

121 FERC ¶ 61,293
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 284

Docket No. RM08-2-000

Pipeline Posting Requirements under Section 23 of the Natural Gas Act

(December 21, 2007)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In this Notice of Proposed Rulemaking, the Commission proposes to require both interstate and certain major non-interstate pipelines to post capacity, daily scheduled flow information and daily actual flow information. This proposal incorporates one contained in an earlier Notice of Proposed Rulemaking to require the posting of capacity and daily actual flow information by some intrastate pipelines, with some changes. Under this proposal, interstate pipelines would be required to post daily actual flow information in addition to their currently required posting of capacity and daily scheduling information. Non-interstate pipelines would be required to post daily scheduled flow information in addition to the earlier Notice of Proposed Rulemaking proposal to require posting capacity and daily actual flow information. The posting proposal would facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce to implement section 23 of the Natural Gas Act.

DATES: Comments are due [**Insert_Date 45 days from publication in the FEDERAL REGISTER**]. Reply comments are due [**Insert_Date 75 days from publication in the FEDERAL REGISTER**].

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

- Agency Web Site: <<http://ferc.gov>> Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures section of the preamble. 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, D.C. 20426. Please refer to the Comment Procedures section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT:

Stephen J. Harvey (Technical)
Office of Enforcement
Federal Energy Regulatory Commission
888 First Street NE
Washington, D.C. 20426
(202)502-6372
Stephen.Harvey@ferc.gov

Charles Whitmore (Technical)
Office of Enforcement
Federal Energy Regulatory Commission
888 First Street NE
Washington, D.C. 20426
(202)502-6256
Charles.Whitmore@ferc.gov

Eric Ciccoretti (Legal)
Office of Enforcement
Federal Energy Regulatory Commission
888 First Street NE
Washington, D.C. 20426
(202)502-8493
Eric.Ciccoretti@ferc.gov

SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Pipeline Posting Requirements under
Section 23 of the Natural Gas Act

Docket No. RM08-2-000

NOTICE OF PROPOSED RULEMAKING

(December 21, 2007)

I. Introduction and Summary of Proposal

1. On April 19, 2007, the Commission issued a Notice of Proposed Rulemaking (Initial NOPR) to implement section 23 of the Natural Gas Act, which was added to the act by the Energy Policy Act of 2005 (EPAAct 2005).¹ In the Initial NOPR, the Commission proposed an annual reporting requirement for certain natural gas sellers and buyers and a daily posting requirement for intrastate pipelines.² The Commission also asked in the Initial NOPR whether posting requirements for interstate pipeline should be changed.³
2. Concurrently, the Commission is issuing a Final Rule with respect to the annual reporting requirement. With respect to the pipeline posting proposal, based on Staff

¹ Transparency Provisions of Section 23 of the Natural Gas Act, 72 FR 20791 (Apr. 26, 2007), FERC Stats. and Regs. ¶ 32,614 (2007). Congress enacted section 23 of the Natural Gas Act as part of the Energy Policy Act of 2005. Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

² Initial NOPR at P 1-2.

³ Initial NOPR at P 43.

experience as well as the comments received, the Commission has determined to issue the instant notice of proposed rulemaking (NOPR) to develop the record more fully with respect to the posting proposal. The Initial NOPR may not have given sufficient notice to interstate pipelines of changes that seem necessary to implement adequately section 23 of the Natural Gas Act. In addition, the Commission believes that more information regarding the technical implementation of daily posting of actual flow information by interstate pipelines is required in order to consider the costs and benefits of such a regulatory change. For those purposes, the Commission incorporates by reference the Initial NOPR and all comments filed in response to the Initial NOPR in Docket No. RM07-10-000 with respect to the pipeline posting proposal.

3. The Commission intends the instant proposal to make available the information needed to track daily flows of natural gas adequately throughout the United States. Specifically, the Commission proposes to require both interstate pipelines and major non-interstate pipelines⁴ to post daily information regarding their capacity, scheduled flow volumes, and actual flow volumes at major points and mainline segments. The proposal would result in both interstate and non-interstate pipelines posting the same types of information.

