

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Revisions to the Blanket Certificate Regulations )  
and Clarification Regarding Rates )

Docket No. RM06-7-000

**COMMENTS OF  
THE NATURAL GAS SUPPLY ASSOCIATION**

The Natural Gas Supply Association (“NGSA”) hereby submits these comments strongly supporting the initiative of the Federal Energy Regulatory Commission (“FERC” or “Commission”) represented by the above-captioned Notice of Proposed Rulemaking (“NOPR”).

Notices and communications concerning these comments should be addressed as follows:

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NGSA represents integrated and independent companies that produce and market natural gas in the United States. Established in 1965, NGSA encourages the expanded use of natural gas and supports regulatory actions that foster competitive markets.

As the Commission is aware, NGSA joined with the Interstate Natural Gas Association of America (“INGAA”) in the November 22, 2005 petition (“Joint Petition”) that resulted in this proceeding. This cooperative effort between the producer sector and the pipeline sector of the natural gas industry was recognized by the Commission as unusual and indicative of the importance of the issues being addressed. NGSA is very

appreciative of the Commission's thorough and prompt response to the Joint Petition, in the form of the NOPR. Since NGSAs participated in the Joint Petition and the Commission's response has been largely favorable, these initial comments will be relatively brief.

The issues addressed in the Joint Petition and in the NOPR all center around the commercial and regulatory factors that affect growth in transmission and storage infrastructure in the natural gas industry. As we stated in our joint petition and as the Commission has recognized in the NOPR, infrastructure adequacy is critical to the health of all sectors of the natural gas industry. Consumers faced with delivery infrastructure constraints can experience price fly-up, high electric prices from gas-fired generation, and increasingly tighter market conditions, particularly during peak days. Producers faced with takeaway infrastructure constraints can experience gas shut-ins, the depression of wellhead prices, and uncertainty as to where and when to drill new wells. Pipelines faced with an inability to build new facilities when needed can experience a lack of growth, operational problems, and a lack of overall system flexibility.

### **The Proposals in the Joint Petition and the Commission's Response**

The Joint Petition asked the Commission to address five areas: Three types of enhanced availability of self-implementing and prior-notice blanket authorization, a reexamination and recalibration of the dollar limits for blanket transactions, and an affirmation that it would not be construed as undue discrimination for a project developer to accord favorable rate treatment to the "foundation shippers" who enable the developer's commitment to go forward with the project. In broad terms, the NOPR moved in the direction advocated by the Joint Petition in all five areas. However, in the four areas related to blanket authority, the Commission modified or restricted the extent to which it adopted

the proposed changes. Additionally, the Commission directed certain questions to commentors, regarding the nature and operation of the blanket rules.

NGSA applauds the progress that would be achieved if the NOPR's proposals are adopted, notwithstanding the fact that those proposals are not identical to the proposals made by the Petitioners. However, NGSA believes that certain of the Joint Petition's proposals should be reconsidered, such that the vitality of the blanket certificate program could be more significantly enhanced than is proposed by the NOPR.

### **Some Issues Best Deferred to Project Proponents' Comments**

NGSA has general concerns about the impact of some of the Commission's modifications and restrictions to the proposals advocated by the Petitioners including:

- (1) The Commission's adjustments to the Joint Petition's proposals as to blanket authority for storage;
- (2) The proposal that newly eligible facilities be confined to prior-notice procedures regardless of size; or
- (3) The various changes in landowner notification and reporting requirements contained in the NOPR.

Each of these adjustments has the potential to limit or slow the capacity enhancements in interstate gas markets that might be gained from the rule changes proposed by the Joint Petition. However, all of these issues may best be addressed by the pipelines and storage operators themselves, who can explore the impact that the NOPR's adjustments would have on the benefits of a final rule in promoting infrastructure development. Accordingly, NGSA will review with interest the information and

perspectives included in those parties' comments, and if necessary will address these issues in reply comments.

### **Extension of Prior Notice Protest Deadline to 60 Days**

Presently, a project sponsor using the Commission's prior-notice procedures must file a notice of the project, and then wait 45 days before proceeding. If anyone protests the project before the 45-day deadline, the sponsor has 30 days to resolve the protests or cause them to be dismissed by the Commission, or the project moves into the longer, more complex full-certificate process. Thus, a non-protested project has an automatic delay in construction of 45 days, and a project that is frivolously protested has a delay of 75 days, or two and a half months. The NOPR would extend this automatic delay to 60 days for non-protested projects and 90 days for protested projects.

