

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

Petition for Rulemaking

) Docket No. RM06-____

**PETITION FOR RULEMAKING OF
THE INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA
AND NATURAL GAS SUPPLY ASSOCIATION**

Pursuant to section 385.207(a)(4) of the Commission's regulations, 18 CFR section § 385.207(a)(4)(2005), the Interstate Natural Gas Association of America (INGAA) and the Natural Gas Supply Association (NGSA), hereinafter referred to as Petitioners, respectfully request that the Federal Energy Regulatory Commission (FERC or Commission) make certain regulatory and policy changes to improve the ability of the natural gas industry to ensure the adequacy of the interstate pipeline infrastructure.

Executive Summary

The importance of sufficient pipeline infrastructure has been recognized frequently by the Commission and the industry. Many difficulties in maintaining this sufficiency have been encountered in recent years as a result of factors beyond the Commission's control, such as the use by project opponents of statutes and post-certificate review processes that are not under the Commission's jurisdiction. The Petitioners, however, have focused here on the regulatory process by which the Commission authorizes new facilities. Under the Commission's goal of expediting the development of energy infrastructure projects, the Commission has stated that one of its objectives is to "(m)ake final decisions on proposed projects in a timely manner, consistent with statutory mandates and due process, and continue to seek improvements in the

Commission's processing of project applications."¹ Consistent with that objective, the intent of the Petitioners' effort has been to determine whether major improvements are needed in the Commission's certificate process and to identify regulatory factors that affect the ability of new pipeline projects to move forward from the formulation stage.

The Petitioners' review has determined that there is little to be improved in the Commission's processing of certificate applications once those applications have been filed. Steady improvement in certificate processing has occurred over the last several years. This petition focuses on the factors that affect the number and timing of projects, *before* applications are filed. All of our key recommendations relate to certainty of regulatory treatment, a critical factor when project sponsors and shippers attempt to reach the bilateral agreements that must support new facilities. Ultimately, the Petitioners arrived at five consensus proposals to enhance this certainty. Four pertain to the authorization of facilities by means of the Commission's blanket facility rules. The fifth pertains to the predictability of regulatory treatment of rates agreed to in the transportation or precedent agreements used to attract the core of initial shippers necessary to support a new project.

Specifically, the Petitioners ask the Commission to allow the blanket authorization of certain mainline expansions, underground-storage enhancements, and takeaway facilities for liquefied natural gas. Next, the Petitioners request that the Commission initiate a process to establish the appropriate dollar limits for blanket facilities, based on updated project costs beyond the inflation that has been recognized in the Commission's regulations. Last, the Petitioners request that the Commission clearly state that it will not be construed as undue discrimination under the Natural Gas Act to provide favorable rate treatment for the shippers who make a project financially possible.

¹ FERC Strategic Plan FY 2005 – FY 2008, Goal 1, Objective 1.1.

I. Introduction

NGSA and INGAA hereby petition the Commission to institute rulemaking proceedings addressing certain issues relative to the regulatory treatment of pipeline infrastructure additions.² Petitioners submit that the changes proposed here would improve the industry's ability to ensure the adequacy of infrastructure, without impairing any legitimate rights of any party and without frustrating any public-policy objectives.

II. Background

The two associations comprising the Petitioners, representing major natural gas producers and major interstate natural gas pipelines, do not always agree with each other on all issues. However, the Petitioners recognize the importance of the adequacy of pipeline infrastructure to the health of the natural gas industry. This importance pervades every industry sector. 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 Commission has continuously recognized the importance of infrastructure adequacy, and has, among other things, conducted a series of annual meetings in different regions of the United States, soliciting comments as to the health of gas-delivery infrastructure. Particularly in the face of the multitude of current proposals to import large volumes of liquefied natural gas

² As a preliminary matter, the Petitioners stress that all of its discussion and proposals herein relate to the Commission's regulation of pipelines pursuant to the Natural Gas Act. In other circumstances, such as the authorization and regulation of the Alaska gas pipeline, the applicable enabling legislation and implementation rules applicable would govern Commission policy.

(LNG), the ability to expand and adjust pipeline transportation capabilities will continue to be critical for the next decade and more. The overall objective of the Petitioners is to advocate improvements which can enhance the ability of the industry to build needed capacity. As is noted below, many factors affect the industry's ability to do so, but for purposes of the instant petition, the Petitioners have focused on the Commission's policies and practices.

