

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeem G. Kelly.

Expediting Infrastructure Construction
To Speed Hurricane Recovery

Docket No. EM06-5-000

ORDER TEMPORARILY WAIVING REGULATIONS
TO RAISE BLANKET CERTIFICATE LIMITS

(Issued November 18, 2005)

1. In this order the Commission is acting to waive its regulations, on a temporary basis, to raise the limitations on the costs for projects that natural gas pipelines may construct without prior specific authorization under their Part 157, Subpart F blanket certificates.¹ As discussed below, Hurricanes Katrina and Rita crossed directly over major zones of natural gas production, processing and transportation in the Gulf Coast region, causing significant damage to production platforms, offshore pipelines, processing plants, and other facilities in the area. Loss of such infrastructure exacerbated an already tight natural gas market and has the potential to negatively affect both the price and supply of natural gas during the upcoming winter heating season. The more natural gas that reaches the market, the less the price impact will be for users of that gas. Thus, to expedite the construction of infrastructure which may serve to provide access to additional supplies of natural gas, the Commission is increasing the costs of projects that can be constructed under the automatic provisions of blanket certificates from \$8.0 million to \$16.0 million, and under the prior notice provisions from \$22.0 million to \$50.0 million. In addition, the Commission is expanding the definition of “eligible facilities” to include mainline facilities for this purpose. These temporary waivers will apply only to those projects constructed and placed in service by October 31, 2006.

¹ See 18 C.F.R. §§157.201 - 157.218 (2005).

Background

2. On August 29, 2005, Hurricane Katrina swept through the Gulf Coast region of the United States. The storm had direct and devastating effects on the lives of those in its path. It also caused major disruptions to the Nation's energy infrastructure. Among other impacts, Hurricane Katrina resulted in the immediate 8.8 Bcf/d reduction in natural gas supplies.² Less than a month later, while approximately 44 percent of Gulf production was still off-line, Hurricane Rita struck. Hurricane Rita increased outages greatly, and recovery has been slower. As of October 21, 2005, over 6.6 Bcf/d of natural gas production in the Gulf remained shut in.³ Estimates are that at least 650 Bcf of production, equal to over 3.5 percent of U.S. annual production, will have been lost overall, and that 2 Bcf/d will remain shut-in during the November to March winter period.⁴

3. Hurricanes Katrina and Rita have not only reduced natural gas production, but have also damaged pipeline and gas processing infrastructure, and disrupted electric supply and oil production and refining. As of October 24, 2005, 16 processing plants in Louisiana and Texas, with capacities of equal or greater than 100 million cubic feet per day, were not active owing to the hurricanes. There were also a number of plants which were operational, but not operating because of upstream or downstream infrastructure problems or supplies being unavailable. A number of the inactive plants are expected to be operating within four weeks.⁵ However, complete recovery is not expected for several months.

4. Since Hurricane Katrina, closely followed by Hurricane Rita, devastated the Gulf Coast region of our nation, the Commission has stood ready to do what it can to alleviate the problems caused by the hurricanes. The Commission already had certain provisions in place prior to Hurricanes Katrina and Rita which enabled the natural gas industry to take significant steps toward recovery as soon as physically possible after the storms had passed. For example, under § 2.55 of the Commission's regulations, pipelines can

² EIA, *Short-Term Energy Outlook*, September 2005 edition.

³ EIA, *Daily Report on Hurricane Impacts on U.S. Energy*, as of Friday, October 21, 2005.

⁴ Staff derivation from CERA, *Monthly Gas Briefing: A Band of Uncertainty*, September 19, 2005 and CERA, *Here We Go Again: Hurricane Rita Adds to Hurricane Katrina's Supply Shock*, September 23, 2005.

⁵ EIA, *Daily Report on Hurricane Impacts on U.S. Energy*, as of Monday, October 24, 2005.

replacement physically deteriorated facilities without prior, specific Commission authorization as long as the new facilities will have a substantially equivalent design capacity and be located in the same right-of-way as the facilities being replaced.⁶ In addition, the Commission has emergency reconstruction provisions built in to its regulations under Part 157.⁷ Pursuant to these existing rules, in the case of certain sudden, unanticipated losses of gas supply or capacity that require immediate restoration of interrupted service, pipeline companies can construct otherwise ineligible facilities under their blanket certificates without receiving prior authorization from the Commission. Under these provisions, Chandeaur Pipe Line Company only had to notify the Commission before acting to replace a 6,600-foot segment of 12-inch offshore pipeline that had been damaged as a result of Hurricane Katrina. Similarly, Southern Natural Gas Company was able to take action to install temporary compression in order to increase its access to gas from Elba Island LNG terminal, mitigating loss of gas supply from other portions of its system. No Commission action on the notifications was required.

5. Part 284, Subpart I, of the Commission's regulations⁸ exempt persons who engage in emergency natural gas transactions, including the construction and operation of necessary facilities, from the certificate requirements of the Natural Gas Act and from the requirements of section 284.10 of our regulations, relating to rates. While the regulations impose a maximum 120-day limit on such transactions,⁹ the Commission has already taken action in the wake of Hurricanes Katrina and Rita to waive that time limitation in one proceeding, enabling unprocessed gas which would otherwise be shut-in behind the non-functional Venice Processing Plant to be rerouted to another plant, and on to market, for up to a year, or until the Venice Plant comes back on line.¹⁰ In addition to the actions noted above, we also have granted waivers of tariff provisions as necessary to reflect modified operations made necessary by hurricane damage.¹¹ It is in that vein that we act today.

