requirements.

New § 380.15 reflects the facility siting guidelines currently at § 2.69.

Comments: INGAA contends that the Commission should continue to treat these provisions as guidelines. It believes that a rigid application of these provisions could limit the balancing necessary to properly site a pipeline facility.

The Council states that in § 380.15 and elsewhere, wording should be revised so that the efforts to avoid as well as minimize effects to historic properties can be considered.

Commission Response: INGAA is concerned § 380.15 now includes the word "requirements" in the title and therefore it might be more restrictive. The title has changed but the wording is basically the same. The current regulations at § 157.14(a)(6–c) requires that the applicant swear that these guidelines have been adopted and will be issued to the appropriate personnel and that the applicant provide a description of how they will be implemented. The new section avoids the need for a separate sworn exhibit, but adds no different obligation on the applicant. In the future, as now, the applicant is expected to use the guidelines. In addition, the wording continues to specify that the guidelines are to be used as practicable. Of course, the applicant can be asked to explain its failure to follow the guidelines and justify a decision that some part of them is not practical.

We agree with the Council that avoidance of historic properties, where practical, is extremely important. That is why the proposed rule included this wording at § 380.15(d)(2). However, in response to this comment we will add similar wording at the lead-in to this section at § 380.15(a). We will change § 380.15(a) to read

"* * * undertaken in a way that avoids or minimizes effects on scenic,* * *".

On further review, we note that old § 2.69(a)(3)(vi) was inadvertently left out of § 380.15. We will include a slightly modified version at new § 380.15(f)(5).

G. Part 385—Rules of Practice and Procedure

Part 385 sets forth the Commission's Rules of Practice and Procedure. The Commission is proposing to revise certain of the regulations under subpart T relating to the rejection of filings and to electronic filing of applications.

Subpart T—Formal Requirements for Filings in Proceedings Before the Commission

Section 385.2001—Filings (Rule 2001)

Consistent with our proposal to reject patently deficient filings under § 157.8 and § 157.205(d), the Commission proposes to modify § 385.2001(b)(3), dealing with rejection of filings, to provide for a letter of rejection indicating the reasons for rejection.

IV. Information Collection Statement

The Office of Management of Budget's (OMB) regulations in 5 CFR 1320.11 require that it approve certain reporting and record keeping requirements (collections of information) imposed by an agency. 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 failing to respond to these collections of information unless the collections of information display valid OMB control numbers.

The collections of information related to the subject of this Final Rule fall under FERC-537, Gas Pipeline Certificates: Construction, Acquisition,

and Abandonment (OMB Control No. 1902-00060); FERC-539, Gas Pipelines Certificate: Import/Export Related (OMB Control No. 1902-0062); and FERC-577, Environmental Impact Statement (Pipeline Certificate) (OMB Control No. 1902-0128).

Under this Final Rule, the overall burden of filing will be reduced based on the elimination of certain filings by the rule. Further, the burden will be reduced by the elimination of the requirement to report all but cost

information for prior notice activity in the annual report. On the whole, the Commission estimates that the revised reporting schedule will reduce the existing reporting burden by a total of 8,284 hours. Therefore, the Commission believes the overall burden on the industry will be lessened over time by the changes in the Final Rule.

The burden estimates for complying with this proposed rule are as follows:

PUBLIC REPORTING BURDEN
[Estimated Annual Burden]

Data collection	No. of respondents	No. of responses	Hours of Response	Total annual hours
FERC-537	50	11.2	245.82	137,660
FERC-539	12	1	218	2,616
FERC-577	70	16.8	154	181,720

The total annual hours for collection (including record keeping) is estimated to be 321,996.

Information Collection costs: The average annualized cost for all respondents is projected to be the following:

Data collection	Annualized capital/start-up costs	Annualized costs (operations & maintenance)	Total annualized costs
FERC-537	\$30,000	\$7,189,717	\$7,219,717
FERC-539	7,200	136,639	143,829
FERC-577	0	9,494,751	9,494,751

The total annualized costs for collection is estimated to be \$3,313,844.

None of the comments received in response to the NOPR specifically addressed the reporting burden or cost estimates. Further, we note that, as required under OMB's regulations, the Commission submitted the NOPR to OMB for review. OMB took no action on the NOPR. However, in response, OMB stated that the Commission should resubmit its information request when it takes final action.

Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Michael Miller, Office of 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, Attention: Desk Officer for the Federal Energy Regulatory Commission, 725 17th Street, NW, Washington, DC, 20503, Phone: 202-395-3087, fax: 202 395-7285.

V. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.³⁴ The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.³⁵ The actions taken here 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 sales, exchange, and transportation of natural gas that requires no construction of facilities.³⁶ Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

³⁴ 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).

³⁵ 18 CFR 380.4.

³⁶ See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)³⁷ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations adopted here impose requirements only on interstate pipelines, which are not small businesses. Accordingly, pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations adopted herein will not have a significant adverse impact on a substantial number of small entities.

VII. Effective Date

These regulations become effective June 14, 1999. The Commission has concluded, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.

³⁷ 5 U.S.C. 601-612.

List of Subjects

18 CFR Part 2

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

18 CFR Part 153

Exports, Imports, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 157

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

18 CFR Part 284

Continental shelf, Incorporating by reference, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 380

Environmental impact statements, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping. By the Commission.

David P. Boergers,
Secretary.

In consideration of the foregoing, the Commission proposes to amend parts 2, 153, 157, 284, 375, 380, 381 and 385, Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 2—GENERAL POLICY AND INTERPRETATIONS

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

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

§ 2.1 [Amended]

2. In § 2.1, paragraph (a)(1)(viii)(A)–(D) are removed.

3. In § 2.55, paragraph (a) is revised; (b)(1)(ii) is revised; (b)(4)(i) is removed and (b)(4)(ii) redesignated as (b)(4); and paragraph (d) is removed and reserved, to read as follows:

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

* * * * *
(a) *Auxiliary installations.* (1) Installations (excluding gas compressors) which are merely auxiliary or appurtenant to an

authorized or proposed transmission pipeline system and which are installations only for the purpose of obtaining more efficient or more economical operation of the authorized or proposed transmission facilities, such as: Valves; drips; pig launchers/receivers; yard and station piping; cathodic protection equipment; gas cleaning, cooling and dehydration equipment; residual refining equipment; water pumping, treatment and cooling equipment; electrical and communication equipment; and buildings.

(2) *Advance notification.* If auxiliary facilities are to be installed:

(i) On existing transmission facilities, then no notification is required;

(ii) On, or at the same time as, certificated facilities which are not yet in service, then a description of the auxiliary facilities and their locations must be provided to the Commission at least 30 days in advance of their installation; or

(iii) On and at the same time as facilities that are proposed, then the auxiliary facilities must be described in the environmental report specified in § 380.12 or in a supplemental filing while the application is pending.

(b) * * *

(1) * * *

(ii) The replacement facilities will have a substantially equivalent designed delivery capacity, will be located in the same right-of-way or on the same site as the facilities being replaced, and will be constructed using the temporary work space used to construct the original facility (See appendix A to this part 2 for guidelines on what is considered to be the appropriate work area in this context);

* * * * *

(d) [Reserved]

§ 2.69 [Removed]

4. § 2.69 is removed and reserved.

§ 2.102 [Removed]

5. Section 2.102 is removed and reserved.

6. New Appendix A to part 2 is added to read as follows:

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

These guidelines shall be followed to determine what area may be used to construct the replacement facility. Specifically, they address what areas, in addition to the permanent right-of-way, may be used.

Pipeline replacement must be within the existing right-of-way as specified by § 2.55(b)(1)(ii). Construction activities for the replacement can extend outside the current permanent right-of-way if they are within the temporary and permanent right-of-way and

associated work spaces used in the original installation.

If documentation is not available on the location and width of the temporary and permanent rights-of-way and associated work space that was used to construct the original facility, the company may use the following guidance in replacing its facility, provided the appropriate easements have been obtained:

a. Construction should be limited to no more than a 75-foot-wide right-of-way including the existing permanent right-of-way for large diameter pipeline (pipe greater than 12 inches in diameter) to carry out routine construction. Pipeline 12 inches in diameter and smaller should use no more than a 50-foot-wide right-of-way.

b. The temporary right-of-way (working side) should be on the same side that was used in constructing the original pipeline.

c. A reasonable amount of additional temporary work space on both sides of roads and interstate highways, railroads, and significant stream crossings and in side-slope areas is allowed. The size should be dependent upon site-specific conditions. Typical work spaces are:

Item	Typical extra area (width/length)
Two lane road (bored).	25–50 by 100 feet.
Four lane road (bored).	50 by 100 feet.
Major river (wet cut)	100 by 200 feet.
Intermediate stream (wet cut).	50 by 100 feet.
Single railroad track ..	25–50 by 100 feet.

d. The replacement facility must be located within the permanent right-of-way or, in the case of nonlinear facilities, the cleared building site. In the case of pipelines this is assumed to be 50-foot-wide and centered over the pipeline unless otherwise legally specified.

However, use of the above guidelines for work space size is constrained by the physical evidence in the area. Areas obviously not cleared during the original construction, as evidenced by stands of mature trees, structures, or other features that exceed the age of the facility being replaced, should not be used for construction of the replacement facility.

If these guidelines cannot be met, the company should consult with the Commission's staff to determine if the exemption afforded by § 2.55 may be used. If the exemption may not be used, construction authorization must be obtained pursuant to another regulation under the Natural Gas Act.

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

7. The authority citation for part 153 continues to read as follows:

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

8. In § 153.8, paragraph (a)(7) is revised to read as follows:

§ 153.8 Required exhibits.

(a) * * *

(7) *Exhibit F.* (i) An environmental report as specified in § 380.3 and § 380.12 of this chapter. Applicant must submit all appropriate revisions to Exhibit F whenever route or site changes are filed. These revisions should identify the specific differences resulting from the route or site changes, and not just provide revised totals for the resources affected; and

* * * * *

9. In § 153.21, paragraph (b) is revised to read as follows:

§ 153.21 Conformity with requirements.

* * * * *

(b) *Rejection of applications.* If an application patently fails to comply with applicable statutory requirements or with applicable Commission rules, regulations, and orders for which a waiver has not been granted, the Director of the Office of Pipeline Regulation may reject the application within 10 days of filing as provided by § 385.2001(b) of this chapter. This rejection is without prejudice to an applicant's refiling a complete application. However, an application will not be rejected solely on the basis of: Environmental reports that are incomplete because the company has not been granted access by the affected landowner(s) to perform required surveys, or environmental reports that are incomplete, but where the minimum checklist requirements of part 380, appendix A of this chapter have been met. An application that relates to an operation, service, or construction concerning which a prior application has been filed and rejected, shall be docketed as a new application. Such new application shall state the docket number of the prior rejected application.

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

10–11. 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.

12. In § 157.6, paragraphs(a) is revised; the heading of paragraph (b) is revised; a new sentence is added to paragraph (b)(7) and a new paragraph (b)(8) is added to read as follows:

§ 157.6 Applications; general requirements.

(a) *Applicable rules—(1) Submission required to be furnished by applicant under this subpart.* Applications, amendments thereto, and all exhibits and other submissions required to be furnished by an applicant to the Commission under this subpart must be submitted in an original and 7 conformed copies. To the extent that data required under this subpart has been provided to the Commission, this data need not be duplicated. The applicant must, however, include a statement identifying the forms and records containing the required information and when that form or record was submitted.

(2) The following must be submitted in electronic format as prescribed by the Commission:

- (i) Applications filed under this part 157 and all attached exhibits;
- (ii) Applications covering acquisitions and all attached exhibits;
- (iii) Applications for temporary certificates and all attached exhibits;
- (iv) Applications to abandon facilities or services and all attached exhibits;
- (v) The progress reports required under § 157.20(c) and (d);
- (vi) Applications submitted under subpart E of this part and all attached exhibits;
- (vii) Applications submitted under subpart F of this part and all attached exhibits;
- (viii) Requests for authorization under the notice procedures established in § 157.205 and all attached exhibits;
- (ix) The annual report required by § 157.207;
- (x) The report required under § 157.214 when storage capacity is increased;
- (xi) Amendments to any of the foregoing.

(3) All filings must be signed in compliance with the following.

- (i) The signature on a filing constitutes a certification that: The signer has read the filing signed and knows the contents of the paper copies and electronic filing; the paper copies contain the same information as contained in the electronic filing; the contents as stated in the copies and in the electronic filing are true to the best knowledge and belief of the signer; and the signer possesses full power and authority to sign the filing.
- (ii) A filing must be signed by one of the following:

(A) The person on behalf of whom the filing is made;

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

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

(4) Suitable means of electronic transmission or electronic media suitable for Commission filings are listed in the instructions for each form and filing. Lists of suitable electronic media are available upon request from the Commission. The formats for the electronic filing and paper copy can be obtained at the Federal Energy Regulatory Commission, Public Information and Reference Branch, 888 First Street, NE., Washington, DC 20426.