NGSA submits that the extension of the initial protest period under the prior notice rules, from 45 days to 60 days, is an unnecessary addition of delay for projects that will not receive legitimate protests. Where affected parties are concerned but need more information before being certain of the impact of a project (as in the assessment of rate impact, for example), it is NGSA's observation that such parties file a protest within the 45-day period and then receive the information they need during the 30-day "cure" period. In other words, 45 days is ample time for any potentially affected party to decide whether to protest. This is true regardless of the reason for concern, including any impact that might be perceived from the proposed increase in blanket dollar limits.

It is important to note that the Commission's proposed addition of 15 days to the notice period will have a material impact only on projects that either receive no protests or receive only protests that can be resolved within 30 days. Any other project, receiving a

protest that cannot be resolved within 30 days, moves out of the prior notice procedure into normal certificate procedures. Thus, NGSAs believes that the addition of 15 days to the protest deadline has the effect of delaying innocuous projects, without conferring any meaningful benefit on affected parties. NGSAs submits that the final rule should retain the existing 45-day deadline.

NGSAs understands and supports the Commission's desire to provide sufficient time for landowners and customers to review the possible impacts of proposed projects. Yet, we believe that continuing the current timeframes have proven successful and on balance, the delayed timeframes stand to make the blanket certificate program less successful going forward.

### **Criteria for Higher Blanket Dollar Limits**

The NOPR accepted the Joint Petition's suggestion that blanket dollar limits for blanket certificate activities need to be increased. However it did so on the basis of increases in unit construction costs, not on the basis suggested by the Joint Petition. The Joint Petition recommended assessing the impact of changes in cost-driving requirements, such as enhanced environmental standards, since the inception of the blanket rules. The Commission did not accept the logic of the Joint Petition that the dollar limits should be adjusted such that the same project that could have been built under blanket rules in 1982 could be built under the blanket rules today. The Commission's primary reason for this choice was the emphasis on keeping blanket projects small enough that they would not have a material effect on rates.

Below, NGSAs responds to the Commission's inquiry regarding the potential for allowing some incremental rates for blanket projects. NGSAs submits that if its suggestion

that such rates be allowed is accepted, the basis for dollar-limit increases recommended by the Joint Petition should be reexamined. That is, if incremental rates are permitted as an option for blanket projects to shield existing customers from rate impacts, the rationale of the Commission's emphasis of such impacts as they relate to the dollar limits should be less important. Accordingly, NGSAs recommends that, if some degree of incremental pricing for blanket facilities becomes a reality, the criteria for increased blanket dollar limits should be revisited, along the lines proposed by the Joint Petition.

### **LNG Takeaway Facilities**

Of the NOPR's adjustments to the proposals of the Joint Petition, NGSAs is most concerned with the limitations retained on the use of blanket authority to build or expand lateral pipes receiving regasified liquefied natural gas ("LNG"). The proposal of the Joint Petition was, simply put, to allow blanket construction of new takeaway lateral facilities to connect existing terminals with existing pipelines. In those instances, there is no basis for making the permitting more difficult for LNG supplies than for other domestic supply sources. All supply sources are critical to meet the nation's demand.<sup>1</sup>

The theory behind the Joint Petition's proposal is that the rules should reflect the environment of a mature LNG industry, with multiple terminals competing into multiple markets. As reconfiguration of the market access of existing regasified LNG becomes appropriate because of successful competition by that supply for a particular market, it is very important that the reconfiguration be able to be accomplished quickly and predictably. It is worth emphasizing NGSAs's view that, once multiple LNG terminals are built and have been in service for some time, a very robust competitive situation should emerge. Markets

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<sup>1</sup> Of course, consistent with the Joint Petition's observation that issues such as gas quality should be and are addressed in pipeline tariff proceedings, any facility constructed under this blanket authority must necessarily comply fully with the constructing pipeline's tariff.

will be competing for various supplies, suppliers will be competing for various markets, and there may well be instances of LNG importers avoiding pipeline bottlenecks by “driving the ship around the constraint”—making short-term arrangements at a different terminal to reach the other side of the bottleneck. The rapid, responsive ability to change infrastructure to match market needs, an ability that has been a major underpinning of the successful restructuring of the natural gas industry, will be essential in the mature LNG market. Accordingly, NGSAs asks the Commission to expand or clarify the NOPR’s proposal to encompass blanket authority for new lateral facilities connecting existing terminals with existing pipelines.

