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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Revisions to the Blanket Certificate Regulations
and Clarification Regarding Rates

Docket No. RM06-7-003

ORDER DENYING REHEARING

(Issued January 17, 2008)

I. Introduction

1. On October 19, 2006, the Federal Energy Regulatory Commission (Commission) issued a Final Rule in Order No. 686,¹ which, in pertinent part, amended Part 157, Subpart F, of its regulations to expand the scope and scale of activities that may be undertaken pursuant to blanket certificate authority by (1) broadening the types of natural gas projects permitted under blanket certificate authority to include certain mainline, storage, liquefied natural gas (LNG), and synthetic gas pipeline facilities, and (2) increasing the blanket certificate project cost limits from \$8,200,000 to \$9,600,000 for automatic authorization projects and from \$22,700,000 to \$27,400,000 for prior notice projects.² The revised blanket certificate regulations are intended to allow interstate natural gas companies to employ the streamlined blanket certificate procedures for additional types of activities, thereby increasing efficiencies and decreasing the time and

¹ *Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates*, Order No. 686, 71 FR 63680 (October 31, 2006), FERC Stats. & Regs. ¶ 31,231 (2006) (October 2006 Final Rule). This rulemaking proceeding was initiated in response to a petition submitted under 18 CFR 385.207(a) of the Commission's regulations by the Interstate Natural Gas Association of America (INGAA) jointly with the Natural Gas Supply Association (NGSA).

² These cost limits now stand at \$9,900,000 for an automatic authorization project and \$28,200,000 for a prior notice project. See *Natural Gas Pipelines; Project Cost and Annual Limits*, 72 FR 5614 (Feb. 7, 2007).

cost associated with the construction and maintenance of the nation's natural gas infrastructure. On June 22 and September 20, 2007, the Commission issued orders in response to motions seeking rehearing and clarification of the October 2006 Final Rule.³

2. INGAA and Northern Natural Gas Company (Northern Natural) submitted separate motions for rehearing of the September 2007 Order on Rehearing. In that order, the Commission revised section 157.216 to enlarge the universe of facilities that might be abandoned pursuant to blanket certificate authority. INGAA and Northern Natural describe the September 2007 Order as narrowing the scope of blanket abandonment authority, and claim the Commission erred by not providing the public with notice and an opportunity to comment prior to revising section 157.216. In this order, for the reasons discussed below, we deny the requests for rehearing of the September 2007 Order.

II. Background

3. In the October 2006 Final Rule, the Commission broadened the size and scope of projects that could be constructed (or acquired) and abandoned under blanket certificate authority to include, inter alia, certain mainline facilities. INGAA sought clarification with respect to abandonment of mainline facilities, asking whether blanket abandonment authority would apply only to mainline facilities put in place subsequent to the effective date of the Final Rule, or whether companies could also employ the expanded blanket certificate authority to abandon mainline facilities that had already been installed under case-specific Natural Gas Act (NGA) section 7 certificate authorization.

4. In the June 2007 Order on Rehearing and Clarification, the Commission responded to INGAA by stating that facilities that were constructed under case-specific authorization, but that could now qualify for construction authorization under the current blanket certificate program, may be abandoned pursuant to the provisions of section 157.216.⁴ We explained that to qualify for blanket abandonment, a facility put in place pursuant to case-specific authorization (1) must be able to meet the criteria for construction under the current blanket program, and (2) must have met the blanket project cost cap in effect at the time the facility was constructed. While the June 2007 Order did

³ *Order on Rehearing and Clarification*, Order No. 686-A, 72 FR 37431 (July 10, 2007), FERC Stats. & Regs. ¶ 31,249 (2007) (June 2007 Order) and *Order on Rehearing*, Order No. 686-B, 72 FR 54818 (Sept. 27, 2007), FERC Stats. & Regs. ¶ 31,255 (2007) (September 2007 Order).

⁴ 72 FR 37431 (July 10, 2007), FERC Stats. & Regs. ¶ 31,249, P 24 (2007).

not discuss the rationale for this cost constraint, it was intended to maintain a ceiling on the size of facilities subject to blanket abandonment authority.⁵

5. In linking the abandonment of an existing facility under the blanket certificate program to the blanket project cost cap in effect when the facility was constructed, we restricted such abandonments to facilities put in place when there was a cost cap, i.e., since implementation of the blanket program in 1982. INGAA questioned this constraint, seeking rehearing of the June 2007 Order to argue for making blanket certificate abandonment authority available for a facility regardless of when it was put in place, provided (1) the facility meets the criteria for construction under the current blanket program, and (2) the facility's original cost does not exceed the currently effective blanket project cost cap.

6. In the September 2007 Order, we adopted INGAA's proposal to extend blanket abandonment authority to all existing facilities that could be constructed under the current blanket program. However, we did not adopt INGAA's proposal to measure a facility's original cost against the current blanket project cost cap, but instead required that the estimated cost to replicate an existing facility be compared to the current blanket project cost cap. We found no justification for comparing a facility's original cost with the blanket program's current cost cap, as this would overlook the impact of inflation and other factors, and as a result, permit the abandonment of facilities far larger than any that now could be constructed under the blanket program.