(5) Other requirements. Applications under section 7 of the Natural Gas Act must conform to the requirements of §§ 157.5 through 157.14. Amendments to or withdrawals of applications must conform to the requirements of §§ 385.213 and 385.214 of this chapter. If the application involves an acquisition of facilities, it must conform to the additional requirements prescribed in §§ 157.15 and 157.16. If the application involves an abandonment of facilities or service, it must conform to the additional requirements prescribed in § 157.18.

(b) *General content of application.*

* * *

(7) * * * The form of notice shall also include the name, address, and telephone number of an authorized contact person.

(8) For applications to construct new facilities, the complete information necessary for the Commission to make an upfront determination on the rate treatment of the proposed project in accordance with the Statement of Policy in Docket No. PL94–4–000, unless the applicant propose to charge incremental rates that are at or above the effective maximum part 284 rate. The Policy Statement can be found at 71 FERC ¶61,241 (1995). Such information should include, but is not limited to the following:

(i) Documentation specifically showing that an expansion project will increase system or operational reliability, or provide other financial benefits;

(ii) Detailed cost-of-service data supporting the cost of the expansion project, a detailed study showing the revenue responsibility for each firm rate schedule under the pipeline's currently effective rate design and under the pipeline's proposed rolled-in rate

design, a detailed rate impact analysis by rate schedule (including by zone, if applicable), and an analysis reflecting the impact of the fuel usage resulting from the proposed expansion project (including by zone, if applicable).

* * * * *

13. § 157.8 is revised to read as follows:

§ 157.8 Acceptance for filing or rejection of applications.

Applications will be docketed when received and the applicant so advised. If an application patently fails to comply with applicable statutory requirements or with applicable Commission rules, regulations, and orders for which a waiver has not been granted, the Director of the Office of Pipeline Regulation may reject the application within 10 days of filing as provided by § 385.2001(b) of this chapter. This rejection is without prejudice to an applicant's refile a complete application. However, an application will not be rejected solely on the basis of: Environmental reports that are incomplete because the company has not been granted access by the affected landowner(s) to perform required surveys, or Environmental reports that are incomplete, but where the minimum checklist requirements of part 380, appendix A of this chapter have been met. An application which relates to an operation, sale, service, construction, extension, acquisition, or abandonment concerning which a prior application has been filed and rejected, shall be docketed as a new application. Such new application shall state the docket number of the prior rejected application.

14. In § 157.9, the first sentence is revised to read as follows:

§ 157.9 Notice of application.

Notice of each application filed, except when rejected in accordance with § 157.8, will be issued within 10 days of filing, and subsequently will be published in the **Federal Register** and copies of such notice mailed to States affected thereby. * * *

15. Section 157.10 is revised to read as follows:

§ 157.10 Interventions and protests.

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

intervention shall state specifically whether he seeks formal hearing on the application. Any person may file to intervene on environmental grounds based on the draft environmental impact statement as stated at § 380.10(a)(1)(i) of this chapter. In accordance with that section, such intervention will be deemed timely as long as it is filed within the comment period for the draft environmental impact statement. Failure to make timely filing will constitute grounds for denial of participation in the absence of extraordinary circumstances or good cause shown. A copy of each application, supplement and amendment thereto, including exhibits required by §§ 157.14, 157.16, and 157.18, shall upon request be promptly supplied by the applicant to anyone who has filed a petition for leave to intervene or given notice of intervention. However, an applicant is not required to serve voluminous or difficult to reproduce material, such as copies of environmental information, to all parties, unless such material is specifically requested. Complete copies of the application must be available in each county in the project area, either in paper or electronic format, within three business days of filing an application. Within five business days of receiving a request for a complete copy from any party, the applicant must serve a full copy of any filing on the requesting party. Pipelines must keep all voluminous material on file with the Commission and make such information available for inspection at buildings with public access and with evening and weekend business hours, such as libraries located in each county in the project area. Protests may be filed in accordance with § 385.211 of this chapter within the time permitted by any person who does not seek to participate in the proceeding.

16. In § 157.14, paragraph (a) is amended to remove the words "On or after October 31, 1989, exhibits" and the word "Exhibits" is added in its place; paragraph (a)(6-a) is revised; paragraph (a)(6-b), (a)(6-c) and (a)(6-d) are removed; paragraph (a)(12) is removed and reserved; paragraphs (a)(14)(i)-(vi) are revised; and paragraphs (a)(14)(vii)-(xiii) are removed, all to read as follows:

§ 157.14 Exhibits.

(a) * * *

(6-a) *Exhibit F-I, Environmental Report.* An environmental report as specified in §§ 380.3 and 380.12 of this chapter. Applicant must submit all appropriate revisions to Exhibit F-I whenever route or site changes are filed. These revisions should identify the

locations by mile post and describe all other specific differences resulting from the route or site changes, and should not simply provide revised totals for the resources affected.

* * * * *

(12) [Reserved]

* * * * *

(14) * * *

(i) A description of the class (e.g., commercial paper, long-term debt, preferred stock) and cost rates for securities expected to be issued with construction period and post-operational sources of financing separately identified.

(ii) Statement of anticipated cash flow, including provision during the period of construction and the first 3 full years of operation of proposed facilities for interest requirements, dividends, and capital requirements.

(iii) A balance sheet and income statement (12 months) of most recent data available.

(iv) Comparative pro forma balance sheets and income statements for the period of construction and each of the first 3 full years of operation, giving effect to the proposed construction and proposed financing of the project.

(v) Any additional data and information upon which applicant proposes to rely in showing the adequacy and availability of resources for financing its proposed project.

(vi) In instances for which principal operations of the company have not commenced or where proposed rates for services are developed on an incremental basis, a brief statement explaining how the applicant will determine the actual allowance for funds used during construction (AFUDC) rate, or if a rate is not to be used, how the applicant will determine the actual amount of AFUDC to be capitalized as a component of construction cost, and why the method is appropriate under the circumstances.

* * * * *

17. In § 157.16, paragraph (c)(1) is revised to read as follows:

§ 157.16 Exhibits relating to acquisitions.

* * * * *

(c) * * *

(1) The amounts recorded upon the books of the vendor, as being applicable to the facilities to be acquired, and the related depreciation, depletion, and amortization reserves. Include a brief statement explaining the basis or methods used to derive the related depreciation, depletion and amortization reserves.

* * * * *

§ 157.17 [Amended]

18. In § 157.17, the words "Before October 31, 1989, and thereafter whenever" are removed from paragraph (a) and the word "Whenever" is added in their place; and the words "On or after October 31, 1989, the" are removed from paragraph (b) and the word "The" is added in their place.

19. In § 157.18, new sentences are added between the first and second sentence in the introductory text and paragraph (f)(2); and the first sentence in paragraph (f)(3) is revised to read as follows:

§ 157.18 Applications to abandon facilities or service; exhibits.

* * * Any application for an abandonment that is not excluded by § 380.4(a)(28) or (29), must include an environmental report as specified by § 380.3(c)(2). * * *

(f) * * * (2) * * * Include a brief statement explaining the basis or methods used to derive the accumulated depreciation related to the property to be disposed of. * * *

(3) State the amount of accumulated deferred income taxes attributable to the property to be abandoned and the tax basis of the property. * * *

20. In § 157.20, paragraph (b) is revised; the phrases " , until October 13, 1989," and " and thereafter," are removed from paragraph, (c) introductory text, and paragraph (c)(2) is removed; paragraphs (c)(3) and (c)(4) are redesignated as (c)(2) and (c)(3); the phrases " , before October 13, 1989," and "and thereafter" are removed from paragraph (d), introductory text and paragraph (d)(1) is removed; paragraph (d)(2) and (d)(3) are redesignated as (d)(1) and (d)(2); redesignated paragraph (d)(2) is revised; paragraph (f) is removed; paragraph (g) is redesignated as (f) to read as follows:

§ 157.20 General conditions applicable to certificates.

(b) Any authorized construction, extension, or acquisition shall be completed and made available for service by applicant and any authorized operation, service, or sale shall be available for regular performance by applicant within (period of time to be specified by the Commission in each order) from the issue date of the Commission's order issuing the certificate. Applicant shall notify the Commission in writing no later than 10 days after expiration of this time period that the end-user/shipper is unable to

meet the imposed timetable to commence service.

(d) * * * (2) within 10 days after authorized facilities have been constructed and within 10 days after such facilities have been placed in service or any authorized operation, sale, or service has commenced, notice of the date of such completion, placement, and commencement, and * * *

§ 157.21 [Removed]

21. Section 157.21 is removed and reserved.

22. In § 157.102, the last sentence in paragraph (a)(1) is removed; paragraph (b)(1)(v) is revised to read as follows:

§ 157.102 Contents of application and other pleadings.

(b) * * * (1) * * * (v) An environmental report as specified in § 380.3 and § 380.12 of this chapter. Applicant must submit all appropriate revisions to the environmental report whenever route or site changes are filed. These revisions must identify and describe the specific differences resulting from the route or site changes. Revised totals for the resources affected will not be sufficient; and * * *

§ 157.103 [Amended]

23. In § 157.103(j), the words "and Producer" are removed from the reference to the "Office of Pipeline and Producer Regulation."

§ 157.201 [Amended]

24. In § 157.201(a) the words "sales arrangements" are removed.

25. In § 157.202, paragraphs (b)(2)(i) and (ii)(A), (B), (D), (E), and (F), and paragraphs (b)(4), (5), (6), (7), (10) and (12) are revised; and (b)(13)-(14) are removed to read as follows:

§ 157.202 Definitions.

(b) * * * (2)(i) Eligible facility means, except as provided in paragraph (b)(2)(ii) of this section, any facility subject to the Natural Gas Act jurisdiction of the Commission that is necessary to provide service within existing certificated levels. Eligible facility also includes any gas supply facility or any facility, including receipt points, needed by the certificate holder to receive gas into its system for further transport or storage, and interconnecting points between

transporters that transport natural gas under Part 284 of this chapter. Further, eligible facility includes main line, lateral, and compressor replacements that do not qualify under § 2.55(b) of this chapter because they will result in an incidental increase in the capacity of main line facilities, or because they will not satisfy the location or work space requirements of § 2.55(b). Replacements must be done for sound engineering purposes. Replacements for the primary purpose of creating additional main line capacity are not eligible facilities.

(ii) * * * (A) A main line of a transmission system, except replacement facilities covered under § 157.202(b)(2)(i).

(B) An extension of a main line, except replacement facilities covered under § 157.202(b)(2)(i).

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

(E) Delivery points under § 157.211.

(F) Temporary compression under § 157.209.

(3) * * * (4) Temporary compression means compressor facilities installed and operated at existing compressor locations for the limited purpose of temporarily replacing existing permanent compressor facilities that are undergoing maintenance or repair or that are pending permanent replacement.

(5) Main line means the principal transmission facilities of a pipeline system extending from supply areas to market areas and does not include small diameter supply or delivery laterals or gathering lines.

(6) Miscellaneous rearrangement of any facility means any rearrangement of a facility that does not result in any change of service rendered by means of the facilities involved, including changes in existing field operations or relocation of existing facilities:

(i) On the same property; (ii) When required by highway construction, dam construction, or the expansion or change of course of rivers, streams or creeks; or

(iii) To respond to other natural forces beyond the certificate holder's control when necessary to ensure safety or maintain the operational integrity of the certificate holder's facilities.

(7) *Project* means a unit of improvement or construction that is used and useful upon completion.

(10) *Delivery point* means a tap and/or metering and appurtenant facilities, such as heaters, minor gas conditioning, treatment, odorization, and similar equipment, necessary to enable the certificate holder to deliver gas to any party.

(12) *Interconnecting point* means only the interconnecting facilities such as the tap, metering, M&R facilities and minor related piping.

§ 157.203 [Amended]

26. In § 157.203, paragraph (b) is amended to change the reference from “§ 157.211(a)” to “§ 157.211(a)(1),” remove the references to “§ 157.213(a)” and “§ 157.217” and to add the reference to “§ 157.209(a)” in their place. Paragraph (c) is amended to remove the references to “§ 157.211,” “§ 157.211(b)” and “§ 157.212, § 157.213(b)” and to add the reference “§ 157.211(a)(2)” in their place.

§ 157.204 [Amended]

27. In § 157.204, paragraph (d)(2) is removed; paragraph (d)(3) is redesignated as d(2); and paragraphs (d)(3), (4), and (5) and paragraph (e) are removed.

28. In § 157.205, paragraphs (a), introductory text, and (b), introductory text, are revised; paragraph (c) is removed; paragraphs (d)—(i) are redesignated as (c)—(h); in paragraph (a)(2) add the words “or dismissed” after the word “withdrawn”; a sentence is added at the end of paragraph (b)(5); in paragraph (b)(6) the reference to “paragraph (d)” is changed to “paragraph (c)”; redesignated paragraph (c) is revised; in redesignated paragraph (d) the first sentence is revised; in redesignated paragraph (f) the words “and Producer” are removed from the reference to the “Director of Pipeline and Producer Regulation”; the form in redesignated paragraph (e)(2) is revised; in redesignated paragraph (f) add the words “or dismissed” after the words “is not withdrawn”; and in redesignated paragraph (g) the heading is revised, the words “and staff” are removed and the word “and” is added between “certificate holder” and “protestor”, and sentences are added at the end of the paragraph 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) is authorized by a blanket certificate granted under this subpart, unless, prior to undertaking such activity:

(b) *Contents.* For any activity subject to the requirements of this section, the certificate holder must file with the Secretary of the Commission an original and seven copies, as prescribed in §§ 157.6(a) and 385.2011 of this chapter, a request for authorization under the notice procedures of this section that contains:

(5) * * * The form of notice shall also include the name, address, and telephone number of an authorized contact person.

