

193 FERC ¶ 61,014  
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 October 7, 2025)

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) removes 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:** This rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**

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Docket No.

**SUPPLEMENTARY INFORMATION:**

193 FERC ¶ 61,014  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

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

Docket No. RM25-9-000

FINAL RULE

(Issued October 7, 2025)

1. Section 157.23 of the Federal Energy Regulatory Commission’s (Commission) regulations provides that, with respect to orders issued pursuant to sections 3 and 7(c) of the NGA<sup>1</sup> 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. In this final rule, the Commission amends its regulations to remove § 157.23 and modify § 153.4 to remove the reference to § 157.23. This action will advance the Commission’s principal statutory mission under the Natural Gas Act “to encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices.”<sup>2</sup>

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<sup>1</sup> 15 U.S.C. 717b; 15 U.S.C. 717f(c).

<sup>2</sup> 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)).

## I. Background

### A. Order No. 871

2. On June 9, 2020, the Commission in Order No. 871<sup>3</sup> 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(c) of the Natural Gas Act (NGA) during the period for filing requests for rehearing of initial orders, or while rehearing is pending.<sup>4</sup> 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 address concerns raised in the then-pending appeal *Allegheny Defense Project v. FERC*<sup>5</sup> 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

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<sup>3</sup> *Limiting Authorizations to Proceed with Construction Activities Pending Rehearing*, Order No. 871, 171 FERC ¶ 61,201 (2020) (Order No. 871), *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).

<sup>4</sup> 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.

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

parties an opportunity to file initial and reply briefs on the arguments raised on rehearing and specific questions posed by the Commission.<sup>6</sup>

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.<sup>7</sup> 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 or 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).<sup>8</sup> Finally, Order No. 871-B adopted a 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,<sup>9</sup> an NGA section 7(c) certificate order during the 30-day period for seeking rehearing, and pending Commission resolution

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<sup>6</sup> Order No. 871-A, 174 FERC ¶ 61,050.

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

<sup>8</sup> *Id.* PP 26, 30.

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

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).<sup>10</sup>

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

6. On January 20, 2025, the President issued Executive Order 14154, seeking 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 energy and natural resources.”<sup>13</sup> 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.<sup>14</sup>

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<sup>10</sup> 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).

<sup>11</sup> Order No. 871-C, 176 FERC ¶ 61,062.

<sup>12</sup> The Interstate Natural Gas Association of America (INGAA) and others filed and later withdrew petitions for review of the Order No. 871 rulemaking.

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

<sup>14</sup> Exec. Order No. 14,156, 90 FR 8433 (Jan. 20, 2025).

## 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 amending § 153.4, which relates to applications to authorize liquefied natural gas facilities under NGA section 3, to remove the reference to § 157.23.<sup>15</sup> 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.<sup>16</sup> Specifically, INGAA maintains that *Allegheny*'s holding<sup>17</sup> 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 rehearing" has been filed.<sup>18</sup> INGAA contends that the current Order No. 871 framework assumes that the Commission erred in authorizing a project.<sup>19</sup>

8. Additionally, INGAA notes that when creating project schedules, project developers must work with contractors and vendors to set the timeframes to

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<sup>15</sup> INGAA Petition for Rulemaking (Petition) at 18.

<sup>16</sup> *Id.* at 7.

<sup>17</sup> *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).

<sup>18</sup> INGAA Petition at 7-8.

<sup>19</sup> *Id.* at 8.

accommodate anticipated construction, material procurement, and environmental compliance requirements, as well as seasonal constraints.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup>

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 promulgation of Order No. 871, and that the regulation has become a tool to delay authorized projects.<sup>23</sup> INGAA contends that the interests of project developers and landowners are unbalanced and that the burdens imposed on developers are not

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 8-9.

<sup>22</sup> *Id.* at 9-11.

<sup>23</sup> *Id.* at 12-14. As stated in the NOPR, we note that INGAA has not provided additional support for these specific claims.

justified.<sup>24</sup> 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.<sup>25</sup>

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

### **C. Waiver Order and Notice of Proposed Rulemaking**

11. On June 18, 2025, the Commission issued an order temporarily waiving § 157.23 for one year, until June 30, 2026 (Waiver Order). At the same time, the Commission issued a Notice of Proposed Rulemaking (NOPR), which proposed to permanently remove § 157.23 from its regulations and revise § 153.4 to eliminate the cross-reference

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<sup>24</sup> *Id.* at 14.

<sup>25</sup> *Id.* at 14-15.

<sup>26</sup> *Id.* at 16-17.

<sup>27</sup> *Id.* (citing *Applications for Permits to Site Interstate Elec. Transmission Facilities*, Notice of Proposed Rulemaking, 181 FERC ¶ 61,205, at P 30 (2022); *Applications for Permits to Site Interstate Elec. Transmission Facilities*, Order No. 1977, 187 FERC ¶ 61,069, at P 111 (2024)).

to § 157.23.<sup>28</sup> The Commission proposed to remove § 157.23 to respond to the imperative to remove barriers to the construction of necessary energy infrastructure.