⁴ In the Initial NOPR, the Commission used the term “intrastate pipeline;” herein, the Commission uses the term “non-interstate pipeline” – a point explained further below.

4. For interstate pipelines, this proposal would add to the existing posting requirements in § 284.13(d) a requirement to post daily actual flow volume.⁵ To bring the requirements for major non-interstate pipelines into alignment with the existing and proposed posting requirements for interstate pipelines, this proposal adds to the proposal in the Initial NOPR a requirement that major non-interstate pipelines post daily scheduled flow volumes.⁶ For the purposes of this NOPR, a “major non-interstate pipeline” is defined as one that is not a “natural gas company” under section 1 of the Natural Gas Act⁷ and that flows greater than 10 million (10,000,000) MMBtus of natural gas per year, with two exceptions.⁸ The first exception is non-interstate pipelines that fall entirely upstream of a processing plant.⁹ The second exception is non-interstate pipelines that deliver more than ninety-five percent (95%) of the natural gas volumes they flow directly to end-users.¹⁰

5. With these proposed additions of flow information from major non-interstate pipelines to the information already available from interstate pipelines, market observers,

⁵ Proposed 18 CFR 284.13(d).

⁶ Proposed 18 CFR 284.14(a).

⁷ 15 U.S.C. 717.

⁸ Proposed 18 CFR 284.1.

⁹ Proposed 18 CFR 284.14(b)(1).

¹⁰ Proposed 18 CFR 284.14(b)(2).

such as the Commission, state commissions and market participants, could develop a better understanding of the supply and demand conditions that directly affect the U.S. wholesale natural gas markets. Market participants would have a better basis for evaluating the prices at which they transact. Consequently, this proposal to increase information from non-interstate pipelines and from interstate pipelines would directly “facilitate price transparency for the sale... of physical natural gas in interstate commerce” as authorized in the natural gas transparency provisions.¹¹

6. The Commission’s proposal would apply to major non-interstate pipelines even though section 1 of the Natural Gas Act¹² excludes them from the Commission’s ratemaking authority under sections 4 and 5 of the Natural Gas Act¹³ and the Commission’s certificate authority under section 7 of the Natural Gas Act.¹⁴ As discussed below, Congress placed market participants, which include non-interstate pipelines, within the Commission’s transparency authority under section 23 of the Natural Gas Act to ensure “the dissemination, on a timely basis, of information about the

¹¹ Section 23(a)(1) of the Natural Gas Act, 15 U.S.C. 717t-2(a)(1) (2000 & Supp. V 2005).

¹² 15 U.S.C. 717.

¹³ 15 U.S.C. 717c; 15 U.S.C. 717d.

¹⁴ 15 U.S.C. 717f.

availability and prices of natural gas sold at wholesale and in interstate commerce.”¹⁵

Aware that the pre-EPA 2005 limits on the Commission’s authority would have left gaps in the transparency of the wholesale, physical natural gas markets, Congress did not restrict the Commission’s transparency authority to those same limits in enacting section 23 of the Natural Gas Act. As we stated in the Initial NOPR: “While distinctions

between intrastate and interstate natural gas markets may be meaningful from a legal perspective, they are not meaningful from the perspective of market price formation.”¹⁶

Congress was aware of the legal distinctions between natural gas markets in enacting EPA 2005 and, in choosing to use the term “any market participant” indicated that these distinctions should not apply to the Commission’s transparency authority. At the same time, by not amending section 1 of the Natural Gas Act, Congress retained the legal distinctions between intrastate and interstate pipelines for the purposes of delineating the entities subject to the Commission’s authority over ratemaking in sections 4 and 5 and over certification of construction and sales of new facilities and transportation services in section 7 of the act.

7. The Commission issues this NOPR in order to solicit further comment on requiring actual flow information from both interstate and non-interstate pipelines and to

¹⁵ Section 23(a)(2) of the Natural Gas Act, 15 U.S.C. 717t-2(a)(2) (2000 & Supp. V 2005).

