

MAY 18 2016

RULEMAKING NOTICE FORM

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Notice Number

2016-78

Rule Number

Site 301.03(e); 301.08 intro.,  
(c) & (d); 301.14(f);  
302.01(f); 302.02(d);  
302.03(d) & (e)

1. Agency Name & Address:

Site Evaluation Committee  
Pamela G. Monroe, Administrator  
21 South Fruit Street, Suite 10  
Concord, NH 03301-2429

2. RSA Authority:

RSA 162-H:10,VI;  
RSA 162-H:10-b,II

3. Federal Authority:

4. Type of Action:

Adoption

Amendment

X

Repeal

Readoption

Readoption w/amendment

5. Short Title: Enforcement and High Pressure Natural Gas Pipeline Amendments

6. (a) Summary of what the rule says and of any proposed amendments:

The amendments to Site 301 are intended to add site evaluation criteria for high pressure natural gas pipelines, as authorized by RSA 162-H:10-b. Proposed new requirements include impact assessments for health and vibration, and standards for sound, vibration, and exterior lighting at compressor stations. The existing Site 301.08(c) has been renumbered as Site 301.08(d).

The Site Evaluation Committee (SEC) is proposing also to amend existing enforcement rules in Site 302 by changing "may" to "shall" in Site 302.01(f) and Site 302.02(d), and by adopting new criteria for the suspension and revocation of certificates in both of the aforementioned rules and in Site 302.03(d). These changes were requested by the Joint Legislative Committee on Administrative Rules in a petition for rulemaking to the SEC in December of 2015. The purpose of these changes is to limit the discretion of, and provide clear standards for, the SEC in the suspension or revocation of certificates. The existing Site 302.03(d) has been renumbered as Site 302.03(e).

6. (b) Brief description of the groups affected:

The amendments to Site 301 will affect applicants for certificates to site high pressure natural gas pipelines and associated facilities, such as compressor stations. The amendments to Site 302 will affect holders of site certificates.



Fiscal Impact Statement for Site Evaluation Committee rules governing Enforcement and High Pressure Natural Gas Pipeline Amendments. [Site 301, 302]

**1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**

When compared to the existing rules, the proposed rules will increase costs to independently owned businesses by an indeterminable amount.

**2. Cite the Federal mandate. Identify the impact on state funds:**

No federal mandate, no impact on state funds.

**3. Cost and benefits of the proposed rule(s):**

**A. To State general or State special funds:**

None.

**B. To State citizens and political subdivisions:**

None.

**C. To independently owned businesses:**

The proposed rules would add the requirement that the applicant conduct a comprehensive health impact assessment. The costs of conducting an assessment is indeterminable and would vary depending on the size of the project. The Site Evaluation Committee sites cost estimates from the Society of Practitioners of Health Impact Assessment which range from \$75,000 to \$100,000. In addition the Society also assumes the average health impact assessment would require a part-time employee qualified to coordinate the project, perform the assessment and write the report.

See attached comment regarding authority.

**Amend Site 301.01(e), effective 12-16-15 (Document #10994), cited and to read as follows:**

CHAPTER Site 300 CERTIFICATES OF SITE AND FACILITY

PART Site 301 REQUIREMENTS FOR APPLICATIONS FOR CERTIFICATES

Site 301.03 Contents of Application.

(e) If the application is for an energy facility, including an energy transmission pipeline, that is not an electric generating facility or an electric transmission line, the application shall include:

- (1) The type of facility being proposed;
- (2) A description of the process to extract, produce, manufacture, transport or refine the source of energy;
- (3) The facility's size and configuration, *including, for a high pressure gas pipeline, any associated compressor station(s)*;
- (4) The ability to increase the capacity of the facility in the future;
- (5) Raw materials used or transported, as follows:
  - a. An inventory, including amounts and specifications;
  - b. A plan for procurement, describing sources and availability; and
  - c. A description of the means of transportation;
- (6) Production information, as follows:
  - a. An inventory of products and waste streams, *including blowdown emissions from a high pressure gas pipeline and any associated compressor station(s)*;
  - b. The quantities and specifications of hazardous materials; and
  - c. Waste management plans; ~~and~~
- (7) A map showing the entire energy facility, including, in the case of an energy transmission pipeline, the location of each compressor station, pumping station, storage facility, and other ancillary facilities associated with the energy facility, and the corridor width *and length* in the case of a proposed new route or widening along an existing route; *and*
- (8) *For a high pressure gas pipeline, the following information:*
  - a. *Construction information, including a description of the pipe to be used, depth of pipeline placement, type of fuel to be used to power any associated compressor station, and a description of any compressor station emergency shutdown system;*
  - b. *Proposed construction schedule, including start date and scheduled completion date;*
  - c. *Operation and maintenance information, including a description of measures to be taken to notify adjacent landowners and minimize sound during blowdown events at pipelines and compressor stations;*

