

191 FERC ¶ 61,209
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Mark C. Christie, Chairman;
David Rosner, Lindsay S. See,
and Judy W. Chang.

Interstate Natural Gas Association of America

Docket No. CP25-499-000

ORDER GRANTING TEMPORARY WAIVER OF RULE LIMITING
AUTHORIZATIONS TO PROCEED WITH CONSTRUCTION ACTIVITIES
PENDING REHEARING

(Issued June 18, 2025)

1. On April 14, 2025, in Docket No. RM25-9-000, the Interstate Natural Gas Association of America (INGAA)¹ filed a petition pursuant to Rule 207(a)(4) of the Commission's Rules of Practice and Procedure,² requesting that the Commission adopt a rule rescinding Order No. 871 and the associated Commission regulations. As discussed below, we are temporarily waiving section 157.23 of the Commission's regulations for a period of one year, until June 30, 2026, while we consider INGAA's petition in RM25-9-000.

I. Background

A. Order No. 871

2. On June 9, 2020, the Commission in Order No. 871³ issued a final rule amending its regulations to add 18 C.F.R. § 157.23, precluding the issuance of authorizations to proceed with the construction of projects authorized under sections 3 and 7 of the Natural

¹ INGAA is an incorporated, not-for-profit trade association representing interstate natural gas pipeline companies operating in the United States. INGAA April 14, 2025 Petition, Docket No. RM25-9-000, at 4 (INGAA Petition).

² 18 C.F.R. § 385.207(a)(4) (2024).

³ *Limiting Authorizations to Proceed with Constr. Activities Pending Rehearing*, Order No. 871, 171 FERC ¶ 61,201 (2020), *order on reh'g*, Order No. 871-A, 174 FERC ¶ 61,050, *order on reh'g*, Order No. 871-B, 175 FERC ¶ 61,098, *order on reh'g*, Order No. 871-C, 176 FERC ¶ 61,062 (2021).

Gas Act (NGA) during the period for filing requests for rehearing of initial orders, or while rehearing is pending.⁴ Order No. 871 also revised section 153.4 of the Commission's regulations, which sets forth general requirements for NGA section 3 applications, to incorporate a cross-reference to section 157.23. The Commission issued Order No. 871 to address concerns raised in the then-pending appeal *Allegheny Defense Project v. FERC*⁵ before the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit).

3. In response to requests for clarification and rehearing of Order No. 871 and briefs filed, the Commission in Order No. 871-B revised section 157.23 to limit the applicability of the rule prohibiting the issuance of construction authorizations pending rehearing to requests for rehearing raising issues reflecting opposition to project construction, operation, or need.⁶ Order No. 871-B also revised section 157.23 to provide that the rule's restriction on issuing construction authorizations would expire if no qualifying request for rehearing was filed or, if such a request was filed, when (1) the request was no longer pending (i.e., it had been withdrawn or the Commission had acted on it), (2) the record of the proceeding was filed with the court of appeals, or (3) 90 days had passed from the date that the request might be deemed denied by operation of law under NGA section 19(a).⁷ Finally, Order No. 871-B also adopted a policy of presumptively staying, on a case-by-case basis where a pipeline developer has not

⁴ Under NGA section 3(e), the Commission is authorized to grant or deny applications to site, construct, expand, or operate liquefied natural gas (LNG) terminals. Under NGA section 7(c), the Commission is authorized to issue certificates of public convenience and necessity for the construction of interstate natural gas transportation facilities.

⁵ 964 F.3d 1 (D.C. Cir. 2020) (*Allegheny*).

⁶ Order No. 871-B, 175 FERC ¶ 61,098 at PP 14, 30.