¹⁶ Initial NOPR at P 20.

consider whether the posting requirements for both interstate and non-interstate pipelines should be similar. In the Initial NOPR, the Commission did not propose to require the posting of actual flow information by interstate pipelines, but it did seek comment on such posting.¹⁷ Further comment in response to the instant NOPR will allow the Commission to give more consideration to requiring actual flow information on interstate pipelines, in particular the technical issues associated with quick posting of that information. In addition, the Commission seeks further comment regarding how the posting requirements should apply to storage facilities and regarding its daily pipeline posting proposal for major non-interstate pipelines.

8. To address implementation issues associated with the posting proposal, such as obtaining and posting actual flow information and obtaining and posting information from storage facilities, the Commission directs Staff to conduct a technical conference before comments on this NOPR are due.

II. The Commission's Transparency Authority Over Non-Interstate Pipelines under Section 23 of the Natural Gas Act

9. At the outset, the Commission addresses the jurisdictional issues raised by its proposal in the Initial NOPR. In the Initial NOPR, the Commission explained how section 23 of the Natural Gas Act authorizes the Commission to require an intrastate pipeline to post information regarding its transportation of natural gas, even though

¹⁷ Initial NOPR at P 43.

section 1 of the Natural Gas Act excludes such companies from the Commission's authority to regulate transportation of natural gas under sections 4, 5, and 7 of the Natural Gas Act.¹⁸

A. Comments

1. Comments: Section 23 of the Natural Gas Act

10. The Texas Pipeline Association (TPA)¹⁹ argued that, contrary to the Commission's explanation, the plain language of section 23 of the Natural Gas Act shows that the term "market participant" is limited to those entities that participate in wholesale interstate natural gas markets and does not include intrastate pipelines.²⁰ TPA concluded that the plain language of section 23 of the Natural Gas Act does not support the Commission's assertion of authority to collect information from intrastate pipelines because they do not participate in markets for the sale or transportation of natural gas in interstate commerce.²¹

¹⁸ Initial NOPR at P 11-18, 21-24, & 37.

¹⁹ Eight entities expressed support for the Texas Pipeline Association's comments: Atmos Energy Corporation, Copano Energy, L.L.C., Crosstex Energy Services, LP, DCP Midstream, LLC, Enbridge Energy Co., Inc., Gas Processors Association, Kinder Morgan Texas Intrastate Pipeline Group, Targa Resources, Inc..

²⁰ Comments of TPA at 16-17.

²¹ Id.

11. Enterprise Products Partners L.P. (Enterprise) also asserted that an entity must be participating in the interstate market to be a “market participant” under section 23 of the Natural Gas Act. Enterprise reasoned that an entity subject to the Commission’s authority under section 23 but not to its authority under other sections of the Natural Gas Act is an entity that “participat[es] in the interstate market (whether by buying, selling, shipping or trading physical natural gas) but not already subject to [Natural Gas Act] jurisdiction as natural gas companies.”²² According to Enterprise, the Commission’s proposal to impose posting requirements on intrastate pipelines bears no relation to Congress’s intention to restrict the Commission’s jurisdiction to entities participating in the interstate market.²³

12. Similarly, the Railroad Commission of Texas argued that the term “market participant” does not indicate that Congress contemplated the expansion of Commission authority to include intrastate pipelines as asserted by the Commission.²⁴ The Railroad Commission of Texas explained that there is no reference at all in the relevant statutory provisions or legislative history of EPCA 2005 to intrastate pipelines, the intrastate natural gas market or intrastate gas flows and no express indication that the

²² Comments of Enterprise at 13.

²³ Id.

²⁴ Comments of Railroad Commission of Texas at 6-7; see also Comments of Atmos Pipeline-Texas at 6-7.