III. Overview of Conclusions and Project Development Process

At the outset, the Petitioners congratulate the Commission on the substantial improvements that have been made, and continue to be made, in its process of natural gas infrastructure review and authorization. In fact, the Petitioners have found that there are few changes to the current authorization process that would accelerate the process beyond its current, efficient state. However, the Petitioners urge the Commission to continue to evaluate its processes to further enhance the authorization process.

In the instant petition, the Petitioners chose to focus on project formulation and certificate authorization, in order to determine whether more new projects could be appearing as viable contenders in the marketplace. Additionally, since the Petitioners' focus was regulatory, the project-formulation stage was approached from the perspective of determining what regulatory factors affect the ability and willingness of market participants to make early, binding commitments to new projects.

The proposals herein are consensus positions, reached after extensive interaction between the two associations belonging to the Petitioners and among the many member companies of those associations.

IV. The Petitioners' Proposals

The Petitioners propose two broad types of changes. First, the Petitioners believe that the “blanket” authorizations contained in 18 CFR §157.201 *et seq.* should be expanded to allow self-implementing or prior notice authorization of more types of infrastructure facilities. Second, the Petitioners believe that a clear policy should be established to allow for predictable, favorable treatment of those shippers who underwrite a new facility through timely commitments.

Specifically, the Petitioners propose the following rule or policy changes:

1. Revise 18 CFR §157.202(b)(2)(ii), the “exclusions” section of the blanket rules, to remove Subsection (C), the exclusion of mainline expansions from blanket eligibility.
2. Revise 18 CFR §157.202(b)(2)(ii)(D) to remove the exclusion of certain underground storage enhancements from blanket eligibility.
3. Modify 18 CFR §157.202(b)(2)(ii)(D) to remove the exclusion of takeaway facilities for LNG from blanket eligibility.
4. Through an inquiry and rulemaking proceeding, revise the blanket dollar limits in Table 1 of 18 CFR §157.208(d), to reflect updated project development and construction costs.
5. With respect to larger, non-blanket projects, issue a policy statement or rule clarifying that it shall not constitute undue discrimination for a project’s “foundation shippers” to receive favorable rate treatment as compared with other shippers in the same project.

A. Removal of the “Mainline Exclusion”

Dating from the creation of the blanket certificate rules with Order No. 234 in 1982, certain facilities have been excluded from eligibility of blanket treatment, always requiring a full certificate application and approval proceeding in order to be authorized. Among these excluded facilities, at 18 CFR §157.202(b)(2)(ii)(C), is “A facility, including compression and looping, that alters the capacity of a main line. . .” This exclusion was not a significant issue of discussion in Order No. 234, beyond the observation that some commenting parties had suggested that “mainline” might be difficult to define. In reviewing the history and development of the blanket rules, it is evident blanket authorization was intended to address minor, “routine,” facilities.

There have been significant fundamental changes in the interstate pipeline industry since Order No. 234 was issued.³ That Order was the first in a series of orders that established self-implementing transportation pursuant to blanket certificates. Such transportation was very much the exception in 1982, as compared with the dominant, individually certificated merchant service of interstate pipelines. As a companion to this new, self-implementing authority to render certain services, a new blanket authority was created to expedite the addition of minor pipeline facilities, in part to enable the blanket transportation. The industry has progressed considerably since 1982. Today, the main service of interstate pipelines is the provision of transportation, storage, and other delivery services pursuant to blanket certificates on a self-implementing basis. Thus, the scope of facilities that may be authorized pursuant to blanket certificates should be correspondingly broader to keep pace with the evolution of the industry’s services.

Another important change in the industry that has taken place since 1982 is the importance of pipeline infrastructure. At that time, the industry was dealing with a pendulum

³ 47 FERC ¶ 24,254 (June 4, 1982).

swing of natural gas supply because of the shortages of the 1970s and the Natural Gas Policy Act gave way to an oversupply of gas supplies which contributed to the take-or-pay crisis. Physically delivering gas supply to the available market was not a significant challenge of the industry. Today, however, in many parts of the country, growth in demand for natural gas has led to repetitive capacity constraints and price volatility.⁴ In short, today mainline capacity continues to be a major issue for the industry and consumers. Transportation arrangements to use available mainline capacity may be put in place quickly under the self-implementing blanket certificates held by the interstate pipelines. However, the authorization of an increase in mainline capacity, even when such an increase may be implemented at low costs, requires the additional time impact of a full certificate proceeding. Certainly, based on cost, there should be no distinction between low-cost lateral facilities and low-cost mainline facilities.