(c) *Rejection of request.* The Director of the Office of Pipeline Regulation shall reject within 10 days of the date of filing a request which patently fails to comply with the provisions of paragraph (b) of this section, without prejudice to the pipeline’s refiling a complete application.

(d) *Publication of notice of request.* Unless the request has been rejected pursuant to paragraph (c) of this section, the Secretary of the Commission shall issue a notice of the request within 10 days of the date of the filing, which will then be published in the **Federal**

Register. * * *

(e) * * *
(2) * * *

United States of America Before the Federal Energy Regulatory Commission

[Name of pipeline holding the blanket certificate] Docket No. [Include both docket no. of the blanket certificate and the prior notice transaction]

Protest to Proposed Blanket Certificate Activity

(Name of Protestor) hereby protests the request filed by (Name of pipeline) to conduct a (construction of facilities, abandonment, etc.) under § 157.— of the Commission’s regulations. Protestor seeks to have this request processed as a separate application.

(Include a detailed statement of Protestor’s interest in the activity and the specific reasons and rationale for the objection and whether the protestor seeks to be an intervener.)

(g) *Withdrawal or dismissal of protests.* * * * Within 10 days of the filing of a protest, the Director of the Office of Pipeline Regulation will dismiss that protest if it does not raise a substantive issue and fails to provide any specific detailed reason or rationale for the objection. If a protest is dismissed, the notice requirements of

this section will not be fulfilled until the earlier of: (1) a 30 day period following the deadline determined in paragraph (d) of this section has run; or the dismissed protesting party notifying the Secretary of the Commission that its concerns have been resolved.

29. In § 157.206, paragraphs (b) and (c) are removed; paragraph (d) is redesignated as paragraph (b); paragraph (f) is redesignated as (c); paragraph (g) is redesignated as (d); redesignated (b) is amended to add an introductory text; redesignated (b)(1) is revised; in redesignated (b)(3)(i)–(iii) the references to paragraph (d) are removed and a reference to (b) is added in its place; redesignated (b)(5) is revised; redesignated paragraph (c) is revised; and paragraphs (e)–(h) are removed to read as follows:

§ 157.206 Standard conditions.

(b) *Environmental compliance.* This paragraph only applies to activities that involve ground disturbance or changes to operational air and noise emissions.

(1) The certificate holder shall adopt the requirements set forth in § 380.15 of this chapter for all activities authorized by the blanket certificate and shall issue the relevant portions thereof to construction personnel, with instructions to use them.

(5) 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 (L_{dn}) of 55 dBA at any pre-existing noise-sensitive area (such as schools, hospitals, or residences).

(c) *Commencement.* Any authorized construction, extension, or acquisition shall be completed and made available for service by the certificate holder and any authorized operation, or service, shall be available within one year of the date the activity is authorized pursuant to § 157.205(h). The certificate holder may apply to the Director of the Office of Pipeline Regulation for an extension of this deadline due to construction delays. However, if the request for extension is due to the end-user/shipper not being ready to accept service, the certificate holder must so notify the Commission in writing no later than 10 days after expiration of the one-year period.

30. In § 157.207, paragraphs (b) and (c) are revised; paragraph (f) is removed; paragraphs (g) and (h) are redesignated

as paragraphs (f) and (g) and paragraph (h) is removed to read as follows:

§ 157.207 General reporting requirements.

* * * * *

(b) For each delivery point authorized under § 157.211(a)(1), the information required by § 157.211(c);

(c) for each temporary compressor facility under § 157.209, the information required by § 157.209(b);

* * * * *

31. In § 157.208, the heading is revised; the paragraph designations (1) and (2) are removed from paragraphs (a) and (b); in paragraphs (a) and (b) add the word "replace" after the word "construct" and add a new sentence at the end; remove paragraphs (c)(6) and (c)(8); paragraph (c)(7) is redesignated as (c)(6), paragraphs (c)(9)-(11) are redesignated as (c)(7)-(9); in redesignated (c)(9) the first sentence is revised and a new sentence is added at the end; in paragraph (d) the reference to "GNP" is removed and a reference to "GDP" is added in its place, the words "and Producer" are removed from the phrase "Director of Pipeline and Producer Regulation", and the reference to § 375.307(t) is corrected to § 375.307(d); paragraph (e), the introductory text, and paragraph (e)(2) are revised, paragraphs (e)(4) and (e)(5) are removed; paragraph (e)(8) is redesignated as (e)(4), paragraph (e)(9) is redesignated as (e)(5), and paragraphs (e)(6) and (7) are removed; the second sentence of paragraph (f)(2) is revised; and in paragraph (g) the words "and Producer" are removed from the phrase "Director of Pipeline and Producer Regulation" to read as follows:

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

(a) * * * The certificate holder shall not segment projects in order to meet the cost limitations set forth in column 1 of Table I.

* * * * *

(b) * * * The certificate holder shall not segment projects in order to meet the cost limitations set forth in column 2 of Table I.

* * * * *

(c) * * *

(9) A concise analysis discussing the relevant issues outlined in § 380.12 of this chapter. * * * Include a copy of the agreements received for compliance with the Endangered Species Act, National Historic Preservation Act, and Coastal Zone Management Act.

* * * * *

(e) Reporting requirements. For each facility completed during the calendar

year pursuant to paragraph (a) of this section, the certificate holder shall file in the manner prescribed in §§ 157.6(a) and 385.2011 of this chapter as part of the required annual report under § 157.207(a) the information described in paragraphs (e)(1)-(5) of this section. For each facility completed during the calendar year pursuant to paragraph (b) of this section, the certificate holder shall file in the manner prescribed above only the information described in paragraph (e)(3) of this section.

(1) * * *

(2) The specific purpose, location, and beginning and completion date of construction of the facilities installed, the date service commenced, and, if applicable, a statement indicating the extent to which the facilities were jointly constructed;

* * * * *

(f) * * *

(2) * * * In the event that the certificate holder thereafter wishes to change the maximum operating pressure of lateral facilities constructed under section 7(c) or facilities constructed under this section 157.208, it shall file an appropriate request pursuant to the procedures set forth in § 157.205(b). * * *

* * * * *

32. New § 157.209 is added to read as follows:

§ 157.209 Temporary compression facilities.

(a) Automatic authorization. If the cost does not exceed the cost limitations set forth in column 1 of Table I, under § 158.208(d) of this chapter, the certificate holder may install, operate and remove temporary facilities provided that the temporary compressor facilities shall not be used to increase the volume or service above that rendered by the involved existing permanent compressor unit(s).

(b) Reporting requirements. As part of the certificate holder's annual report of projects authorized under paragraph (a) of this section, the certificate holder must report the following in the manner prescribed in §§ 157.6(a) and 385.2011 of this chapter;

(1) A description of the temporary compression facility, including the size, type and number of compressor units;

(2) The location at which temporary compression was installed, operated and removed, including its location relative to existing facilities;

(3) A description of the permanent compression facility which was unavailable, and a statement explaining the reason for the temporary compression;

(4) The dates for which the temporary compression was installed, operated and removed; and

(5) If applicable, the information required in § 157.208(e)(4).

§ 157.210 [Removed]

33. Section 157.210 is removed and reserved.

34. In § 157.211, the heading, paragraphs (a), (b)(1)-(5), and (c)(1)-(3) are revised, a new paragraph (c)(4) is added, and paragraph (d) is removed to read as follows:

§ 157.211 Delivery points.

(a) Construction and operation—(1) Automatic authorization. The certificate holder may acquire, construct, replace, modify, or operate any delivery point, excluding the construction of certain delivery points subject to the prior notice provisions in paragraph (a)(2) of this section if:

(i) The natural gas is being delivered to, or for the account of, a shipper for whom the certificate holder is, or will be, authorized to transport gas; and

(ii) The certificate holder's tariff does not prohibit the addition of new delivery points.

(2) Prior notice. Subject to the notice procedure in § 157.205, the certificate holder may acquire, construct, replace, modify, or operate any delivery point if:

(i) The natural gas is being delivered to, or for the account of, an end-user that is currently being served by a local distribution company; and

(ii) The natural gas is being delivered to a shipper for whom the certificate holder is, or will be, authorized to transport gas; and

(iii) The certificate holder's tariff does not prohibit the addition of new delivery points.

(b) * * *

(1) The name of the end-user, the location of the delivery point, and the distribution company currently serving the end-user;

(2) A description of the facility and any appurtenant facilities;

(3) A USGS 7 1/2-minute series (scale 1:24,000 or 1:25,000) topographic map (or map of equivalent or greater detail, as appropriate) showing the location of the proposed facilities;

(4) The quantity of gas to be delivered through the proposed facility;

(5) A description, with supporting data, of the impact of the service rendered through the proposed delivery tap upon the certificate holder's peak day and annual deliveries.

(c) * * *

(1) A description of the facilities acquired, constructed, replaced, modified or operated pursuant to this section;

(2) The location and maximum quantities delivered at such delivery point;

(3) The actual cost and the completion date of the delivery point; and

(4) The date of each agreement obtained pursuant to § 157.206(b)(3) and the date construction began.

§ 157.212 [Removed]

35. Section 157.212 is removed and reserved.

§ 157.213 [Removed]

36. Section 157.213 is removed and reserved.

37. In § 157.215, paragraph (a), introductory texts and paragraph (b)(1)(iii) are revised to read as follows:

§ 157.215 Underground storage testing and development.

(a) *Automatic authorization.* The certificate holder is authorized to acquire, construct and operate natural gas pipeline and compression facilities, including injection, withdrawal, and observation wells for the testing or development of underground reservoirs for the possible storage of gas, if:

* * * * *

(b) * * *

(1) * * *

(iii) The cost of such facilities, the date construction began, and the date they were placed in service;

* * * * *

38. In § 157.216, amend the introductory text of paragraph (a) to remove the words "facilities, if" and add the words "facilities, and" in its place; paragraphs (a) (1) and (2), (b), (c) (1) and (3), and (d) (1), (2), and (4) are revised; and new paragraphs (c)(5) and (d)(5) are added to read as follows:

§ 157.216 Abandonment.

(a) * * *

(1) a receipt or delivery point, or related supply or delivery lateral, provided the facility has not been used to provide:

(i) Interruptible transportation service during the one year period prior to the effective date of the proposed abandonment, or

(ii) Firm transportation service during the one year period prior to the effective date of the proposed abandonment, provided the point is no longer covered under a firm contract; or

(2) An eligible facility that was installed pursuant to automatic authority under § 157.208(a), or that now qualifies for automatic authority under § 157.208(a), provided the certificate holder obtains the written consent of the customers served through such facility. Consent is required from

customers that have received service during the past 12 months.

(b) *Prior Notice.* Subject to the notice requirements of § 157.205, the certificate holder is authorized pursuant to section 7(b) of the Natural Gas Act to abandon:

(1) Any receipt or delivery point if all of the existing customers of the pipeline served through the receipt or delivery point consent in writing to the abandonment. When filing a request for authorization of the proposed abandonment under the notice procedures of § 157.205, the certificate holder shall notify, in writing, the State public service commission having regulatory authority over retail service to the customers served through the delivery point.

(2) Any other facility which qualifies as an eligible facility, and which is not otherwise eligible for automatic authorization under paragraph (a)(2) of this section, provided the certificate holder obtains the written consent of all of the customers served through such facility. Consent is required from customers that have received service during the immediate past 12 months.

(c) * * *

(1) The location, type, size, and length of the subject facilities;

* * * * *

(3) For each facility an oath statement that all of the customers served during the past year by the subject facilities have consented to the abandonment, or an explanation of why the customers' consent is not available;

* * * * *

(5) For any abandonment resulting in earth disturbance, a USGS 7½-minute-series (scale 1:24,000 or 1:25,000) topographic map (or map of equivalent or greater detail, as appropriate) showing the location of the proposed facilities.

(d) * * *

(1) A description of the facilities abandoned pursuant to this section;

(2) The docket number(s) of the certificate(s) authorizing the construction and operation of the facilities to be abandoned;

* * * * *

(4) The date earth disturbance, if any, related to the abandonment began and the date the facilities were abandoned; and

(5) The date of the agreements obtained pursuant to § 157.206(b)(3), if earth disturbance was involved.

39. In § 157.217 paragraph (a) and (b)(2) are revised to read as follows:

§ 157.217 Changes in rate schedules.

(a) *Automatic authorization.* The certificate holder is authorized to permit

an existing customer, at the customer's request, to change from Part 157 individually certificated transportation or storage service to Part 284 transportation or storage service, and to abandon the Part 157 service, if:

(1) The combined volumetric limitations on deliveries to the customer under both rate schedules are not increased, for either annual or peak day limitations;

(2) The conversion will reflect all the maximum rates and charges associated with the service;

(3) The changes are consistent with the terms of the effective tariffs on file with the Commission. The certificate holder is granted a limited waiver of its tariff requiring posting of available capacity.

