

128 FERC ¶ 61,029  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 284

Docket No. RM09-2-000

Contract Reporting Requirements of Intrastate Natural Gas Companies

(Issued July 16, 2009)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is proposing to revise its contract reporting requirements for those natural gas pipelines that fall under the Commission's jurisdiction pursuant to section 311 of the Natural Gas Policy Act or section 1(c) of the Natural Gas Act. The Commission is proposing to (1) require the existing annual § 284.126(b) transactional reports to be filed on a quarterly basis, (2) require that the reports include certain additional types of information and cover storage transactions as well as transportation transactions, (3) establish a procedure for the § 284.126(b) reports to be filed in a uniform electronic format and posted on the Commission's web site, and (4) hold that those reports must be public and may not be filed with information redacted as privileged.

DATES: Comments are due **90 days after publication in the FEDERAL REGISTER**

ADDRESSES: You may submit comments, identified by docket number, by any of the following methods:

- Agency Web Site: <http://www.ferc.gov>. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- Mail/Hand Delivery: Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, N.E., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

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SUPPLEMENTARY INFORMATION:

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Gas Companies

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NOTICE OF PROPOSED RULEMAKING

(Issued July 16, 2009)

1. The Commission is proposing to modify its contract reporting requirements for (1) intrastate pipelines providing interstate services pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA)<sup>1</sup> and (2) Hinshaw pipelines providing interstate services subject to the Commission's Natural Gas Act (NGA) jurisdiction pursuant to blanket certificates issued under § 284.224 of the Commission's regulations.<sup>2</sup> First, the Commission proposes to require intrastate and Hinshaw pipelines to file quarterly reports of all transportation and storage transactions. Second, the Commission proposes to require that the reports include certain additional types of information not currently reported. Third, the Commission proposes to establish a procedure for the reports to be

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<sup>1</sup> 15 U.S.C. 3372.

<sup>2</sup> Section 1(c) of the NGA exempts from the Commission's NGA jurisdiction pipelines which transport gas in interstate commerce if (1) they receive natural gas at or within the boundary of a state, (2) all the gas is consumed within that state, and (3) the pipeline is regulated by a state Commission. This exemption is referred to as the Hinshaw exemption after the Congressman who introduced the bill amending the NGA to include § 1(c). See ANR Pipeline Co. v. Federal Energy Regulatory Comm'n, 71 F.3d 897, 898 (1995) (briefly summarizing the history of the Hinshaw exemption).

filed in a uniform electronic format and posted on the Commission's web site. Fourth, the Commission proposes to require that reports be public and not filed with information redacted as privileged. These proposals are intended to improve market transparency, without making it unduly burdensome for intrastate and Hinshaw pipelines to participate in interstate markets.

## **I. Background**

### **A. Current Regulations**

2. NGPA section 311 authorizes the Commission to allow intrastate pipelines to transport natural gas "on behalf of" interstate pipelines or local distribution companies served by interstate pipelines "under such terms and conditions as the Commission may prescribe."<sup>3</sup> NGPA § 601(a)(2) exempts transportation service authorized under NGPA section 311 from the Commission's NGA jurisdiction. Congress adopted these provisions in order to eliminate the regulatory barriers between the intrastate and interstate markets and to promote the entry of intrastate pipelines into the interstate market. Such entry eliminates the need for duplication of facilities between interstate and intrastate pipelines.<sup>4</sup> Shortly after the adoption of the NGPA, the Commission authorized Hinshaw pipelines to apply for NGA section 7 certificates authorizing them to transport

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<sup>3</sup> 15 U.S.C. 3371(c).

<sup>4</sup> EPGT Texas Pipeline, 99 FERC ¶ 61,295, at 62,252-62,253 (2002).

natural gas in interstate commerce in the same manner as intrastate pipelines may do under NGPA section 311.<sup>5</sup>

3. Subpart C of the Commission's Part 284 open access regulations (18 CFR § 284.121-126) implements the provisions of NGPA section 311 concerning transportation by intrastate pipelines. Section 284.224 of the regulations provides for the issuance of blanket certificates to Hinshaw pipelines to provide open access transportation service "to the same extent that, and in the same manner" as intrastate pipelines are authorized to perform such service by Subpart C. The Part 284, Subpart C, regulations require that intrastate pipelines performing interstate service under NGPA section 311 must do so on an open access basis.<sup>6</sup> However, consistent with the NGPA's goal of encouraging intrastate pipelines to provide interstate service, the Commission has not imposed on intrastate pipelines all of the Part 284 requirements imposed on interstate pipelines.<sup>7</sup> For example, when the Commission first adopted the Part 284 open access regulations in Order No. 436, the Commission exempted intrastate pipelines from the requirement that

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<sup>5</sup> Certain Transportation, Sales, and Assignments by Pipeline Companies not Subject to Commission Jurisdiction Under Section 1(c) of the Natural Gas Act, Order No. 63, FERC Stats. & Regs. ¶ 30,118, at 30,824-25 (1980).

<sup>6</sup> See 18 CFR §§ 284.7(b), 284.9(b) and 284.122.

