

191 FERC ¶ 61,208
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 153 and 157

[Docket No. RM25-9-000]

Removal of Regulations Limiting Authorizations to Proceed
with Construction Activities Pending Rehearing

(Issued June 18, 2025)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to remove from its regulations a rule that precludes the issuance of authorizations to proceed with construction activities with respect to natural gas facilities approved pursuant to section 3 or section 7 of the Natural Gas Act for a limited time while certain requests for rehearing are pending before the Commission.

DATES: Comments are due **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways. Electronic filing through <http://www.ferc.gov>, is preferred.

- Electronic Filing: Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

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- Mail via U.S. Postal Service Only: Addressed to: Federal Energy
Regulatory Commission, Secretary of the Commission, 888 First Street,
N.E., Washington, DC 20426.
- Hand (including courier) delivery: Deliver to: Federal Energy Regulatory
Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

The Comment Procedures section of this document contains more detailed filing procedures.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

191 FERC ¶ 61,208
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Removal of Regulations Limiting Authorizations to
Proceed with Construction Activities Pending
Rehearing

Docket No. RM25-9-000

NOTICE OF PROPOSED RULEMAKING

(Issued June 18, 2025)

1. Section 157.23 of the Federal Energy Regulatory Commission's (Commission) regulations provides that with respect to orders issued pursuant to 15 U.S.C. 717b or 15 U.S.C. 717f(c) authorizing the construction of new natural gas transportation, export, or import facilities, no authorization to proceed with construction activities will be issued during the periods specified therein. The Commission proposes to remove § 157.23 and modify § 153.4 to remove the reference to § 157.23, in response to the imperative to remove impediments to the construction of needed energy infrastructure identified in the Interstate Natural Gas Association of America's (INGAA) petition for rulemaking and elsewhere.¹ This action would advance the Commission's principal statutory mission

¹ See, e.g., FERC, *Federal-State Current Issues Collaborative* (Apr. 28 2025), <https://www.ferc.gov/federal-state-current-issues-collaborative> (noting that constrained natural gas pipeline capacity and storage availability is increasing impacts on domestic manufacturing where manufacturing is facing a growing crisis due to inadequate natural gas pipeline capacity); FERC, *January 2025 Arctic Events: A System Performance Review*, 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) (supporting that new natural gas infrastructure is needed in the immediate term to help address pressing nationwide reliability and resource adequacy concerns); Secretary Burgum April 30, 2025 Letter Endorsing Petition for Rulemaking to Rescind Order

under the Natural Gas Act “to encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices.”²

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 CFR 157.23, precluding the issuance of authorizations to proceed with construction of projects authorized under sections 3 and 7 of the Natural 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 § 153.4 of the Commission’s regulations, which sets forth general requirements for NGA section 3 applications, to incorporate a cross-reference to § 157.23. The Commission issued Order No. 871 to

No. 871; Exec. Order No. 14,154, 90 FR 8353 (Jan. 20, 2025); Exec. Order No. 14,156, 90 FR 8433 (Jan. 20, 2025); Exec. Order No. 14,213, 90 FR 9945 (Feb. 14, 2025).

² See *Citizens Action Coal. of Ind., Inc. v. FERC*, 125 F.4th 229, 244 (D.C. Cir. 2025) (quoting *NAACP v. FPC*, 425 U.S. 662, 669-70 (1976)).

³ *Limiting Authorizations to Proceed with Construction Activities Pending Rehearing*, Order No. 871, 85 FR 40113 (July 6, 2020), 171 FERC ¶ 61,201 (2020) , *order on reh’g*, Order No. 871-A, 86 FR 7643 (Feb. 1, 2021), 174 FERC ¶ 61,050, *order on reh’g*, Order No. 871-B, 86 FR 26150 (May 13, 2021), 175 FERC ¶ 61,098, *order on reh’g*, Order No. 871-C, 176 FERC ¶ 61,062 (2021).

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.