III. Requests for Rehearing

7. INGAA and Northern Natural claim that in directing companies to determine if a facility may be abandoned under section 157.216 by comparing the current blanket project cost cap to an estimate of the cost to replicate an existing facility today, rather than to the original cost to construct that facility, the Commission improperly amended its

⁵ The Commission has described the blanket certificate program as being restricted to projects that will not result in unjustified increases in existing customers' rates and that are modest in scale and routine in nature, i.e., projects that are sufficiently well understood so as to permit them to proceed with a lesser level of regulatory scrutiny. In expanding the blanket certificate program, we sought to retain this character in accord with INGAA's and NGS's expectation that "an increase in the dollar limits will [not] cause blanket projects to be larger, in terms of the project foot print or right of way needed, than they would have been in [1982]," so that "any project which could have fit within the blanket dollar limits in [1982] would still fit within the limits if it were constructed today." INGAA's and NGS's joint *Petition for Rulemaking*, at 16 (Nov. 11, 2005).

regulations in violation of the Administrative Procedure Act (APA) requirement to provide the public with notice and an opportunity to comment. INGAA and Northern Natural further assert that the Commission did not articulate the problem it sought to solve and provide a justification for its action, and thus did not engage in reasoned decision making.

8. The Commission does not believe the September 2007 Order breeches any applicable rulemaking requirement. The public had notice and the opportunity to comment on the revisions to the blanket certificate program; indeed, it was in response to INGAA's request for rehearing of our June 2007 Order that we allowed for the abandonment of facilities installed prior to 1982.

9. The September 2007 Order's revisions to sections 157.216(a)(2) and (b)(2) clarified which facilities qualify for abandonment under blanket certificate authority following the October 2006 Final Rule's expansion of the blanket certificate provisions. Prior to the September 2007 Order, section 157.216(a)(2) permitted automatic abandonment for 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), or a facility constructed under § 157.211 or § 157.213(a)." The September 2007 Order modified section 157.216(a)(2) to permit automatic abandonment for a "facility that did or could now qualify for automatic authorization as described in § 157.203(b)." Similarly, before the September 2007 Order, section 157.216(b)(2) permitted prior notice abandonment for a "facility which qualifies as an eligible facility, and which is not otherwise eligible for automatic abandonment under paragraph (a)(2) of this section or a facility constructed under § 157.210, § 157.212, or § 157.213(b)." The September 2007 Order modified section 157.216(b)(2) to permit prior notice abandonment for a "facility that did or could now qualify for prior notice authorization as described in § 157.203(c)."

10. Rather than itemize the facilities described in sections 157.202(2)(1), .210, .211, .212, and .213, the September 2007 Order gathered these facilities into two abandonment categories – automatic and prior notice – and clarified that if a facility once did, or could now, qualify for blanket construction or acquisition authorization, the facility qualifies for blanket abandonment authorization under section 157.216. The September 2007 Order specified in sections 157.216(c)(1) and (d)(1) that to determine whether a facility that was not constructed or acquired under blanket authorization may be abandoned under blanket authority, a company must estimate the current cost to replicate the facility.⁶ The September 2007 Order's revisions to section 157.216 granted INGAA's request for rehearing of our June 2007 Order to extend blanket certificate abandonment authority to

⁶ Section 157.216(c)(1) addresses automatic abandonment requirements; section 157.216(d)(1) addresses prior notice abandonment requirements.

facilities constructed before 1982; the September 2007 Order did not otherwise alter the types of facilities subject to blanket certificate abandonment authority.

11. INGAA and Northern Natural fault the Commission for not providing a sufficient justification for requiring companies to compare the current cost cap to an estimate of the current cost to replicate an existing facility. The nature of the blanket program serves as our justification. The blanket program applies a streamlined set of regulations to a restricted set of facilities and services. We have found we can reduce our regulatory oversight, yet ensure the public interest is protected, provided the blanket program only applies to activities that are routine, well understood, limited in size, and that will not significantly impact rates.⁷ INGAA's and Northern Natural's proposal to rely on a facility's original cost would effectively lift the lid on the size of projects subject to blanket abandonment authorization, since the original cost remains fixed as the project cost cap ratchets up. Thus, over time, companies could abandon increasingly more significant portions of their systems, particularly with respect to their older facilities, such as mainline installed in the 1930s. If we were to permit the scale of blanket abandonment projects to grow with each annual adjustment to the blanket project cost limit, we could no longer be confident that blanket abandonments would continue to be consistent with the public convenience and necessity criteria of NGA section 7(b). Accordingly, we employ replacement cost as a means to measure those activities that will not result in unacceptable operational, economic, and environmental impacts. Facilities that cannot meet this cost constraint are appropriately considered individually in a case-specific section 7(b) proceeding.⁸

⁷ See note 5. In addition, the conclusion of our 1981 Environmental Assessment that the blanket program will result in no significant environmental impacts is premised on the expectation that there be certain restrictions on the size and type of projects that can be undertaken pursuant to blanket certificate authorization. To expand the universe of projects subject to blanket certificate abandonment authority as proposed by INGAA and Northern Natural may require additional environmental review.