<sup>7</sup> Associated Gas Distributors v. FERC, 824 F.2d 981, 1002-1003 (D.C. Cir. 1987) (AGD); Mustang Energy Corp. v. Federal Energy Regulatory Comm'n, 859 F.2d 1447, 1457 (10<sup>th</sup> Cir. 1988), cert. denied, 490 U.S. 1019 (1988); see also EPGT Texas Pipeline, 99 FERC ¶ 61,295 (2002).

they offer open access service on a firm basis.<sup>8</sup> The Commission found that requiring intrastate pipelines to offer firm service to out-of-state shippers could discourage them from providing any interstate service, because such a requirement could progressively turn the intrastate pipeline into an interstate pipeline against its will and against the will of the responsible state authorities. Similarly, Order No. 636-B exempted intrastate pipelines from the requirements of Order No. 636.<sup>9</sup> Those requirements included capacity release, electronic bulletin boards (now internet websites), and flexible receipt and delivery points.

4. The Commission currently has less stringent transactional reporting requirements for NGPA section 311 intrastate pipelines and Hinshaw pipelines, than for interstate pipelines. In Order No. 637,<sup>10</sup> the Commission revised the reporting requirements for interstate pipelines in order to provide more transparent pricing information and to permit

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<sup>8</sup> Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 436, FERC Stats. & Regs. ¶ 30,665, at 31,502 (1985).

<sup>9</sup> Pipeline Service Obligations, and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations; Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636-B, 61 FERC ¶ 61,272, at 61,992 n.26 (1992), order on reh'g, 62 FERC ¶ 61,007 (1993), aff'd in part and remanded in part sub nom. United Distribution Cos. v. FERC, 88 F.3d 1105 (D.C. Cir. 1996), order on remand, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

<sup>10</sup> Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637, FERC Stats. & Regs. ¶ 31,091, clarified, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, reh'g denied, Order No. 637-B, 92 FERC ¶ 61,062 (2000), aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC, 285 F.3d 18 (D.C. Cir. 2002), order on remand, 101 FERC ¶ 61,127 (2002), order on reh'g, 106 FERC ¶ 61,088 (2004), aff'd sub nom. American Gas Ass'n v. FERC, 428 F.3d 255 (D.C. Cir. 2005).

more effective monitoring for the exercise of market power and undue discrimination. As adopted by Order No. 637, § 284.13(b) requires interstate pipelines to post on their internet websites basic information on each transportation and storage transaction with individual shippers, including revisions to a contract, no later than the first nomination under a transaction. This information includes:

- The name of the shipper
- The contract number (for firm service)
- The rate charged
- The maximum rate
- The duration (for firm service)
- The receipt and delivery points and zones covered
- The quantity of natural gas covered
- Any special terms or details, such as any deviations from the tariff
- Whether any affiliate relationship exists.

5. Section 284.13(c) of the Commission's regulations also requires interstate pipelines to file with the Commission on the first business day of each calendar quarter an index of its firm transportation and storage customers and to publish the same information on their websites. The information required to be included in the Index of Customers does not include the rates paid by the customers. Section 284.13(e) requires interstate pipelines to file semi-annual reports of their storage injection and withdrawal activities, including the identities of the customers, the volumes injected into and



withdrawn from storage for each customer and the unit charge and total revenues received.

6. Order No. 637 did not modify the reporting requirements for NGPA section 311 intrastate pipelines and Hinshaw pipelines provided in § 284.126(c) of the Commission's regulations. Section 284.126(b) of the regulations requires NGPA section 311 and Hinshaw pipelines to file with the Commission annual reports of their transportation transactions, but not their storage transactions. Those reports must include the following information:

- The name of the shipper receiving transportation service
- The type of service performed (i.e. firm or interruptible)
- The total volumes transported for the shipper, including for firm service a separate statement of reservation and usage quantities
- Total revenues received for the shipper, including for firm service a separate statement of reservation and usage revenues.

7. Unlike § 284.13(b), § 284.126(b) does not require intrastate pipelines to include in these reports the rate charged under each contract, the duration of the contract, the receipt and delivery points and zones or segments covered by each contract, whether the contract includes any special terms and conditions, and whether there is an affiliate relationship between the pipeline and the shipper.

8. Section 284.126(c) requires section 311 intrastate pipelines and Hinshaw pipelines to file a semi-annual report of their storage activity within 30 days of the end of each complete storage and injection season. This requirement is substantially the same as the

§ 284.13(e) requirement that interstate pipelines file such semi-annual reports of their storage activity.

**B. Petition and Notice of Inquiry**

9. In September 2008, an interstate storage provider with market-based rates, SG Resources Mississippi, L.L.C. (SGRM) filed a request for waiver of the §§ 284.13(b)(1)(iii) and (b)(2)(ii) requirements that interstate pipelines post the rates charged in firm and interruptible transactions no later than first nomination for service. SGRM requested the waiver for both itself and all interstate storage providers with market-based rates. It contended that the mandatory disclosure of commercially sensitive pricing information provides prospective customers and competitors, such as NGPA section 311 intrastate storage providers that are only subject to semi-annual reporting requirements, with an unfair competitive advantage. SGRM also stated that a number of the NGPA section 311 storage providers submit their semi-annual storage reports subject to a request for privileged treatment pursuant to § 388.112 of the Commission's regulations.