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. Following the issuance of *Allegheny*, in response to requests for clarification and rehearing of Order No. 871, the Commission in Order No. 871-A provided interested parties an opportunity to file initial and reply briefs on the arguments raised on rehearing and specific questions posed by the Commission.⁶

4. After review of the briefs filed, the Commission in Order No. 871-B revised § 157.23 to provide that the rule prohibiting the issuance of construction authorizations pending rehearing would apply only when a request for rehearing raised issues reflecting opposition to project construction, operation, or need.⁷ Order No. 871-B also revised § 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).⁸ Finally, Order No. 871-B also adopted a

⁵ 932 F.3d 940 (D.C. Cir. 2019), *on reh'g en banc*, 964 F.3d 1 (D.C. Cir. 2020) (*Allegheny*).

⁶ Order No. 871-A, 174 FERC ¶ 61,050.

⁷ Order No. 871-B, 175 FERC ¶ 61,098 at PP 14, 30.

⁸ *Id.* PP 26, 30.

policy of presumptively staying, on a case-by-case basis where a pipeline developer has not already acquired all necessary property interests and where a landowner who would be subject to eminent domain proceedings protested,⁹ 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).¹⁰

5. In Order No. 871-C, the Commission addressed requests for rehearing and clarification of Order No. 871-B.¹¹ The Commission modified the discussion but did not change the outcome of Order No. 871-B.¹²

6. On January 20, 2025, the President issued Executive Order 14154, to eliminate delays in and streamline the permitting process for energy infrastructure projects, and noting that it is “in the national interest to unleash America’s affordable and reliable

⁹ Order No. 871-C, 176 FERC ¶ 61,062 at P 41 (clarifying that the stay policy applies to landowners subject to eminent domain).

¹⁰ 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.).

¹¹ Order No. 871-C, 176 FERC ¶ 61,062.

¹² INGAA and others filed and later withdrew petitions for review of the Order No. 871 rulemaking.

energy and natural resources.”¹³ 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.¹⁴

B. INGAA Petition

7. On April 14, 2025, INGAA filed a petition for rulemaking, requesting that the Commission adopt a rule rescinding Order No. 871, removing § 157.23 from the regulations, and revising § 153.4 to remove the reference to § 157.23.¹⁵ In its petition, INGAA argues that the stakeholder protections afforded by the D.C. Circuit’s decision in *Allegheny* rendered the regulations promulgated under Order No. 871 unnecessary.¹⁶ Specifically, INGAA maintains that *Allegheny*’s holding¹⁷ protects stakeholders from the 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

¹³ Exec. Order No. 14,154, 90 FR 8353 (Jan. 20, 2025).

¹⁴ Exec. Order No. 14,156, 90 FR 8433 (Jan. 20, 2025).

¹⁵ INGAA Petition at 18.

¹⁶ *Id.* at 7.

¹⁷ *Allegheny*, 964 F.3d 1, 13-17 (holding that parties that have filed a rehearing request may file a petition for judicial review of the underlying order immediately after rehearing is deemed denied).

rehearing” has been filed.¹⁸ INGAA contends that the current Order No. 871 framework assumes that the Commission erred in authorizing a project.¹⁹

8. Additionally, INGAA notes that when creating project schedules, project developers must work with contractors and vendors to set the timeframes to accommodate anticipated construction, material procurement, and environmental compliance requirements, as well as seasonal constraints.²⁰ It argues 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, even where no eligible rehearing request is filed.²¹ INGAA avers that Order No. 871 subjects project developers to unnecessary costs and construction delays regardless of whether developers account in advance for the potential delays which would be encountered should an eligible rehearing request be filed or fail to consider such potential delays and are forced to make last-minute schedule changes.²²

9. Further, INGAA claims that Order No. 871 increased the number of rehearing requests, that non-landowner parties have filed most of the rehearing requests since the

¹⁸ INGAA Petition at 7-8.

¹⁹ *Id.* at 8.

²⁰ *Id.*

²¹ *Id.* at 8-9.