During the California crisis of 2000-2001, the Commission temporarily waived the “mainline exclusion” through April 30, 2002 for pipelines serving the Western United States.⁵ Further, on November 18, 2005, the Commission temporarily eased construction rules to speed recovery from Hurricanes Katrina and Rita by expanding the definition of “eligible facilities” that can be constructed under the blanket certificates to include: mainline facilities; extensions of a mainline; facilities, including compression and looping, that alter the capacity of a mainline; and temporary compression that raises the capacity of a mainline.⁶ The Petitioners submit that the mainline exclusion is equally inappropriate and is, in general, an artifact of an earlier,

⁴ Pipelines are working continuously with their shippers to determine whether there is contractual support to expand and improve the pipeline systems. Any factors which would frustrate these efforts without a public policy reason should be adjusted.

⁵ *Removing Obstacles to Increased 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 ¶ (2001), *order on reh’g*, 97 FERC ¶ 61,024 (2001).

⁶ *Expediting Infrastructure Construction To Speed Hurricane Recovery*, Docket No. EM06-5-000, 113 FERC ¶ 61,179 (Nov. 18, 2005).

merchant era that has no place in today's market. Further, since the merchant era, the Commission has imposed additional rules on pipelines regarding the posting of available capacity to ensure that capacity is available to all shippers on a non-discriminatory basis. Accordingly, the Petitioners ask the Commission to amend its rules to allow the expansion of mainline facilities when such an expansion can meet the other requirements of the blanket rules, including the dollar limits.

The availability of such capacity on a non-discriminatory basis would automatically be assured because of the aforementioned transparency of the capacity posting process. As long as potential shippers received the same notice and ability to acquire capacity created by a blanket mainline expansion as they do on any existing capacity that becomes available, any risk of undue discrimination should be avoided. Also, prior notice for certain blanket facilities as well as annual blanket reports will keep the Commission and others informed about a pipeline's construction activities.

If the continued exclusion of mainline-expansion facilities from blanket eligibility is driven in any way by a concern over the addition of unscrutinized costs, such concern is misplaced in the case of service-enabling mainline expansions. It is important to note that in the Commission's original justification for the restrictions in Order No. 234, the primary reason given was the impact on ratepayers, not environmental impact or safety. The ratepayer impact issue is contained by the dollar limits of the blanket rules and, as with mainline expansions, by the likelihood that new investments will produce new revenue that covers the cost of the investments. Given the cap on projects performed under blanket certificates, the dollar amount of the project is sufficiently small enough that the cost of the project would have a *de minimus*

impact on pipeline rates. Moreover, there would be no rate impact to existing customers if the revenues exceeded the costs of the project, which in most instances should be the case.

If the Commission does extend the blanket rules to include mainline expansions, the rate treatment of mainline blanket facilities may need to be addressed. Presently, service through blanket facilities is presumptively priced at the pipeline's existing tariff rates. Recently, the Commission rejected a proposal to allow incremental pricing for facilities constructed under blanket certificate procedures.⁷ Whatever the Commission's pricing policy for blanket facilities, however, there would be no basis for a distinction between the pricing policy for mainline blanket facilities and non-mainline facilities. The Commission's pricing policy for smaller projects under blanket rules and rationale for that policy should be applicable to facilities whether they are non-mainline or mainline.

Accordingly, the Petitioners ask the Commission to enable the blanket treatment of mainline expansions within the cost limits of the blanket certificate rules. Doing so would be an appropriate recognition that one of the industry's major challenges today is very much the assurance of adequate delivery capability to market, and that any cost-effective means of addressing this challenge should be accorded as much deference and flexibility as possible. In the critical project-formulation stage of a project's life, the ability of a project sponsor to ensure