10. In response, in November 2008 the Commission issued an order denying the request for waiver and the alternative petition for a rulemaking proceeding. The SGRM order held that the existing posting requirements for interstate pipelines are necessary to provide shippers with the price transparency they need to make informed decisions, and

the ability to monitor transactions for undue discrimination and preference.<sup>11</sup> The Commission also found that the requested exemption would be contrary to NGA section 4(c)'s requirement that "every natural gas company . . . keep open . . . for public inspection . . . all rates."<sup>12</sup>

11. Contemporaneously with the SGRM order, the Commission issued a Notice of Inquiry (NOI), requesting comments on whether the Commission should impose additional reporting requirements on NGPA section 311 intrastate pipelines and on Hinshaw pipelines.<sup>13</sup> The NOI stated that the Commission was interested in exploring (1) whether the disparate reporting requirements for interstate and NGPA section 311 and Hinshaw pipelines have an adverse competitive effect on the interstate pipelines and (2) if so, whether the Commission should modify the posting requirements for section 311 intrastate pipelines and Hinshaw pipelines in order to make them more comparable to the § 284.13(b) posting requirements for interstate pipelines. Accordingly, the Commission sought comments to assist it in evaluating whether changes in the Commission's posting requirements should be considered in order to remove any competitive disadvantage for interstate pipelines, as compared to intrastate pipelines providing interstate transportation and storage services under section 311 of the NGPA

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<sup>11</sup> SG Resources Mississippi, L.L.C., 125 FERC ¶ 61,191 (2008) (SGRM).

<sup>12</sup> 15 U.S.C. § 717c(c).

<sup>13</sup> Contract Reporting Requirements of Intrastate Natural Gas Companies, Notice of Inquiry, FERC Stats & Regs. ¶ 35,559 (2008).

and to Hinshaw pipelines providing such service pursuant to a § 284.224 blanket certificate.

**C. Industry Comments on Notice of Inquiry**

12. A total of eighteen parties filed comments on the NOI. Fourteen of those represented NGPA section 311 or Hinshaw pipelines or their advocacy associations.

13. Seven of the section 311 and Hinshaw pipelines, along with the Gas Processors Association (GPA) and the Texas Pipeline Association (TPA), completely oppose any change in the existing reporting requirements.<sup>14</sup> They argue that imposing additional burdensome reporting requirements on section 311 and Hinshaw pipelines would be inconsistent with Congress' intent of allowing intrastate pipelines to participate in the interstate pipeline grid without unduly burdensome regulatory requirements. For example, they argue that the intrastate and Hinshaw pipelines would have to invest in additional information technology and personnel in order to comply with the § 284.13 requirement that pipelines post the information on an internet web site in downloadable file formats. They also maintain they already file enough information with other state and federal agencies. Any further filings, they claim, would place them at a competitive disadvantage against intrastate-only pipelines, who are often allowed to keep confidential

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<sup>14</sup> See, e.g., Comments of Arkansas Oklahoma Gas Corporation (AOG), Atmos Pipeline Texas (Atmos), Copano Energy, LLC (Copano), Cranberry Pipeline Corporation (Cranberry), DCP Midstream, LLC (DCP), Enogex LLC (Enogex), GPA, Jefferson Island Storage & Hub (Jefferson), and TPA.

the identity of their shippers and the agreed-upon prices.<sup>15</sup> Moreover, they state that they generally do not compete for the same customers as interstate pipelines, arguing that they generally feed into interstate pipelines, rather than running parallel and competing with them. The GPA also suggested that the Commission lacks jurisdiction to reform the reporting requirements.<sup>16</sup>

14. The remaining section 311 and Hinshaw commenters, including the American Gas Association (AGA), also oppose changing the current reporting requirements, and make many of the same arguments as are summarized above.<sup>17</sup> However, these commenters suggested that, if the Commission believes increased reporting is necessary, it could consider increasing the frequency of the existing reports to quarterly and to hold such reports to be fully public. This more limited change in the current reporting requirements would address perhaps their primary concern: the cost of having to upgrade their existing information technology systems in order to maintain the necessary internet website. If the Commission were to require reports more frequently than quarterly, these commenters support an exemption for smaller intrastate and Hinshaw pipelines. Several commenters propose such an exemption apply to intrastate and Hinshaw pipelines whose

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<sup>15</sup> See, e.g., Comments of Atmos, DCP, Jefferson, Niska Gas Storage LLC (Niska), and the TPA.

<sup>16</sup> See GPA Comments at 2-5.