12. In the NOPR, the Commission noted its broad authority under NGA section 16<sup>29</sup> to rescind regulations as it finds appropriate to carry out the provisions of the NGA, and its statutory duties under NGA section 7(e) to issue certificates for proposed pipelines that are required by the present or future public convenience and necessity and under NGA section 3 to authorize import or export facilities unless such facilities are inconsistent with the public interest.<sup>30</sup>

13. The Commission recognized that construction of natural gas infrastructure is a complex process and explained that, due to timing constraints and other outside factors effecting construction, a potential 150-day delay in the start of construction could cause further unforeseen delays that might jeopardize the availability of a project's capacity or reliability benefits within the timeframe when they are needed, which could frustrate the objectives of approved projects.<sup>31</sup> The Commission acknowledged that there is widespread recognition that adequate natural gas infrastructure is critical to meet the increasing natural gas and electric system demand, particularly during periods of high

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<sup>28</sup> See NOPR, 191 FERC ¶ 61,208.

<sup>29</sup> 15 U.S.C. 717o.

<sup>30</sup> See NOPR, 191 FERC ¶ 61,208 at P 12.

<sup>31</sup> See NOPR, 191 FERC ¶ 61,208 at P 13.

demand, and to ensure the reliability of both systems.<sup>32</sup> The Commission cited several reports analyzing projected growth in natural gas and electricity demand and the role of natural gas infrastructure in supporting reliability and demand, and executive actions that have also recognized resource adequacy and reliability concerns.<sup>33</sup>

14. The Commission stated that the ruling in *Allegheny* provides safeguards to stakeholders' interests and ensures that parties may seek to halt the commencement of construction during the pendency of a rehearing request.<sup>34</sup> The Commission emphasized that it carefully considers and balances the alleged harms of a proposed project, including potential impacts to landowners and communities, against its benefits before issuing a certificate or authorization and that it will continue to consider whether additional protections are warranted in individual proceedings.<sup>35</sup>

15. In addition to requesting public comments on the NOPR proposal to eliminate § 157.23 in its entirety, the Commission posed two specific questions. The Commission sought 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 authorizations to proceed with construction.<sup>36</sup>

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<sup>32</sup> *Id.* PP 14-16.

<sup>33</sup> *Id.* PP 14-17

<sup>34</sup> NOPR, 191 FERC ¶ 61,208 at P 19 (citing *Allegheny*, 964 F.3d 1, 13-17).

<sup>35</sup> *Id.* PP 20-21.

<sup>36</sup> *Id.* P 23.

16. Several entities filed motions to intervene, without comment.<sup>37</sup> Comments on the NOPR were due July 24, 2025. In response to the NOPR, 23 comments were filed. The Commission received 11 comments from various individuals and organizations opposing the Commission's proposal to remove § 157.23;<sup>38</sup> and 12 comments from various entities supporting the removal of § 157.23.<sup>39</sup> We have considered these comments in developing this final rule.

## II. Discussion

### A. Temporary Waiver Order

17. Public Interest Organizations argue that the Waiver Order was, in essence, an improper rulemaking and that the NOPR offers a post-promulgation comment period and

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<sup>37</sup> Motions to intervene were filed by Arizona Corporation Commission; Symmetry Energy Solutions, LLC; Atmos Energy Corporation; EQT Energy, LLC; Coterra Energy, Inc.; Cheniere Energy, Inc.; New England Local Distribution Companies; and Delaware Riverkeeper Network and Maya Van Rossum (Delaware Riverkeeper). Intervention is not necessary to obtain party status in a rulemaking proceeding. *See, e.g.*, Order No. 871-B, 175 FERC ¶ 61,098, at n.14.

<sup>38</sup> Commenters that oppose the NOPR include: Marion Freistadt; Texas Environmental Justice Advocacy Services; a consortium of public interest organizations and individuals (Public Interest Organizations); Robert Feder; Lila Zastrow and Dave Hendrickson; Diana Dakey; Robert E. Rutkowski; Lakshmi Ford; Institute for Policy Integrity at New York University School of Law (Institute for Policy Integrity); PennFuture; Columbia Riverkeeper et. al; and Delaware Riverkeeper.

<sup>39</sup> Commenters that support the NOPR include: Arizona Corporation Commission; Energy Transfer LP; Eastern Shore Natural Gas Company; American Gas Association; Mountain Valley Pipeline, LLC (Mountain Valley); INGAA, the American Petroleum Institute, and GPA Midstream Association (INGAA); Cheniere Energy, Inc. (Cheniere Energy); Kinder Morgan, Inc. (Kinder Morgan); Enbridge Gas Pipelines; Boardwalk Pipeline Partners, LP (Boardwalk Pipeline); The Williams Companies, Inc.; and WBI Energy Transmission, Inc.

functions as an attempt to cure the Commission's failure to engage in notice and comment rulemaking prior to issuing that order.<sup>40</sup> They maintain that the Commission's contemporaneous issuance of the Waiver Order and the NOPR reflect the Commission's commitment to remove § 157.23 before soliciting public comment, and therefore, the Commission's rulemaking effort is fatally flawed.<sup>41</sup>

18. Any arguments challenging the Waiver Order are outside the scope of this rulemaking proceeding, which is entirely separate from the Waiver Order proceeding. Further, we find the Commission's process in promulgating this final rule is lawful. In compliance with APA § 553, the Commission provided notice and an opportunity to file comments in response to the proposal to eliminate § 157.23.<sup>42</sup> The Commission's separate finding of good cause to temporarily waive § 157.23 does not reflect a decision to remove the regulation on a permanent basis. As discussed below, after considering the submitted comments opposing and supporting the NOPR, and in light of the perspectives gained during the past four years of practical implementation, the Commission has determined that removing § 157.23 from its regulations will reduce the construction delays which have resulted from the regulation's limitation on the issuance of construction authorizations and hampered the timely development of natural gas

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<sup>40</sup> Public Interest Organizations July 24, 2025 Protest at 20-21.