⁶ See 18 C.F.R. § 2.55 (2005).

⁷ See 18 C.F.R. §§ 157.202(b)(2)(i), (b)(2)(ii)(C), and (b)(13); 157.205(a); 157.207; and 157.208(a) (2005).

⁸ See 18 C.F.R. § 224.261 (2005).

⁹ See 18 C.F.R. § 284.264(b)(1) (2005).

¹⁰ *Discovery Gas Transmission LLC*, 113 FERC ¶ 61,025 (2005).

¹¹ See *Stingray Pipeline Company, L.L.C.*, 113 FERC ¶ 61,034 (2005).

Waivers Of Blanket Certificate Cost Limits

6. Section 157.208¹² of the Commission's regulations limits the cost for projects qualifying for automatic authorization under a pipeline's blanket certificate to \$8.0 million; it limits the cost for projects qualifying for prior notice authorization to \$22.0 million. In the wake of Hurricanes Katrina and Rita, the Commission believes it is in the public interest for us to waive our regulations, on a temporary basis, to raise blanket limits to \$16.0 million for automatic authorizations and \$50 million for prior notice authorization for any facilities that will provide increased access to gas supply.¹³ We believe that these amounts will be sufficient to allow pipelines to quickly add facilities necessary to provide alternate access to supplies of natural gas while effectively limiting the size of projects that can be constructed during the temporary period without specific prior Commission authorization. This temporary waiver applies only to those projects that will be built and placed in service by October 31, 2006. A pipeline intending to construct facilities under our prior notice regulations at a cost between \$22.0 million¹⁴ and \$50.0 million should note the temporary waiver in its prior notice application.

7. We also believe it would be in the public interest to temporarily waive our regulations to expand the definition of eligible facilities under section 157.202¹⁵ of our regulations for facilities anticipated to provide increased or alternative access to gas supply. Specifically, we will temporarily waive sections 157.202(b)(2)(ii)(A), (B), (C), and (F) of our regulations to include as an eligible facility a main line, an extension of a mainline, a facility, including compression and looping, that alters the capacity of a main

¹² 18 C.F.R. § 157.208 (2005).

¹³ We note that the Commission took similar action in May 2001, in the wake of the California energy crisis, to temporarily waive the then-existing cost limitations under the blanket certificate regulations in order to expedite the construction of new capacity to serve California and Western United States. *See Removing Obstacles to Increase Electric Generation and Natural Gas Supply in the Western United States*, 94 FERC ¶ 61,272 (2001), *order on reh'g*, 95 FERC ¶ 61,225 (2001), *order on reh'g*, 96 FERC ¶ 61,155 (2001), *order on reh'g*, 97 FERC ¶ 61,024 (2001).

¹⁴ Pursuant to 18 C.F.R. § 375.308(x)(1), the project limits specified in § 157.208 are adjusted each year for inflation. Accordingly, once new limits have been established, pipelines intending to construct facilities under our prior notice regulations at a cost between the new limit and \$50.0 million should note the temporary waiver in its prior notice filing.

¹⁵ 18 C.F.R. § 157.202 (2005).

line, and temporary compression that raises the capacity of a mainline. The cost limit waivers can apply to newly eligible facilities. This temporary waiver is in effect through October 31, 2006.

8. We emphasize that the projects constructed under the expanded blanket authority will remain subject to our existing environmental regulations and compliance provisions.¹⁶ We also note that section 157.208(b)¹⁷ of our regulations prohibits pipelines from segmenting projects to meet the automatic or prior notice cost limitations. Nothing in this order negates that prohibition.

9. Under our Certificate Policy Statement,¹⁸ pipelines can roll costs incurred in constructing facilities pursuant to of Part 157, Subpart F regulations into their system-wide rates. We will treat the costs of facilities that are constructed, and placed into service by October 31, 2006, under the expanded authorizations adopted in this order in the same manner we do other facilities constructed under blanket certificate authority.

¹⁶ The Commission is required to prepare an EA or EIS for any action that may have a significant adverse effect on the human environment. *Regulations Implementing the National Environmental Policy Act*, Order No. 486, FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (1987). The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment. 18 C.F.R. § 380.4 (2005). The actions herein fall within the categorical exclusion in the Commission's regulations for actions that do not substantially change the effect of the regulations be amended. 18 C.F.R. § 380.4(a)(2)(ii) (2005). Therefore, an environmental assessment has not been prepared for this action. We also note in this regard that the Commission's regulations provide that activities authorized under a blanket certificate that involve ground disturbance or changes to operational air and noise emissions "shall be consistent with all applicable law" including, among others, the Clean Water Act, Clean Air Act, Coastal Zone Management Act, Endangered Species Act, and the Magnuson-Stevens Fishery Conservation and Management Act. 18 C.F. R. § 157.206 (2005). Thus, actions taken under a blanket certificate should not result in significant adverse environmental impacts in any event.

¹⁷ 18 C.F.R. § 157.208(b) (2005).

¹⁸ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *Order Clarifying Statement of Policy*, 90 FERC ¶ 61,128, *Order Further Clarifying Statement of Policy*, 92 FERC ¶ 61,094 (2000).

The Commission orders:

The cost limitation and eligible facility provisions of the Part 157, Subpart F blanket certificate regulations are waived, on a temporary basis, consistent with the discussion in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.