Edit: Delete comma.

*d. Copy of any proposed plan application or other documentation required to be submitted to the Federal Energy Regulatory Commission in connection with construction and operation of the proposed facility; and*

*e. Copy of any environmental report, assessment or impact statement prepared by or on behalf of the Federal Energy Regulatory Commission when it becomes available.*

**Amend Site 301.08, effective 12-16-15 (Document #10994), by inserting (c), renumbering the existing (c) as (d), so that Site 301.08 intro., (c) and (d) are cited and read as follows:**

Site 301.08 Effects on Public Health and Safety. Each application shall include the following information regarding the effects of, and plans for avoiding, minimizing, or mitigating potential adverse effects of, the proposed energy facility on public health and safety:

**(c) For high pressure gas pipelines:**

Edit: "including".

*(1) A comprehensive health impact assessment specifically designed to identify and evaluate potential human health impacts by identifying potential pathways for facility-related contaminants to harm human health, quantifying the cumulative risks posed by any contaminants, and recommending necessary avoidance, minimization, or mitigation;*

*(2) A sound and vibration impact assessment prepared by an expert in the field, in accordance with ANSI/ASA S12.9-2013 Part 3 for short-term monitoring and with ANSI S12.9-1992 2013 Part 2 for long-term monitoring, which assessment shall include the reports of a preconstruction sound and vibration background study and a sound and vibration modeling study;*

*(3) A description of planned setbacks that indicate the distance between:*

*a. The proposed pipeline and existing buildings on, and the boundaries of, abutting properties;*

*b. Any associated compressor station and schools, day-care centers, health care facilities, residences, residential neighborhoods, places of worship, elderly care facilities, and farms within a one mile radius; and*

*c. The proposed pipeline and any overhead or underground electric transmission line within 1/2 mile of the pipeline;*

*(4) An explanation of why the setbacks described by the applicant in response to (3), above, are adequate to protect the public from risks associated with the operation of the pipeline and any associated compressor station; and*

*(5) A description of all permanently installed exterior lighting at compressor stations and how it complies with Site 301.14(f)(5)c.*

**(ed) For all energy facilities:**

*(1) Except as otherwise provided in (a)(1) above, an assessment of operational sound associated with the proposed facility, if the facility would involve use of equipment that might reasonably be*

Edit: When these rules come in as a final proposal, an Incorporation by Reference Statement must be filed, along with an appendix to the rule and a reference in the rule to the appendix.

expected to increase sound by 10 decibel A-weighted (dBA) or more over background levels, measured at the L-90 sound level, at the property boundary of the proposed facility site or, in the case of an electric transmission line or an energy transmission pipeline, at the edge of the right-of-way or the edge of the property boundary if the proposed facility, or portion thereof, will be located on land owned, leased or otherwise controlled by the applicant or an affiliate of the applicant;

(2) A facility decommissioning plan prepared by an independent, qualified person with demonstrated knowledge and experience in similar energy facility projects and cost estimates; the decommissioning plan shall include each of the following:

a. A description of sufficient and secure funding to implement the plan, which shall not account for the anticipated salvage value of facility components or materials;

b. The provision of financial assurance in the form of an irrevocable standby letter of credit, performance bond, surety bond, or unconditional payment guaranty executed by a parent company of the facility owner maintaining at all times an investment grade credit rating;

c. All transformers shall be transported off-site; and

d. All underground infrastructure at depths less than four feet below grade shall be removed from the site and all underground infrastructure at depths greater than four feet below finished grade shall be abandoned in place;

(3) A plan for fire safety prepared by or in consultation with a fire safety expert;

(4) A plan for emergency response to the proposed facility site; and

(5) A description of any additional measures taken or planned to avoid, minimize, or mitigate public health and safety impacts that would result from the construction and operation of the proposed facility, and the alternative measures considered but rejected by the applicant.