<sup>41</sup> *Id.*

<sup>42</sup> *See* 5 U.S.C. 553; NOPR, 191 FERC ¶ 61,208.

infrastructure, and serve to promote and expedite efficient energy development, furthering the Commission's statutory mission under the NGA.

## **B. Justification for Removing § 157.23**

19. Several commenters oppose the NOPR, arguing that the Commission failed to provide evidence justifying the proposal to remove § 157.23 and raising concerns regarding the Commission's statutory duties under the NGA, the Commission's alleged reliance on Executive Order 14156, and energy demand and reliability projections. The Commission finds that removal of § 157.23 from its regulations is warranted to reduce unnecessary delays to constructing needed natural gas infrastructure and safeguards available to impacted stakeholders, including *Allegheny's* assurance that parties are able to seek judicial review immediately after rehearing is deemed denied and other protections provided by the Commission's case-by-case evaluation of proposed projects.

### **1. Reliance on the *Allegheny* Decision**

20. Supporting commenters argue that *Allegheny* mooted the concerns that originally motivated the issuance of Order No. 871 and that landowners have sufficient protections without § 157.23.<sup>43</sup> They contend that *Allegheny* ensured that stakeholders are able to seek judicial review or a stay immediately following a deemed denial of rehearing.<sup>44</sup>

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<sup>43</sup> See, e.g., INGAA July 24, 2025 Comments at 2, 8-12; Boardwalk Pipeline July 24, 2025 Comments at 10-11; Energy Transfer July 24, 2025 Comments at 2-3, 4, 11-13; Cheniere Energy July 24, 2025 Comments at 6; Kinder Morgan July 24, 2025 Comments at 11-13.

<sup>44</sup> The Williams Companies, Inc. July 24, 2025 Comments at 5-6; Cheniere July 24, 2025 Comments at 6.

Supporting commenters maintain that the stakeholders also have additional protections, including the Commission's balancing test and pre-filing requirements under the NGA, the ability to seek a stay from the Commission, and the requirement to obtain all necessary federal and state approvals prior to commencing construction.<sup>45</sup>

21. Opposing commenters argue that the decision in *Allegheny* does not justify the removal of § 157.23.<sup>46</sup> They emphasize that the Commission failed to explain its departure from its prior findings that both Order No. 871 and the ruling in *Allegheny* are necessary as they offer different protections.<sup>47</sup> Opposing commenters state that Order No. 871 addressed serious concerns posed by the possibility of construction proceeding prior to the completion of the Commission's review, while *Allegheny* offered timely judicial review for parties opposing certificate or authorization orders.<sup>48</sup> Public Interest Organizations maintain that due to the timing of the court's review of Commission orders *Allegheny* does not provide enough protection for stakeholders because a court may not act promptly enough to prevent permanent destruction or the exercise of eminent domain,

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<sup>45</sup> INGAA July 24, 2025 Comments at 22-23; Cheniere July 24, 2025 Comments at 6; Mountain Valley July 24, 2025 Comments at 8; Kinder Morgan July 24, 2025 Comments at 11-13.

<sup>46</sup> See Public Interest Organizations July 24, 2025 Protest at 37; Delaware Riverkeeper July 24, 2025 Comments at 9-10.

<sup>47</sup> See Public Interest Organizations July 24, 2025 Protest at 38-39; Delaware Riverkeeper July 24, 2025 Comments at 9-10.

<sup>48</sup> See Public Interest Organizations July 24, 2025 Protest at 38-39; Delaware Riverkeeper July 24, 2025 Comments at 9-10.

or to issue a stay.<sup>49</sup> They note that *Allegheny* is not a changed circumstance because the Commission issued rehearing orders of Order No. 871 following that decision and that the Commission's failure to repeal Order No. 871 after *Allegheny* demonstrates the importance of § 157.23.<sup>50</sup>

22. In issuing Order No. 871, the Commission considered the impacts that commencing construction during the pendency of a rehearing request would have on affected landowners and members of communities that would be affected by project construction.<sup>51</sup> While at that time the Commission determined that Order No. 871 provided necessary protections along with *Allegheny*'s assurance of timely judicial review of initial Commission orders, we now conclude that the protection offered by judicial review and the potential for other case-by-case relief discussed further below<sup>52</sup> are sufficient given that the projects subject to 157.23 have been found to be needed and in the public interest following a fulsome agency review that includes environmental review and consideration of alternatives. Based on these considerations and given the Commission's command pursuant to the NGA to encourage the orderly development of

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<sup>49</sup> Public Interest Organizations July 24, 2025 Protest at 37-38.

<sup>50</sup> *Id.* at 39-40.

<sup>51</sup> *See* Order No. 871-B, 175 FERC ¶ 61,098 at P 15.

<sup>52</sup> *Infra* PP 40, 43-46 (discussing other protections, including the Commission's evaluation of each individual project application, the ability to petition the Commission for a stay, and the presumptive stay policy established in Order No 871-B).

plentiful supplies of natural gas<sup>53</sup> the Commission concludes that § 157.23 is no longer in the public interest.

