

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

**Revisions to the Blanket Certificate Regulations )  
and Clarification Regarding Rates )**

**Docket No. RM06-7-000**

**REQUEST FOR CLARIFICATION AND/OR REHEARING OF THE  
INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA**

Pursuant to Rules 203(a) and 713 of the Commission's Rules of Practice and Procedure, 18 CFR §§ 203(a) and 713, the Interstate Natural Gas Association of America (“INGAA”) requests clarification and/or rehearing with respect to one matter presented by the Commission's Order No. 686-A, *Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates*, 117 FERC ¶ 61,303 (Order on Rehearing and Clarification, issued June 22, 2007). INGAA is a national, non-profit trade association that represents the interstate natural gas pipeline industry operating in the United States, as well as comparable pipeline companies in Canada and Mexico. INGAA’s United States members, which transport virtually all of the natural gas sold in interstate commerce, are regulated by the Commission pursuant to the Natural Gas Act (“NGA”), 15 U.S.C. §§ 717-717w.

**I. RULE 713 SPECIFICATION OF REHEARING ERROR**

Pursuant to Commission Rule 713(c)(1), to the extent the Commission does not correct the matter through clarification as discussed below, the Commission erred insofar as it ruled that a company may not rely on the provisions of 18 CFR § 157.216(b)(2), which permits, *inter alia*, abandonment of facilities constructed under

the “prior notice” blanket certificate provisions of 18 CFR §§ 157.210 (mainline), 157.212 (LNG), or 157.213(b) (storage), to abandon facilities that were constructed under case-specific authorization pursuant to section 7 of the NGA, 15 U.S.C. § 717e, but which would qualify under blanket certificate regulation standards in effect at the time of the abandonment.

## **II. RULE 713 STATEMENT OF REHEARING ISSUE**

Pursuant to Rule 713(c)(2), the issue presented for rehearing is essentially the same as the specification or error set out above, i.e., to the extent the Commission does not correct the matter through clarification – whether the Commission erred in ruling that a company may not rely on the provisions of 18 CFR 157.216(b)(2) to abandon facilities that were constructed under case-specific authorization, but which facilities would qualify under blanket certificate regulation standards in effect at the time of the abandonment – the Commission erred and INGAA seeks rehearing. Such a ruling would depart from the standard of reasoned decisionmaking and constitute an unexplained departure from precedent and otherwise violate the standards under the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2)(A) (“arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law”) and (E) (“unsupported by substantial evidence”).

## **III. BACKGROUND**

The Commission's Final Rule added new § 157.210 which, subject to the prior notice requirements of §§ 157.205 and 157.208(c), allows blanket certificate holders to acquire, construct, modify, replace, and operate mainline gas facilities. In order to extend the expedited abandonment provisions for facilities authorized under blanket

certificates (see § 157.216) to the mainline facilities and services that it had just authorized for prior notice blanket certification procedures, the Commission added a cross-reference to § 157.210 in the abandonment provision under § 157.216(b)(2). *See* Final Rule at P 13. INGAA then sought clarification that mainline facilities that were already in place – facilities that would have qualified under the revised blanket rules for prior notice filing if they had been built after January 2, 2007, the effective date of the Final Rule – may also be abandoned under § 157.216(b). *See* INGAA Request for Rehearing and Clarification at 14-15. INGAA stated that such a clarification or revision would be consistent with changes that the Commission made to the automatic abandonment authorization in 1999. *Id.*, citing Order No. 603-A, *Revision Of Existing Regulations Under the Natural Gas Act*, FERC Stats. & Regs. (Regulations Preambles) ¶ 31,081 at 30,936. In Order No. 603-A, the Commission established the principle that a pre-existing facility “that now qualifies for automatic [blanket certificate] authority” is eligible for the expedited abandonment procedures under § 157.216(b) as long as “the certificate holder obtains the written consent of the customers that have received service through the facilities during the past 12 months.” *Id.*; *see* amended § 157.216(a)(2). Consistent with Order 603-A, INGAA requested that the Commission clarify that mainline facilities that would have qualified under the revised blanket rules if they had been built after January 2, 2007 also qualify for abandonment under § 157.216(b).

In response, the Commission stated:

The Commission believes the blanket certificate program’s §§ 157.216(b), (c), and (d) requirements for the abandonment of mainline, storage, LNG, and synthetic gas facilities, which include obtaining the written consent of any customer that received service through the facility during the previous 12 months, provide adequate safeguards to ensure “that the present or future public

convenience or necessity permit such abandonment,” as mandated by NGA section 7(b). Consequently, the Commission clarifies that facilities that were constructed under case-specific authorization, but that could now qualify for authorization under the current blanket certificate program criteria, may be abandoned pursuant to the provisions § 157.216(b).

While that was the clarification that INGAA sought, the Commission added:

Note that in considering whether previously constructed facilities might qualify for authorization under the current blanket certificate program criteria, the facilities must have been installed subsequent to the Commission’s implementation of the blanket certificate program and the facilities’ original cost must have met the § 157.208 project cost cap in effect at the time of their construction.

That last passage is the subject of this request for clarification and/or rehearing.

#### **IV. CLARIFICATION/REHEARING REQUEST**

INGAA seeks clarification or, in the alternative, rehearing, regarding the statement quoted immediately above to the effect that, to qualify for the expedited abandonment procedures under § 157.216, facilities must have been constructed after implementation of the Commission's blanket certificate program, and must meet the cost criteria that were in effect when constructed. There is no reasonable basis for imposing such conditions on use of the blanket certificate abandonment procedure.