* * * * *

(b) * * *

(2) The rate schedules and associated rates involved; and

* * * * *

40. In § 157.218, paragraph (a) is revised to read as follows:

§ 157.218 Changes in customer name.

(a) *Automatic authorization.* The effective certificates of the certificate holder may be amended to the extent necessary to reflect the change in the name of an existing customer, if the certificate holder has filed any necessary conforming changes in its Index of Customers, including the customer's old name.

* * * * *

41. In Appendix I to Subpart F of Part 157, in the reference to "§ 157.206(d)(3)(i)" in the heading and the references to § 157.206(d)" and "§ 157.206(d)(7)" in the introductory text, the (d) is removed and a (b) is added in its place; the references to "§ 157.206(d)(2)(vii)" in paragraphs 2, 3 is removed and "§ 157.206(b)(2)(vi)" is added in its place, and paragraph 4(b) is revised to read as follows:

**Appendix I to Subpart F of Part 157—
Procedures for Compliance With the
Endangered Species Act OF 1973 Under
§ 157.206(b)(3)(i)**

* * * * *

(4) * * *

(b) The certificate holder shall be deemed in compliance with § 157.206(b)(2)(vi) of the Commission's regulations if the consulted agency agrees with the certificate holder's determination resulting from the continued informal consultations, that the proposed project is not likely to adversely affect a listed species or critical habitat, or that no further consultation is necessary.

* * * * *

42. Appendix II to Subpart F of Part 157 is revised to read as follows:

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

The following procedures apply to any certificate holder which undertakes a project under the authority of a blanket certificate issued pursuant to subparts E or F of part 157 and to any other service subject to § 157.206(b) of the Federal Energy Regulatory Commission's (Commission) regulations. For the purposes of this appendix, the following definitions apply:

(a) "Listed property" means any district, site, building, structure or object which is listed (1) on the National Register of Historic Places, or (2) in the **Federal Register** as a property determined to be eligible for inclusion on the National Register.

(b) "SHPO" means the State Historic Preservation Officer or any alternative person duly designated, in accordance with section (1)(b) of Appendix II to Subpart F, to advise on cultural resource matters.

(c) "Unlisted property" means any district, site, building, structure or object which is not a listed property.

(d) "THPO" means the Tribal Historic Preservation Officer.

The certificate holder shall be deemed to be in compliance with § 157.206(b)(2)(iii) of the Commission's regulations only if, prior to constructing facilities or abandoning facilities by removal under the blanket certificate, it complies with the following procedures:

(1)(a) If federally administered land would be directly affected by the project, then the procedures used by the appropriate Tribal or Federal land managing agency to comply with section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470f, shall take precedence over these procedures. The procedures in this appendix apply to State and private lands, and Federal lands for which there are no other Federal procedures.

(b) If there is no SHPO, or THPO, if appropriate, or if the SHPO, or THPO, as appropriate, declines to consult with the certificate holder, the certificate holder shall so inform the environmental staff of the Office of Pipeline Regulation and shall not proceed with these procedures or the project until an alternate consultant has been duly designated.

(2) It shall be the certificate holder's responsibility to identify or cause to be identified listed properties and unlisted properties that satisfy the National Register Criteria for Evaluation (36 CFR 1202.6), that are located within the area of the project's potential environmental impact and that may be affected by the undertaking.

(3) The certificate holder shall:

(a) Check the National Register of Historic Places and consult with the SHPO, or THPO, as appropriate, to identify all listed properties within the area of the project's potential environmental impact;

(b) Consult with the SHPO, or THPO, as appropriate, and to the extent deemed appropriate by the SHPO, or THPO, as appropriate, check public records and consult with other individuals and organizations with historical and cultural expertise, to determine whether unlisted

properties that satisfy the National Register Criteria for Evaluation are known or likely to occur within the area of the project's potential environmental impact; and

(c) Consult with the SHPO, or THPO, as appropriate, to determine the need for surveys to identify unknown unlisted properties. The certificate holder shall evaluate the eligibility of any known unlisted properties located within the area of the project's potential environmental impact according to the National Register Criteria for Evaluation.

(4) The certificate holder shall be deemed in compliance with § 157.206(b)(2)(iii) of the Commission's regulations if the SHPO, or THPO, as appropriate, agrees with the certificate holder that no survey is required, and that no listed properties or unlisted properties that satisfy the National Register Criteria for Evaluation occur in the area of the project's potential environmental impact.

(5) If the SHPO, or THPO, as appropriate, determines that surveys are required to ensure that no listed properties, or unlisted properties that satisfy the National Register Criteria for Evaluation, occur within the area of the project's potential environmental impact, the certificate holder shall perform surveys deemed by the SHPO, or THPO, as appropriate, to be of sufficient scope and intensity to identify and evaluate such properties. The certificate holder shall submit the results of the surveys including a statement as to which unlisted properties satisfy the National Register Criteria for Evaluation, to the SHPO and solicit comments on the surveys and the conclusions.

(6) The certificate holder shall be deemed in compliance with § 157.206(b)(2)(iii) of the Commission's regulations if, upon conclusion of the surveys, the certificate holder and the SHPO, or THPO, as appropriate, agree that no listed properties, and no unlisted properties which satisfy the National Register Criteria for Evaluation, occur in the area of the project's potential environmental impact.

(7) For each listed property, and each unlisted property which satisfies the National Register Criteria for Evaluation, which is located within the area of the project's potential environmental impact, the certificate holder, in consultation with the SHPO, shall apply the Criteria of Effect (36 CFR 800.5) to determine whether the project will have an effect upon the historical, architectural, archeological, or cultural characteristics of the property that qualified it to meet National Register Criteria for Evaluation. The certificate holder shall be deemed in compliance with § 157.206(b)(2)(iii) of the Commission's regulations if the certificate holder and the SHPO agree that the project will not affect these characteristics.

(8) If either the certificate holder or the SHPO, or THPO, as appropriate, finds that the project may affect a listed property or an unlisted property which satisfies the National Register Criteria for Evaluation, located within the area of the project's potential environmental impact, then the project shall not be authorized under the blanket certificate unless such properties can

be avoided by relocation of the project to an area where the SHPO, or THPO, as appropriate, agrees that no listed properties or unlisted properties that satisfy the National Register Criteria for Evaluation occur. The certificate holder shall be deemed in compliance with § 157.206(b)(2)(iii) of the Commission's regulations if the project is relocated as described above.

(9) If the certificate holder and the SHPO, or THPO, as appropriate, are unable to agree upon the need for a survey, the adequacy of a survey, or the results of application of the National Register Criteria for Evaluation to an unlisted property, the project shall not be authorized under the blanket certificate.

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

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

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

44. In § 284.221, paragraph (d)(1) is amended to remove the "s" from the word "paragraphs" and to remove the phrase "and (d)(3)"; paragraph (d)(3) is removed; the word "replacement," is added to paragraph (f)(3) after the word "operation"; paragraph (f)(4) is revised; and the phrase "and § 157.212" is removed from paragraph (h)(3) to read as follows:

§ 284.221 General rule; transportation by interstate pipeline on behalf of others.

* * * * *

(f) * * *

(4) Authorization for delivery points is subject to the automatic authorization under § 157.211(a)(1) and the prior notice procedures under § 157.211(a)(2) and § 157.205.

* * * * *

45. Section 284.262 is revised to read as follows:

§ 284.262 Definitions.

For purposes of this subpart:

Emergency means:

(1) Any situation in which an actual or expected shortage of gas supply or capacity would require an interstate pipeline company, intrastate pipeline, local distribution company, or Hinshaw pipeline to curtail deliveries of gas or provide less than the projected level of service to any pipeline customer, including any situation in which additional supplies or capacity are necessary to ensure a pipeline's contracted level of service to any customer, but not including any situation in which additional supplies or capacity are needed to increase the contracted level of service to an existing

customer or to provide service to a new customer; or

(2) A sudden unanticipated loss of natural gas supply or capacity; or

(3) An anticipated loss of natural gas supply or capacity due to a foreseeable facility outage resulting from a landslide or riverbed erosion or other natural forces beyond the participant's control. Participants may seek a temporary certificate under §§ 157.17 of this chapter if the facilities to remedy the emergency cannot be constructed automatically under § 2.55(b) or § 157.208(a) of this chapter.

(4) A situation in which the participant, in good faith, determines that immediate action is required or is reasonably anticipated to be required for protection of life or health or for maintenance of physical property.

Emergency does not mean any situation resulting from a failure by any person to transport natural gas under subpart B, C, or G of this part.

Projected level of service means the level of gas volumes to be delivered by the company for each customer and additional gas volumes needed by a customer due solely to a weather-induced increase in requirements.

Emergency natural gas means natural gas sold, transported, or exchanged in an emergency natural gas transaction.

Emergency natural gas transaction means the sale, transportation, or exchange of natural gas (including the construction and operation of necessary facilities) conducted pursuant to this subpart, that is:

(1) Necessary to alleviate an emergency; and

(2) Not anticipated to extend for more than 60 days in duration.

Emergency facilities means any facilities necessary to alleviate the emergency within the time frame established in § 284.264(b). Participants can seek permanent authority to operate the emergency facilities either under the temporary certificate provisions of § 157.17 of this chapter or the prior notice provisions of § 157.208(b) of this chapter.

Participant means any first seller, interstate pipeline, intrastate pipeline, local distribution company or Hinshaw pipeline that participates in an emergency natural gas transaction under this subpart.

Recipient means:

(1) In the case of a sale of emergency natural gas, the purchaser of such gas; or

(2) In the case of a transportation or exchange of natural gas when there is no sale of emergency natural gas under this subpart, the participant who receives the gas.

Hinshaw pipeline means a pipeline that is exempt from the Natural Gas Act jurisdiction of the Commission by reason of section 1(c) of the Natural Gas Act.

§ 284.288 [Removed]

46. Section 284.288 is removed and reserved.

PART 375—THE COMMISSION

47. The authority citation for Part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

48. In § 375.307, paragraph (a)(1) is revised; paragraph (a)(2) is removed; paragraphs (a)(3)–(5) are redesignated as paragraphs (a)(2)–(4) and are revised; paragraphs (a)(6) and (a)(7) are redesignated as (a)(5) and (6); paragraphs (a)(8) and (a)(9) are removed; paragraph (a)(10)–(12) are redesignated as (a)(7)–(9); new paragraph (a)(10) is added; paragraphs (a)(14)–(16) are redesignated as (a)(11)–(13), and paragraphs (a)(17) and (a)(18) are removed; paragraphs (b)(4) and (5) and (c) are removed; paragraph (d) is redesignated as (c); paragraphs (e)(3) and (7) are removed; paragraphs (e)(4)–(6) are redesignated as (e)(3)–(5); paragraphs (e)–(g) are redesignated as (d)–(f); and redesignated paragraph (e)(3) is revised all to read as follows:

§ 375.307 Delegations to the Director of the Office of Pipeline Regulation.

* * * * *

(a) * * *

(1) Applications or amendments requesting authorization for the construction or acquisition and operation of facilities that have a construction or acquisition cost less than the limits specified in Column 2 of Table I in § 157.208(d) of this chapter;

(2) Applications by a pipeline for the abandonment of pipeline facilities or for the deletion of delivery points;

(3) Applications to abandon pipeline facilities or services involving a specific customer or customers, if such customer or customers have agreed to the abandonment;

(4) Applications for temporary or permanent certificates (and for amendments thereto) for the transportation, exchange, or storage of natural gas, provided that the cost of construction of the certificate applicant's related facility is less than the limits specified in Column 2 of Table I in § 157.208(d) of this chapter.

* * * * *

(10) Dismiss any protest to prior notice filings made pursuant to

§ 157.205 of this chapter that does not raise a substantive issue and fails to provide any specific detailed reason or rationale for the objection;

* * * * *

(e) * * *

(3) Fees prescribed in §§ 381.207 and 381.403 of this chapter in accordance with §§ 381.106(b) of this chapter;

PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

49. The authority citation for Part 380 continues to read as follows:

Authority: National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370a; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

§ 380.3 [Amended]

50. Section 380.3(c)(2) is amended to add the words “§ 380.12 and” after the words “information identified in”.

§ 380.4 [Amended]

51. In § 380.4(a)(28) remove the word “tops” and add the word “taps” in its place.

52. New § 380.12, is added to read as follows:

§ 380.12 Environmental Reports for Natural Gas Act Applications.

(a) *Introduction.* (1) The applicant must submit an environmental report with any application that proposes the construction, operation, or abandonment of any facility identified in § 380.3(c)(2)(i). The environmental report shall consist of the thirteen resource reports and related material described in this section.

(2) The detail of each resource report must be commensurate with the complexity of the proposal and its potential for environmental impact. Each topic in each resource report shall be addressed or its omission justified, unless the resource report description indicates that the data is not required for that type of proposal. If material required for one resource report is provided in another resource report or in another exhibit, it may be incorporated by reference. If any resource report topic is required for a particular project but is not provided at the time the application is filed, the environmental report shall explain why it is missing and when the applicant anticipates it will be filed.