23. We note that many of the Public Interest Organizations' concerns are addressed by existing landowner protections. The Commission will continue to consider stay requests from landowners on a case-by-case basis, as well as continue the presumptive stay policy established in Order No. 871-B. The presumptive stay policy specifically protects directly affected landowners who would be subject to eminent domain under NGA section 7. In Order No. 871-B, the Commission recognized that "eminent domain is among the most significant actions that a government may take with regard to an individual's private property," and that *Allegheny* alone does not preclude the harm that can arise when developers initiate eminent domain proceedings following the issuance of a certificate order.<sup>54</sup>

24. Further, as clarified by *Allegheny*, affected landowners and stakeholders that have sought rehearing of an initial order are able to seek judicial review as soon as 30 days after rehearing is deemed denied, and to seek more immediate injunctive relief.<sup>55</sup> Stakeholders may also file with the Commission a motion for a stay of the initial certificate or authorization order. Based on these protections, we find that the removal of § 157.23 is warranted.

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<sup>53</sup> *NAACP v. FPC*, 425 U.S. at 670.

<sup>54</sup> See Order No. 871-B, 175 FERC ¶ 61,098 at P 47.

<sup>55</sup> *Allegheny*, 964 F.3d at 13-17.

## 2. Resource Adequacy and Reliability Concerns

25. Supporting commenters argue that § 157.23 of the Commission's regulations hinders the additional pipeline infrastructure needed to serve growing electricity demand.<sup>56</sup> They state that the U.S. is facing unprecedented increases in natural gas and electricity demand from the residential, manufacturing, commercial, and transportation sectors and artificial intelligence-driven growth, and contend that infrastructure development is necessary to ensure energy reliability and affordability.<sup>57</sup> INGAA emphasizes that additional generation capacity is critical to the nation's energy security needs, particularly given the development of data centers to advance artificial intelligence.<sup>58</sup>

26. Opposing commenters express concerns regarding the Commission's reliance on natural gas and electricity demand projections and reliability concerns to justify its proposal and argue that it is unclear how the removal of § 157.23 would ease resource adequacy constraints.<sup>59</sup> Opposing commenters note that the Commission failed to

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<sup>56</sup> See, e.g., INGAA July 24, 2025 Comments at 3, 20-21; Energy Transfer July 24, 2025 Comments at 10-11; The Williams Companies, Inc. July 24, 2025 Comments at 7-9.

<sup>57</sup> The Williams Companies, Inc. July 24, 2025 Comments at 7-8; Kinder Morgan July 24, 2024 Comments at 3, Enbridge Gas Pipelines July 24, 2025 Comments at 2; WBI Energy Transmission, Inc. July 24, 2025 Comments at 3-4.

<sup>58</sup> See INGAA July 24, 2025 Comments at 3, 21.

<sup>59</sup> See Public Interest Organizations July 24, 2025 Protest at 26, 30; Institute for Policy Integrity July 23, 2025 Comments.

consider that the U.S. Energy Information Administration's (EIA) Short-Term Outlook<sup>60</sup> projected that, in 2025, the percentage of renewable energy resources supporting electric generation is increasing while the percentage of natural gas doing so is decreasing.<sup>61</sup>

Public Interest Organizations acknowledge the expected growth for domestic electricity demand, but argue that due to the uncertainty surrounding data centers there is uncertainty regarding the degree to which both demand for electricity, generally, and natural gas to support electric generation, specifically, will increase.<sup>62</sup> Opposing commenters dispute the reports that INGAA cited in its Petition and the Commission cited in the NOPR, arguing that they do not provide evidence that expanded pipeline capacity is the optimal solution to ensure and improve reliability and that the reports indicate that the rate of natural gas demand increase is lowering from previous years.<sup>63</sup> They contend that the Commission does not provide evidence that the increasing energy demand constitutes an emergency or that the current pace of natural gas infrastructure additions would fail to meet such demand.<sup>64</sup>

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<sup>60</sup> See EIA, *Short-Term Energy Outlook* (May 6, 2025), <https://www.eia.gov/outlooks/steo> (accessed Sept. 16, 2025);

<sup>61</sup> See Public Interest Organizations July 24, 2025 Protest at 27-28; Diana Dakey July 21, 2025 Comments.

<sup>62</sup> Public Interest Organizations July 24, 2025 Protest at 28-29, 33-34.

<sup>63</sup> See Public Interest Organizations July 24, 2025 Protest at 31-32; Institute for Policy Integrity July 23, 2025 Comments at 2-4.

<sup>64</sup> See Public Interest Organizations July 24, 2025 Protest at 32-33; Delaware Riverkeeper July 24, 2025 Comments at 11.

27. Opposing commenters argue that given the alleged uncertainty regarding natural gas and electricity demand, removing § 157.23 could lead to overbuilding infrastructure. The Institute for Policy Integrity urges the Commission to conduct its own updated analysis of existing infrastructure and current projections for load growth and system needs prior to concluding that widespread infrastructure expansion is necessary.<sup>65</sup> It maintains that a range of operational and market reforms to increase the effective utilization of existing gas and electricity systems, along with targeted infrastructure expansion are critical to improving reliability.<sup>66</sup>

28. Section 157.23 is a procedural regulation, delaying the commencement of construction of projects that the Commission has already found to be in the public interest for a period of time pending consideration of certain requests for rehearing. Despite comments suggesting the contrary, it is not the mechanism by which the Commission determines whether there is a need for additional energy infrastructure. The Commission continues to evaluate proposed projects under the existing standards in NGA sections 3 and 7, as appropriate. Therefore, the Commission need not find that there is an energy infrastructure emergency in order to conclude that § 157.23 is not necessary to protect stakeholders. Regarding the NGA's mandate to oversee the orderly development of the natural gas grid, the Commission recognizes that the projected natural gas and electric system demand requires natural gas infrastructure. Moreover, the reports estimating that

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<sup>65</sup> Institute for Policy Integrity July 23, 2025 Comments 7-8.