**Amend Site 301.14(f), effective 12-16-15 (Document #10994), cited and to read as follows:**

Site 301.14 Criteria Relative to Findings of Unreasonable Adverse Effects.

(f) In determining whether a proposed energy facility will have an unreasonable adverse effect on public health and safety, the committee shall:

(1) For all energy facilities, consider the information submitted pursuant to Site 301.08 and other relevant evidence submitted pursuant to Site 202.24, the potential adverse effects of construction and operation of the proposed facility on public health and safety, the effectiveness of measures undertaken or planned to avoid, minimize, or mitigate such potential adverse effects, and the extent to which such measures represent best practical measures;

(2) For wind energy systems, apply the following standards:

a. With respect to sound standards, the A-weighted equivalent sound levels produced by the applicant's energy facility during operations shall not exceed the greater of 45 dBA or 5 dBA above background levels, measured at the L-90 sound level, between the hours of 8:00 a.m. and 8:00 p.m. each day, and the greater of 40 dBA or 5 dBA above background levels,

measured at the L-90 sound level, at all other times during each day, as measured using microphone placement at least 7.5 meters from any surface where reflections may influence measured sound pressure levels, on property that is used in whole or in part for permanent or temporary residential purposes, at a location between the nearest building on the property used for such purposes and the closest wind turbine; and

b. With respect to shadow flicker, the shadow flicker created by the applicant's energy facility during operations shall not occur more than 8 hours per year at or within any residence, learning space, workplace, health care setting, outdoor or indoor public gathering area, or other occupied building;

(3) For wind energy systems, consider the proximity and use of buildings, property lines, public roads, and overhead and underground energy infrastructure and energy transmission pipelines, the risks of ice throw, blade shear, tower collapse, and other potential adverse effects of facility operation, and the effectiveness of measures undertaken or planned to avoid, minimize, or mitigate such potential adverse effects, and the extent to which such measures represent best practical measures; ~~and~~

(4) For electric transmission lines, consider the proximity and use of buildings, property lines, and public roads, the risks of collapse of towers, poles, or other supporting structures, the potential impacts on public health and safety of electric and magnetic fields generated by the proposed facility, and the effectiveness of measures undertaken or planned to avoid, minimize, or mitigate such potential adverse effects, and the extent to which such measures represent best practical measures;

*(5) For high pressure gas pipelines, apply the following standards:*

*a. With respect to sound standards for interstate pipelines, the noise attributable to any new compressor station, compression added to an existing station, or any modification, upgrade or update of an existing station, shall not exceed a day-night sound level (Ldn) of 55 dBA at any pre-existing noise-sensitive area, such as schools, hospitals, or residences, as provided in 18 CFR §380.12(k);*

*b. With respect to sound standards for intrastate pipelines, the noise attributable to any new compressor station, compression added to an existing station, or any modification, upgrade or update of an existing station, shall not exceed the standards set forth in (2)a., above, regarding wind energy systems;*

*c. With respect to vibration, compressor stations or modifications of existing compressor stations shall not result in a perceptible increase in vibration at any pre-existing noise-sensitive area, such as schools, hospitals, or residences, as provided in 18 CFR §380.12(k), or a level of 2.0 peak particle velocity, whichever is less;*

*d. With respect to exterior lighting at compressor stations, no light shall be projected above the horizontal plane or projected beyond the property lines;*

*e. With respect to pipeline construction and safety, the requirements in Puc 506 and Puc 508 for a class 4 location in a high consequence area, as those terms are defined in 49 CFR §192.5(b)(4) and 49 CFR §192.903, respectively; and*

**Unclear:** If the SEC is not required to enforce these CFRs by State or Federal law, it is incorporating these standards by reference, and it should include a date or edition and an appendix with a reference in the rules to the appendix, and file an Incorporation by Reference Statement (for each regulation) with the Final Proposal . See §3.12 of Chap. 4 of the *Manual*.