(3) The appendix to this part contains a checklist of the minimum filing requirements for an environmental report. Failure to provide at least the applicable checklist items will result in rejection of the application unless the

Director of OPR determines that the applicant has provided an acceptable reason for the item's absence and an acceptable schedule for filing it. Failure to file within the accepted schedule will result in rejection of the application.

(b) *General requirements.* As appropriate, each resource report shall:

(1) Address conditions or resources that might be directly or indirectly affected by the project.

(2) Identify significant environmental effects expected to occur as a result of the project;

(3) Identify the effects of construction, operation (including maintenance and malfunctions), and termination of the project, as well as cumulative effects resulting from existing or reasonably foreseeable projects;

(4) Identify measures proposed to enhance the environment or to avoid, mitigate, or compensate for adverse effects of the project;

(5) Provide a list of publications, reports, and other literature or communications, including agency contacts, that were cited or relied upon to prepare each report. This list should include the name and title of the person contacted, their affiliations, and telephone number.

(6) Whenever this section refers to "mileposts" the applicant may substitute "survey centerline stationing" if so desired. However, whatever method is chosen should be used consistently throughout the resource reports.

(c) *Resource Report 1—General project description.* This report is required for all applications. It will describe facilities associated with the project, special construction and operation procedures, construction timetables, future plans for related construction, compliance with regulations and codes, and permits that must be obtained. Resource Report 1 must:

(1) Describe and provide location maps of all jurisdictional facilities, including all aboveground facilities associated with the project (such as: meter stations, pig launchers/receivers, valves), to be constructed, modified, abandoned, replaced, or removed, including related construction and operational support activities and areas such as maintenance bases, staging areas, communications towers, power lines, and new access roads (roads to be built or modified). As relevant, the report must describe the length and diameter of the pipeline, the types of aboveground facilities that would be installed, and associated land requirements. It must also identify other companies that must construct

jurisdictional facilities related to the project, where the facilities would be located, and where they are in the Commission's approval process.

(2) Identify and describe all nonjurisdictional facilities, including auxiliary facilities, that will be built in association with the project, including facilities to be built by other companies.

(i) Provide the following information:

(A) A brief description of each facility, including as appropriate:

Ownership, land requirements, gas consumption, megawatt size, construction status, and an update of the latest status of Federal, state, and local permits/approvals;

(B) The length and diameter of any interconnecting pipeline;

(C) Current 1:24,000/1:25,000 scale topographic maps showing the location of the facilities;

(D) Correspondence with the appropriate State Historic Preservation Officer (SHPO) or duly authorized Tribal Historic Preservation Officer (THPO) for tribal lands regarding whether properties eligible for listing on the National Register of Historic Places (NRHP) would be affected;

(E) Correspondence with the U.S. Fish and Wildlife Service (and National Marine Fisheries Service, if appropriate) regarding potential impacts of the proposed facility on federally listed threatened and endangered species; and

(F) For facilities within a designated coastal zone management area, a consistency determination or evidence that the owner has requested a consistency determination from the state's coastal zone management program.

(ii) Address each of the following factors and indicate which ones, if any, appear to indicate the need for the Commission to do an environmental review of project-related nonjurisdictional facilities.

(A) Whether or not the regulated activity comprises "merely a link" in a corridor type project (e.g., a transportation or utility transmission project).

(B) Whether there are aspects of the nonjurisdictional facility in the immediate vicinity of the regulated activity which uniquely determine the location and configuration of the regulated activity.

(C) The extent to which the entire project will be within the Commission's jurisdiction.

(D) The extent of cumulative Federal control and responsibility.

(3) Provide the following maps and photos:

(i) Current, original United States Geological Survey (USGS) 7.5-minute

series topographic maps or maps of equivalent detail, covering at least a 0.5-mile-wide corridor centered on the pipeline, with integer mileposts identified, showing the location of rights-of-way, new access roads, other linear construction areas, compressor stations, and pipe storage areas. Show nonlinear construction areas on maps at a scale of 1:3,600 or larger keyed graphically and by milepost to the right-of-way maps.

(ii) Original aerial images or photographs or photo-based alignment sheets based on these sources, not more than 1 year old (unless older ones accurately depict current land use and development) and with a scale of 1:6,000 or larger, showing the proposed pipeline route and location of major aboveground facilities, covering at least a 0.5 mile-wide corridor, and including mileposts. Older images/photographs/alignment sheets should be modified to show any residences not depicted in the original. Alternative formats (e.g., blue-line prints of acceptable resolution) need prior approval by the environmental staff of the Office of Pipeline Regulation.

(iii) In addition to the copy required under § 157.6(a)(2) of this chapter, applicant should send two additional copies of topographic maps and aerial images/photographs directly to the environmental staff of the Office of Pipeline Regulation.

(4) When new or additional compression is proposed, include large scale (1:3,600 or greater) plot plans of each compressor station. The plot plan should reference a readily identifiable point(s) on the USGS maps required in paragraph (c)(3) of this section. The maps and plot plans must identify the location of the nearest noise-sensitive areas (schools, hospitals, or residences) within 1 mile of the compressor station, existing and proposed compressor and auxiliary buildings, access roads, and the limits of areas that would be permanently disturbed.

(5) Identify aboveground facilities to be abandoned, how they would be abandoned, and how the site would be restored.

(6) Describe and identify by milepost, proposed construction and restoration methods to be used in areas of rugged topography, residential areas, active croplands, sites where the pipeline would be located parallel to and under roads, and sites where explosives are likely to be used.

(7) Unless provided in response to Resource Report 5, describe estimated workforce requirements, including the number of pipeline construction spreads, average workforce

requirements for each construction spread and meter or compressor station, estimated duration of construction from initial clearing to final restoration, and number of personnel to be hired to operate the proposed project.

(8) Describe reasonably foreseeable plans for future expansion of facilities, including additional land requirements and the compatibility of those plans with the current proposal.

(9) Describe all authorizations required to complete the proposed action and the status of applications for such authorizations. Identify environmental mitigation requirements specified in any permit or proposed in any permit application to the extent not specified elsewhere in this section.

(10) Provide the names and addresses of all landowners whose land would be crossed by the project facilities. Include the names and addresses of all residents adjacent to new or modified compressor stations.

(d) *Resource Report 2—Water use and quality.* This report is required for all applications, except those which involve only facilities within the areas of an existing compressor, meter, or regulator station that were disturbed by construction of the existing facilities, no wetlands or waterbodies are on the site and there would not be a significant increase in water use. The report must describe water quality and provide data sufficient to determine the expected impact of the project and the effectiveness of mitigative, enhancement, or protective measures. Resource Report 2 must:

(1) Identify and describe by milepost perennial waterbodies and municipal water supply or watershed areas, specially designated surface water protection areas and sensitive waterbodies, and wetlands that would be crossed. For each waterbody crossing, identify the approximate width, state water quality classifications, any known potential pollutants present in the water or sediments, and any potable water intake sources within 3 miles downstream.

(2) Compare proposed mitigation measures with the staff's current "*Wetland and Waterbody Construction and Mitigation Procedures*," which are available from the Commission Internet home page or the Commission staff, describe what proposed alternative mitigation would provide equivalent or greater protection to the environment, and provide a description of site-specific construction techniques that would be used at each major waterbody crossing.

(3) Describe typical staging area requirements at waterbody and wetland

crossings. Also, identify and describe waterbodies and wetlands where staging areas are likely to be more extensive.

(4) Include National Wetland Inventory (NWI) maps. If NWI maps are not available, provide the appropriate state wetland maps. Identify for each crossing, the milepost, the wetland classification specified by the U.S. Fish and Wildlife Service, and the length of the crossing. Include two copies of the NWI maps (or the substitutes, if NWI maps are not available) clearly showing the proposed route and mileposts directed to the environmental staff.

Describe by milepost, wetland crossings as determined by field delineations using the current Federal methodology.

(5) Identify aquifers within excavation depth in the project area, including the depth of the aquifer, current and projected use, water quality and average yield, and known or suspected contamination problems.

(6) Describe specific locations, the quantity required, and the method and rate of withdrawal and discharge of hydrostatic test water. Describe suspended or dissolved material likely to be present in the water as a result of contact with the pipeline, particularly if an existing pipeline is being retested. Describe chemical or physical treatment of the pipeline or hydrostatic test water. Discuss waste products generated and disposal methods.

(7) If underground storage of natural gas is proposed:

(i) Identify how water produced from the storage field will be disposed of, and

(ii) For salt caverns, identify the source locations, the quantity required, and the method and rate of withdrawal of water for creating salt cavern(s), as well as the means of disposal of brine resulting from cavern leaching.

(8) Discuss proposed mitigation measures to reduce the potential for adverse impacts to surface water, wetlands, or groundwater quality to the extent they are not described in response to paragraph (d)(2) of this section. Discuss the potential for blasting to affect water wells, springs, and wetlands, and measures to be taken to detect and remedy such effects.

(9) Identify the location of known public and private groundwater supply wells or springs within 150 feet of proposed construction areas. Identify locations of EPA or state-designated sole-source aquifers and wellhead protection areas crossed by the proposed pipeline facilities.

(e) *Resource Report 3—Fish, wildlife, and vegetation.* This report is required for all applications, except those involving only facilities within the improved area of an existing

compressor, meter, or regulator station. It must describe aquatic life, wildlife, and vegetation in the vicinity of the proposed project; expected impacts on these resources including potential effects on biodiversity; and proposed mitigation, enhancement or protection measures. Resource Report 3 must:

(1) Describe commercial and recreational warmwater, coldwater, and saltwater fisheries in the affected area and associated significant habitats such as spawning or rearing areas and estuaries.

(2) Describe terrestrial habitats, including wetlands, typical wildlife habitats, and rare, unique, or otherwise significant habitats that might be affected by the proposed action. Describe typical species that have commercial, recreational, or aesthetic value.

(3) Describe and provide the affected acreage of vegetation cover types that would be affected, including unique ecosystems or communities such as remnant prairie or old-growth forest, or significant individual plants, such as old-growth specimen trees.

(4) Describe the impact of construction and operation on aquatic and terrestrial species and their habitats, including the possibility of a major alteration to ecosystems or biodiversity, and any potential impact on state-listed endangered or threatened species. Describe the impact of maintenance, clearing and treatment of the project area on fish, wildlife, and vegetation. Surveys may be required to determine specific areas of significant habitats or communities of species of special concern to state or local agencies.

(5) Identify all federally listed or proposed endangered or threatened species and critical habitat that potentially occur in the vicinity of the project. Discuss the results of the consultation requirements listed in § 380.13(b) at least through § 380.13(b)(5)(i) and include any written correspondence that resulted from the consultation. The initial application must include the results of any required surveys unless seasonal considerations make this impractical. If species surveys are impractical, there must be field surveys to determine the presence of suitable habitat unless the entire project area is suitable habitat.

(6) Describe site-specific mitigation measures to minimize impacts on fisheries, wildlife, and vegetation.

(7) Include copies of correspondence not provided pursuant to paragraph (e)(5) of this section, containing recommendations from appropriate Federal and state fish and wildlife agencies to avoid or limit impact on

wildlife, fisheries, and vegetation, and the applicant's response to the recommendations.

(f) *Resource Report 4—Cultural resources.* This report is required for all applications. In order to prepare this report, the applicant must follow the principles in § 380.14 of this part. Guidance on the content and the format for the documentation listed below, as well as professional qualifications of preparers, is detailed in “*OPR's Guidelines for Reporting on Cultural Resources Investigations*,” which is available from the Commission Internet home page or from the Commission staff.

(1) Resource Report 4 must contain:

(i) Documentation of the applicant's initial cultural resources consultation, including consultations with Native Americans and other interested persons (if appropriate);

(ii) Overview and Survey Reports, as appropriate;

(iii) Evaluation Report, as appropriate;

(iv) Treatment Plan, as appropriate; and

(v) Written comments from State Historic Preservation Officer(s) (SHPO), Tribal Historic Preservation Officers (THPO), as appropriate, and applicable land-managing agencies on the reports in paragraphs (f)(1)(i)–(iv) of this section.

(2) The initial application must include the Documentation of initial cultural resource consultation, the Overview and Survey Reports, if required, and written comments from SHPOs, THPOs and land-managing agencies, if available. The initial cultural resources consultations should establish the need for surveys. If deemed necessary, the survey report must be filed with the application.

(i) If the comments of the SHPOs, THPOs, or land-management agencies are not available at the time the application is filed, they may be filed separately, but they must be filed before a final certificate is issued.

(ii) If landowners deny access to private property and certain areas are not surveyed, the unsurveyed area must be identified by mileposts, and supplemental surveys or evaluations shall be conducted after access is granted. In such circumstances, reports, and treatment plans, if necessary, for those inaccessible lands may be filed after a certificate is issued.

(3) The Evaluation Report and Treatment Plan, if required, for the entire project must be filed before a final certificate is issued.

(i) The Evaluation Report may be combined in a single synthetic report with the Overview and Survey Reports

if the SHPOs, THPOs, and land-management agencies allow and if it is available at the time the application is filed.