Commission's authority was being extended in any manner over "intrastate" market participants.²⁵

13. One commenter, Enterprise, contended that the Commission does not have the authority to require posting of information by intrastate pipelines because Congress limited the information that may be collected from market participants to "information about natural gas sold at wholesale and in interstate commerce."²⁶ Enterprise interpreted Congress's use of the word "about" as limiting language and asserted that Congress deliberately chose the word "about" as opposed to "affect" or "at least impacts" in order to stress that the Commission does not have the authority to compel reporting for any activity that might have some impact on the interstate wholesale natural gas markets.²⁷

2. Comments: Section 1(b) of the Natural Gas Act

14. TPA argued that section 1(b) of the Natural Gas Act precludes the Commission from prescribing rules under its section 23 authority that apply to intrastate transportation or sale of natural gas.²⁸ TPA asserted that Congress has consistently respected the distinction between interstate and intrastate pipelines which first appeared in section 1(b)

²⁵ Comments of Railroad Commission of Texas at 7.

²⁶ Comments of Enterprise Products Partners, L.P. at 11 (emphasis in original).

²⁷ Id. at 11-12.

²⁸ Comments of TPA at 7; see also Comments of Louisiana Office of Conservation at 5.

of the Natural Gas Act and was recognized by Congress in amendments to the Natural Gas Act and in the Natural Gas Policy Act of 1978.²⁹ TPA referred to numerous appellate court decisions that recognized this distinction in reviewing the Commission's jurisdiction.³⁰

15. Several commenters argued that if Congress intended the transparency provisions to cover intrastate pipelines, it would have amended section 1 of the Natural Gas Act.³¹ TPA argued that if Congress intended to expand the Commission's authority over intrastate transportation of natural gas, it would have amended section 1(b) to include new posting obligations for intrastate pipelines for all daily flows and capacity at major points.³² TPA explained that, in EAct 2005, Congress amended section 1(b) of the Natural Gas Act to include application to the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation.³³ TPA contended that without a similar amendment to section 1(b) to provide for the posting of

²⁹ Comments of TPA at 9.

³⁰ Id. at 11 (citations omitted).

³¹ Comments of TPA at 10-11; Comments of Enterprise at 15; Comments of Louisiana Office of Conservation at 5; Comments of Railroad Commission of Texas at 6-7.

³² Comments of TPA at 10-11.

³³ Id. (citing EAct 2005 section 311 (amending section 1(b) of the Natural Gas Act)).

information Congress cannot “cross the jurisdictional line” by imposing a posting requirement on intrastate pipelines.³⁴

3. Comments: Section 1(c) of the Natural Gas Act

16. Several commenters, such as the Railroad Commission of Texas, asserted that the Commission’s proposal to require intrastate pipelines to post information impermissibly intrudes on states’ regulation of natural gas transportation.³⁵ Cranberry Pipeline Corporation argued that the Commission cannot have jurisdiction over intrastate transactions when those transactions are already subject to the jurisdiction of the state regulatory commission.³⁶ Similarly, DCP argued that the Commission ignored section 1(c) of the Natural Gas Act which exempts intrastate transportation because it is viewed as a matter of local concern subject to regulation by the states.³⁷

4. Comments: Other

17. TPA argued that there is no indication in the legislative history of section 23 that Congress intended to modify the Commission’s jurisdiction to include intrastate

³⁴ Comments of TPA at 11.

³⁵ Comments of Railroad Commission of Texas at 8-9; see also Reply Comments of the RRC of Texas at 8; Reply Comments of the Texas Pipeline Association at 12.

³⁶ Comments of Cranberry Pipeline Corporation at 8 (internal citations omitted).

³⁷ Comments of DCP Midstream, LLC at 7 (internal citations omitted).

transportation.³⁸ Atmos Energy Corporation (Atmos) and the Railroad Commission of Texas similarly stated that there is no reference at all in the relevant statutory provisions or legislative history of EPCRA 2005 to intrastate pipelines, the intrastate natural gas market or intrastate gas flows and certainly no express indication that the FERC's authority was being extended in any manner over "intrastate" market participants.³⁹

18. DCP Midstream, LLC argued that intrastate pipelines should not be held to the same reporting burden as interstate pipelines because intrastate pipelines have not submitted to the jurisdiction of the Commission. The burdens that an interstate pipeline assumes, DCP contended, accompany a certificate of public convenience and necessity and should not be imposed on an intrastate pipeline. DCP asserted that the Commission's policy historically has been that only gas pipelines that affirmatively accepted a jurisdictional certificate to provide transportation in interstate commerce would be subject to Commission regulation, such as daily scheduled volume or pipeline capacity reporting.⁴⁰

19. Atmos argued that the Commission's interpretation of Natural Gas Act section 23 is inconsistent with the Commission's prior analysis of its own jurisdiction in Order No.