⁷ *Id.* PP 26, 30. As explained in Order No. 871-B, Order No. 871 is procedural in nature because it concerns Commission staff's internal process and procedure for issuing authorizations to proceed with construction. *Id.* P 35. The Commission previously explained that the timing of when to permit construction to begin is a matter entirely within the Commission's existing discretion and not a matter of right. *Id.* (explaining that nothing in the NGA or the Commission's regulations, other than the rule adopted in Order No. 871, addresses the timing of authorizations to commence construction or prevents the Commission from acting on rehearing prior to issuing an authorization to proceed with construction). *See also Tenn. Gas Pipeline Co., L.L.C.*, 162 FERC ¶ 61,013, at P 23 (2018) (issuance of a notice to proceed is a "ministerial action") (citing *Arlington Storage Co., LLC*, 149 FERC ¶ 61,158, at 62,010 (2014)).

already acquired all necessary property interests and where a landowner who would be subject to eminent domain proceedings protested,⁸ an NGA section 7(c) certificate order during the 30-day period for seeking rehearing, and pending Commission resolution of any timely requests for rehearing filed by a landowner, until the earlier of the date on which the Commission (1) issues a substantive order on rehearing or otherwise indicates that the Commission will not take further action, or (2) 90 days following the date that a request for rehearing may be deemed to have been denied under NGA section 19(a).⁹

4. In Order No. 871-C, the Commission addressed requests for rehearing and clarification of Order No. 871-B.¹⁰ The Commission modified the discussion but did not change the outcome of Order No. 871-B.¹¹

5. On January 20, 2025, the President issued Executive Order 14154, to eliminate delays in and streamline the permitting process for energy infrastructure projects and the expeditious completion of authorized projects, and noting that it is “in the national interest to unleash America’s affordable and reliable energy and natural resources.”¹² On the same date, the President issued Executive Order 14156, which declares a national energy emergency and prioritizes the expansion of energy infrastructure as a matter of critical national and economic security.¹³

B. INGAA Petition

6. On April 14, 2025, INGAA filed a petition for rulemaking, requesting that the Commission adopt a rule rescinding Order No. 871, removing section 157.23 from the regulations, and amending section 153.4 to remove the reference to section 157.23. In its petition, INGAA maintains that *Allegheny*’s holding¹⁴ protects stakeholders from the

⁸ Order No. 871-C, 176 FERC ¶ 61,062 at P 41 (clarifying that the stay policy applies to landowners subject to eminent domain).

⁹ Order No. 871-B, 175 FERC ¶ 61,098 at PP 43-51 (noting at P 51 that the new policy is only presumptive and that the question of whether to impose a stay will be decided on the circumstances presented in each particular certificate proceeding.).

¹⁰ Order No. 871-C, 176 FERC ¶ 61,062.

¹¹ INGAA and others filed and later withdrew petitions for review of the Order No. 871 rulemaking.

¹² Exec. Order No. 14,154, 90 Fed. Reg. 8353 (Jan. 20, 2025).

¹³ Exec. Order No. 14,156, 90 Fed. Reg. 8433 (Jan. 20, 2025).

¹⁴ *Allegheny*, 964 F.3d 1, 13-17 (holding that parties that have filed a rehearing

possibility that project construction may proceed before the completion of the Commission's review because that decision allows parties to "seek and receive a judicial stay of a certificate [or authorization] order as soon as 30 days after a request for rehearing" has been filed.¹⁵ INGAA contends that Order No. 871's preemptive prohibition of the issuance of construction authorizations forces developers to account in their schedules for the maximum amount of time (150 days) that could be imposed as a result of a potential rehearing request, which it argues subjects project developers to unnecessary costs and construction delays regardless of whether developers account in advance for the potential delays or fail to consider such potential delays and are forced to make last-minute schedule changes.¹⁶

7. Further, INGAA claims that Order No. 871 increased the number of rehearing requests and that the regulation has become a tool to delay authorized projects, and imposes burdens on developers that are not justified.¹⁷ INGAA maintains that if the Commission rescinds Order No. 871 landowners will not be materially impacted because they would still have statutory and regulatory protections.¹⁸ Finally, INGAA states that rescinding Order No. 871 would be consistent with the Administration's priorities to develop reliable energy infrastructure.¹⁹

II. Interventions and Comments

8. In response to INGAA's petition, several entities filed motions to intervene.²⁰ We grant party status to this proceeding, CP25-499-000, to any person that intervened in

request may file a petition for judicial review of the underlying order immediately after rehearing is deemed denied).