(ii) In preparing the Treatment Plan, the applicant must consult with the Commission staff, the SHPO, and any applicable THPO and land-management agencies.

(iii) Authorization to implement the Treatment Plan will occur only after the final certificate is issued.

(4) Applicant must request privileged treatment for all material filed with the Commission containing location, character, and ownership information about cultural resources in accordance with § 388.112 of this chapter. The cover and relevant pages or portions of the report should be clearly labeled in bold lettering: “CONTAINS PRIVILEGED INFORMATION—DO NOT RELEASE.”

(5) Except as specified in a final Commission order, or by the Director of the Office of Pipeline Regulation, construction may not begin until all cultural resource reports and plans have been approved.

(g) *Resource Report 5—Socioeconomics.* This report is required only for applications involving significant aboveground facilities, including, among others, conditioning or liquefied natural gas (LNG) plants. It must identify and quantify the impacts of constructing and operating the proposed project on factors affecting towns and counties in the vicinity of the project. Resource Report 5 must:

(1) Describe the socioeconomic impact area.

(2) Evaluate the impact of any substantial immigration of people on governmental facilities and services and plans to reduce the impact on the local infrastructure.

(3) Describe on-site manpower requirements and payroll during construction and operation, including the number of construction personnel who currently reside within the impact area, would commute daily to the site from outside the impact area, or would relocate temporarily within the impact area.

(4) Determine whether existing housing within the impact area is sufficient to meet the needs of the additional population.

(5) Describe the number and types of residences and businesses that would be displaced by the project, procedures to be used to acquire these properties, and types and amounts of relocation assistance payments.

(6) Conduct a fiscal impact analysis evaluating incremental local government expenditures in relation to

incremental local government revenues that would result from construction of the project. Incremental expenditures include, but are not limited to, school operating costs, road maintenance and repair, public safety, and public utility costs.

(h) *Resource Report 6—Geological resources.* This report is required for applications involving LNG facilities and all other applications, except those involving only facilities within the boundaries of existing aboveground facilities, such as a compressor, meter, or regulator station. It must describe geological resources and hazards in the project area that might be directly or indirectly affected by the proposed action or that could place the proposed facilities at risk, the potential effects of those hazards on the facility, and methods proposed to reduce the effects or risks. Resource Report 6 must:

(1) Describe, by milepost, mineral resources that are currently or potentially exploitable;

(2) Describe, by milepost, existing and potential geological hazards and areas of nonroutine geotechnical concern, such as high seismicity areas, active faults, and areas susceptible to soil liquefaction; planned, active, and abandoned mines; karst terrain; and areas of potential ground failure, such as subsidence, slumping, and landsliding. Discuss the hazards posed to the facility from each one.

(3) Describe how the project would be located or designed to avoid or minimize adverse effects to the resources or risk to itself, including geotechnical investigations and monitoring that would be conducted before, during, and after construction. Discuss also the potential for blasting to affect structures, and the measures to be taken to remedy such effects.

(4) Specify methods to be used to prevent project-induced contamination from surface mines or from mine tailings along the right-of-way and whether the project would hinder mine reclamation or expansion efforts.

(5) If the application involves an LNG facility located in zones 2, 3, or 4 of the Uniform Building Code's Seismic Risk Map, or where there is potential for surface faulting or liquefaction, prepare a report on earthquake hazards and engineering in conformance with “*Data Requirements for the Seismic Review of LNG Facilities*,” NBSIR 84–2833. This document may be obtained from the Commission staff.

(6) If the application is for underground storage facilities:

(i) Describe how the applicant would control and monitor the drilling activity

of others within the field and buffer zone;

(ii) Describe how the applicant would monitor potential effects of the operation of adjacent storage or production facilities on the proposed facility, and vice versa;

(iii) Describe measures taken to locate and determine the condition of old wells within the field and buffer zone and how the applicant would reduce risk from failure of known and undiscovered wells; and

(iv) Identify and discuss safety and environmental safeguards required by state and Federal drilling regulations.

(i) *Resource Report 7—Soils.* This report is required for all applications except those not involving soil disturbance. It must describe the soils that would be affected by the proposed project, the effect on those soils, and measures proposed to minimize or avoid impact. Resource Report 7 must:

(1) List, by milepost, the soil associations that would be crossed and describe the erosion potential, fertility, and drainage characteristics of each association.

(2) If an aboveground facility site is greater than 5 acres:

(i) List the soil series within the property and the percentage of the property comprised of each series;

(ii) List the percentage of each series which would be permanently disturbed;

(iii) Describe the characteristics of each soil series; and

(iv) Indicate which are classified as prime or unique farmland by the U.S. Department of Agriculture, Natural Resources Conservation Service.

(3) Identify, by milepost, potential impact from: Soil erosion due to water, wind, or loss of vegetation; soil compaction and damage to soil structure resulting from movement of construction vehicles; wet soils and soils with poor drainage that are especially prone to structural damage; damage to drainage tile systems due to movement of construction vehicles and trenching activities; and interference with the operation of agricultural equipment due to the probability of large stones or blasted rock occurring on or near the surface as a result of construction.

(4) Identify, by milepost, cropland and residential areas where loss of soil fertility due to trenching and backfilling could occur.

(5) Describe proposed mitigation measures to reduce the potential for adverse impact to soils or agricultural productivity. Compare proposed mitigation measures with the staff's current "*Upland Erosion Control, Revegetation and Maintenance Plan*",

which is available from the Commission Internet home page or from the Commission staff, and explain how proposed mitigation measures provide equivalent or greater protections to the environment.

(j) *Resource Report 8—Land use, recreation and aesthetics.* This report is required for all applications except those involving only facilities which are of comparable use at existing compressor, meter, and regulator stations. It must describe the existing uses of land on, and (where specified) within 0.25 mile of, the proposed project and changes to those land uses that would occur if the project is approved. The report shall discuss proposed mitigation measures, including protection and enhancement of existing land use. Resource Report 8 must:

(1) Describe the width and acreage requirements of all construction and permanent rights-of-way and the acreage required for each proposed plant and operational site, including injection or withdrawal wells.

(i) List, by milepost, locations where the proposed right-of-way would be adjacent to existing rights-of-way of any kind.

(ii) Identify, preferably by diagrams, existing rights-of-way that would be used for a portion of the construction or operational right-of-way, the overlap and how much additional width would be required.

(iii) Identify the total amount of land to be purchased or leased for each aboveground facility, the amount of land that would be disturbed for construction and operation of the facility, and the use of the remaining land not required for project operation.

(iv) Identify the size of typical staging areas and expanded work areas, such as those at railroad, road, and waterbody crossings, and the size and location of all pipe storage yards and access roads.

(2) Identify, by milepost, the existing use of lands crossed by the proposed pipeline, or on or adjacent to each proposed plant and operational site.

(3) Describe planned development on land crossed or within 0.25 mile of proposed facilities, the time frame (if available) for such development, and proposed coordination to minimize impacts on land use. Planned development means development which is included in a master plan or is on file with the local planning board or the county.

(4) Identify, by milepost and length of crossing, the area of direct effect of each proposed facility and operational site on sugar maple stands, orchards and nurseries, landfills, operating mines,

hazardous waste sites, state wild and scenic rivers, state or local designated trails, nature preserves, game management areas, remnant prairie, old-growth forest, national or state forests, parks, golf courses, designated natural, recreational or scenic areas, or registered natural landmarks, Native American religious sites and traditional cultural properties to the extent they are known to the public at large, and reservations, lands identified under the Special Area Management Plan of the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, and lands owned or controlled by Federal or state agencies or private preservation groups. Also identify if any of those areas are located within 0.25 mile of any proposed facility.

(5) Identify, by milepost, all residences and buildings within 50 feet of the proposed pipeline construction right-of-way and the distance of the residence or building from the right-of-way. Provide survey drawings or alignment sheets to illustrate the location of the facilities in relation to the buildings.

(6) Describe any areas crossed by or within 0.25 mile of the proposed pipeline or plant and operational sites which are included in, or are designated for study for inclusion in: The National Wild and Scenic Rivers System (16 U.S.C. 1271); The National Trails System (16 U.S.C. 1241); or a wilderness area designated under the Wilderness Act (16 U.S.C. 1132).

(7) For facilities within a designated coastal zone management area, provide a consistency determination or evidence that the applicant has requested a consistency determination from the state's coastal zone management program.

(8) Describe the impact the project will have on present uses of the affected area as identified above, including commercial uses, mineral resources, recreational areas, public health and safety, and the aesthetic value of the land and its features. Describe any temporary or permanent restrictions on land use resulting from the project.

(9) Describe mitigation measures intended for all special use areas identified under paragraphs (j)(2) through (6) of this section.

(10) Describe proposed typical mitigation measures for each residence that is within 50 feet of the edge of the pipeline construction right-of-way, as well as any proposed residence-specific mitigation. Describe how residential property, including for example, fences, driveways, stone walls, sidewalks, water supply, and septic systems, would be

restored. Describe compensation plans for temporary and permanent rights-of-way and the eminent domain process for the affected areas.

(11) Describe measures proposed to mitigate the aesthetic impact of the facilities especially for aboveground facilities such as compressor or meter stations.

(12) Demonstrate that applications for rights-of-way or other proposed land use have been or soon will be filed with Federal land-management agencies with jurisdiction over land that would be affected by the project.

(k) *Resource Report 9—Air and noise quality.* This report is required for applications involving compressor facilities at new or existing stations, and for all new LNG facilities. It must identify the effects of the project on the existing air quality and noise environment and describe proposed measures to mitigate the effects.

Resource Report 9 must:

(1) Describe the existing air quality, including background levels of nitrogen dioxide and other criteria pollutants which may be emitted above EPA-identified significance levels.

(2) Quantitatively describe existing noise levels at noise-sensitive areas, such as schools, hospitals, or residences and include any areas covered by relevant state or local noise ordinances.

(i) Report existing noise levels as the L_{eq} (day), L_{eq} (night), and L_{dn} and include the basis for the data or estimates.

(ii) For existing compressor stations, include the results of a sound level survey at the site property line and nearby noise-sensitive areas while the compressors are operated at full load.

(iii) For proposed new compressor station sites, measure or estimate the existing ambient sound environment based on current land uses and activities.

(iv) Include a plot plan that identifies the locations and duration of noise measurements, the time of day, weather conditions, wind speed and direction, engine load, and other noise sources present during each measurement.

(3) Estimate the impact of the project on air quality, including how existing regulatory standards would be met.

(i) Provide the emission rate of nitrogen oxides from existing and proposed facilities, expressed in pounds per hour and tons per year for maximum operating conditions, include supporting calculations, emission factors, fuel consumption rates, and annual hours of operation.

(ii) For major sources of air emissions (as defined by the Environmental Protection Agency), provide copies of applications for permits to construct

(and operate, if applicable) or for applicability determinations under regulations for the prevention of significant air quality deterioration and subsequent determinations.

(4) Provide a quantitative estimate of the impact of the project on noise levels at noise-sensitive areas, such as schools, hospitals, or residences.

(i) Include step-by-step supporting calculations or identify the computer program used to model the noise levels, the input and raw output data and all assumptions made when running the model, far-field sound level data for maximum facility operation, and the source of the data.

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

(iii) Far-field sound level data measured from similar units in service elsewhere, when available, may be substituted for manufacturer's far-field sound level data.

(iv) If specific noise control equipment has not been chosen, include a schedule for submitting the data prior to certification.

(v) The estimate must demonstrate that the project will comply with applicable noise regulations and show how the facility will meet the following requirements:

(A) 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 sound level (L_{dn}) of 55 dBA at any pre-existing noise-sensitive area (such as schools, hospitals, or residences).

(B) New compressor stations or modifications of existing stations shall not result in a perceptible increase in vibration at any noise-sensitive area.

(5) Describe measures and manufacturer's specifications for equipment proposed to mitigate impact to air and noise quality, including emission control systems, installation of filters, mufflers, or insulation of piping and buildings, and orientation of equipment away from noise-sensitive areas.

(l) *Resource Report 10—Alternatives.* This report is required for all applications. It must describe

alternatives to the project and compare the environmental impacts of such alternatives to those of the proposal. The discussion must demonstrate how environmental benefits and costs were weighed against economic benefits and costs, and technological and procedural constraints. The potential for each alternative to meet project deadlines and the environmental consequences of each alternative shall be discussed. *Resource Report 10* must:

(1) Discuss the "no action" alternative and the potential for accomplishing the proposed objectives through the use of other systems and/or energy conservation. Provide an analysis of the relative environmental benefits and costs for each alternative.

(2) Describe alternative routes or locations considered for each facility during the initial screening for the project.

(i) For alternative routes considered in the initial screening for the project but eliminated, describe the environmental characteristics of each route or site, and the reasons for rejecting it. Identify the location of such alternatives on maps of sufficient scale to depict their location and relationship to the proposed action, and the relationship of the pipeline to existing rights-of-way.

(ii) For alternative routes or locations considered for more in-depth consideration, describe the environmental characteristics of each route or site and the reasons for rejecting it. Provide comparative tables showing the differences in environmental characteristics for the alternative and proposed action. The location of any alternatives in this paragraph shall be provided on maps equivalent to those required in paragraph (c)(2) of this section.