²² *Id.* at 9-11.

promulgation of Order No. 871, and that the regulation has become a tool to delay authorized projects.²³ INGAA contends that the interests of project developers and landowners are unbalanced and that the burdens imposed on developers are not justified.²⁴ INGAA maintains that if the Commission rescinds Order No. 871 landowners will not be materially impacted because they would still have statutory and other regulatory protections, such as the ability to file with the Commission rehearing requests of certificate and authorization orders and motions to stay the certificate or authorization order, as well as to seek an emergency judicial stay of the certificate holder's exercise of eminent domain if needed.²⁵

10. Finally, INGAA states that rescinding Order No. 871 would be consistent with the Administration's priorities to develop reliable energy infrastructure.²⁶ INGAA argues that the Commission has previously proposed rules that are justified by federal policies established in prior Executive Orders.²⁷

²³ *Id.* at 12-14. We note that INGAA has not provided additional support for these specific claims. *Cf. Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colo.*, No. 23-975, 2025 WL 1520964, slip op. at 12 (D.C. Cir. May 29, 2025) (noting that “project opponents have invoked [the National Environmental Policy Act] and sought to enlist courts in blocking or delaying even those projects that otherwise comply with all relevant substantive environmental laws.”)

²⁴ *Id.* at 14.

²⁵ *Id.* at 14-15.

²⁶ *Id.* at 16-17.

²⁷ *Id.* (citing *Applications for Permits to Site Interstate Elec. Transmission Facilities*, Notice of Proposed Rulemaking, 181 FERC ¶ 61,205, at P 30 (2022);

11. In response to INGAA's petition, several entities filed motions to intervene, without comment.²⁸ 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.²⁹ On June 11, 2025, Energy Transfer LP and its affiliates filed comments in support of INGAA's petition.

Applications for Permits to Site Interstate Elec. Transmission Facilities, Order No. 1977, 89 FR 46682 (May 29, 2024), 187 FERC ¶ 61,069, at P 111 (2024)).

²⁸ 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, 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.*, Order No. 871-B, 175 FERC ¶ 61,098 at n.14.

²⁹ Secretary Burgum April 30, 2025 Letter Endorsing Petition for Rulemaking to Rescind Order No. 871 (citing Executive Order Nos. 14154, “Unleashing American Energy;” 14156, “Declaring a National Energy Emergency;” and 14213, “Establishing the National Energy Dominance Council”).

II. Discussion

12. NGA section 16 authorizes the Commission to make, amend, and rescind any regulations as it may find appropriate to carry out the provisions of the NGA.³⁰ As stated above, the NGA was primarily enacted to encourage the orderly development of natural gas supply.³¹ Consequently, NGA section 7(e) instructs the Commission to issue certificates if it determines that a proposed pipeline “is or will be required by the present or future public convenience and necessity.”³² NGA section 3 requires the Commission to authorize proposed import or export facilities unless it finds that the proposed facilities “will not be consistent with the public interest.”³³

13. As pointed out in INGAA’s petition,³⁴ construction of natural gas infrastructure is a complex process, constrained by many outside factors, including timing constraints related to weather (e.g., the infeasibility in certain areas of winter construction) and certain species (“tree clearing windows,” i.e., months of the year during which regulatory constraints are imposed on clearing of trees in areas where species may be present).³⁵ A

³⁰ 15 U.S.C. 717o.

³¹ *See supra* P 1.

³² 15 U.S.C. 717f(e).

³³ *Id.* 717b(a).

³⁴ INGAA Petition at 8-9.

³⁵ *See, e.g., Transcon. Gas Pipe Line Co., LLC*, 161 FERC ¶ 61,250, at P 100 (2017) (upholding the Commission’s finding that delaying construction could jeopardize compliance with a limited tree clearing window that was recommended to mitigate impacts on threatened and endangered species in the project area); *Algonquin Gas*

potential 150-day delay in the start of construction, under real world conditions, could equate to a much longer and much less certain delay, jeopardizing the availability of the project's capacity or reliability benefits in the timeframe identified by the project sponsor as being needed. Delays can frustrate achieving the identified objectives of approved projects that the Commission found to be needed and in the public interest or required by the public convenience and necessity, in addition to adversely affecting project financing and increasing costs.