<sup>66</sup> *Id.* at 4-6

the percentage of natural gas supplying electric generation will decrease<sup>67</sup> do not negate the interdependence of natural gas supplies and electric generation. Even though more renewable energy resources, such as wind and solar, are supplying electric generation, the electric power sector has relied on natural gas over the past decades and continues to do so, which leads to increased interdependence.<sup>68</sup> Accordingly, an increase in electricity demand, without sufficient natural gas supplies and interstate transportation infrastructure to support such demand, could impact grid reliability even if renewable energy source generation increases.

29. Domestic natural gas consumption, natural gas exports, and demand for electricity are expected to increase.<sup>69</sup> The U.S. Department of Energy reports increased electricity demand due to the development of new manufacturing, re-industrialization of the U.S. economy, and the growing development of data centers to support artificial intelligence - and emphasizes that the nation's power grid may be unable to meet projected demand,

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<sup>67</sup> EIA, *EIA Expects Record U.S. Natural Gas Consumption in 2025* (Aug. 25, 2025), <https://www.eia.gov/todayinenergy/detail.php?id=65984> (accessed Sept. 16, 2025).

<sup>68</sup> See NERC, *Draft Electric-Natural Gas Strategy Report* (Aug. 2025), [https://www.nerc.com/comm/RSTCReviewItems/1\\_08\\_Electricity\\_Natural\\_Gas\\_Strategy%20Draft.pdf](https://www.nerc.com/comm/RSTCReviewItems/1_08_Electricity_Natural_Gas_Strategy%20Draft.pdf) (accessed Sept. 16, 2025).

<sup>69</sup> See EIA, *Short-Term Energy Outlook* (May 6, 2025), <https://www.eia.gov/outlooks/steo> (accessed Sept. 16, 2025); EIA, *EIA Expects Record U.S. Natural Gas Consumption in 2025* (Aug. 25, 2025), <https://www.eia.gov/todayinenergy/detail.php?id=65984> (accessed Sept. 16, 2025).

while maintaining a reliable grid and low costs for consumers.<sup>70</sup> As stated in the NOPR, there are growing concerns regarding insufficient gas pipeline capacity,<sup>71</sup> partially due to the retirement of dispatchable generation sources and the lack of comparable replacement capacity.<sup>72</sup>

30. Reports recommend several measures including coordination among utilities, grid operators, regulators and policymakers, new analyses to evaluate future reliability risks, and infrastructure development.<sup>73</sup> We continue to find that ensuring the timely

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<sup>70</sup> U.S. Department of Energy (DOE), *Resource Adequacy Report*, at 1 (July 7, 2025), <https://www.energy.gov/sites/default/files/2025-07/DOE%20Final%20EO%20Report%20%28FINAL%20JULY%207%29.pdf> (accessed Sept. 16, 2025).

<sup>71</sup> NOPR, 191 FERC ¶ 61,208 at P 16; 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](https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_Long%20Term%20Reliability%20Assessment_2024.pdf) (accessed Sept. 16, 2025); Federal-State Current Issues Collaborative, <https://www.ferc.gov/federal-state-current-issues-collaborative>.

<sup>72</sup> DOE, *Resource Adequacy Report*, 1 (July 7, 2025), <https://www.energy.gov/sites/default/files/2025-07/DOE%20Final%20EO%20Report%20%28FINAL%20JULY%207%29.pdf> (accessed Sept. 16, 2025); 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](https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_Long%20Term%20Reliability%20Assessment_2024.pdf) (accessed Sept. 16, 2025).

<sup>73</sup> DOE, *Resource Adequacy Report*, 1-2 (July 7, 2025), <https://www.energy.gov/sites/default/files/2025-07/DOE%20Final%20EO%20Report%20%28FINAL%20JULY%207%29.pdf> (accessed Sept. 16, 2025); NERC, *2024 Long-Term Reliability Assessment*, 10 (2024), [https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC\\_Long%20Term%20Reliability%20Assessment\\_2024.pdf](https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_Long%20Term%20Reliability%20Assessment_2024.pdf) (accessed Sept. 16, 2025).

development of sufficient natural gas pipeline capacity is critical to addressing natural gas and electricity system reliability and resource adequacy concerns.

31. Opposing commenters' concerns that adopting the NOPR proposal will result in overbuilding pipeline infrastructure are misplaced. The removal of § 157.23 would not lead to overbuilding as the regulation only prevented the start of construction of projects approved under NGA section 3 or section 7 for a period of time during the pendency of a rehearing request. Given that the Commission only authorizes projects consistent with its statutory mandates, i.e., those found to be required by the public convenience and necessity or not inconsistent with the public interest, there is no risk of overbuilding gas infrastructure.

### 3. Executive Orders

32. Supporting commenters generally argue that the regulation is inconsistent with federal policy, including Executive Order 14154 and Executive Order 14156, to streamline energy infrastructure development and eliminate delays.<sup>74</sup> Citing the Supreme Court's decision in *Seven County Infrastructure Coalition v. Eagle County*, commenters argue that recent judicial decisions signal a government-wide effort to expand energy infrastructure.<sup>75</sup>

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<sup>74</sup> See, e.g., INGAA July 24, 2025 Comments at 17-18; Boardwalk Pipeline July 24, 2025 Comments at 5, 10; Energy Transfer July 24, 2025 Comments at 2, 9-11; Kinder Morgan, July 24, 2025 Comments at 4-5.