⁷ *Tennessee Gas Pipeline Company*, 110 FERC ¶ 61,047 (2005) (Docket No. CP04-60-001), (January 24, 2005), *rehearing denied*, 111 FERC ¶ 61,094 (April 19, 2005). There, the Commission denied a proposal that a "prior notice" lateral be priced incrementally, requiring that if such treatment was desired, the lateral must be authorized through a full certificate proceeding. In addressing the Commission staff's protest to the pipeline's prior notice filing, the Commission noted "Commission staff observed that under the Commission's Pricing Policy [*Pricing Policy for New and Existing Facilities Constructed by Interstate Natural Gas Pipelines*, 71 FERC ¶ 61,241 (1995)], projects that qualify for construction under the blanket procedures are entitled to a presumption of rolled-in treatment because the rate impact of qualifying projects on existing customers would be *de minimis*. [fn deleted] Therefore, Commission staff maintained, the Commission does not subject these projects to a case-specific analysis of system-wide benefits as is required for projects proposed for construction under the provisions of Part 157, subpart A." 110 FERC at 61,185. The Commission agreed and held that it is preferable to review all proposals to price new facilities on an incremental rate in case-specific proceedings. *Id.*

prospective shippers that automatic or prior notice authority could be used to eliminate the delay and uncertainty of a certificate proceeding would be a valuable tool in securing the necessary bilateral commitments to get capacity built.

B. Enhancement of Storage Eligibility for Blanket Treatment

The Commission’s regulations exclude from blanket eligibility any facilities that increase the deliverability of a storage field and any wells necessary to utilize the field. *See* 18 CFR §157.202(b)(2)(ii)(D). While various other storage facilities and operations for the “testing and development” of a storage field are eligible for their own blanket rules under 18 CFR §157.215, it is clear that the regulations prohibit using blanket authority to enhance the usefulness of storage through deliverability increases or through new injection and withdrawal wells.

Given the critical need for expedited enhancements of storage capability, these particular restrictions should be modified. Clearly, operations that could change the physical characteristics of a storage field, such as changes in the geographic size of the field, present issues other than cost that require more review than can be accomplished under blanket rules. However, deliverability enhancements or “infill wells”⁸ to increase injection or withdrawal capability frequently do not present such issues. Similarly, the development of new caverns or storage zones within a previously defined project area or field, where Section 7(c) authority under the Natural Gas Act was previously granted and where all issues with respect to safety, the environment, and cultural and social concerns had been addressed, may not present such issues, if there is no resulting change in the certificated boundaries or pressure of the field.

It is important to note that in the Commission’s original justification for the restrictions in Order No. 234, the primary reason given was the impact on ratepayers, not environmental impact or safety. The ratepayer impact issue is contained by the dollar limits of the blanket rules and, as

⁸ Infill wells are wells drilled within the existing perimeter of a field to enhance the use of existing storage capacity.

with mainline expansions, by the likelihood that new investments will produce new revenue that covers the cost of the investments.

Thus, the Petitioners submit that the Commission's regulations should be amended to allow blanket treatment of facilities that increase deliverability, such as above-ground piping or compression, and the drilling of new wells that improve or increase injection or withdrawal capability. Blanket treatment should also be extended to the development of new capacity within a previously defined project area or field where all areas of scrutiny including safety and environmental concerns were previously addressed under prior Section 7(c) certificate authority with regard to the referenced project area or field and where the blanket improvements would not alter the certificated boundaries or pressure of the field where facility construction is involved. The same dollar limits applicable to all blanket certificate holders would apply.

Petitioners also recognize that the Commission has tended to move very cautiously in extending blanket authority to storage, especially with respect to the drilling of new wells.⁹ To the extent that such expanded availability of blanket authority would need to be limited to allow the Commission to be certain it could not extend to inappropriate changes in the physical characteristics of a storage field, the Commission should establish such limits as part of the

⁹ Revision Of Existing Regulations Under Part 157 and Related Sections of the Commission's Regulations Under the Natural Gas Act, 87 FERC ¶ 61,125 (1999); 88 FERC ¶ 61,297 (1999); 90 FERC ¶ 61,205 (2000) and Landowner Notification Expanded Categorical Exclusions and Other Environmental Filing, 89 FERC ¶ 61,023 (1999); 90 FERC ¶ 61,259 (2000). In particular, in Order No. 609-A, the Commission said: "[A]s stated in Order Nos. 603-A, 603-B, and 609, the Commission does not believe that blanket certificate authorization provides adequate oversight of the construction of new injection/withdrawal wells, including those intended to replace existing wells, but constructed at a different site. Despite the fact that they are only intended to replace existing facilities, such wells may inherently alter the daily or seasonal deliverability, volumetric capacity, or boundary of a storage reservoir. Accordingly, separate NGA section 7(c) authorization is necessary prior to the drilling of replacement injection/withdrawal wells that are not on the site of the original facilities."