14. Additionally, 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.³⁶ 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."³⁷ The Commission and NERC published a recent report that emphasizes

Transmission, LLC, 151 FERC ¶ 61,118, at P 39 (2015) (acknowledging that the project developer proposed a project schedule that appropriately balanced weather, environmental, and construction constraints).

³⁶ *Interstate Nat. Gas Ass'n of Am.*, 191 FERC ¶ 61,209 at P 10 (2025) (order granting temporary waiver of § 157.23); *Interstate Nat. Gas Ass'n of Am.*, 191 FERC ¶ 61,206, at P 6 (2025) (order granting temporary waiver of regulations to increase blanket certificate cost limitations).

³⁷ NERC, *2022 Long-Term Reliability Assessment*, 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*, 15, 29 (2024),

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.³⁸ 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,”³⁹ but “finding available pipeline transportation capacity during a cold weather event may still be difficult in certain areas of the country.”⁴⁰

15. Notably, near-term natural gas and electricity demand are both expected to grow rapidly in the United States. 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.⁴¹ 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

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).

³⁸ NERC, *January 2025 Arctic Events: A System Performance Review*, Docket No. AD25-9-000, 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).

³⁹ *Id.* at 20.

⁴⁰ *Id.* at 28.

⁴¹ U.S. Energy Information Administration, *Short-Term Energy Outlook* (Apr. 10, 2025), <https://www.eia.gov/outlooks/steo/> (accessed May 8, 2025).

in 2027.⁴² 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.⁴³

16. Further, domestic demand for electricity, the largest share of which comes from natural gas generation, is also anticipated to grow robustly between 2025 and 2029,⁴⁴ 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.⁴⁵ As

⁴² 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.

⁴³ U.S. Energy Information Administration, *Short-Term Energy Outlook* (May 6, 2025), <https://www.eia.gov/outlooks/steo/> (accessed May 13, 2025).

⁴⁴ *Id.*

⁴⁵ 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

noted in the 2024 NERC Long-Term Reliability Assessment, “[n]atural gas-fired 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.”⁴⁶ 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.⁴⁷

17. In recognition of these concerns, the President has issued several executive orders that emphasize the Administration’s policy priorities to facilitate the efficient development of reliable, necessary energy infrastructure to protect the country’s national and economic security. Executive Order 14154 seeks to eliminate delays in and streamline the permitting process for energy infrastructure projects and the expeditious completion of authorized projects, and notes that it is “in the national interest to unleash America’s affordable and reliable energy and natural resources.”⁴⁸ Executive Order

(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).

⁴⁶ NERC, *2024 Long-Term Reliability Assessment*, at 8 (2024), https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_Long%20Term%20Reliability%20Assessment_2024.pdf (accessed May 19, 2025).

⁴⁷ FERC, *Federal-State Current Issues Collaborative* (Apr. 28, 2025), <https://www.ferc.gov/federal-state-current-issues-collaborative>.

⁴⁸ Exec. Order No. 14,154, 90 FR 8353 (Jan. 20, 2025).

14156 declares a national emergency and prioritizes the expansion of energy infrastructure as a matter of critical national and economic security.⁴⁹

18. Accordingly, to promote and expedite efficient energy development and reduce construction delays resulting from the regulation's limitation on the issuance of construction authorizations while a rehearing request is pending, the Commission proposes to remove § 157.23 from its regulations and revise § 153.4 to eliminate the cross-reference to § 157.23. This action would reduce unnecessary delays in, and burdens on, energy infrastructure development.

19. Moreover, the Commission finds that changed circumstances warrant the removal of § 157.23. We acknowledge that the Commission has expressed concerns posed by the possibility of construction proceeding prior to the completion of Commission review;⁵⁰ however, subsequent to promulgation of § 157.23, the court in *Allegheny* clarified that stakeholders have the opportunity to seek judicial relief while a rehearing request may be pending before the Commission. In the *Allegheny* decision, the D.C. Circuit found that NGA section 19(a) allows parties that have filed a rehearing request to file a petition for judicial review of the underlying order immediately after rehearing is deemed denied, and that after a petition for judicial review is filed the Commission retains the authority to

⁴⁹ Exec. Order No. 14,156, 90 FR 8433 (Jan. 20, 2025).