(m) *Resource Report 11—Reliability and safety.* This report is required for applications involving new or recommissioned LNG facilities. Information previously filed with the Commission need not be refiled if the applicant verifies its continued validity. This report shall address the potential hazard to the public from failure of facility components resulting from accidents or natural catastrophes, how these events would affect reliability, and what procedures and design features have been used to reduce potential hazards. *Resource Report 11* must:

(1) Describe measures proposed to protect the public from failure of the proposed facilities (including coordination with local agencies).

(2) Discuss hazards, the environmental impact, and service interruptions which could reasonably

ensue from failure of the proposed facilities.

(3) Discuss design and operational measures to avoid or reduce risk.

(4) Discuss contingency plans for maintaining service or reducing downtime.

(5) Describe measures used to exclude the public from hazardous areas. Discuss measures used to minimize problems arising from malfunctions and accidents (with estimates of probability of occurrence) and identify standard procedures for protecting services and public safety during maintenance and breakdowns.

(n) *Resource Report 12—PCB Contamination.* This report is required for applications involving the replacement, abandonment by removal, or abandonment in place of pipeline facilities determined to have polychlorinated biphenyls (PCBs) in excess of 50 ppm in pipeline liquids. Resource Report 12 must:

(1) Provide a statement that activities would comply with an approved EPA disposal permit, with the dates of issuance and expiration specified, or with the requirements of the Toxic Substances Control Act.

(2) For compressor station modifications on sites that have been determined to have soils contaminated with PCBs, describe the status of remediation efforts completed to date.

(o) *Resource Report 13—Engineering and design material.* This report is required for construction of new liquefied natural gas (LNG) facilities, or the recommissioning of existing LNG facilities. If the recommissioned facility is existing and is not being replaced, relocated, or significantly altered, resubmittal of information already on file with the Commission is unnecessary. Resource Report 13 must:

(1) Provide a detailed plot plan showing the location of all major components to be installed, including compression, pretreatment, liquefaction, storage, transfer piping, vaporization, truck loading/unloading, vent stacks, pumps, and auxiliary or appurtenant service facilities.

(2) Provide a detailed layout of the fire protection system showing the location of fire water pumps, piping, hydrants, hose reels, dry chemical systems, high expansion foam systems, and auxiliary or appurtenant service facilities.

(3) Provide a layout of the hazard detection system showing the location of combustible-gas detectors, fire detectors, heat detectors, smoke or combustion product detectors, and low temperature detectors. Identify those detectors that activate automatic

shutdowns and the equipment that would shut down. Include all safety provisions incorporated in the plant design, including automatic and manually activated emergency shutdown systems.

(4) Provide a detailed layout of the spill containment system showing the location of impoundments, sumps, subdikes, channels, and water removal systems.

(5) Provide manufacturer's specifications, drawings, and literature on the fail-safe shut-off valve for each loading area at a marine terminal (if applicable).

(6) Provide a detailed layout of the fuel gas system showing all taps with process components.

(7) Provide copies of company, engineering firm, or consultant studies of a conceptual nature that show the engineering planning or design approach to the construction of new facilities or plants.

(8) Provide engineering information on major process components related to the first six items above, which include (as applicable) function, capacity, type, manufacturer, drive system (horsepower, voltage), operating pressure, and temperature.

(9) Provide manuals and construction drawings for LNG storage tank(s).

(10) Provide up-to-date piping and instrumentation diagrams. Include a description of the instrumentation and control philosophy, type of instrumentation (pneumatic, electronic), use of computer technology, and control room display and operation. Also, provide an overall schematic diagram of the entire process flow system, including maps, materials, and energy balances.

(11) Provide engineering information on the plant's electrical power generation system, distribution system, emergency power system, uninterruptible power system, and battery backup system.

(12) Identify of all codes and standards under which the plant (and marine terminal, if applicable) will be designed, and any special considerations or safety provisions that were applied to the design of plant components.

(13) Provide a list of all permits or approvals from local, state, Federal, or Native American groups or Indian agencies required prior to and during construction of the plant, and the status of each, including the date filed, the date issued, and any known obstacles to approval. Include a description of data records required for submission to such agencies and transcripts of any public hearings by such agencies. Also provide

copies of any correspondence relating to the actions by all, or any, of these agencies regarding all required approvals.

(14) Identify how each applicable requirement will comply with 49 CFR part 193 and the National Fire Protection Association 59A LNG Standards. For new facilities, the siting requirements of 49 CFR part 193, subpart B, must be given special attention. If applicable, vapor dispersion calculations from LNG spills over water should also be presented to ensure compliance with the U.S. Coast Guard's LNG regulations in 33 CFR part 127.

(15) Provide seismic information specified in Data Requirements for the Seismic Review of LNG facilities (NBSIR 84-2833, available from FERC staff) for facilities that would be located in zone 2, 3, or 4 of the Uniform Building Code Seismic Map of the United States.

53. New § 380.13 is added to read as follows:

§ 380.13 Compliance with the Endangered Species Act.

(a) *Definitions.* For purposes of this section:

(1) *Listed species* and *critical habitat* have the same meaning as provided in 50 CFR 402.02.

(2) *Project area* means any area subject to construction activities (for example, material storage sites, temporary work areas, and new access roads) necessary to install or abandon the facilities.

(b) *Procedures for informal consultation.*—(1) *Designation of non-Federal representative.* The project sponsor is designated as the Commission's non-Federal representative for purposes of informal consultations with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) under the Endangered Species Act of 1973, as amended (ESA).

(2) *Consultation requirement.* (i) Prior to the filing of the environmental report specified in § 380.12, the project sponsor must contact the appropriate regional or field office of the FWS or the NMFS, or both if appropriate, to initiate informal consultations, unless it is proceeding pursuant to a blanket clearance issued by the FWS and/or NMFS which is less than 1 year old and the clearance does not specify more frequent consultation.

(ii) If a blanket clearance is more than 1 year old or less than 1 year old and specifies more frequent consultations, or if the project sponsor is not proceeding pursuant to a blanket clearance, the project sponsor must request a list of

federally listed or proposed species and designated or proposed critical habitat that may be present in the project area, or provide the consulted agency with such a list for its concurrence.

(iii) The consulted agency will provide a species and critical habitat list or concur with the species list provided within 30 days of its receipt of the initial request. In the event that the consulted agency does not provide this information within this time period, the project sponsor may notify the Director of the Office of Pipeline Regulation and continue with the remaining procedures of this section.

(3) *End of informal consultation.* (i) At any time during the informal consultations, the consulted agency may determine or confirm:

(A) That no listed or proposed species, or designated or proposed critical habitat, occurs in the project area; or

(B) That the project is not likely to adversely affect a listed species or critical habitat;

(ii) If the consulted agency provides the determination or confirmation described in paragraph (b)(3)(i) of this section, no further consultation is required.

(4) *Potential impact to proposed species.* (i) If the consulted agency, pursuant to informal consultations, initially determines that any species proposed to be listed, or proposed critical habitat, occurs in the project area, the project sponsor must confer with the consulted agency on methods to avoid or reduce the potential impact.

(ii) The project sponsor shall include in its proposal, a discussion of any mitigating measures recommended through the consultation process.

(5) *Continued informal consultations for listed species.* (i) If the consulted agency initially determines, pursuant to the informal consultations, that a listed species or designated critical habitat may occur in the project area, the project sponsor must continue informal consultations with the consulted agency to determine if the proposed project may affect the species or designated critical habitat. These consultations may include discussions with experts (including experts provided by the consulted agency), habitat identification, field surveys, biological analyses, and the formulation of mitigation measures. If the provided information indicates that the project is not likely to adversely affect a listed species or critical habitat, the consulting agency will provide a letter of concurrence which completes informal consultation.

(ii) The project sponsor must prepare a Biological Assessment unless the consulted agency indicates that the proposed project is not likely to adversely affect a specific listed species or its designated critical habitat. The Biological Assessment must contain the following information for each species contained in the consulted agency's species list:

(A) Life history and habitat requirements;

(B) Results of detailed surveys to determine if individuals, populations, or suitable, unoccupied habitat exists in the proposed project's area of effect;

(C) Potential impacts, both beneficial and negative, that could result from the construction and operation of the proposed project, or disturbance associated with the abandonment, if applicable; and

(D) Proposed mitigation that would eliminate or minimize these potential impacts.

(iii) All surveys must be conducted by qualified biologists and must use FWS and/or NMFS approved survey methodology. In addition, the Biological Assessment must include the following information:

(A) Name(s) and qualifications of person(s) conducting the survey;

(B) Survey methodology;

(C) Date of survey(s); and

(D) Detailed and site-specific identification of size and location of all areas surveyed.

(iv) The project sponsor must provide a draft Biological Assessment directly to the environmental staff of the Office of Pipeline Regulation for review and comment and/or submission to the consulted agency. If the consulted agency fails to provide formal comments on the Biological Assessment to the project sponsor within 30 days of its receipt, as specified in 50 CFR 402.120, the project sponsor may notify the Director, OPR, and follow the procedures in paragraph (c) of this section.

(v) The consulted agency's comments on the Biological Assessment's determination must be filed with the Commission.

(c) *Notification to Director.* In the event that the consulted agency fails to respond to requests by the project sponsor under paragraph (b) of this section, the project sponsor must notify the Director of the Office of Pipeline Regulation. The notification must include all information, reports, letters, and other correspondence prepared pursuant to this section. The Director will determine whether:

(1) Additional informal consultation is required;

(2) Formal consultation must be initiated under paragraph (d) of this section; or

(3) Construction may proceed.

(d) *Procedures for formal consultation.* (1) In the event that formal consultation is required pursuant to paragraphs (b)(5)(v) or (c)(2) of this section, the Commission staff will initiate formal consultation with the FWS and/or NMFS, as appropriate, and will request that the consulted agency designate a lead Regional Office, lead Field/District Office, and Project Manager, as necessary, to facilitate the formal consultation process. In addition, the Commission will designate a contact for formal consultation purposes.

(2) During formal consultation, the consulted agency, the Commission, and the project sponsor will coordinate and consult to determine potential impacts and mitigation which can be implemented to minimize impacts. The Commission and the consulted agency will schedule coordination meetings and/or field visits as necessary.

(3) The formal consultation period will last no longer than 90 days, unless the consulted agency, the Commission, and project sponsor mutually agree to an extension of this time period.

(4) The consulted agency will provide the Commission with a Biological Opinion on the proposed project, as specified in 50 CFR 402.14(e), within 45 days of the completion of formal consultation.

54. New § 380.14 is added to read as follows:

§ 380.14 Compliance with the National Historic Preservation Act.

(a) Section 106 of the National Historic Preservation Act, as amended (16 U.S.C. 470(f)) (NHPA), requires the Commission take into account the effect of a proposed project on any historic property and to afford the Advisory Council on Historic Preservation (Council) an opportunity to comment on projects if required under 36 CFR 800. The project sponsor, as a non-Federal party, assists the Commission in meeting its obligations under NHPA section 106 and the implementing regulations at 36 CFR part 800 by following the procedures at § 380.12(f). The project sponsor may contact the Commission at any time for assistance. The Commission will review the resultant filings.

(1) The Commission's NHPA section 106 responsibilities apply to public and private lands, unless subject to the provisions of paragraph (a)(2) of this section. The project sponsor will assist the Commission in taking into account

the views of interested parties, Native Americans, and tribal leaders.

(2) If Federal or Tribal land is affected by a proposed project, the project sponsor shall adhere to any requirements for cultural resources studies of the applicable Federal land-managing agencies on Federal lands and any tribal requirements on Tribal lands. The project sponsor must identify, in Resource Report 4 filed with the application, the status of cultural resources studies on Federal or Tribal lands, as applicable.

(3) The project sponsor must consult with the SHPO(s) and THPOs, if appropriate. If the SHPO or THPO declines to consult with the project sponsor, the project sponsor shall not continue with consultations, except as instructed by the Director of the Office of Pipeline Regulation.

(4) If the project is covered by an agreement document among the Commission, Council, SHPO(s), THPO(s), land-managing agencies, project sponsors, and interested persons, as appropriate, then that agreement will provide for compliance with NHPA section 106, as applicable.

(b) [Reserved]

55. New § 380.15 is added to read as follows:

§ 380.15 Siting and maintenance requirements.

(a) *Avoidance or minimization of effects.* The siting, construction, and maintenance of facilities shall be undertaken in a way that avoids or minimizes effects on scenic, historic, wildlife, and recreational values.

(b) *Landowner consideration.* The desires of landowners should be taken into account in the planning, locating, clearing, and maintenance of rights-of-way and the construction of facilities on their property, so long as the result is consistent with applicable requirements of law, including laws relating to land-use and any requirements imposed by the Commission.

(c) *Safety regulations.* The requirements of this paragraph do not affect a project sponsor's obligation to comply with safety regulations of the U.S. Department of Transportation and recognized safe engineering practices.

(d) *Pipeline construction.*

(1) The use, widening, or extension of existing rights-of-way must be considered in locating proposed facilities.