¹⁵ INGAA Petition at 7-8.

¹⁶ *Id.* at 8-11.

¹⁷ *Id.* at 12-14.

¹⁸ *Id.* at 14-15

¹⁹ *Id.* at 16-17.

²⁰ In Docket No. RM25-9-000, motions to intervene were filed by Public Citizen, Inc.; Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.; Iroquois Gas Transmission System, L.P.; National Grid Gas Delivery Companies; Ameren Services Company on behalf of Ameren Illinois Company and Union Electric Company d/b/a Ameren Missouri; Ascent Resources – Utica, LLC; Natural Gas Supply Association; Chevron U.S.A. Inc.; Missouri Public Service Commission; UGI Utilities, Inc.; Duke Energy Carolinas, LLC, Duke Energy Progress,

RM25-9-000. On April 30, 2025, U.S. Department of the Interior Secretary Burgum, acting in his capacity as Chairman of the National Energy Dominance Council, filed a letter supporting INGAA's petition. Secretary Burgum states that Order No. 871 is inconsistent with the Administration's policies declaring a national energy emergency and prioritizing the efficient development of energy infrastructure for the protection of national and economic security.²¹

III. Discussion

9. The Commission has broad authority to waive its regulations "if waiver is consistent with the language and objective of the statute under which the regulation was promulgated."²² We may waive Commission regulations using the "good cause shown" standard.²³ The Commission has previously waived its regulations during emergency situations.²⁴

Duke Energy Florida, LLC, and Duke Energy Indiana, LLC; Piedmont Natural Gas Company, Inc.; American Gas Association; and Energy Transfer LP and its affiliates. Intervention is not necessary in order to request rehearing of a rulemaking. *See, e.g., Limiting Authorizations to Proceed with Construction Activities Pending Rehearing*, Order No. 871-B, 175 FERC ¶ 61,098, at n.14 (2021).

²¹ Secretary Burgum April 30, 2025 Letter Endorsing Petition for Rulemaking to Rescind Order No. 871, Docket No. RM25-9-000 (citing Executive Order Nos. 14154, "Unleashing American Energy;" 14156, "Declaring a National Energy Emergency;" and 14213, "Establishing the National Energy Dominance Council").

²² *New Fortress Energy LLC*, 176 FERC ¶ 61,031, at P 25 (2021) (quoting *Great Lakes Gas Transmission Co.*, 29 FERC ¶ 61,135, at 61,270 (1984) ("The general standard which will be applied in considering waiver requests is whether the overall policy objectives for the Rule outweigh the concerns raised by the individuals seeking waiver."), *reh'g denied*, 30 FERC ¶ 61,263 (1985)), *aff'd sub nom., New Fortress Energy Inc. v. FERC*, 36 F.4th 1172 (2022). Further, the Commission has the general statutory authority to waive regulations as it "may find necessary or appropriate." 15 U.S.C. § 717o.

²³ *S. Nat. Gas Co., L.L.C.*, 187 FERC ¶ 61,122 (2024); *Fayetteville Express Pipeline LLC*, 173 FERC ¶ 61,187, at P 5 (2020); *Ruby Pipeline, L.L.C.*, 173 FERC ¶ 61,190, at P 5 (2020).