⁵⁰ See Order No. 871, 171 FERC ¶ 61,201 at P 11; Order No. 871-B, 175 FERC ¶ 61,098 at P 25.

“modify or set aside, in whole or in part” the underlying order or findings.⁵¹ The court noted that section 19(a) ensures the “opportunity for the [rehearing] applicant to seek temporary injunctive relief if needed under the ordinary standards for a stay.”⁵² By specifying that parties are able to seek judicial review or a stay immediately following a deemed denial of rehearing, *Allegheny* provides safeguards to stakeholders’ interests and helps ensure that parties may seek to halt the commencement of construction during the pendency of a rehearing request.

20. The Commission also protects landowners and communities from harm through its NGA sections 3 or 7 authorizations. Only after carefully considering and balancing alleged harms of the project, including potential impacts to landowners and communities, against its benefits will the Commission proceed with issuing an NGA section 3 authorization or section 7 certificate. Although the Commission generally makes NGA authorizations effective immediately upon issuance by the Commission, as INGAA points out, because the Commission requires in each authorization that project proponents secure all applicable authorizations under federal law before beginning construction, it is rare that construction can begin immediately on all but the smallest scope projects, thus minimizing the perceived need for the regulations we propose to eliminate here.⁵³

⁵¹ *See Allegheny*, 964 F.3d at 13-17.

⁵² *Id.* at 17.

⁵³ INGAA Petition at P 15 (citing Order No. 871-B, 175 FERC ¶ 61,098 at P 42).

21. The Commission will also continue to consider whether additional protections are warranted in individual proceedings. The Commission's proposal here does not modify our case-by-case application of our presumptive stay policy, which may be applied where a landowner who is potentially subject to eminent domain proceedings protests the proposal,⁵⁴ and the applicant has not acquired the necessary property interests.⁵⁵

22. Accordingly, in light of the Commission's experience in implementing *Allegheny*, specifically that relatively few rehearing requests are filed by landowners whose property would be encumbered by the project, the Commission has determined that § 157.23 may no longer be necessary.

III. Request for Comments

23. The Commission requests and encourages public comments on this notice of proposed rulemaking. Additionally, the Commission seeks comment on whether it should instead revise § 157.23 to (1) limit its scope while maintaining some protections for certain types of stakeholders or (2) reduce the time period on the limitation for issuing

⁵⁴ Order No. 871-C, 176 FERC ¶ 61,062 at P 41 (clarifying that the stay policy applies to landowners subject to eminent domain).

⁵⁵ See Order No. 871-B, 175 FERC ¶ 61,098 at PP 43-51. The Commission has affirmatively directed a presumptive stay in four orders issuing section 7 certificates. *Transcon. Gas Pipe Line Co., LLC*, 182 FERC ¶ 61,006 (2023), *N. Nat. Gas Co.*, 178 FERC ¶ 61,203 (2022), *Spire Storage W. LLC*, 179 FERC ¶ 61,123 (2022), *Gulf S. Pipeline Co., LLC*, 181 FERC ¶ 61,145 (2022). As we have explained, a pipeline developer may move to preclude, or lift, such a stay based on a showing of significant hardship. Order No. 871-B, 175 FERC ¶ 61,098 at P 51.

authorizations to proceed with construction. The Commission will consider comments it receives and provide responses in a final rule, with changes, if warranted.

IV. Information Collection Statement

24. The Paperwork Reduction Act⁵⁶ requires each federal agency to seek and obtain the Office of Management and Budget's (OMB) approval before undertaking a collection of information (i.e., reporting, recordkeeping, or public disclosure requirements) directed to ten or more persons or contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements contained in final rules published in the *Federal Register*.⁵⁷ This notice of proposed rulemaking does not contain any information collection requirements. The Commission is therefore not required to submit this rule to OMB for review.