<sup>17</sup> See, e.g., Comments of the AGA, Duke Energy Ohio/Duke Energy Kentucky (Duke), Niska, Northwest Natural Gas Company (NW Natural), and Pacific Gas and Electric Company (PG&E).

average natural gas deliveries over the previous three years did not exceed 50 million MMBtu, consistent with the exemption from the Order No. 720 requirement that non-NGA pipelines report scheduled gas flows.<sup>18</sup>

15. The other four commenters were an interstate pipeline (Tres Palacios), a company owning both interstate and NGPA section 311 intrastate storage providers (Enstor), a producer/marketer (Apache), and the American Public Gas Association (APGA). They contend that the Commission should extend the § 284.13 interstate pipeline reporting requirements to intrastate and Hinshaw pipelines. They assert that applying the same reporting requirements to all pipelines performing interstate service is both a matter of fairness and a practical solution to the discrimination and anti-competitive practices currently afflicting the market. Enstor states that in order to fully equalize the reporting requirements for interstate pipelines and intrastate and Hinshaw pipelines, the Commission must impose tariff filing requirements on intrastate and Hinshaw pipelines comparable to those currently imposed on interstate pipelines. Enstor points out that §§ 284.13(b)(1)(viii) and 284.13(b)(2)(vi) require interstate pipelines to post all aspects in which a service agreement deviates from the pipeline's tariff. Enstor states that, while interstate pipelines are required to file tariffs in a prescribed format, there is no similar requirement for intrastate and Hinshaw pipelines, and this would complicate any requirement for those pipelines to post how particular contracts deviate from their tariff.

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<sup>18</sup> Pipeline Posting Requirements under Section 23 of the Natural Gas Act, Order No. 720, 73 Fed. Reg. 73494 (December 2, 2008) FERC Stats & Regs. ¶ 31,283 (2008).

## II. Discussion

16. Based upon a review of the comments received in response to the NOI, the Commission is proposing to revise its transactional reporting requirements for intrastate and Hinshaw pipelines in order to increase market transparency, without imposing unduly burdensome requirements on those pipelines. Transactional information provides price transparency so shippers can make informed purchasing decisions, and also permits both shippers and the Commission to monitor actual transactions for evidence of possible abuse of market power or undue discrimination. The Commission is proposing to increase the availability and usefulness of the transactional information reported by intrastate and Hinshaw pipelines by requiring that: (1) the existing annual § 284.126(b) transactional reports be filed on a quarterly basis, (2) the quarterly reports include certain additional types of information and cover storage transactions as well as transportation transactions, (3) the quarterly reports be filed in a uniform electronic format and posted on the Commission's web site, and (4) those reports must be public and may not be filed with information redacted as privileged.

17. The Commission is not proposing to impose on intrastate and Hinshaw pipelines the same reporting requirements as it imposes on interstate pipelines. For example, the Commission in this rulemaking will not require the intrastate and Hinshaw pipelines to make daily postings of transactional information on their own websites. As discussed below, the Commission believes that the revised reporting requirements proposed in this NOPR appropriately balance the need for increased transparency of intrastate and

Hinshaw pipeline transactions, while avoiding unduly burdensome requirements that might discourage such pipelines from participating in the interstate market.

**A. Report Frequency and Content**

18. Increasing the frequency of the § 284.126(b) transactional reports by intrastate and Hinshaw pipelines from annual to quarterly and requiring additional information in those reports will provide shippers and the Commission with both more timely and more useful information concerning the transactions entered into by section 311 and Hinshaw pipelines. Specifically, the Commission proposes that the transactional reports to be filed on a quarterly basis include the following additional information not currently required by § 284.126(b).

19. First, the Commission proposes to amend § 284.126(b) to require the quarterly reports to include certain additional information about each transaction not currently required by § 284.126(b). This information will include: (1) the rate charged under each contract, including a separate statement of each rate component, (2) the duration of the contract, (3) the primary receipt and delivery points covered by the contract, (4) the quantity of natural gas the shipper is entitled to transport, store, or deliver, and (5) whether there is an affiliate relationship between the pipeline and the shipper. The purpose of these reports is to allow shippers and others, including the Commission, to monitor transactions for undue discrimination and preference. This additional information is necessary to enable such entities to determine the extent to which particular transactions are comparable to one another. For example, contracts for service



on different parts of a pipeline system or with different durations may not be comparable to one another. In addition, the requirement that affiliate relationships between the pipeline and its shippers be reported will allow the Commission and interested parties to monitor whether the pipeline is favoring its affiliates.

20. Requiring section 311 intrastate and Hinshaw pipelines to report this additional information concerning each transaction will make the reporting requirements for those pipelines more comparable to the transactional posting requirements for interstate pipelines. Section 284.13(b)(1) requires interstate pipelines to post similar information concerning contract rates, duration, receipt and delivery points, entitlements to service, and affiliate relationships.<sup>19</sup> Most of the remaining information which § 284.13(b) requires interstate pipelines to post, but the Commission is not proposing to require section 311 and Hinshaw pipelines to report, relates to capacity release, which section 311 and Hinshaw pipelines are not required to permit.