²⁴ *See Extension of Non-Statutory Deadlines*, Supplemental Notice Granting Extension of Time for Non-Statutory Deadlines, Waiving Regulations, and Shortening Answering Period, Docket No. AD 20-11-000 (Apr. 2, 2020) (waiving the deadline to make non-statutory filings and noting that entities may seek waiver of Commission

10. There is widespread recognition that new natural gas infrastructure, as well as continued maintenance to ensure the integrity of the existing interstate natural gas system, is critical for the immediate term to help address pressing nationwide reliability and resource adequacy concerns. For example, the North American Electric Reliability Corporation (NERC), which oversees the reliability of the nation's bulk power system, has found that "additional pipeline infrastructure is needed to reliably serve electric load."²⁵ The Commission and NERC published a recent report that emphasizes that adequate natural gas infrastructure is critical in meeting total natural gas demand, particularly in periods of high demand to support both natural gas and electric system reliability.²⁶ Specifically, the report notes that recently-built natural gas pipeline infrastructure "played a crucial role in maintaining reliable electric supply during [last winter's] high demand period by sustaining stable pipeline pressure,"²⁷ but "finding available pipeline transportation capacity during a cold weather event may still be difficult in certain areas of the country."²⁸

regulations in response to the emergency conditions caused by the COVID-19 pandemic); *Expediting Infrastructure Constr. to Speed Hurricane Recovery*, 113 FERC ¶ 61,179 (2005) (temporarily waiving regulations to raise the blanket certificate cost limits in response to the loss of energy infrastructure caused by Hurricanes Katrina and Rita); *Removing Obstacles to Increase Elec. Generation & Nat. Gas Supply in the W. U.S.*, 94 FERC ¶ 61,272, *order on reh'g*, 95 FERC ¶ 61,225, *order on reh'g*, 96 FERC ¶ 61,155 (2001) (temporarily waiving several regulations under the Federal Power Act, Natural Gas Act, Natural Gas Policy Act, and Public Utility Regulatory Policies Act in response to the severe electric energy shortages in California and other areas in the West).

²⁵ NERC, *2022 Long-Term Reliability Assessment*, at 18 (2022), https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2022.pdf (accessed May 1, 2025); *see also* NERC, *2024 Long-Term Reliability Assessment*, at 15, 29 (2024), https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_Long%20Term%20Reliability%20Assessment_2024.pdf (accessed May 1, 2025) (discussing the need for natural gas pipeline capacity in PJM, SPP, and ISO-NE).

²⁶ FERC, NERC, *January 2025 Arctic Events: A System Performance Review*, Docket No. AD25-9-000, at 18-19 (2025), <https://www.ferc.gov/media/report-january-2025-arctic-events-system-performance-review-ferc-nerc-and-its-regional> (accessed May 16, 2025).

²⁷ *Id.* at 20.

²⁸ *Id.* at 28.

11. Notably, near-term natural gas and electricity demand are both expected to grow rapidly in the United States in the period covered by this waiver. Total U.S. natural gas demand is forecasted to average 98.7 billion cubic feet per day (Bcf/d) in summer 2025, 1.7 Bcf/d more than summer 2024 levels and nearly 10% more than the previous five-year summer average.²⁹ Moreover, longer-term forecasts show demand growing beyond this summer, with total U.S. natural gas demand forecasted to increase from 35.2 trillion cubic feet (Tcf) in 2025 to 35.6 Tcf in 2027.³⁰ Anticipated levels of natural gas exports, reflecting sustained demand for liquified natural gas cargos in international markets and greater pipeline flows to Mexico, are also expected to increase in both the near- and medium-terms. The U.S. Energy Information Administration (EIA) forecasts gross natural gas exports to average 15.5 Bcf/d in summer 2025, an increase of 3.2 Bcf/d from summer 2024 and 51% over the previous five-year average.³¹

12. Further, domestic demand for electricity, the largest share of which comes from natural gas generation, is also anticipated to grow robustly between 2025 and 2029,³² sparking concern among market operators about meeting that demand reliably and affordably. Grid operators at the Midcontinent Independent System Operator, Inc. (MISO), ISO New England Inc. (ISO-NE), PJM Interconnection, L.L.C. (PJM), and Southwest Power Pool (SPP), which collectively serve 144 million people across 36 states and the District of Columbia, have stressed that new natural gas infrastructure is essential for improved gas-electric coordination, energy security, and reliability.³³ As noted in the 2024 NERC Long-Term Reliability Assessment, “[n]atural gas-fired

²⁹ U.S. Energy Information Administration, *Short-Term Energy Outlook* (Apr. 10, 2025), <https://www.eia.gov/outlooks/steo/> (accessed May 8, 2025).