<sup>75</sup> See INGAA July 24, 2025 Comments at 18-19 (citing *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 145 S. Ct. 1497 (2025)); Kinder Morgan July 24, 2025 Comments at 5; Enbridge Gas Pipelines July 24, 2025 Comments at 5.

33. Opposing commenters claim that the Commission erroneously relied on Executive Order 14156 to justify the removal of § 157.23.<sup>76</sup> Specifically, Public Interest Organizations argue that the Executive Order neither provides sufficient evidence to support the declaration of an energy emergency nor clarifies the specific nature of the alleged emergency, and that the Commission validates the alleged energy emergency without justification.<sup>77</sup> They urge that compliance with Executive Order 14156 is voluntary, as agencies may lawfully implement executive orders only so long as they also abide by their statutory duties.<sup>78</sup> Public Interest Organizations maintain that complying with the Executive Order violates what they characterize as the NGA's mandate barring the Commission from certifying unnecessary facilities.<sup>79</sup>

34. While the Commission noted executive actions, including Executive Order 14156 and Executive Order 14154, in the NOPR,<sup>80</sup> they are not the primary basis for Commission's decision. In proposing to remove § 157.23, the Commission considered (1) its broad statutory authority to make and rescind any regulations as it may find appropriate; (2) its statutory obligation to encourage the orderly development of natural

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<sup>76</sup> See, e.g., Public Interest Organizations July 24, 2025 Protest at 23-24, 30; Diana Dakey July 21, 2025 Comments; PennFuture July 24, 2025 Comments.

<sup>77</sup> Public Interest Organizations July 24, 2025 Protest at 24-25.

<sup>78</sup> *Id.* at 36.

<sup>79</sup> *Id.* at 37 (citing 15. U.S.C. 717f(e)).

<sup>80</sup> See NOPR, 191 FERC ¶ 61,208 at P 17.

gas supplies; (3) the potential 150-day delay that § 157.23 imposes; and (4) other protections for stakeholders' interests, including the availability of judicial review and consideration of alleged harms during the NGA sections 3 and 7 authorization process.<sup>81</sup> Additionally, the Commission also noted (1) several reports emphasizing the increase in natural gas and electricity system demand, the expanded capacity necessary to meet such demand, and the resultant reliability concerns; and (2) executive action recognizing the resource adequacy and reliability concerns. The Commission did not rely on compliance with executive policy to justify the regulation's removal, rather it discussed the Executive Orders as evidence that the pressing resource adequacy and system reliability concerns have been widely recognized.<sup>82</sup>

35. The Commission finds that the removal of § 157.23 is consistent with Commission's command pursuant to the NGA to facilitate the orderly development of natural gas supplies.<sup>83</sup> By removing the blanket delays in § 157.23, the Commission ensures natural gas infrastructure projects that it has determined to be required by the public convenience and necessity or not inconsistent with the public interest<sup>84</sup> may proceed in a timely manner.

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<sup>81</sup> *See id.* PP 12-21.

<sup>82</sup> *See id.* P 17.

<sup>83</sup> *See Citizens Action Coal. of Ind., Inc. v. FERC*, 125 F.4th at 244 (quoting *NAACP v. FPC*, 425 U.S. at 669-70).

<sup>84</sup> *See* 15 U.S.C. 717f(e), 717b(a).

### C. Impacts of Delay

36. Supporting commenters generally argue that § 157.23 unduly delays the construction of approved projects.<sup>85</sup> Along with timing constraints related to weather and certain species, Cheniere Energy notes that the uncertainty resulting from a potential 150-day delay could result in contractual impacts on project sponsors, such as obligations and deadlines established in offtake sale and purchase agreements or Engineering Procurement and Construction agreements for LNG projects.<sup>86</sup> Cheniere Energy emphasizes that these contractual impacts could also lead to increased costs.<sup>87</sup>

37. Opposing commenters aver that any harm caused by alleged construction delays or costs to project sponsors is outweighed by the benefits and protections provided by § 157.23.<sup>88</sup> Citing Order No. 871-B, Public Interest Organizations contend that project sponsors do not have a right to the issuance of construction authorizations within a specific timeframe.<sup>89</sup> They argue that construction delays are of little consequence because, prior to Order No. 871, project sponsors had to account for time uncertainty

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<sup>85</sup> See, e.g., Arizona Corporation Commission July 8, 2025 Comments at 3-4; The Williams Companies, Inc. July 24, 2025 Comments at 2-5; American Gas Association July 24, 2025 Comments at 4; Energy Transfer July 24, 2024 Comments at 5-7.

<sup>86</sup> Cheniere Energy July 24, 2025 Comments at 9-10.

<sup>87</sup> *Id.*

<sup>88</sup> See Public Interest Organizations July 24, 2025 Protest at 42-43; Delaware Riverkeeper July 24, 2025 Comments at 10-11; PennFuture July 24, 2025 Comments.

<sup>89</sup> Public Interest Organizations July 24, 2025 Protest at 41.

regarding order issuance and, following order issuance, sponsors may conduct certain pre-construction activities to develop the project while waiting for a construction authorization.<sup>90</sup> Delaware Riverkeeper argues that the Commission failed to explain why a potential 150-day delay prevents the construction of natural gas infrastructure.<sup>91</sup> Public Interest Organizations argue that the Commission failed to provide evidence that Order No. 871 became a tool for stakeholders and parties seeking rehearing to stop or delay construction.<sup>92</sup>

38. In response to the specific questions posed in the NOPR, supporting commenters argue that the Commission should fully rescind § 157.23 rather than revise the regulation to reduce the time period for issuing construction authorizations because such revision would still cause delays and allow project opponents to use the regulation to delay authorized projects.<sup>93</sup>

39. We find that preventing delays in the commencement of construction of projects that have been found to be in the public interest is an effective step in addressing the

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<sup>90</sup> *Id.* at 42-43

<sup>91</sup> Delaware Riverkeeper July 24, 2025 Comments at 10-11.