(2) In locating proposed facilities, the project sponsor shall, to the extent practicable, avoid places listed on, or eligible for listing on, the National Register of Historic Places; natural landmarks listed on the National

Register of Natural Landmarks; officially designated parks; wetlands; and scenic, recreational, and wildlife lands. If rights-of-way must be routed near or through such places, attempts should be made to minimize visibility from areas of public view and to preserve the character and existing environment of the area.

(3) Rights-of-way should avoid forested areas and steep slopes where practical.

(4) Rights-of-way clearing should be kept to the minimum width necessary.

(5) In selecting a method to clear rights-of-way, soil stability and protection of natural vegetation and adjacent resources should be taken into account.

(6) Trees and vegetation cleared from rights-of-way in areas of public view should be disposed of without undue delay.

(7) Remaining trees and shrubs should not be unnecessarily damaged.

(8) Long foreground views of cleared rights-of-way through wooded areas that are visible from areas of public view should be avoided.

(9) Where practical, rights-of-way should avoid crossing hills and other high points at their crests where the crossing is in a forested area and the resulting notch is clearly visible in the foreground from areas of public view.

(10) Screen plantings should be employed where rights-of-way enter forested areas from a clearing and where the clearing is plainly visible in the foreground from areas of public view.

(11) Temporary roads should be designed for proper drainage and built to minimize soil erosion. Upon abandonment, the road area should be restored and stabilized without undue delay.

(e) *Right-of-way maintenance.*

(1) Vegetation covers established on a right-of-way should be properly maintained.

(2) Access and service roads should be maintained with proper cover, water bars, and the proper slope to minimize soil erosion. They should be jointly used with other utilities and land-management agencies where practical.

(3) Chemical control of vegetation should not be used unless authorized by the landowner or land-managing agency. When chemicals are used for control of vegetation, they should be approved by EPA for such use and used in conformance with all applicable regulations.

(f) *Construction of aboveground facilities.*

(1) Unobtrusive sites should be selected for the location of aboveground facilities.

(2) Aboveground facilities should cover the minimum area practicable.

(3) Noise potential should be considered in locating compressor stations, or other aboveground facilities.

(4) The exterior of aboveground facilities should be harmonious with the surroundings and other buildings in the area.

(5) The site of aboveground facilities which are visible from nearby residences or public areas, should be planted in trees and shrubs, or other appropriate landscaping and should be installed to enhance the appearance of the facilities, consistent with operating needs.

56. Appendix A to Part 380 is revised to read as follows:

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

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Environmental Reports Under the Natural Gas Act.

Resource Report 1—General Project Description

1. Provide a detailed description and location map of the project facilities. (§ 380.12(c)(1)).

2. Describe any nonjurisdictional facilities that would be built in association with the project. (§ 380.12(c)(2)).

3. Provide current original U.S. Geological Survey (USGS) 7.5-minute-series topographic maps with mileposts showing the project facilities; (§ 380.12(c)(3)).

4. Provide aerial images or photographs or alignment sheets based on these sources with mileposts showing the project facilities; (§ 380.12(c)(3)).

5. Provide plot/site plans of compressor stations showing the location of the nearest noise-sensitive areas (NSA) within 1 mile. (§ 380.12(c)(3,4)).

6. Describe construction and restoration methods. (§ 380.12(c)(6)).

7. Identify the permits required for construction across surface waters. (§ 380.12(c)(9)).

8. Provide the names and addresses of all landowners whose land would be crossed by the project facilities. Include the names and addresses of all residents adjacent to new or modified compressor stations. (§ 380.12(c)(10)).

Resource Report 2—Water Use and Quality

1. Identify all perennial surface waterbodies crossed by the proposed project and their water quality classification. (§ 380.12(d)(1)).

2. Identify all waterbody crossings that may have contaminated waters or sediments. (§ 380.12(d)(1)).

3. Identify watershed areas, designated surface water protection areas, and sensitive waterbodies crossed by the proposed project. (§ 380.12(d)(1)).

4. Provide a table (based on NWI maps if delineations have not been done) identifying all wetlands, by milepost and length, crossed by the project (including abandoned pipeline), and the total acreage and acreage of each wetland type that would be affected by construction. (§ 380.12(d)(1 & 4)).

5. Discuss construction and restoration methods proposed for crossing wetlands, and compare them to staff's Wetland and Waterbody Construction and Mitigation Procedures; (§ 380.12(d)(2)).

6. Describe the proposed waterbody construction, impact mitigation, and restoration methods to be used to cross surface waters and compare to the staff's Wetland and Waterbody Construction and Mitigation Procedures. (§ 380.12(d)(2)).

7. Provide original National Wetlands Inventory (NWI) maps or the appropriate state wetland maps, if NWI maps are not available, that show all proposed facilities and include milepost locations for proposed pipeline routes. (§ 380.12(d)(4)).

8. Identify all U.S. Environmental Protection Agency (EPA)- or state-designated aquifers crossed. (§ 380.12(d)(9)).

Resource Report 3—Vegetation and Wildlife

1. Classify the fishery type of each surface waterbody that would be crossed, including fisheries of special concern. (§ 380.12(e)(1)).

2. Describe terrestrial and wetland wildlife and habitats that would be affected by the project. (§ 380.12(e)(2)).

3. Describe the major vegetative cover types that would be crossed and provide the acreage of each vegetative cover type that would be affected by construction. (§ 380.12(e)(3)).

4. Describe the effects of construction and operation procedures on the fishery resources and proposed mitigation measures. (§ 380.12(e)(4)).

5. Evaluate the potential for short-term, long-term, and permanent impact on the wildlife resources and state-listed endangered or threatened species caused by construction and operation of the project and proposed mitigation measures. (§ 380.12(e)(4)).

6. Identify all federally listed or proposed endangered or threatened species that potentially occur in the vicinity of the project and discussion

results of consultations with other agencies. (§ 380.12(e)(5)).

7. Describe any significant biological resources that would be affected. Describe impact and any mitigation proposed to avoid or minimize that impact. (§ 380.12(e)(4 & 6)).

Resource Report 4—Cultural Resources

See § 380.14 and "OPR's Guidelines for Reporting on Cultural Resources Investigations" for further guidance.

1. Initial cultural resources consultation and documentation, and documentation of consultation with Native Americans. (§ 380.12(f)(1)(ii) & (2)).

2. Overview/Survey Report(s). (§ 380.12(f)(1)(iii) & (2)).

Resource Report 5—Socioeconomics

1. For major aboveground facilities and major pipeline projects that require an EIS, describe existing socioeconomic conditions within the project area. (§ 380.12(g)(1)).

2. For major aboveground facilities, quantify impact on employment, housing, local government services, local tax revenues, transportation, and other relevant factors within the project area. (§ 380.12(g)(2–6)).

Resource Report 6—Geological Resources

1. Identify the location (by milepost) of mineral resources and any planned or active surface mines crossed by the proposed facilities. (§ 380.12(h)(1 & 2)).

2. Identify any geologic hazards to the proposed facilities. (§ 380.12(h)(2))

3. Discuss the need for and locations where blasting may be necessary in order to construct the proposed facilities. (§ 380.12(h)(3))

4. For LNG projects in seismic areas, the materials required by "Data Requirements for the Seismic Review of LNG Facilities," NBSIR84–2833. (§ 380.12(h)(5))

5. For underground storage facilities, how drilling activity by others within or adjacent to the facilities would be monitored, and how old wells would be located and monitored within the facility boundaries. (§ 380.12(h)(6))

Resource Report 7—Soils

1. Identify, describe, and group by milepost the soils affected by the proposed pipeline and aboveground facilities. (§ 380.12(i)(1))

2. For aboveground facilities that would occupy sites over 5 acres, determine the acreage of prime farmland soils that would be affected by construction and operation. (§ 380.12(i)(2))

3. Describe, by milepost, potential impacts on soils. (§ 380.12(i)(3,4))

4. Identify proposed mitigation to minimize impact on soils, and compare with the staff's Upland Erosion Control, Revegetation, and Maintenance Plan. (§ 380.12(i)(5))

Resource Report 8—Land Use, Recreation and Aesthetics

1. Classify and quantify land use affected by: (§ 380.12(j)(1))

a. Pipeline construction and permanent rights-of-way (§ 380.12(j)(1));

b. Extra work/staging areas (§ 380.12(j)(1));

c. Access roads (§ 380.12(j)(1));

d. Pipe and contractor yards (§ 380.12(j)(1)); and

e. Aboveground facilities (§ 380.12(j)(1)).

2. Identify by milepost all locations where the pipeline right-of-way would at least partially coincide with existing right-of-way, where it would be adjacent to existing rights-of-way, and where it would be outside of existing right-of-way. (§ 380.12(j)(1))

3. Provide detailed typical construction right-of-way cross-section diagrams showing information such as widths and relative locations of existing rights-of-way, new permanent right-of-way, and temporary construction right-of-way. (§ 380.12(j)(1))

4. Summarize the total acreage of land affected by construction and operation of the project. (§ 380.12(j)(1))

5. Identify by milepost all planned residential or commercial/business development and the time frame for construction. (§ 380.12(j)(3))

6. Identify by milepost special land uses (e.g., sugar maple stands, specialty crops, natural areas, national and state forests, conservation land, etc.). (§ 380.12(j)(4))

7. Identify by beginning milepost and length of crossing all land administered by Federal, state, or local agencies, or private conservation organizations. (§ 380.12(j)(4))

8. Identify by milepost all natural, recreational, or scenic areas, and all registered natural landmarks crossed by the project. (§ 380.12(j)(4 & 6))

9. Identify all facilities that would be within designated coastal zone management areas. (§ 380.12(j)(4))

10. Identify by milepost all residences that would be within 50 feet of the construction right-of-way or extra work area. (§ 380.12(j)(5))

11. Identify all designated or proposed candidate National or State Wild and Scenic Rivers crossed by the project. (§ 380.12(j)(6))

12. Describe any measures to visually screen aboveground facilities, such as compressor stations. (§ 380.12(j)(11))

13. Demonstrate that applications for rights-of-way or other proposed land use

have been or soon will be filed with Federal land-managing agencies with jurisdiction over land that would be affected by the project. (§ 380.12(j)(12))

Resource Report 9—Air and Noise Quality

1. Describe existing air quality in the vicinity of the project. (§ 380.12(k)(1))

2. Quantify the existing noise levels (day-night sound level (L_{dn}) and other applicable noise parameters) at noise-sensitive areas and at other areas covered by relevant state and local noise ordinances. (§ 380.12(k)(2))

3. Quantify existing and proposed emissions of compressor equipment, plus construction emissions, including nitrogen oxides (NO_x) and carbon monoxide (CO), and the basis for these calculations. Summarize anticipated air quality impacts for the project. (§ 380.12(k)(3))

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

5. Identify any nearby noise-sensitive area by distance and direction from the proposed compressor unit building/ enclosure. (§ 380.12(k)(4))

6. Identify any applicable state or local noise regulations. (§ 380.12(k)(4))

7. Calculate the noise impact at noise-sensitive areas of the proposed compressor unit modifications or additions, specifying how the impact was calculated, including manufacturer's data and proposed noise control equipment. (§ 380.12(k)(4))

Resource Report 10—Alternatives

1. Address the "no action" alternative. (§ 380.12(l)(1))

2. For large projects, address the effect of energy conservation or energy alternatives to the project. (§ 380.12(l)(1))

3. Identify system alternatives considered during the identification of the project and provide the rationale for rejecting each alternative. (§ 380.12(l)(1))

4. Identify major and minor route alternatives considered to avoid impact on sensitive environmental areas (e.g., wetlands, parks, or residences) and provide sufficient comparative data to justify the selection of the proposed route. (§ 380.12(l)(3))

5. Identify alternative sites considered for the location of major new aboveground facilities and provide sufficient comparative data to justify the selection of the proposed site. (§ 380.12(l)(3))

Resource Report 11—Reliability and Safety

Describe how the project facilities would be designed, constructed, operated, and maintained to minimize potential hazard to the public from the failure of project components as a result of accidents or natural catastrophes. (§ 380.12(m))

Resource Report 12—PCB Contamination

1. For projects involving the replacement or abandonment of facilities determined to have PCBs, provide a statement that activities

would comply with an approved EPA disposal permit or with the requirements of the TSCA. (§ 380.12(n)(1))

2. For compressor station modifications on sites that have been determined to have soils contaminated with PCBs, describe the status of remediation efforts completed to date. (§ 380.12(n)(2))

Resource Report 13—Additional Information Related to LNG Plants

Provide all the listed detailed engineering materials. (§ 380.12(o))

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PART 385—RULES OF PRACTICE AND PROCEDURE

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

Authority: 5 U.S.C. 551-557; 15 U.S.C. 717-717z, 3301-3432; 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352; 49 U.S.C. 60502; 49 App. U.S.C. 1085.

58. In § 385.2001, paragraph (b)(3) is revised to read as follows:

§ 385.2001 Filings (Rule 2001).

* * * * *

(b) * * *

(3) The Secretary, or the office director to whom the filing has been referred, will send a letter of rejection with an indication of the deficiencies in the filing and the reasons for rejection.

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[FR Doc. 99-11247 Filed 5-13-99; 8:45 am]

BILLING CODE 6717-01-U