*(6) For high pressure gas pipelines, consider the results of the comprehensive health impact assessment, the proximity of electric transmission lines to the pipeline, and the proximity of any compressor station to schools, day-care centers, health care facilities, residences, residential neighborhoods, places of worship, elderly care facilities, and farms, and the effectiveness of measures undertaken or planned to avoid, minimize, or mitigate such potential adverse effects, and the extent to which such measures represent best practical measures.*

**Edit:** To aid readability:

(6) For high pressure gas pipelines, consider:

- a. The results of the comprehensive health impact assessment;
- b. The proximity of electric transmission lines to the pipeline;
- c. The proximity of any compressor station to schools, day care center, health care facilities, and farms;
- d. The effectiveness of measures undertaken or planned to avoid, minimize, or mitigate potential adverse effects described in a.-c., above; and
- e. The extent to which the measures in d. represent best practical measures.

Amend Site 302.01(f) and Site 302.02(d), effective 12-16-15 (Document #10994), cited and to read as follows:

PART Site 302 ENFORCEMENT OF TERMS AND CONDITIONS

Site 302.01 Determination of Certificate Violation.

(f) Pursuant to ~~RSA 162-H:12, I,~~ if the committee determines following the adjudicative hearing *proceeding* that a certificate violation has occurred and is continuing, the committee *shall* ~~may~~ issue an order that suspends the holder's certificate until such time as the violation has been corrected *if the committee determines that the following criteria have been met:*

(1) *The violation will not be terminated within 30 days from the date of the committee's decision; and*

Edit: Cite to 301.14, the criteria for findings of unreasonable adverse effects.

(2) *The violation will have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, or public health and safety.*

Site 302.02 Determination of Misrepresentation or Non-Compliance.

(d) Pursuant to ~~RSA 162-H:12, II,~~ if the committee determines following the adjudicative hearing *proceeding* that a material misrepresentation or violation of RSA 162-H or its rules has occurred, the committee *shall* ~~may~~ issue an order that suspends the holder's certificate until such time as the holder has corrected and mitigated the consequences of such misrepresentation or violation *if the committee determines that the following criteria have been met:*

(1) *The violation will not be terminated within 30 days from the date of the committee's decision; and*

(2) *The violation will have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, or public health and safety.*

Amend Site 302.03, effective 12-16-15 (Document #10994), by inserting (d) and renumbering the existing (d) as (e), so that Site 302.03(d) and (e) are cited and read as follows:

Site 302.03 Revocation of Certificate.

(d) *Following the adjudicative proceeding, the committee shall revoke the holder's certificate if the committee determines, after due consideration of any mitigating circumstances and a determination of whether revocation is in the best interests of the public, or would result in an inability to assure that the state has an adequate and reliable supply of energy in conformance with sound environmental principles, that one or more of the following criteria have been met:*

(1) *The certificate holder obtained the certificate through fraud, deceit, or falsification;*

(2) *The certificate holder knowingly violated the rules of the committee, the conditions of the holder's certificate, or the rules or permits of any agency that participated in the holder's certificate proceeding;*

(3) *The certificate holder failed to comply with an order of the committee or an order imposed as a result of a judicial action taken to enforce any statute or rule implemented by the*

*committee, unless the certificate holder is complying in accordance with a compliance schedule and is current with all items; or*

*(4) The certificate holder is a chronic non-complier.*

(e) If the holder's certificate is revoked by order of the committee, then the holder shall permanently cease construction or operation of the energy facility subject to the certificate as of the time specified in the order and shall commence and complete decommissioning of the facility within the time period specified in the order.

#### APPENDIX

<b>Proposed Rule</b>	<b>Statute</b>
Site 301.03(e)	RSA 162-H:7,IV and V
Site 301.08 intro., (c) and (d)	RSA 162-H:7,IV and V; 10-b,II
Site 301.14(f)	RSA 162-H:10-b,II
Site 302.01(f)	RSA 162-H:10,VI and VII, 12
Site 302.02(d)	RSA 162-H:10,VI and VII, 12
Site 302.03(d) and (e)	RSA 162-H:10,VI and VII, 12

## **JLCAR Staff Comments Relative to Authority:**

### **Conclusion:**

In proposing these amendments to Site 300, the Site Evaluation Committee (SEC) has properly used the authority granted to it by the General Court; it was granted authority to adopt pipeline siting standards by RSA 162-H:10-b, and it has done so. Despite using this authority properly, a constitutional issue exists with these rules because RSA 162-H:10-b likely conflicts with Federal law.