<sup>92</sup> Public Interest Organizations July 24, 2025 Protest at 44-45.

<sup>93</sup> *Id.* at 12, 15-16; Energy Transfer July 24, 2024 Comments at 15; INGAA July 24, 2025 Comments at 22-24; Mountain Valley July 24, 2025 Comments at 4-7. We note that, in the NOPR, the Commission did not adopt INGAA's statement that § 157.23 has become a tool to delay authorized projects. *See supra* note 23; NOPR, 191 FERC ¶ 61,208 at n.23. Indeed, we note that INGAA and other supporting commenters have not provided additional support for these specific claims.

resource adequacy and reliability concerns associated with the projected increase in natural gas and electricity system demand.

40. While project sponsors will always be faced with some degree of unpredictability, such as the timeframe for obtaining federal and state approvals, removing § 157.23 eliminates one, potentially five-month, delay from the process and will increase the potential that natural gas capacity additions will be available when needed to meet increasing natural gas and electricity system demand and maintain and improve the reliability of such systems. Further, the Commission finds that it is no longer necessary to impose such a delay given the other protections available to landowners and stakeholders, including (1) the Commission's ability to consider stays on a case-by-case basis and (2) the availability of both judicial review, which, after *Allegheny*, parties may now seek more promptly following an initial order, and judicial stays.

#### **D. Impacts of Expedited Construction**

41. Generally, opposing commenters express concerns regarding potential adverse impacts to stakeholders, including environmental and cultural impacts, increased costs, and safety concerns, of approved projects that commence construction during the pendency of a rehearing request, and the potential exercise of eminent domain.<sup>94</sup> They argue that removal of § 157.23 would erode public trust in the regulatory process and

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<sup>94</sup> See, e.g., Delaware Riverkeeper July 24, 2025 Comments at 13; Diana Dakey July 21, 2025 Comments; Columbia Riverkeeper et. al July 24, 2025 Comments; Robert Feder July 21, 2025 Comments; Robert E. Rutkowski July 22, 2025 Comments; PennFuture July 24, 2025 Comments; Texas Environmental Justice Advocacy Services July 7, 2025 Comments; Lakshmi Ford July 22, 2025 Comments.

undermine the rights of affected communities, particularly communities with environmental justice concerns and non-English speaking communities.<sup>95</sup> Delaware Riverkeeper notes that Order No. 871 was promulgated for the protection of landowners and other stakeholders due to increased interest and participation of community members, non-governmental organizations, property rights advocates, and governmental entities.<sup>96</sup> It contends that removing § 157.23 assumes that in all cases that the Commission's initial certificate or authorization order will be correct and that parties seeking rehearing would not present new information or arguments worth considering before construction begins.<sup>97</sup>

42. We emphasize that natural gas infrastructure projects subject to § 157.23 have been found to be needed and in the public interest following a fulsome agency review that requires that the Commission consider concerns raised by all stakeholders. Although Commission orders are the "product of expert judgment which carries a presumption of validity,"<sup>98</sup> when the Commission receives a rehearing request, it considers all properly raised arguments and evidence on the record to determine whether the initial order must be reconsidered.

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<sup>95</sup> PennFuture July 24, 2025 Comments; Texas Environmental Justice Advocacy Services July 7, 2025 Comments.

<sup>96</sup> Delaware Riverkeeper July 24, 2025 Comments at 12-13 (quoting Order No. 871, 171 FERC ¶ 61,201 at P 11) (quotations omitted).

<sup>97</sup> Delaware Riverkeeper July 24, 2025 Comments at 12.

<sup>98</sup> *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 602 (1944).

43. While the Commission previously sought to ensure the construction of an approved natural gas project will not commence until the Commission has acted upon the merits of any rehearing request,<sup>99</sup> in light of the reliability and expediency concerns discussed, this blanket approach has become overly broad. Based on our statutory command pursuant to the NGA and the Commission's extensive review before issuing a certificate, the default should be for certificate orders to go into effect absent case-specific reasons to the contrary. We conclude that existing judicial and Commission remedies provide sufficient avenues for those case-specific inquiries.

44. Further, during its evaluation of each individual NGA section 3 or section 7 project application, the Commission will consider what additional protections, such as mitigation measures, are warranted during project construction and operation on a case-by-case basis. Project developers may not commence construction on an approved project until they have complied with the required conditions stipulated in a section 3 authorization or section 7 certificate order<sup>100</sup> and provided documentation demonstrating that they have received all applicable state and federal authorizations or that such authorizations have been waived.<sup>101</sup>

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<sup>99</sup> Order No. 871-B, 175 FERC ¶ 61,098 at P 15.

<sup>100</sup> The Commission has broad authority to condition certificates for interstate pipelines on "such reasonable terms and conditions as the public convenience and necessity may require." 15 U.S.C. 717f(e); *see also, e.g., ANR Pipeline Co. v. FERC*, 876 F.2d 124, 129 (D.C. Cir. 1989) (noting the Commission's "extremely broad" conditioning authority).

<sup>101</sup> Order No. 871-B, 175 FERC ¶ 61,098 at PP 41-42.