21. Second, the Commission proposes to require that the proposed § 284.126(b) quarterly reports include all storage transactions in addition to transportation transactions. Currently, § 284.126(b) only requires section 311 and Hinshaw pipelines to report information with respect to transportation transactions. The only information the Commission currently requires those pipelines to report with respect to storage transactions is the information included in the § 284.126(c) semi-annual storage activity report. Aside from the fact the storage activity report is only filed on a semi-annual,

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<sup>19</sup> See 18 CFR § 284.13(b)(1)(ii), (iv), (v), and (vii) and (2)(iv)(v)(vi) and (ix).

rather than a quarterly basis, it also does not include all of the information that we are proposing to require to be included in the quarterly reports under revised § 284.126(b). For example, § 284.126(c) does not require section 311 and Hinshaw pipelines to report the rates provided for in each contract, the duration of each contract, or whether there is an affiliate relationship between the storage provider and its customer. In order to assure that section 311 and Hinshaw pipelines report the same information about storage transactions as transportation transactions and on the same schedule, the Commission proposes to revise section 284.126(b) to cover both transportation and storage transactions. Clearly, there is just as great a need for transparency of storage transactions as of transportation transactions.

22. While we are proposing to revise § 284.126(b) to include storage transactions, we will continue to require section 311 and Hinshaw pipelines to make the semi-annual storage activity reports currently required by § 284.126(c). Those reports include information that will not be contained in the proposed quarterly transactional reports. Specifically, § 284.126(c) requires section 311 and Hinshaw pipelines to report total volumes injected into storage during each complete storage injection season and total volumes withdrawn from storage during each complete storage withdrawal season. Such seasonal information will not be captured by the § 284.126(b) quarterly transactional reports, because those reports will not correlate with the typical five-month withdrawal and seven-month injection seasons. Moreover, retaining the § 284.126(c) semi-annual storage activity report for section 311 and Hinshaw pipelines is consistent with the Commission's existing requirement, in § 284.13(e), that interstate pipelines also make

such semi-annual storage activity reports in addition to posting transactional information pursuant to § 284.13(c).

23. In proposing to require section 311 and Hinshaw pipelines to make quarterly transactional reports containing similar information to that reported by interstate pipelines, the Commission has sought to balance the benefits of increased transparency of intrastate and Hinshaw pipeline transactions with the interest in avoiding unduly burdensome requirements for those pipelines. Under the Commission's proposal, one primary difference will remain between the reporting requirements for interstate pipelines and the section 311 and Hinshaw pipelines: interstate pipelines will post transactional information daily on their websites, while section 311 and Hinshaw pipelines will submit this information in a quarterly report to the Commission. Four commenters<sup>20</sup> requested that the Commission extend the § 284.13(b) daily interstate pipeline posting requirements to intrastate and Hinshaw pipelines. They asserted that this would address the concern that intrastate and Hinshaw pipelines have an unfair competitive advantage over interstate pipelines because of the disparate reporting requirement for the two sets of pipelines, and it would provide a greater ability to monitor the market for potential discrimination. However, the Commission is not proposing at this time to impose the full interstate pipeline posting requirements on intrastate and Hinshaw pipelines for several reasons.

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<sup>20</sup> See, e.g., Comments of Tres Palacios, Enstor, Apache, and APGA.

24. First, one purpose of the NGPA was to induce intrastate pipelines to participate in the interstate market by ensuring that it would not be unduly burdensome to do so.<sup>21</sup> This participation by intrastate pipelines eliminates the need for duplication of facilities between interstate and intrastate pipelines.<sup>22</sup> Thus, as the court has stated, “Congress intended that intrastate pipelines should be able to compete in the transportation market without bearing the burden of full regulation by FERC under the Natural Gas Act.”<sup>23</sup> AGA and several other intrastate and Hinshaw pipeline commenters indicated that they could make these reports on a quarterly basis, without incurring undue hardship.<sup>24</sup> For example, AGA states, “a quarterly filing requirement would strike an appropriate balance between any added transparency to the wholesale, interstate natural gas markets and the burden on LDCs and the markets in producing additional contract information.”<sup>25</sup>

25. However, if the Commission were to require all intrastate and Hinshaw pipelines to post transactional information on a daily basis, all those pipelines would have to maintain their own websites for this purpose. Such daily postings of information about

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<sup>21</sup> AGD, 824 F.2d at 1001-1003.

<sup>22</sup> EPGT Texas Pipeline, L.P., 99 FERC ¶ 61,295 at 62,252

<sup>23</sup> Mustang Energy Corp. v. Federal Energy Regulatory Comm’n, 859 F.2d 1447, 1457 (10<sup>th</sup> Cir. 1988), cert. denied, 490 U.S. 1019 (1988); see also EPGT Texas Pipeline, 99 FERC ¶ 61,295 (2002).

<sup>24</sup> See, e.g., AGA Comments at 1-2, 9, 13, 16, 18-19; Duke Comments at 9; Niska Comments at 15; NW Natural Comments at 9, 11, 13, 14; and PG&E Comments at 6, 10.

<sup>25</sup> AGA Comments at 2.

individual transactions could be significantly more burdensome than the quarterly reporting requirement the Commission is proposing. The cost of maintaining a website in compliance with NAESB standards appears to be the primary concern of many intrastate and Hinshaw pipelines. The TPA notes that NAESB compliance “would require section 311 and Hinshaw pipelines to invest in additional information technology hardware and personnel,”<sup>26</sup> and notes that the Commission recently avoided requiring NAESB compliance for section 311 and Hinshaw pipelines in Order No. 720.<sup>27</sup> Other pipelines expressed similar concerns about the cost of NAESB standards.<sup>28</sup> Notably, Cranberry expressed doubt that it would be able to afford even an electronic bulletin board, given the small size of its staff.<sup>29</sup> Further, as the AGA and others note, “a daily reporting requirement would be unduly burdensome in light of the information that would be obtained,” from the typical service provider, whose transactions often do not change on a day-to-day basis.<sup>30</sup> Based on these comments, the Commission is concerned that a daily

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<sup>26</sup> TPA Comments at 21.