rulemaking process. However, Petitioners submit that every available opportunity should be provided to expand the usefulness of the Nation's critical natural gas storage assets.¹⁰

C. Narrowing of the LNG Exclusion

Section 157.202(b)(2)(i)(D) of the Commission's regulations states that an "eligible facility" for a blanket certificate does not include "a facility used to receive gas ... from plants gasifying liquefied natural gas." Because of this specific exclusion in the regulations, current pipeline blanket holders have significant doubt as to whether they can construct facilities associated with attaching LNG to their existing pipeline, absent a full Commission certificate proceeding for review. This would include pipeline laterals, headers and connectors and any other related construction required to receive gas from an LNG terminal.

This exclusion was originally imposed in 1982 in Order No. 234 and, at that time, the Commission's rationale for the exclusion was that the bundled price of LNG has a "significant impact on ratepayers." It is important to note that all LNG activity to that point in time involved system-supply purchases by pipelines, to be charged to all their merchant customers. As such, due to the unbundling of the industry, this rationale is an artifact of a prior era and those choosing to purchase LNG do so with full knowledge of the LNG commodity cost and associated pipeline transportation costs.

Ten years after Order No. 234 created the LNG exclusion, another rationale for this exclusion surfaced. In a 1992 *Distrigas* case, the Commission stated that the blanket certificate procedures are for use only for routine pipeline operations that require limited Commission involvement. The Commission explained that, in addition to the rate issues, the complex public safety and operational issues raised by a proposal to construct LNG facilities support excluding

¹⁰ The Commission itself recognized the importance of building new storage infrastructure by designating the development of new storage its key topic for discussion at its annual natural gas conference in 2004.

such facilities from blanket eligibility. “Major proposals, such as those involving the construction of LNG facilities, were expected to continue to require detailed applications and analysis.”¹¹

On October 7, 2005, the Commission issued Order No. 665¹², which set forth regulations to implement a mandatory pre-filing process for prospective applicants for authority under section 3 of the NGA for the siting and construction of new LNG terminals and “related jurisdictional natural gas facilities.” The Commission defined “related jurisdictional natural gas facilities” in section 153.2(e) as “any pipeline or other natural gas facilities which are subject to section 7 of the NGA; will directly interconnect with the facilities of an LNG terminal, as defined in paragraph (d) of this section; and which are necessary to transport gas to or regasified LNG from: (1) A planned but not yet authorized LNG terminal; or (2) An existing or authorized LNG terminal for which prospective modifications are subject pursuant to section 157.21(e)(2) to a mandatory pre-filing process.”

Interstate pipelines commonly use their blanket certificate authority to construct laterals to hook up new domestic supplies to their system. This option should also be available for hooking up LNG supplies to the grid and could potentially expedite and facilitate LNG development by eliminating potential delays resulting from the permits and authorizations the pipeline is required to obtain. Accordingly, the Petitioners urge the Commission to provide pipelines attaching to the developers’ plants, and the shippers of regasified LNG, the same timing benefits and certainty as afforded to other gas supplies through the blanket rules. Blanket authority should be available for the construction or expansion of laterals to carry regasified

¹¹ 60 FERC ¶ 61,274 (1992).

¹² 113 FERC ¶ 61,015 (2005).

LNG by any blanket holder.¹³ Notwithstanding the Commission’s recent action in Order No. 665 to require some “associated jurisdictional pipeline” to become subject to mandatory pre-filing, Petitioners assert that it is still appropriate to narrow the LNG exclusion of section 157.202(b)(2)(i)(D) to permit certain pipeline laterals receiving regasified LNG to be constructed or modified under the blanket certificate. Specifically, Petitioners request the Commission to modify its regulations to omit the LNG interconnect exclusion provided that the pipeline lateral receiving regasified LNG is not subject to the Commission’s mandatory pre-filing process; i.e., the pipeline lateral is attaching to an existing LNG terminal in order to serve a customer with a new or additional supply source, or is otherwise being modified in a way that requires no LNG terminal modification.

Moreover, while the Commission must take great strides to ensure that a full environmental and safety review has been done prior to approving, or significantly modifying, an LNG terminal, a low-cost lateral to hook up to existing LNG facilities should cause no additional issues regarding safety and environmental concerns. This should be especially true in the case of a low-cost expansion of an LNG takeaway lateral.