³⁸ Comments of TPA at 21.

³⁹ Comments of Atmos at 12 (internal citations omitted); Comments of the Railroad Commission of Texas at 6-7 (internal citations omitted).

⁴⁰ Comments of DCP Midstream, LLC at 9-10.

670⁴¹ and Order No. 636.⁴² Atmos pointed to Order No. 670, in which the Commission interpreted the phrase “any entity” from section 4A of the Natural Gas Act to encompass any person or form of organization, regardless of its legal status, function or activities, and further concluded that this language did not specifically exclude entities engaged in non-jurisdictional activities.⁴³ Atmos also described the Commission interpreting the phrase “in connection with” from section 4A so as to conclude that not every common-law fraud that touches a jurisdictional transaction would constitute market manipulation.⁴⁴ According to Atmos, in Order No. 670, the Commission further determined, that had Congress intended to expand the Commission’s jurisdiction so significantly as to give it anti-manipulation authority over non-jurisdictional transactions such as first sales of natural gas, sales of imported natural gas, sales of imported liquefied

⁴¹ Prohibition of Energy Market Manipulation, Order No. 670, 71 FR 4244 (Jan. 26, 2006), FERC Stats. & Regs. ¶ 31,202 (2006) (Order No. 670).

⁴² Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636, 57 FR 13267 (Apr. 16, 1992), FERC Stats. & Regs. ¶ 30,939 (1992), order on reh’g, Order No. 636-A, 57 FR 36128 (Aug. 12, 1992), FERC Stats & Regs. ¶ 30,950 (1992), order on reh’g, Order No. 636-B, 61 FERC ¶ 61,272 (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) (Order No. 636).

⁴³ Comments of Atmos at 9.

⁴⁴ Id. at 9-10.

natural gas, or sales and transportation by entities exempt from Commission regulation under Natural Gas Act section 1(b), then it would have done so explicitly.⁴⁵

20. As to Order No. 636, Atmos argued that the Commission's assertion of transparency authority over intrastate pipelines is contrary to its holdings in that order, in which the Commission held that a non-interstate pipeline "providing service under section 311 of the [Natural Gas Policy Act of 1978] is not required to meet the service requirements of the Commission's Order No. 636 such as offering firm service, having a capacity release program, posting available capacity electronically, offering flexible receipt and delivery points, or unbundling distinct services."⁴⁶ By contrast, the pipeline posting proposal, asserted Atmos, would not only extend daily posting requirements to section 311 transportation by intrastate pipelines, but also to transportation that is purely intrastate in nature.⁴⁷

⁴⁵ Id. at 9 (internal citations omitted).

⁴⁶ Id. at 15 (emphasis in original).

⁴⁷ Id. at 12 (internal citations omitted). Atmos stated that it would not object if the Commission limits the posting requirements applicable to intrastate pipelines to section 311 transportation or other activity regulated under the Natural Gas Policy Act of 1978. Id.

21. Some commenters, such as the Railroad Commission of Texas, expressed concern that a requirement for intrastate pipelines to post information would lead to further regulation of those intrastate pipelines.⁴⁸

B. Discussion

22. The Commission proposes here to require major non-interstate pipelines to post information regarding capacity, scheduled flow volumes, and actual flow volumes.⁴⁹

This proposal would impose posting requirements on major non-interstate pipelines in a limited way. The Commission does not intend to regulate the intrastate operations of those non-interstate pipelines; nor do we intend to regulate the rates or terms and conditions of intrastate service for those non-interstate pipelines. The Commission proposes to require those non-interstate pipelines only to post information.