### **Constitutional Issue of Federal Preemption and State Authority:**

The potential problem with these rules is actually a problem with the underlying statute. Based on United States Supreme Court precedent, the federal Natural Gas Act (NGA) implicitly pre-empts state regulation of interstate natural gas pipelines, rendering most such regulations invalid.<sup>1</sup> RSA 162-H:10-b appears to require siting standards for the same pipelines that the NGA regulates

When Congress authorizes regulation in an area, the question arises whether it intended to allow the States to adopt additional regulations governing that field. Article VI, Clause 2 of the United States Constitution provides that “the Laws of the United States shall be the supreme law of the Land... Any thing in the Constitution or Laws of any state to the Contrary notwithstanding.” This clause makes it clear that Federal, not state, law governs when the two conflict.

There is an additional doctrine, however, which prohibits all state regulation in a particular field if Congress intended the Federal regulation to be exclusive. Called “field pre-emption,” this doctrine holds that where Congress has pervasively regulated a field, or explicitly stated its intention that states not hold concurrent power to regulate, states are prohibited from adopting any law or rule dealing with the subject matter of those regulations, regardless of whether an actual conflict exists.<sup>2</sup>

In looking to see whether “field preemption” applies, a court will determine if “in the absence of explicit statutory language” if Congress has indicated the “intent to occupy a given field to the exclusion of state law.”<sup>3</sup> “Such a purpose may be inferred,” the Supreme Court says, “where the pervasiveness of the federal regulation precludes supplementation by the states, where the Federal interest in the field is sufficiently dominant, or where the object sought to be obtained by the federal law and the character of obligations imposed by it reveal the same purpose.”<sup>4</sup>

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<sup>1</sup> *Schniedewind v. ANR Pipeline Co.*, 485 U.S. 293, 385 (1988).

<sup>2</sup> *See Sprietsma v. Mercury Marine*, 537 U.S. 51, 64 (2002).

<sup>3</sup> *Schniedewind*, 485 U.S. at 300.

<sup>4</sup> *Id.*

Pursuant to 15 U.S.C. §717, the provisions of the NGA apply to:

[T]he transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, and to the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation.

To exercise this jurisdiction, the Federal Energy Regulatory Commission (FERC) follows the remaining provisions of the chapter and its own rules. The most relevant section to these rules is 15 U.S.C. § 717f, which governs the construction, extension, or abandonment of facilities. That section explains how natural gas companies may apply for and receive “certificates of public convenience and necessity,” which allow them to construct natural gas facilities.

This certificate of public convenience and necessity appears to, in essence, be the federal equivalent of the “certificate of site and facility” created by RSA 162-H.

A “certificate of site and facility” is “a document issued by the committee, containing such terms and conditions as the committee deems appropriate, that authorizes the applicant to proceed with the proposed site and facility.”<sup>5</sup>

A “certificate of public convenience and necessity” is required in order to construct, extend, or operate a facility used in the transportation or sale of natural gas.<sup>6</sup> While the certificate of public convenience and necessity apparently also covers ongoing projects, both certificates are effectively licenses to construct or extend a facility.

Because both the state and federal certificates are effectively licenses required to lawfully engage in the same conduct, it would appear that the NGA preempts equivalent state laws. Both certificates in “the object sought” and “the character of the obligations imposed” go to “the same purpose.” While a recent Supreme Court decision seems to back away from complete NGA preemption, those cases still look to the target of state regulations to determine if the state regulates in a pre-empted field.<sup>7</sup>

It appears that RSA 162-H:10-b commands the adoption of rules that regulate in an area of comprehensive federal regulation. By making interstate high pressure gas pipelines subject to a state certification process, the state statute attempts to accomplish the same goal as the federal regulation: the safe and appropriate siting of high pressure gas lines. The state of course has the authority to govern *intrastate* pipelines, and insofar as these rules apply to such pipelines, there is no basis to object on the issue of lack of authority.