V. Environmental Analysis

25. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.⁵⁸ The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment, including the promulgation of rules that are clarifying, corrective, or procedural, or that

⁵⁶ 44 U.S.C. 3501-3521.

⁵⁷ See 5 CFR 1320.12.

⁵⁸ *Reguls. Implementing the Nat'l Env't Pol'y Act of 1969*, Order No. 486, 41 FERC ¶ 61,284 (1987).

do not substantially change the effect of legislation or the regulations being amended.⁵⁹

This notice proposes to remove § 157.23 from the Commission's regulations and revise § 153.4 to remove the cross-reference to § 157.23. Because the proposed rule is procedural in nature and falls within this categorical exclusion, preparation of an Environmental Assessment or an Environmental Impact Statement is not required. Further, we note that this proposed rule only changes the potential construction commencement date for natural gas projects, and such a change would not alter the environmental effects of a project constructed and operated in compliance with its certificate or authorization order.

VI. Regulatory Flexibility Act

26. The Regulatory Flexibility Act of 1980 (RFA)⁶⁰ generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and minimize any significant economic impact on a substantial number of small entities.⁶¹ In lieu of preparing a regulatory flexibility analysis, an agency may certify that a proposed rule will not have a significant economic impact on a substantial number of small entities.⁶² The Small

⁵⁹ 18 CFR 380.4(a)(2)(ii).

⁶⁰ 5 U.S.C. 601-612.

⁶¹ *Id.* 603(c).

⁶² *Id.* 605(b).

Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.⁶³ The SBA has established a size standard for pipelines transporting natural gas, stating that a firm is small if its annual receipts (including its affiliates) are less than \$41.5 million.⁶⁴

27. If enacted, this proposed rule would apply to entities, a small number of which may be small businesses, that receive Commission authorization to construct new natural gas transportation, export, or import facilities under section 3 or 7 of the NGA. However, the proposed rule would have no adverse effect on these entities, regardless of their status as a small entity or not, as the rule imposes no action or requirement on those entities. Instead, the proposed rule would remove a time-limited prohibition on the issuance of authorizations to proceed with construction activities while rehearing is pending. Accordingly, pursuant to section 605(b) of the RFA, the Commission certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

VII. Comment Procedures

28. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative

⁶³ 13 CFR 121.101.

⁶⁴ 13 CFR 121.201, subsection 486.

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proposals that commenters may wish to discuss. Comments are due **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

Comments must refer to Docket No. RM25-9-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

29. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software must be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

30. Commenters that are not able to file comments electronically may file an original of their comment by USPS mail or by courier-or other delivery services. For submission sent via USPS only, filings should be mailed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE, Washington, DC 20426. Submission of filings other than by USPS should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

VIII. Document Availability

31. In addition to publishing the full text of this document in the *Federal Register*, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>).

32. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

33. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202)502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

List of subjects

18 CFR Part 153

Exports, Natural gas, Reporting and recordkeeping requirements

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18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements

By direction of the Commission.

(S E A L)

Debbie-Anne A. Reese,
Secretary.

In consideration of the foregoing, the Commission proposes to amend Parts 153 and 157, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

PART 153—APPLICATIONS FOR AUTHORIZATION TO CONSTRUCT, OPERATE, OR MODIFY FACILITIES USED FOR THE EXPORT OR IMPORT OF NATURAL GAS

1. The authority citation for Part 153 continues to read as follows:

Authority: 15 U.S.C. 717b, 717o; E.O. 10485; 3 CFR, 1949–1953 Comp., p. 970, as amended by E.O. 12038, 3 CFR, 1978 Comp., p. 136, DOE Delegation Order No. 0204–112, 49 FR 6684 (February 22, 1984).

2. Revise § 153.4 to read as follows:

§ 153.4 General requirements.

The procedures in §§ 157.5, 157.6, 157.8, 157.9, 157.10, 157.11, and 157.12 of this chapter are applicable to the applications described in this subpart.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

3. The authority citation for Part 157 continues to read as follows:

Authority: 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352.

4. Remove § 157.23.

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