The Petitioners submit that it is problematic to have rules in place that make it considerably more difficult to hook up LNG to the interstate grid (as compared with other supplies) at a time when all supply sources are critical to meet demand. The Petitioners do not believe it is appropriate to differentiate between facilities for different types of supply; such differentiation appears unduly discriminatory. There is no basis to distinguish its treatment in terms of facility eligibility from the treatment of facilities for receipt of any other supply of natural gas.

¹³ The modification would not affect any decision on the actual siting of any LNG plant.

There is some evidence that the Commission has already interpreted the LNG exclusion as drawing some distinction between an LNG terminal itself and the pipeline lateral facilities that carry the regasified LNG from the terminal.¹⁴ Regardless, the plain language of the exclusion is broad enough to appear to frustrate the use of blanket authority to construct or expand an LNG takeaway lateral. This presents the same project-formulation issue discussed above – uncertainty. Such uncertainty can delay or prevent the early finalization of a bilateral agreement to go forward.

To resolve this impediment and its impact, the Petitioners request that the Commission modify its regulations to omit the LNG interconnect exclusion for all take-away laterals that would not be subject to the mandatory pre-filing requirements of Order No. 665.¹⁵ The Petitioners urge the Commission to provide pipelines attaching to the developers' plants, and the shippers of regasified LNG, the same timing benefits and certainty as afforded to other gas supplies through the blanket rules. Blanket authority should be available for the construction or expansion of laterals to carry regasified LNG by any blanket holder so long as the mandatory pre-filing requirements of Order No. 665 are not triggered.

¹⁴ *In Pine Needle LNG Company, LLC*, 77 FERC ¶ 61,229 (1996), for example, the Commission issued a blanket certificate under Part 157.201 *et seq.*, but included the following language:

Pine Needle also requests authority under Part 157, Subpart F, to perform certain blanket construction activities. We will grant the request, conditioned upon favorable environmental review. However, the blanket construction certificate is limited to the pipeline facilities linking Pine Needle's LNG plant to Transco's mainlines (i.e., the 1.05 miles of 10-inch inlet pipe and 1.05 miles of 24-inch outlet pipe), but does not apply to any of the LNG storage facilities, since sections 157.202(b)(2)(i)(D) and (G) of our regulations explicitly exclude LNG facilities from the types of facilities eligible to be constructed under a blanket certificate.

¹⁵ In Order No. 665 the Director OEP “may determine, based on the LNG project developer’s resource reports and any other information in the record, that certain filing or other requirements can be waived for the prospective pipeline applicant seeking to construct the direct interconnect with the LNG terminal.” Order No. 665, par.24. Petitioners request that the Director OEP’s discretion be broad enough to waive the pre-filing regulations for pipeline laterals even if they would be considered “associated jurisdictional facilities” in order to allow the lateral to proceed under the blanket certificate regulations.

D. Revision of the Blanket Dollar Limits

Section 157.208(d) of the Commission's regulations establishes the dollar limits for blanket facility authorization. The two limits, set forth in Table No. 1 of that subsection, establish the projects that can be built with self-implementing authority and those that can use prior notice authority. The subsection also provides for the annual adjustment of the limits for inflation. As may be seen from Table No. 1, the dollar limits have been in place, adjusted only for inflation, since 1992.¹⁶

The Petitioners submit that many factors *other* than inflation have changed over the past thirteen years which affect pipeline construction costs. While the new technology and construction techniques have helped mitigate impacts to the environment, several factors have arisen which would add cost to pipeline projects which were not present or were not as significant when the blanket limit methodology was established. Greater public outreach, greater agency involvement and more complex permitting processes, greater environmental remediation requirements, use of technologically advanced construction equipment, and often the time required for construction are just a few of such factors. It would be timely to revisit the fundamental evaluation of the blanket limits, in light of today's project costs. The intent should be that any project which could have fit within the blanket dollar limits in 1992 would still fit within the limits if it were constructed today. Thus, it is not contemplated that an increase in the dollar limits will cause blanket projects to be larger, in terms of the project foot print or right of way needed, than they would have been in 1992. In fact, the most common blanket construction

¹⁶ The Commission temporarily waived the cost limits from May 2001 through April 2002 for the Western United States by increasing the blanket certificate limits to \$10 million for automatic authorizations and to \$30 million for prior notice authorizations. 95 FERC ¶ 61,225 (2001). Further, on November 18, 2005, the Commission temporarily eased construction rules to speed recovery from Hurricanes Katrina and Rita by increasing the cost caps for automatic authorizations from \$8 million to \$16 million and prior notice caps from \$22 million to \$50 million. *See supra*.

occurs within the existing right of way or fee property, or in close proximity to existing pipeline infrastructure, meaning that there is no reason to expect a restoration of the originally intended project size under the blanket rules to have any negative environmental or landowner impact.