<sup>27</sup> While Order No. 720 does require daily internet postings of certain scheduled flow information, that requirement is only applicable to major non-interstate pipelines and does not require posting of information about individual transactions. By contrast, the reporting requirement proposed here will require all section 311 and Hinshaw pipelines to report information about each customer contract.

<sup>28</sup> See AGA Comments at 2, 11, 15, 18; Copano Comments at 7; DCP Comments at 10; Enogex Comments at 9; NW Natural Comments at 3, 8, 13.

<sup>29</sup> Cranberry Comments at 6-8.

<sup>30</sup> AGA Comments at 12-13; see also Duke Comments at 8; NW Natural at 14; PG&E Comments at 2, 5, 10.

internet posting requirement could discourage section 311 and Hinshaw pipelines from performing interstate service.

26. Second, only two interstate pipelines filed comments claiming that daily posting by intrastate and Hinshaw pipelines is necessary to avoid adverse competitive effects on interstate pipelines. It thus does not appear that there is widespread concern among interstate pipelines that the disparate reporting requirements will cause significant adverse competitive effects. Moreover, our proposal to increase the frequency of intrastate and Hinshaw pipeline transactional reports and increase the information included in those reports will reduce the disparity in the reporting requirements for the two sets of pipelines. We recognize that some of the commenters have raised concerns about the ability of shippers and others to obtain access to the transactional reports filed by section 311 and Hinshaw pipelines with the Commission. For this reason, as discussed in the next two sections, the Commission is also proposing to take several actions to increase the accessibility of these reports, including providing for them to be posted in a standardized format on the Commission's website. This increased accessibility of the reports will also serve to improve market transparency, while minimizing additional burdens on section 311 and Hinshaw pipelines.

27. We conclude that the comments in response to the NOI do not demonstrate a need to impose on section 311 and Hinshaw pipelines the increased burden of complying with the daily § 284.13 transactional posting requirements. In these circumstances, the interest in avoiding unduly burdensome requirements that could discourage intrastate and Hinshaw pipelines from participating in the interstate market, contrary to the goal of the

NGPA, provides a “reasonable justification for excluding” the intrastate and Hinshaw pipelines from the daily posting requirements.<sup>31</sup>

### **B. Online Posting**

28. In order to make the proposed quarterly reports filed with the Commission more accessible to the public, the Commission proposes requiring that the reports be filed in an electronic standardized format to be developed by the Commission staff. The Commission proposes the data be publicly available, and not filed on a redacted basis. This method will enhance the posting of quarterly reports on the Commission’s website and facilitate easy access to the information by the public. At the same time, this procedure will avoid the costs of requiring intrastate pipelines to maintain a NAESB-compliant website, discussed above.

29. In Order No. 720, the Commission “clarifie[d] that the pipeline posting regulations do not impose NAESB requirements on non-interstate pipelines,” but that rather, “posting pipelines need only comply with the manner of posting outlined in” the new regulation.<sup>32</sup> The Commission proposes a similar approach here. Rather than place the burden of website maintenance and standards compliance on individual pipelines, the Commission would take on that responsibility, with the pipelines only being responsible for collecting and filing the information with the Commission. Under the current rules, the

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<sup>31</sup> Cf. ANR v. FERC, 71 F.3d at 902.

<sup>32</sup> Order No. 720 at P 98.

Commission encourages parties to file intrastate reports using FERC-537 Semi-Annual Storage Report for Activity under Section 284.122 and FERC-549, Annual Transportation Report. Standardized formats have proven to be an effective way to increase practical access both for industry members and the Commission's own staff. Currently, FERC-549 and FERC-537 filers are not required to use a standardized format; consequently the data collection has been inconsistent. The Commission therefore proposes to require section 311 and Hinshaw companies to submit their reports in a standardized electronic format. The Commission is currently in the process of developing a standardized electronic format for making the reports proposed in this NOPR. Once that process is complete, the Commission will make the standardized format available for public comment.

### **C. Confidentiality Policy**

30. Finally, the Commission proposes to require such reports be posted without any information redacted as privileged. Currently, when a report is filed subject to a request for privileged treatment, any person desiring to see the report must file a formal request, pursuant to the Freedom of Information Act (FOIA) and § 385.1112 of the Commission's Rules of Practice and Procedure,<sup>33</sup> that the Commission make the report public. Due to the expense and delay caused by this additional step, in practice these requests have been infrequent. Further, as the APGA argues in its comments, allowing pricing information

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<sup>33</sup> 18 CFR § 385.1112.



to be confidential undermines the Commission's goals of preventing undue discrimination and promoting price transparency. Adopting a prohibition on the confidential treatment of § 284.126(b) reports furthers all of these policy goals. Accordingly, the proposed standardized reporting form will include a statement that the report will be public.