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<sup>5</sup> RSA 162-H:2, II-a.

<sup>6</sup> 15 U.S.C. §717f(c)(1)(A)

<sup>7</sup> See *Oneok, Inc. v. Learjet, Inc.*, \_\_\_ U.S. \_\_\_ (2015).

However, as mentioned above the Site Evaluation Committee was charged with writing rules that effectuate the statute. The issue of preemption was discussed by the legislature during the adoption of the bill. As part of its research into this matter, JLCAR staff listened to the audio of the April 29, 2015, Senate Energy and Technology Committee hearing. At that hearing the issue of preemption was discussed extensively, including by the Public Utility Commission's attorney, who described federal regulations of pipeline siting as "comprehensive" and therefore subject to federal preemption.<sup>8</sup> Almost all of the discussion of preemption issues dealt with provisions that were stripped out of the statute. It appears that the final form of the bill is at least in part intended to address issues of preemption.

In conclusion, the SEC has acted in accordance with the statute, but the statute raises potential constitutional issues, and therefore a basis for objection exists pursuant to Committee Rule 401.04, although the JLCAR may wish to revisit the statute rather than objecting to rules which comply with it.

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<sup>8</sup> April 29, 2015 Senate Energy and Technology Committee Hearing, 1:45:39, available online at [http://www.gencourt.state.nh.us/bill\\_Status/BillStatus\\_Media.aspx?lsr=34&sy=2015&sortoption=&txtsessi onyear=2015&txtchapternumber=0264](http://www.gencourt.state.nh.us/bill_Status/BillStatus_Media.aspx?lsr=34&sy=2015&sortoption=&txtsessi onyear=2015&txtchapternumber=0264).

# TITLE XII

## PUBLIC SAFETY AND WELFARE

### CHAPTER 162-H

#### ENERGY FACILITY EVALUATION, SITING, CONSTRUCTION AND OPERATION

##### Section 162-H:10-b

###### **162-H:10-b Siting of High Pressure Gas Pipelines; Rulemaking; Intervention. –**

I. To meet the objectives of this chapter, and with due regard to meeting the energy needs of the residents and businesses of New Hampshire, the general court finds that appropriately sited high pressure gas pipelines subject to committee approval have the potential to assist the state in accomplishing these goals. Accordingly, the general court finds that it is in the public interest for the site evaluation committee to establish criteria or standards governing the siting of high pressure gas pipelines in order to ensure that the potential benefits of such systems are appropriately considered and unreasonable adverse effects avoided through a comprehensive, transparent, and predictable process. When establishing any criteria, standard, or rule for a high pressure gas pipeline or when specifying the type of information that a high pressure gas pipeline applicant shall provide to the committee for its decision-making, the committee shall rely upon the best available evidence.

II. For the adoption of rules, pursuant to RSA 541-A, relative to the siting of high pressure gas pipelines, the committee shall address the following:

- (a) Impacts to natural, scenic, recreational, visual, and cultural resources.
- (b) Health and safety impacts, including but not limited to, proximity to high pressure gas pipelines that could be mitigated by appropriate setbacks from any high pressure gas pipeline.
- (c) Project-related sound and vibration impact assessment prepared in accordance with professional standards by an expert in the field.
- (d) Impacts to the environment, air and water quality, plants, animals, and natural communities.
- (e) Site fire protection plan requirements.
- (f) Best practical measures to ensure quality construction that minimizes safety issues.
- (g) Best practical measures to avoid, minimize, or mitigate adverse effects.
- (h) Criteria to maintain property owners' ability to use and enjoy their property.

III. As soon as practicable, but no later than one year from the effective date of this section, the committee shall adopt rules, pursuant to RSA 541-A, consistent with paragraphs I and II of this section.

IV. The committee shall consider intervention in Federal Energy Regulatory Commission proceedings involving the siting of high pressure gas pipelines in order to protect the interest of the state of New Hampshire.

**Source.** 2015, 264:1, eff. July 20, 2015.

§ 717f. Construction, extension, or abandonment of facilities.