It is the Petitioners' belief that the current blanket authority inflation indexing has not kept pace with construction costs. As one of the petitioners, INGAA stands ready to work with the Commission's Staff in such an evaluation. In short, the benchmarks for blanket limits should be reset through a factual analysis of project costs. Thus, the Petitioners request that the Commission initiate such an analysis with the objective of revising 18 CFR §157.208(d) consistent with the results of the analysis. We hope that an increase in the types of projects permitted under a blanket certificate coupled with the appropriate cost increases for blanket treatment will increase the number of projects the Commission may see, leading to a tangible impact on our nation's transportation capacity and system flexibility.

E. Treatment of Foundation Shippers

Moving beyond the smaller projects where blanket authority is (and could be more) useful, the Petitioners focused on the factors that allow a major pipeline or storage project to reach the level of viability necessary for the project sponsor to incur the substantial cost of environmental review and certificate prosecution. The key factor in this success is the commitment of enough firm transportation business to support the project economically. The

shippers who make the commitments that provide this critical mass of support are identified herein as “foundation shippers.”¹⁷

In the time line of development of a major pipeline or storage project, there are three points at which committed shippers might be considered “foundation shippers.” First, as was the case with the various producer-owned offshore pipelines, there are the shippers who have reached agreement with the pipeline sponsor through one-on-one negotiation to formulate the project, and who basically come forward hand-in-hand with the project’s sponsor when the project is announced. This is the definition of “anchor shipper” recognized by the Commission in its recent rulemaking regarding the Alaska gas pipeline. Second, many shippers make their first commitment to the project as the result of a public open season. These shippers, large or small, ultimately provide the critical mass of support for the project that allows it to go forward in the form included in a certificate application. Third, and actually between the anchor-shipper and open-season groups chronologically, are the shippers of multiple sizes who later decide to join the potential project and commit to it at any time prior to the end of the open season.

As one example, a project’s open season may establish a deadline for the execution of binding precedent agreements, which constitute the shippers’ actual commitment to the project. To the extent that any shippers in the three groups identified above have made such binding

¹⁷ For purposes of this petition, “foundation shippers” are defined as the totality of the shippers who ultimately establish a project. These shippers include (1) the “anchor shippers,” described by the Commission in its Docket No. RM05-1-000, Notice of Proposed Rulemaking as “one or a very few shippers with very large, significant volumes of natural gas that will fully financially support the initial design and cost of a project,” (2) “open-season subscribers,” those shippers who bid successfully in the project sponsor’s open season and execute binding precedent agreements by the deadline established by the project sponsor, and (3) any other shippers who commit contractually to the project prior to such deadline. It is the combination of these three groups of shippers who provide the critical mass of commercial support for a project, and whose timely commitment is the primary factor that determines the timing of project expenditures and filing of an application. Additionally, the Petitioners would identify a further group of foundation shippers, explained more thoroughly *infra*, who bid in an open season, but execute binding commitments after the deadline but prior to the point at which the project sponsor commits publicly to its willingness to build the project. These shippers also provide necessary support for a project, but should not necessarily be considered similarly situated with the three groups of shippers discussed above.

commitment by such a deadline, they jointly become the basis for the project sponsor's ability to go forward. The Petitioners refer to this group of shippers as "Group I Foundation Shippers."

Additionally, there are situations in which potential shippers bid in such an open season, but for various reasons have not executed binding commitments by the deadline established. These shippers, as well as shippers who might bid and commit in a second open season, also provide part of the "foundation" for the project sponsor to be able to go forward, as long as their binding commitments are made prior to the *sponsor's* public commitment to its willingness to build the project.

Thus, the Petitioners believe that these shippers, identified as "Group II Foundation Shippers," should be encouraged to commit through rate treatment that might not be available to shippers committing subsequent to the sponsor's commitment to build. However, the Petitioners do not believe that Group II Foundation Shippers failing to commit by the open-season deadline should be guaranteed treatment identical with Group I Foundation Shippers.