23. In the Initial NOPR, the Commission used the term “intrastate pipeline.” In this proposal, the Commission uses the term “non-interstate pipeline.” The latter term more accurately describes the scope of the proposed rule, which is issued pursuant to section 23 of the Natural Gas Act.⁵⁰ This section applies to both interstate and non-interstate pipelines, a point explained further below, and does not use the term “intrastate pipeline.” In this NOPR, the Commission proposes to collect important information about the

⁴⁸ Comments of the Railroad Commission of Texas at 8-9.

⁴⁹ Proposed 18 CFR 284.14(a).

⁵⁰ 15 U.S.C. 717t-2 (2000 & Supp. V 2005).

physical, natural gas market from certain pipelines in the continental United States regardless of whether the pipeline is an intrastate pipeline, a Hinshaw pipeline, or any other type of pipeline that is not an interstate pipeline under the Natural Gas Act. The subjects of the posting requirement proposed herein are set by their participation in the physical, natural gas market not by their legal status under section 1 of the Natural Gas Act.⁵¹

24. The proposed posting requirements for non-interstate pipelines are consistent with Congress's intent as expressed in section 23 of the Natural Gas Act. There, Congress permitted the Commission to impose on a broad set of market participants requirements for a limited purpose, i.e., to obtain and disseminate "information about the availability and prices of natural gas at wholesale and in interstate commerce."⁵² At the same time, as the Commission explicitly acknowledges, Congress did not expand the Commission's authority to impose on the same set of market participants requirements related to the Commission's traditional regulatory activities, e.g., ratemaking under sections 4 and 5 of the Natural Gas Act and certification of construction and sales and transportation services under section 7 of the Natural Gas Act.

⁵¹ 15 U.S.C. 717.

⁵² Section 23(a)(2) of the Natural Gas Act, 15 U.S.C. 717t-2(a)(2) (2000 & Supp. V 2005).

25. Congress placed non-interstate pipelines within the Commission's transparency authority under section 23 of the Natural Gas Act in order to ensure – for the entirety of the wholesale, physical natural gas market – transparency of price and availability, including transparency of market price formation. Aware that the pre-EPAAct 2005 limits on the Commission's authority would have left gaps in the transparency of the wholesale, physical natural gas markets, Congress did not restrict the Commission's transparency authority to those same limits in enacting section 23 of the Natural Gas Act. As we stated in the Initial NOPR, “While distinctions between intrastate and interstate markets may be meaningful from a legal perspective, they are not meaningful from the perspective of market price formation.”⁵³ Congress was aware of the legal distinctions between non-interstate and interstate natural gas markets in enacting EPAAct 2005. In choosing to use the term “any market participant” and focusing section 23 on “information about the availability and prices of natural gas at wholesale and in interstate commerce,” Congress indicated that these distinctions should not apply to the Commission's transparency authority. At the same time, by not amending section 1, Congress retained the legal distinctions between intrastate and interstate markets for the purposes of delineating the entities subject to the Commission's authority over ratemaking in sections 4 and 5 and over construction of natural gas facilities in section 7 of the Natural Gas Act.

⁵³ Initial NOPR at P 20.

1. Discussion: Section 23 of the Natural Gas Act

26. The language in section 23 of the Natural Gas Act supports the Commission's authority to require non-interstate pipelines to post information about capacity, scheduled flow volumes and actual flow volumes. In section 23(a)(1), Congress directed the Commission to "facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce..."⁵⁴ In section 23(a)(2), Congress authorized the Commission to "provide for the dissemination, on a timely basis, of information about the availability and prices of natural gas sold at wholesale and in interstate commerce..."⁵⁵ Congress expressly delegated to the Commission the task of adopting rules to give life to this provision⁵⁶ and, in section 23(a)(3), provided that the Commission may "obtain the information" about the availability and prices of natural gas sold at wholesale and in interstate commerce from "any market participant."⁵⁷

27. Congress could have limited the Commission's transparency authority to obtaining information from any "natural gas company" subject to the Commission's traditional regulatory authority. It did not do so. Instead, in using the broad new term "any market participant," Congress deliberately expanded the universe subject to the Commission's

⁵⁴ 15 U.S.C. 717t-2(a)(1) (2000 & Supp. V 2005).