NGSA fully understands the Commission’s concern that the entirety of new LNG development needs to be reviewed thoroughly, including the recently implemented mandatory pre-filing process. That the takeaway laterals included in such new development would be included in the project review has been a contested issue, but the Commission’s finding there is clear—the new laterals that go with a new LNG terminal are viewed as part of the project for review and pre-filing purposes.

However, 18 CFR 157.21(e), the new regulations associated with pre-filing procedures for terminal modifications, do not impose “mandatory” pre-filing. Rather, they delegate to a director the decision as to whether pre-filing procedures will be required. If attaching a new lateral to an existing terminal, with no change to the terminal, were construed as the type of “modification” contemplated in 18 CFR 157.21(e), it would be quite feasible to determine generic rules as to when a lateral would or would not be found by the director to require pre-filing<sup>2</sup>. If the general situation for such a lateral were that the

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<sup>2</sup> It is also important to note the significance of the Commission’s proposed requirement that all facilities built under this expanded blanket authority would be subject to prior notice. This means that both the affected parties and the Commission Staff would always have ample prior notice of a facility to be able to determine whether any significant issues must be addressed.

absence of modifications to the existing terminal precluded the need for any special review of the lateral, NGSAs can see no reason that blanket procedures could not be available to the lateral.

However, the NOPR is worded in such a way that the outcome described above could not happen. In the sections of the regulations cited by the NOPR as the criterion for exclusion from blanket eligibility, any lateral attached to the terminal becomes a “related facility,” regardless of the relative timing of the terminal and lateral construction, and is thus excluded. It appears that the only LNG-related lateral facilities that would gain new blanket authority would be those attaching to a takeaway lateral, downstream from the terminal. The distinction between this type of connection and a lateral connecting directly into the outlet header of an existing terminal does not appear meaningful enough to support a difference in authorization criteria. In any event, the Commission should more clearly specify the types of blanket certificates it will allow under its proposal.

### **Rate Treatment of Blanket Facilities**

The Commission seeks comment as to the advisability of allowing project sponsors to request an incremental rate for a specific blanket project, as opposed to the existing rules that require the sponsor to use its existing tariff rates. The Commission also asks how such an option could be implemented within the blanket rules.

NGSA believes that providing some flexibility in rate treatment for blanket projects would be beneficial to the achievement of two goals: stimulating the construction of more infrastructure, and protecting existing ratepayers. It is possible that a project, albeit small enough to qualify for blanket treatment, could have an impact on existing ratepayers. Yet,

that project could still be built quickly and efficiently under the blanket rules if the project proponent had a choice of rate treatment.

The procedure for providing such a choice could be quite simple, according all necessary due process without impeding project timing. The approach would be that a project proponent desiring any treatment other than the use of existing Part 284 rates would file a tariff sheet proposing the project rate in a limited Section 4 filing. The Commission would act upon the proposed rate as a normal tariff matter, accepting, rejecting, or suspending the rate at the end of the 30-day tariff notice period.


The advantage of a tariff approach over the existing practice of pushing any incremental-rate project into certificate procedures is one of timing. This is the same advantage that was gained through the unbundling process in Order Nos. 436 and 636, whereby new services may be implemented with tariff filings instead of certificate filings. In essence, innocuous proposals that do not disadvantage anyone may go into service at the end of 30 days, rather than having to await an affirmative certificate order from the Commission. In the event that a proposal does disadvantage a party or otherwise raises policy concerns at the Commission, a tariff filing is ample notice for remedial action to be taken.

NGSA is comfortable leaving the choice as to whether to seek use of the existing Part 284 rate or an incremental rate for a blanket facility to the project sponsor. There are sufficient economic incentives naturally in place to cause the correct decision to be made. That is, if a project exceeds system-average costs, a pipeline charging only its existing tariff rates would be under-recovering. Thus, such a project could be expected to be proposed at an incremental rate, anywhere that the market would accept such a rate.

## Conclusion

NGSA reiterates its support for the initiative represented by the NOPR. Additionally, NGSA endorses the finding recited in the Joint Petition that the Commission and its Staff have done an excellent job of executing and improving the processing of new-facility certificates. NGSA believes that the issuance of the NOPR is one more step in demonstrating how serious the Commission is in its commitment to the support of healthy infrastructure growth. The Commission is encouraged to consider the modifications to the NOPR discussed herein.

Respectfully Submitted,



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