Pipelines may not unilaterally abandon services under the blanket abandonment provisions of § 157.216(b). The Commission’s reasoning as to why the restrictions that are explicitly stated in that regulation provide adequate safeguards to ensure compliance with the NGA § 7(b) seems to apply equally to facilities constructed before or after the blanket certificate regulations were implemented. That is, all of the explicitly required safeguards under § 157.216 as written – viz., (1) obtaining “the written consent of all of the customers served through such facility[.]” (2) the specific requirement that

“[c]onsent is required from customers that have received service during the immediate past 12 months[,]” and (3) compliance with the notice procedures under § 157.205 – seem adequate to ensure “that the present or future public convenience and necessity permit such abandonment” without imposing the additional restrictions set out in the last sentence of the Commission’s discussion quoted above. Moreover, as an additional safeguard in proceeding under § 157.216, pipelines must still adhere to the environmental compliance provisions in § 157.206(b). Those requirements are more stringent with regard to threatened and endangered species and archeological sites than the analogous requirements for section 7(b) applications in that a proposed abandonment under § 157.216 can proceed only upon a concurrence from the appropriate environmental agency that the abandonment would have “no effect” on threatened and endangered species or upon cultural resources. Under a case-specific application to abandon, the applicant may theoretically proceed with the proposed abandonment subject to specific mitigation measures imposed in the certificate.

The same safeguards also apply to facilities, constructed after the blanket regulations took effect, whose original cost may have been higher than whatever blanket certificate cost limit (if any) was in effect at the time of construction, as long as that original cost meets the currently effective cost limit for prior notice blanket certification. It appears that the Commission may have been trying to address a potential abuse of the § 157.216 abandonment procedures in a situation where today’s cost limits (in current dollars) might permit abandonment of facilities that originally cost substantially more in inflation-adjusted dollars. The potential for abuse, however, is largely hypothetical, and does not warrant the restriction indicated by the language in the

Preamble. The other regulatory controls over abandonment of blanket projects discussed above and the proposed new abandonment rules would prevent abuse of the abandonment rule very effectively.

In sum, the existing restrictions on exercise of blanket certification and abandonment of facilities more than adequately limit the scale of a proposed abandonment under the blanket rules. In the absence of any further discussion or analysis to support restrictions included in the passage noted above, the Commission's order is to that extent arbitrary and capricious and contrary to law. *See, e.g., Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 43 (1983).

Moreover, the "installed subsequent to" and the cost restriction set out above were announced for the first time in the clarification order. Neither restriction was plainly articulated or obvious from the Commission's prior rulemaking orders in Order Nos. 603 or 603-A or 686. An agency may not amend its regulations through the guise of clarification, and thereby avoid the notice and comment procedures under the APA. *See, e.g., Paralyzed Veterans, America v. D.C. Arena*, 117 F.3d 579 (D.C. Cir. 1999).

Finally, if the Commission agrees, INGAA requests that the Commission amend its regulations to make it clear that facilities that would now qualify for automatic authority under § 157.208(a) or § 157.213(a), or that would now qualify for prior notice construction under § 157.210, § 157.212, or § 157.213(b), may be abandoned under the pertinent provisions of § 157.216(a) and (b). INGAA suggests the following amended codification to subsections 157.216(a)(2) and 157.216(b)(2):

**§ 157.216 Abandonment.**

(a) Automatic authorization. The certificate holder is authorized pursuant to section 7(b) of the Natural Gas Act to abandon gas supply facilities, and:

(1) a receipt or delivery point, or related supply or delivery lateral, provided the facility has not been used to provide:

(i) Interruptible transportation service during the one year period prior to the effective date of the proposed abandonment, or

(ii) Firm transportation service during the one year period prior to the effective date of the proposed abandonment, provided the point is no longer covered under a firm contract; or

(2) An eligible facility that was installed pursuant to automatic authority under § 157.208(a) or § 157.213(a), or that would now qualify for automatic authority under those provisions ~~§ 157.208(2)~~, or a facility constructed under § 157.211 ~~or § 157.213(a)~~, provided the certificate holder obtains the written consent of the customers that have received service through the facilities during the past 12 months.

(b) Prior Notice. Subject to the notice requirements of § 157.205, the certificate holder is authorized pursuant to section 7(b) of the Natural Gas Act to abandon:

(1) Any receipt or delivery point if all of the existing customers of the pipeline served through the receipt or delivery point consent in writing to the abandonment. When filing a request for authorization of the proposed abandonment under the notice procedures of § 157.205, the certificate holder shall notify, in writing, the State public service commission having regulatory authority over retail service to the customers served through the delivery point.

(2) Any other facility which qualifies as an eligible facility, and which is not otherwise eligible for automatic authorization under paragraph (a)(2) of this section, or a facility constructed, or that would now qualify for construction, under § 157.210, § 157.212, or § 157.213(b), provided the certificate holder obtains the written consent of all of the customers served through such facility. Consent is required from customers that have received service during the immediate past 12 months...

## V. CONCLUSION

INGAA requests rehearing and/or clarification of the Commission's Final Rule as discussed above.

Respectfully submitted,

Joan Dreskin  
General Counsel  
Timm Abendroth  
Attorney  
Interstate Natural Gas  
Association of America  
10 G Street, NE  
Suite 700  
Washington, DC 20002  
(202) 216-5928  
[jdreskin@ingaa.org](mailto:jdreskin@ingaa.org)  
[tabendroth@ingaa.org](mailto:tabendroth@ingaa.org)

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