⁵⁵ 15 U.S.C. 717t-2(a)(2) (2000 & Supp. V 2005).

⁵⁶ Id.

⁵⁷ 15 U.S.C. 717t-2(a)(3) (2000 & Supp. V 2005).

transparency authority beyond “natural gas compan[ies].”⁵⁸ The term “any market participant” is not defined in the Natural Gas Act; however, it is not on its face limited to entities made subject to the Natural Gas Act under section 1.⁵⁹ Indeed, the language of section 23 indicates that entities excluded from the Commission’s authority under section 1 of the Natural Gas Act would be included in section 23. First, in section 23, Congress did not reference the limitations of section 1 explicitly (discussed further below). Second, in section 23, Congress did not use the term “natural gas company” from section 2(6), which is defined as “a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.”⁶⁰ This limiting term is used in section 1 of the Natural Gas Act to limit the Commission’s authority, for instance, under sections 4, 5, and 7 of the Natural Gas Act.⁶¹ These approaches would have been the simplest ways for Congress to have indicated an intent to limit the Commission’s transparency authority in the same manner it limited the Commission’s comprehensive regulatory authority in other sections of the Natural Gas Act. Thus, commenters’ arguments that the Commission has authority to obtain

⁵⁸ Contrary to the assertions of Bridgeline Holdings, L.P. (Bridgeline), Comments of Bridgeline at 6, this grant of transparency authority is not an implied grant.

⁵⁹ Initial NOPR at P 12.

⁶⁰ 15 U.S.C. 717a(6).

⁶¹ 15 U.S.C. 717c, 717d & 717f.

information only from those subject to the Commission's authority under section 1 of the Natural Gas Act are inconsistent with the language of the statute.

28. In granting the Commission broad authority to obtain information, the Congress not only used the new term "market participant" but it also specifically referred to "any" market participant, instead of limiting the Commission's authority to obtain information from market participants subject to the Commission's traditional Natural Gas Act jurisdiction. The word "any" gives the term it modifies (in this case, "market participant") an expansive meaning.⁶²

29. In addition, in section 23(d)(2), Congress created a de minimis exception to the other provisions in section 23. Specifically, Congress instructed the Commission to create a de minimis exception for gatherers and producers, which section 1(b) of the Natural Gas Act explicitly excludes from Commission's traditional regulation. If, as some commenters asserted, Congress did not intend to give the Commission authority over any entity excluded by section 1(b) of the Natural Gas Act, a de minimis exception

⁶² Norfolk S. Rwy. Co. v. Kirby, 543 U.S. 14, 31-32 (2004) (the word "any" gives the word it modifies an expansive reading); Department of Housing and Urban Dev. v. Rucker, 535 U.S. 125, 130-31 (2002); TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001) (one must give effect to each word in a statute so that none is rendered superfluous); United States v. Gonzales, 520 U.S. 1, 5 (1997) ("any" is an expansive term, meaning "one or some indiscriminately of whatever kind,"); New York v. EPA, 443 F.3d 880, 885-87 (D.C. Cir. 2006) (the word "any" is broadly construed to reflect Congress' intent that all types of physical changes are subject to the Clean Air Act's New Source Review program).

would have been unnecessary; in other words, section 23(d)(2) would have been surplusage. Congress is not presumed to enact surplus language.⁶³ To avoid this improper result, the Commission interprets section 23 of the Natural Gas Act to give effect to the de minimis language by interpreting the term “any market participant” to include those entities otherwise excluded from the Commission’s Natural Gas Act jurisdiction by section 1(b) of the act.