### **E. Presumptive Stay Policy**

45. Several commenters request that the Commission clarify, revise, or rescind its presumptive stay policy. Commenters argue that the policy is contrary to section 19(c) of the NGA,<sup>102</sup> creates regulatory uncertainty and promotes delays in the section 7 certificate process,<sup>103</sup> and is unnecessary given the considerations and protections under the NGA.<sup>104</sup> Boardwalk Pipeline argues that, if the Commission retains the policy, it should revise the policy to ensure that the stay will not extend beyond the date that a landowner's rehearing request is deemed denied.<sup>105</sup> INGAA requests that the Commission clarify whether it will apply a stay only where a landowner files a motion for a stay and the traditional standards for a stay are met.<sup>106</sup>

46. We decline commenters' requests to clarify, revise, or rescind the case-by-case application of the presumptive stay policy. As stated in Order No. 871, nothing in NGA section 19(c) precludes the Commission from determining that a stay of an individual certificate order is warranted.<sup>107</sup> The presumptive stay policy applies to only a limited

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<sup>102</sup> Boardwalk Pipeline July 24, 2025 Comments at 12-17; Kinder Morgan July 24, 2025 Comments at 9-11.

<sup>103</sup> INGAA July 24, 2025 Comments at 24-27; Kinder Morgan July 24, 2025 Comments at 9-11.

<sup>104</sup> INGAA July 24, 2025 Comments at 24-27; Boardwalk Pipeline July 24, 2025 Comments at 12-17.

<sup>105</sup> Boardwalk Pipeline July 24, 2025 Comments at 14.

<sup>106</sup> INGAA July 24, 2025 Comments at 24-25.

<sup>107</sup> Order No. 871-C, 176 FERC ¶ 61,062 at P 39.

subset of parties in NGA section 7 proceedings on a case-by-case basis, and it does not apply at all in section 3 proceedings.<sup>108</sup> Specifically, the policy only applies to protect landowners who meet all of the following criteria, and subject to case-by-case considerations: 1) the landowner would be subject to federal eminent domain proceedings due to the Commission's certificate order, because the landowner owns property for which the pipeline developer has not already acquired all necessary property interests; and 2) the landowner has intervened and protested the certificate proceeding.<sup>109</sup> In Order No. 871-B and Order No. 871-C, the Commission also explained our process for applying the presumptive stay policy on a case-by-case basis.<sup>110</sup>

#### **F. Commission Determination**

47. In this final rule, the Commission removes § 157.23 from its regulations and revises § 153.4 to eliminate the cross-reference to § 157.23 to reduce construction delays resulting from the regulation's limitation on the issuance of construction authorizations, as well as to promote and expedite efficient energy development and ensure that there is

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<sup>108</sup> Commission authorizations under NGA section 3 do not confer federal eminent domain authority to the applicant. *See* Order No. 871-B, 175 FERC ¶ 61,098 at P 46 n.95.

<sup>109</sup> *See id.* P 43; Order No. 871-C, 176 FERC ¶ 61,062 at P 33.

<sup>110</sup> Order No. 871-C, 176 FERC ¶ 61,062 at PP 33, 38; 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. *See 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); *see also Transcon. Gas Pipe Line Co., LLC*, 182 FERC ¶ 61,091 (2023) (order lifting presumptive stay).

sufficient natural gas infrastructure to timely address resource adequacy and reliability concerns. In light of the protections provided by *Allegheny* and the Commission's evaluation of a proposed project's alleged harms in NGA section 3 and section 7 proceedings, we find that § 157.23 is no longer necessary.

### III. Information Collection Statement

48. The Paperwork Reduction Act<sup>111</sup> 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*.<sup>112</sup> This final rule does not contain any information collection requirements. The Commission is therefore not required to submit this rule to OMB for review.

### IV. Environmental Analysis

49. 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.<sup>113</sup> The Commission has categorically excluded certain

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<sup>111</sup> 44 U.S.C. 3501-3521.

<sup>112</sup> See 5 CFR 1320.12.

<sup>113</sup> *Reguls. Implementing the Nat'l Env't Pol'y Act of 1969*, Order No. 486, 41 FERC ¶ 61,284 (1987).

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 do not substantially change the effect of legislation or the regulations being amended.<sup>114</sup> This final rule removes § 157.23 from the Commission's regulations and revises § 153.4 to remove the cross-reference to § 157.23. Because the final 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 final 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.

## V. Regulatory Flexibility Act

50. The Regulatory Flexibility Act of 1980 (RFA)<sup>115</sup> 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.<sup>116</sup> In lieu of preparing a regulatory flexibility analysis, an agency may certify that a proposed rule will not have a

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<sup>114</sup> 18 CFR 380.4(a)(2)(ii).

<sup>115</sup> 5 U.S.C. 601-612.

<sup>116</sup> *Id.* 603(c).

significant economic impact on a substantial number of small entities.<sup>117</sup> The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.<sup>118</sup> 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.<sup>119</sup>

51. This final rule applies 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 final rule has 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 rule removes 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 final rule will not have a significant economic impact on a substantial number of small entities.

## **VI. Document Availability**

52. 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

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<sup>117</sup> *Id.* 605(b).

<sup>118</sup> 13 CFR 121.101.

<sup>119</sup> 13 CFR 121.201, subsection 486.

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contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>).

53. 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.

54. 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](mailto: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](mailto:public.referenceroom@ferc.gov).

## **VII. Effective Date and Congressional Notification**

55. These regulations are effective **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

### **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 the Commission.

( S E A L )

Debbie-Anne A. Reese,  
Secretary.

In consideration of the foregoing, the Commission amends 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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