31. While several parties expressed concern about the commercial sensitivity of the information to be reported, the AGA comments, "a quarterly reporting requirement should allay any concerns regarding the commercial sensitivity of contract data."<sup>34</sup> The Commission concurs with this assessment, and finds that the public benefits of the increasing the availability of market information far outweigh the risks posted by the commercial sensitivity of data from a previous quarter.

32. In addition to the above policy considerations, the Commission finds that its governing statutes support public treatment of data reported both by Hinshaw pipelines and by NPGA section 311 pipelines. The Commission regulates interstate service performed by Hinshaw pipelines pursuant to the NGA.<sup>35</sup> Therefore, NGA section 4(c)'s requirement that interstate pipelines publicly disclose contracts under such rules as the Commission may prescribe applies to the interstate services performed by Hinshaw pipelines pursuant to their § 284.224 blanket certificates. Furthermore, NGA section

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<sup>34</sup> AGA Comments at 19.

<sup>35</sup> See Consumers Energy Co. v. FERC, 226 F.3d 777 (6<sup>th</sup> Cir. 2000) (finding that the Commission must act under NGA section 5 in order to require Hinshaw pipelines to change their rates).

23(a)(1) directs the Commission “to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce.”<sup>36</sup> While the NGPA does not contain an express public disclosure provision similar to NGA section 4(c), section 311(c) of the NGPA authorizes the Commission to prescribe the “terms and conditions” under which intrastate pipelines perform interstate service. Requiring public disclosure of transactional information for the purpose of allowing shippers and others to monitor NGPA section 311 transactions for undue discrimination is well within the Commission’s broad conditioning authority under § 311(c).<sup>37</sup>

#### **D. Miscellaneous Issues**

33. The Commission is proposing that the quarterly reports required by this NOPR include not only the full legal name, but also the “identification number” of each shipper.<sup>38</sup> The Commission is also proposing that the reports include the “industry common code” for each receipt and delivery point.<sup>39</sup> The Commission is proposing to require that the reports include a shipper identification number, in order to simplify recordkeeping and minimize the ambiguity and confusion that can be caused by shippers

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<sup>36</sup> 15 U.S.C. 717t-2(a)(1). See Energy Policy Act of 2005, Pub. L. No. 109-58, § 316 (“Natural Gas Market Transparency Rules”), 119 Stat. 594 (2005).

<sup>37</sup> See, e.g., AGD, 824 F.2d at 1015 – 1018 (D.C. Cir. 1987) (affirming the Commission’s use of section 311(c) to require intrastate pipelines to permit their interstate sales customers to convert to transportation-only service).

<sup>38</sup> 18 CFR § 284.126(b)(1)(i) of the proposed regulations.

<sup>39</sup> 18 CFR § 284.126(b)(1)(iv) of the proposed regulations.

whose names have changed, or whose names are similar to the names of other shippers. Similarly, the Commission is proposing to require that the reports include an industry common code for receipt and delivery points to minimize any ambiguity as to what receipt and delivery points are being reported and to ensure that all reporting pipelines identify such points in a consistent manner.

34. While the Commission is aware of some shipper identification standards and receipt and delivery point codes that are used in the natural gas industry (for example, Dun & Bradstreet, Inc.'s D-U-N-S identification numbers for shippers), it is reluctant to choose any particular standard without input as to that standard's cost-effectiveness and usefulness. Accordingly, the Commission seeks comments from interested parties on two related questions: (1) What sort of shipper identification numbers and receipt and delivery point common industry codes are currently used or readily available to section 311 and Hinshaw pipelines?; and (2) Which shipper identification standard or standards and receipt and delivery point codes, if any, should be used?

### **III. Regulatory Requirements**

#### **A. Information Collection Statement**

35. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, record keeping, and public disclosure requirements (collections of information) imposed by an agency.<sup>40</sup> Therefore, the Commission is providing notice of its proposed information collections to OMB for review in accordance with section

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<sup>40</sup> 5 CFR 1320.11.

3507(d) of the Paperwork Reduction Act of 1995.<sup>41</sup> Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date.

36. The Commission estimates that on an annual basis the burden to comply with this proposed rule will be as follows:

<b>Data Collection</b>	<b>Number of Respondents</b>	<b>Number of Responses</b>	<b>Hours per Response</b>	<b>Total Hours</b>
FERC-549D	125	4	3.5	1,750

Total Annual Hours for Collection: 1,750 hours.

These are mandatory information collection requirements.

Information Collection Costs: Because of the various staffing levels that will be involved in preparing the documentation (legal, technical and support) the Commission is using an hourly rate of \$150 to estimate the costs for filing and other administrative processes, (reviewing instructions, searching data sources, completing and transmitting the collection of information). The estimated cost is anticipated to be \$262,500.

Title: FERC-549D

Action: Proposed Data Collection

OMB Control No.: To be determined.

Respondents: Natural gas pipeline companies

Frequency of Responses: On occasion.