⁸ While INGAA and Northern Natural contend that case-specific abandonments would needlessly consume companies' and the Commission's time and resources, we find that case-specific abandonment proceedings are warranted where issues may arise – e.g., operational, environmental, rate, or competitive impacts – that cannot be fully reviewed in a blanket abandonment proceeding. We note that where no such issues are present, yet a particular abandonment is subject to case-specific approval solely as a consequence of a facility's cost, case-specific abandonment approval is typically granted expeditiously.

12. INGAA and Northern Natural argue that requiring a company to employ an estimated current cost to construct is inconsistent with the approach we took in making revisions to the blanket certificate program in Order No. 603 in 1999 to provide for blanket abandonment of receipt points.⁹ INGAA requested a clarification of Order No. 603 to ensure that all receipt points may be abandoned automatically, whereas Indicated Shippers (in addition to arguing against allowing automatic abandonment for any receipt point) requested we specify that automatic abandonment authorization would only apply to receipt points that did or could qualify for automatic construction authorization. In Order No. 603-A, we explained that if a receipt point did not originally qualify for automatic construction authorization under section 157.208(a), then it could not qualify for automatic blanket abandonment authorization under section 157.216(a) and would have to be abandoned under the prior notice provisions of section 157.216(b). We stated automatic abandonment would apply to receipt point facilities that meet the automatic construction requirements, which include the cost cap requirement, whereas “[r]eceipt facilities that were constructed under the prior notice requirements or whose original cost exceed the level of automatic construction are not eligible for automatic abandonment.”¹⁰ INGAA and Northern Natural take this reference to “original cost” as establishing a Commission policy in conflict with our decision in this proceeding to employ replacement cost. We do not place the same weight on this reference to original cost.¹¹

13. We do not view our direction to compare an existing facility’s current construction cost to the current cost cap as changing “a long-standing regulation” that “pipelines have been relying on since Order No. 603-A.”¹² The reference to original cost in Order No. 603-A specifically addressed comments regarding the abandonment of receipt point facilities. A similar reference to original cost was never made in the context of other

⁹ *Revisions of Existing Regulations Under Part 157 and Related Sections of the Commission's Regulations Under the Natural Gas Act*, Order No. 603, 64 FR 26,571 (May 14, 1999), FERC Stats. & Regs. ¶ 31,073 (April 29, 1999), *order on reh'g*, Order No. 603-A, 64 FR 54,522 (Oct. 7, 1999), FERC Stats. & Regs. ¶ 31,081 (Sept. 29, 1999), *order on reh'g*, Order No. 603-B, 65 FR 11,462 (March 3, 2000), FERC Stats. & Regs. ¶ 31,094 (2000).

¹⁰ Order 603-A, at 30,936 (1999).

¹¹ We do not interpret this reference, as Northern Natural does, as authorizing companies “to utilize the gross plant (original cost) of the facility to determine what facilities could be abandoned pursuant to the automatic blanket regulations.” Northern Natural’s *Request for Rehearing*, at 9 (Oct., 22, 2007).

¹² *Id.*, at 7.

facilities; with respect to other facilities, we have not relied upon original cost as a matter of policy and there is no reference to original cost in our regulations. To the extent there was ever any ambiguity regarding the prior section 157.216 regulations' description of a facility that "qualifies for automatic authority" or "qualifies as an eligible facility" for prior notice abandonment authority, it was clarified by our September 2007 Order.

14. INGAA and Northern Natural are concerned that the Commission may challenge a company's estimate of the current cost to replicate an existing facility. We do not expect this to become a contentious matter. Companies have proved themselves capable of predicting, with reasonable accuracy, the final costs of prospective projects in gauging whether a project will meet the cost cap for blanket certificate construction authorization. The Commission is similarly capable of determining whether a proposed project's projected cost is plausible. In view of this, we do not expect there will be any significant disparity between what a company calculates it would cost to replicate an existing facility and what the Commission views as an acceptable cost estimate.¹³ We acknowledge that there are inherent ambiguities in any estimate; nevertheless, where an estimate reflects a reasonable approximation of current construction costs, or where the basis for calculating a facility's estimated cost is otherwise documented, we are unlikely to find cause to second guess a company's cost estimate.

15. For the reasons discussed herein, we find the September 2007 Order set forth a sufficient rationale for the actions taken and that the public was provided with adequate notice of, and an opportunity to comment on, the issues that were addressed in that order. Accordingly, we deny INGAA's and Northern Natural's requests for rehearing.

¹³ An estimate of the cost to replicate an existing facility is to include, as specified in section 157.202(b)(8), "the total actual cost of constructing the jurisdictional portions of a project." We expect this total actual cost to reflect project costs such as those identified by INGAA and NGSAs associated with "[g]reater 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;" such costs were reflected in our October 2006 Final Rule's adjustment to the blanket project cost caps. See INGAA's and NGSAs' joint *Petition for Rulemaking*, at 16 (Nov. 11, 2005).

The Commission orders:

INGAA's and Northern Natural's requests for rehearing are denied, for the reasons discussed herein.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.