While many shippers are willing to commit to a project before the open season deadline or at least before the public commitment to build is made, there is an economic incentive for a potential shipper to "sit in the wings," betting that the critical mass of support will evolve, that the project will go forward, and that a choice may be made at some later date whether to commit to the project. Clearly, if enough potential shippers take such a "wait and see" attitude, there is a point at which the project sponsor will not be able to justify spending the capital required to initiate environmental review and the certificate process. This is also true for storage projects.

Reaching a bilateral commitment with as much of the project's potential market as possible, as early as possible, may be the most significant variable affecting the timing of infrastructure additions. Thus, project sponsors frequently seek incentives they can legitimately

offer shippers to become part of the true foundation-shipper group. The most obvious of these incentives is the possibility of favorable rate treatment as compared with shippers who wait and see. This may also encourage state commissions to be more supportive of LDCs signing long-term contracts.

The risk for both the project sponsor and the foundation shipper in the use of such incentives is the possibility that either the beneficial rate treatment will be disallowed by the Commission, or that the shippers who waited and did not provide critical support for the project will be found to have an equal right to the beneficial rates. In other words, the risk is that the Commission would find it to be unduly discriminatory to provide different rate levels or structures to foundation shippers than to later-generation shippers.

Thus, the Petitioners request that the Commission confirm, either by policy statement or through its regulations, that it is *not* undue discrimination to provide rate benefits to foundation shippers as compared with later-generation shippers. Similarly, the Petitioners request that the Commission confirm that it is not undue discrimination to provide rate benefits to “Group I Foundation Shippers” that are not available to “Group II Foundation Shippers.” Such confirmations would significantly aid the ability of project sponsors and foundation shippers to negotiate the necessary bilateral commitments with confidence that the negotiated economic relationship would not be overturned by the Commission, *and* would not be necessarily conferred on later shippers who had not made the original commitment to the project. Such a confirmation would also help provide a strong incentive for more potential shippers to become foundation shippers, thus allowing needed infrastructure projects to get underway earlier.

This proposal does not address distinctions *among* foundation shippers within the same group. However, the Petitioners are asking here that the Commission provide the certainty to

project sponsors and *all* foundation shippers in the same group that if a rate bargain is struck that favors the foundation shippers, that bargain will not be undone and later shippers (who may well be competitors of the foundation shippers) will not be automatically entitled to the same bargain.

The common defining criterion for “foundation shippers” is the execution by Group I Foundation Shippers of a binding commitment by the point at which a project sponsor makes the “go/no go” decision for the project, and the execution of a binding commitment by Group II Shippers by the point at which the sponsor commits publicly to its willingness to build the project.

It should also be stressed that the Petitioners’ proposals here relate only to rate treatment under the Natural Gas Act. First, as indicated earlier in Footnote No. 2, the entirety of the instant petition relates to regulation pursuant to the Natural Gas Act, not to regulation pursuant to other legislation such as the enabling legislation for the Alaskan pipeline. Thus, the treatment of relative rate levels on the Alaskan pipeline, for example, would be subject to its own rules, as are many aspects of that pipeline. Second, the instant proposal does not apply to non-rate issues such as capacity allocation. There, the situation is somewhat different as the Commission found in approving certain producer-owned offshore pipelines.¹⁸ In those situations, the finite nature of capacity and the reliance of the anchor shippers on receiving the full capacity for which they had bargained caused the Commission to approve a system in which the anchor shippers received their full needs, while open-season shippers were subject to an allocation of available capacity. The Petitioners propose no change from existing Commission policy and precedent in these non-rate areas.

¹⁸ *Garden Banks Gas Pipeline, LLC*, 78 FERC ¶ 61,066 (1997); *Green Canyon Pipe Line Company*, 47 FERC ¶ 61,310 (1989); *Destin Pipeline Company, L.L.C.*, 81 FERC ¶ 61,211 (1997); *Maritimes & Northeast Pipeline, L.L.C.*, 76 FERC ¶ 61,124 (1996), *order on reh’g*, 80 FERC ¶ 61,136 (1997).

V. Conclusion

The requested improvements in the regulatory treatment of new natural gas facilities certainly can improve upon the Commission's current successful infrastructure authorization process. Given the importance of getting pipeline and storage capacity in place, every step, however incremental, will take us that much further in meeting the nation's energy needs.

Accordingly, INGAA and NGSA request that the Commission move forward to make the appropriate changes to its rules and policies as described in this petition.

Respectfully submitted,



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