**United States Statutes**

**Title 15. COMMERCE AND TRADE**

**Chapter 15B. NATURAL GAS**

*Current through P.L. 114-163*

**§ 717f. Construction, extension, or abandonment of facilities**

(a) **Extension or improvement of facilities on order of court; notice and hearing**

Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company to extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public, and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company, if the Commission finds that no undue burden will be placed upon such natural-gas company thereby: *Provided*, That the Commission shall have no authority to compel the enlargement of transportation facilities for such purposes, or to compel such natural-gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers.

(b) **Abandonment of facilities or services; approval of Commission**

No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

(c) **Certificate of public convenience and necessity**

(1) (A) No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however*, That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on February 7, 1942, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that

public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after February 7, 1942. Pending the determination of any such application, the continuance of such operation shall be lawful.

- (B) In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however,* That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest.

- (2) The Commission may issue a certificate of public convenience and necessity to a natural-gas company for the transportation in interstate commerce of natural gas used by any person for one or more high-priority uses, as defined, by rule, by the Commission, in the case of-

- (A) natural gas sold by the producer to such person; and  
(B) natural gas produced by such person.

(d) **Application for certificate of public convenience and necessity**

Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form, contain such information, and notice thereof shall be served upon such interested parties and in such manner as the Commission shall, by regulation, require.

(e) **Granting of certificate of public convenience and necessity**

Except in the cases governed by the provisos contained in subsection (c)(1) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public

convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.

(f) **Determination of service area; jurisdiction of transportation to ultimate consumers**

- (1) The Commission, after a hearing had upon its own motion or upon application, may determine the service area to which each authorization under this section is to be limited. Within such service area as determined by the Commission a natural-gas company may enlarge or extend its facilities for the purpose of supplying increased market demands in such service area without further authorization; and
- (2) If the Commission has determined a service area pursuant to this subsection, transportation to ultimate consumers in such service area by the holder of such service area determination, even if across State lines, shall be subject to the exclusive jurisdiction of the State commission in the State in which the gas is consumed. This section shall not apply to the transportation of natural gas to another natural gas company.

(g) **Certificate of public convenience and necessity for service of area already being served**

Nothing contained in this section shall be construed as a limitation upon the power of the Commission to grant certificates of public convenience and necessity for service of an area already being served by another natural-gas company.

(h) **Right of eminent domain for construction of pipelines, etc.**

When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: *Provided*, That the United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds \$3,000.

Cite as 15 U.S.C. § 717f

Source: June 21, 1938, ch. 556, §7, 52 Stat. 824; Feb. 7, 1942, ch. 49, 56 Stat. 83; July 25, 1947, ch. 333, 61 Stat.

459; Pub. L. 95-617, title VI, §608, Nov. 9, 1978, 92 Stat. 3173; Pub. L. 100-474, §2, Oct. 6, 1988, 102 Stat. 2302.

#### Notes from the Office of Law Revision Counsel

current through 4/29/2016

**AMENDMENTS**1988-Subsec. (f). Pub. L. 100-474 designated existing provisions as par. (1) and added par. (2).1978-Subsec. (c). Pub. L. 95-617, §608(a), (b)(1), designated existing first paragraph as par. (1)(A) and existing second paragraph as par. (1)(B) and added par. (2).Subsec. (e). Pub. L. 95-617, §608(b)(2), substituted "subsection (c)(1)" for "subsection (c)".1947-Subsec. (h). Act July 25, 1947, added subsec. (h).1942-Subsecs. (c) to (g). Act Feb. 7, 1942, struck out subsec. (c), and added new subsecs. (c) to (g).

**EFFECTIVE DATE OF 1988 AMENDMENT**Pub. L. 100-474, §3, Oct. 6, 1988, 102 Stat. 2302, provided that: "The provisions of this Act [amending this section and enacting provisions set out as a note under section 717w of this title] shall become effective one hundred and twenty days after the date of enactment [Oct. 6, 1988]."

**TRANSFER OF FUNCTIONS**Enforcement functions of Secretary or other official in Department of Energy and Commission, Commissioners, or other official in Federal Energy Regulatory Commission related to compliance with certificates of public convenience and necessity issued under this section with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(d), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.