Necessity of Information: This proposed rule will improve the usefulness and

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<sup>41</sup> 44 U.S.C. 3507(d).

transparency of market transactions. The increased frequency of transactional reporting will help the Commission identify and evaluate emerging trends and business conditions affecting reporting entities, including undue discrimination and preference. Additionally, the information contained in the quarterly reports will identify the economic effects of significant transactions and events, allow more timely evaluations of the adequacy of existing rates and aid in the development of needed changes to existing regulatory initiatives. Finally, more frequent and transparent reporting resulting from this proposed rule will help the Commission achieve its goal of vigilant oversight over reporting entities.

37. The Commission requests comments on the utility of the proposed information collection, the accuracy of the burden estimates, how the quality, quantity, and clarity of the information to be collected might be enhanced, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques. Interested persons may obtain information on the reporting requirements or submit comments by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, 202-502-8415 or e-mail [michael.miller@ferc.gov](mailto:michael.miller@ferc.gov)). Comments may also be sent to the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: 202-395-7285 or e-mail: [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov)).

## **B. Environmental Analysis**

38. 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>42</sup> The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.<sup>43</sup> The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are corrective, clarifying or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.<sup>44</sup> Therefore an environmental review is unnecessary and has not been prepared in this rulemaking.

## **IV. Regulatory Flexibility Act [Analysis or Certification]**

39. The Regulatory Flexibility Act of 1980 (RFA)<sup>45</sup> generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analysis if proposed regulations would not have such an effect.

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<sup>42</sup> Order No. 486, Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (1987).

<sup>43</sup> 18 CFR § 380.4.

<sup>44</sup> See 18 CFR §§ 380.4(a)(2)(ii), 380.4(a)(5) and 380.4(a)(27).

<sup>45</sup> 5 U.S.C. 601-612.

40. Most of the natural gas companies regulated by the Commission do not fall within the RFA's definition of a small entity.<sup>46</sup> Approximately 125 natural gas companies are potential respondents subject to the requirements adopted by this rule. For the year 2008 (the most recent year for which information is available), 4 companies had annual revenues of less than \$7 million. This represents 3.2 percent of the total universe of potential respondents or only a very few entities that may have a significant burden imposed on them. In view of these considerations, the Commission certifies that this proposed rule's amendments to the regulations will not have a significant impact on a substantial number of small entities.

#### V. Comment Procedures

41. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due **[90 days after publication in the FEDERAL REGISTER]**. Comments must refer to Docket No. RM09-2-001, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

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<sup>46</sup> See 5 U.S.C. 601(3), citing section 3 of the Small Business Act, 15 U.S.C. 623. Section 3 of the SBA defines a "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. The Small Business Size Standards component of the North American Industry Classification System defines a small natural gas pipeline company as one that transports natural gas and whose annual receipts (total income plus cost of goods sold) did not exceed \$7 million for the previous year.

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

43. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street N.E., Washington, DC 20426.

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

## **VI. Document Availability**

45. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.



46. From FERC'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.

47. User assistance is available for eLibrary and the FERC'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).

List of subjects in 18 CFR Part 284

Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

In consideration of the foregoing, the Commission proposes to revise part 284, Chapter I, Title 18, Code of Federal Regulations, as follows:

**PART 284 – CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS  
UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED  
AUTHORITIES**

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352; 43 U.S.C. 1331-1356

2. In § 284.126, paragraph (b) is revised to read as follows:

**§ 284.126 Reporting Requirements**

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(b) Quarterly report.

(1) Each intrastate pipeline must file a quarterly report with the Commission and the appropriate state regulatory agency that contains, for each transportation and storage service provided during the preceding calendar quarter under § 284.122, the following information:

- i. The full legal name, and identification number, of the shipper receiving the service, including whether there is an affiliate relationship between the pipeline and the shipper;
- ii. The type of service performed (i.e., firm or interruptible transportation, storage, or other service);

- iii. The rate charged under each contract, specifying the rate schedule/name of service and docket where the rates were approved. The report should separately state each rate component set forth in the contract (i.e. reservation, usage, and any other charges);
  - iv. The primary receipt and delivery points covered by the contract, including the industry common code for each point;
  - v. The quantity of natural gas the shipper is entitled to transport, store, or deliver under each contract;
  - vi. The duration of the contract, specifying the beginning and ending month and year of the current agreement;
  - vii. Total volumes transported, stored, injected or withdrawn for the shipper; and
  - viii. Total revenues received for the shipper. The report should separately state revenues received under each rate component;
- (2) The quarterly report for the period January 1 through March 31 must be filed on or before May 1. The quarterly report for the period April 1 through June 30 must be filed on or before August 1. The quarterly report for the period July 1 through September 30 must be filed on or before November 1. The quarterly

report for the period October 1 through December 31 must be filed on or before February 1.

- (3) Each report must be filed as prescribed in § 385.2011 of this chapter as indicated in the General Instructions set out in the quarterly reporting form. Each report must be prepared in conformance with the Commission's software and reporting guidance, so as to be posted and available for downloading from the FERC Web site (<http://www.ferc.gov>). One copy of the report must be retained by the respondent in its files.

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Document Content(s)

RM09-2-000 G-1.DOC.....1-36