³⁰ U.S. Energy Information Administration, *Annual Energy Outlook, Table 61: Natural Gas Imports and Exports and Table 62: Natural Gas Consumption by End-Use Sector and Census Division* (Apr. 15, 2025), <https://www.eia.gov/outlooks/aeo/> (accessed May 8, 2025) (accessed May 29, 2025). Total natural gas consumption is calculated by subtracting net natural gas imports from natural gas consumption.

³¹ EIA, *Short-Term Energy Outlook* (May 6, 2025), <https://www.eia.gov/outlooks/steo/> (accessed May 13, 2025).

³² *Id.*

³³ MISO, ISO-NE, PJM, SPP, *Strategies for Enhanced Gas-Electric Coordination: A Blueprint for National Progress* 5 n.1 (2024), https://www.iso-ne.com/static-assets/documents/100008/20240220_joint_rtos-gas-electric-coordination-white-paper.pdf (accessed May 16, 2025); *PJM Interconnection, L.L.C. and Midcontinent Indep. Sys. Operator, Inc.*, Comments, Docket No. PL18-1-001, at 2 (filed May 25, 2022); *ISO New England Inc.*, Comments, Docket No. AD22-9-000, at 4 (filed June 9, 2023).

generators are a vital bulk power system resource” and “natural gas pipeline capacity additions over the past seven years are trending downward, and some areas could experience insufficient pipeline capacity for electric generation during peak periods.”³⁴ Constrained natural gas pipeline capacity and storage availability is also having increasing impacts on domestic manufacturing where manufacturing is facing a growing crisis due to inadequate natural gas pipeline capacity.³⁵

13. Given the pressing nationwide near-term demand for expanded natural gas transportation capacity, as well as the reliability concerns associated with maintaining the existing natural gas system, we find good cause to temporarily waive section 157.23. The Commission’s waiver will eliminate delays in, and use lawful emergency authorities to expedite, the development of energy infrastructure.³⁶ By temporarily waiving section 157.23 and maintaining our case-by-case application of our presumptive stay policy while the Commission engages in notice-and-comment rulemaking to consider permanently amending the regulations, the Commission is responding expeditiously to the urgent market conditions that support removing unnecessary barriers to natural-gas infrastructure development.

14. We reiterate that this waiver is temporary and will be in effect for 1 year while we seek public input in Docket No. RM25-9-000, where the Commission is issuing a Notice of Proposed Rulemaking that proposes to permanently remove section 157.23 and revise section 153.4 to remove the corresponding cross-reference.³⁷

15. This order constitutes final agency action. Requests for rehearing of this order must be filed within 30 days of the date of its issuance, as provided in section 19(a) of the Natural Gas Act, 15 U.S.C. § 717r, and section 713 of the Commission’s regulations, 18 C.F.R § 385.713 (2025).

³⁴ NERC, *2024 Long-Term Reliability Assessment* 8 (2024), https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_Long%20Term%20Reliability%20Assessment_2024.pdf (accessed May 19, 2025).

³⁵ Federal-State Current Issues Collaborative, <https://www.ferc.gov/federal-state-current-issues-collaborative>.

³⁶ In this respect, the waiver is consistent with both Executive Order 14154 and Executive Order 14156. 90 Fed. Reg. 8353; 90 Fed. Reg. 8433.

³⁷ *Removal of Reguls. Limiting Authorizations to Proceed with Construction Activities Pending Rehearing*, 191 FERC ¶ 61,208 (2025).

The Commission orders:

(A) Section 157.23 of the Commission's regulations is temporarily waived for a period of one year, until June 30, 2026, consistent with the discussion in the body of this order.

(B) The motions to intervene filed in this proceeding as of the date of this order are granted.

By the Commission.

(S E A L)

Carlos D. Clay,
Deputy Secretary.

Document Content(s)

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