

FERC Issues Final Rule Expanding Scope of Blanket Certificate Authority

October 26, 2006

On October 19th, the Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 686) expanding the scope of activities authorized under its blanket certificate regulations by increasing the types of facilities that are eligible for blanket authority and raising the project cost limits for activities authorized under the blanket authority. The rule also affirms that natural gas pipelines' incentive rate discounts to foundation shippers are generally not unduly discriminatory, expands notice requirements to landowners, and imposes new environmental compliance conditions.

The new rule applies to natural gas companies holding a Natural Gas Act (NGA) section 7(c) certificate and blanket certificate authority under Part 157, Subpart F of the Commission's regulations. The rule will become effective 60 days on January 2, 2007.

Key Issues in the Final Rule

Expanded Scope of Blanket Certificate Authority. Currently, the blanket certificate provisions apply only to a restricted set of eligible facilities that may be constructed, acquired, altered, or abandoned without the need to obtain case-specific certificate authorization for each project. Mainlines, storage field facilities, and facilities receiving gas from a liquefied natural gas (LNG) plant or a synthetic gas plant are currently ineligible. The new rule expands the category of facilities eligible for activities authorized by a blanket certificate to include mainline facilities, certain LNG and synthetic gas facilities, and certain storage facilities; however, all projects involving these additional types of facilities (except projects for remediation and maintenance of underground storage facilities) are subject to the prior notice provisions regardless of the estimated cost of the project.

The final rule extends blanket certificate authority to facilities that attach directly to an existing LNG terminal provided the construction and operation of the facilities do not involve significant modifications to the terminal that result in a mandatory pre-filing process under the Commission's rules. This is a significant change from the Notice of Proposed Rulemaking (NOPR) which stated that "blanket certificate authority will not apply to the outlet pipe of an LNG or synthetic gas plant, but only to those facilities that attach to the directly interconnected pipe."

Increased Blanket Project Cost Limits. The Commission's regulations impose cost limits on natural gas facilities that may be constructed, acquired, altered, or abandoned pursuant to blanket authority. Under existing rules, projects that cost up to \$8,200,000 can be undertaken without prior notice (*i.e.*, self-implementing or automatic authorization projects). Prior notice procedures apply for projects that cost up to \$22,700,000. The new rule would increase the project cost limit to \$9,600,000 for automatic authorization projects and \$27,400,000 for prior notice projects. The rule retains the current presumption of rolled in rate treatment for project costs in a future rate proceeding.

Incentives For Foundation Shippers. In its NOPR in this proceeding, the Commission stated that its existing policies permit a project sponsor to offer a rate incentives as an inducement to get customers to commit to a proposed project early (*i.e.*, "foundation shippers"), while offering a less favorable rate to customers that commit later. In Order No. 686 the Commission affirms that there must be no discrimination in announcing an open season for new capacity and in accepting bids – all potential customers must have an equal opportunity to obtain firm capacity. The Commission will review rate incentives on a case-by-case basis.

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Additional Notice Requirements. The new rule increases the notice required for landowners affected by an automatic authorization project from 30 to 45 days prior to construction, and extends the deadline to protest a proposed prior notice project from 45 to 60 days. The new regulations also specify the information that the project sponsors must provide in the notice to the landowner.

Environmental Compliance Conditions. The new rule modifies the environmental compliance conditions of the blanket certificate program to: clarify that “facility sites” include wells and all other aboveground facility sites; clarify that noise levels will be measured at the site property boundary; establish goals for drilling noise limits and require compliance verification surveys; require certain environmental inspection reports to be filed with FERC on a weekly basis; and require more detailed annual reporting on the status of automatic authorization projects.

For Additional Information

For additional information, assistance in evaluating the implications for your organization, or counsel on participating in FERC proceedings, please contact Curt Moffatt, Bob Christin, or any other member of the Van Ness Feldman Natural Gas Practice at (202) 298-1800.

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