30. The Commission disagrees that the term “about” in section 23 is a limiting term as asserted by Enterprise. In the Initial NOPR, the Commission described the information proposed to be collected from intrastate pipelines as information “about” interstate, wholesale natural gas markets because the flows on intrastate pipelines affect interstate, wholesale natural gas markets.⁶⁴ The Commission used the term “pertains” as a synonym for “about.” Indeed, contrary to Enterprise’s reading, we read the term “about” as broader than the terms “affect” or “impacts.” Information may be “about” a subject without “affecting” it; hence, flow information may be “about natural gas sold at wholesale and in interstate commerce” even if it does not “affect” such natural gas (even though it normally does).

⁶³ City of Roseville v. Norton, 348 F.3d 1020, 1028 (D.C. Cir. 2003) (citing Babbitt v. Sweet Home Chapter of Community for a Great Oregon, 515 U.S. 687, 698 (1995)).

⁶⁴ Initial NOPR at P 15.

31. More specifically, as explained below, the information that would be posted by major non-interstate pipelines is “information about the availability and prices of natural gas sold at wholesale and in interstate commerce.”⁶⁵ There is a relationship between capacity and flow information on non-interstate pipelines and the interstate, natural gas market because non-interstate flows affect the supply and demand fundamentals that underlie the market. As explained below, posted flow information from only interstate pipelines cannot provide a complete picture of natural gas flows in the United States – or even of those flows directly relevant to the pricing of natural gas flowing in interstate commerce.⁶⁶ To avoid such incompleteness, the Commission sets forth the proposal to require major non-interstate pipelines to post flow information. This proposal would provide a complete picture of natural gas supply and demand fundamentals without the gaps that would appear were the non-interstate pipelines excluded by section 1 of the Natural Gas Act also excluded by section 23 of the Natural Gas Act. In enacting section 23 of the Natural Gas Act, Congress sought to avoid any such gaps in the transparency of the physical natural gas markets by avoiding the legal distinctions set forth in section 1 of the Natural Gas Act.

⁶⁵ Section 23(a)(2) of the Natural Gas Act, 15 U.S.C. 717t-2(a)(2) (2000 & Supp. V 2005).

⁶⁶ See below at P 50-59.

2. Discussion: Section 1(b) of the Natural Gas Act.

32. The Commission disagrees with commenters who argued that section 1(b) of the Natural Gas Act precludes the Commission from imposing the daily posting requirement on intrastate pipelines. Section 1(b) of the Natural Gas Act provides that the “provisions of this chapter . . . shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale . . .” and that such provisions “shall not apply to any other transportation or sale of natural gas.”⁶⁷ These arguments ignore the fact that, in section 23, Congress provided the Commission a new and broad grant of authority that goes beyond prior Commission jurisdiction over natural gas companies to facilitate transparency in the wholesale natural gas markets.

33. In stating that the Commission may obtain information from “any market participant,”⁶⁸ Congress contemplated that the transparency provisions would differ from other provisions of the Natural Gas Act as to the entities covered by the Commission’s authority. Commenters’ reliance on section 1 of the Natural Gas Act, therefore, improperly ignores the intent of Congress to subject a different set of entities to the Commission’s transparency authority as evidenced by Congress’s use of the term “any market participant.” In light of this intent, commenters’ reliance on case law setting forth

⁶⁷ Section 1(b) of the Natural Gas Act, 15 U.S.C. 717(b).

⁶⁸ Section 23(a)(3) of the Natural Gas Act, 15 U.S.C. 717t-2(a)(3) (2000 & Supp. V 2005).

the limits on the Commission's authority under section 1 of the Natural Gas Act is misplaced.

34. The Commission does not find persuasive the argument that Congress could have expressed its intent to subject intrastate pipelines to the Commission's transparency authority only by amending section 1 of the Natural Gas Act. First, altering the exceptions in section 1, as commenters suggested, is not the only way to alter the statute to give the Commission transparency authority. Indeed, it would have been more cumbersome for the Congress to take that approach. Instead of that approach, the Commission interprets the addition of section 23 as providing the Commission transparency authority over non-interstate pipelines. This latter interpretation is the more reasonable interpretation of section 23 and reflects Congress's intent to subject non-interstate pipelines to only the Commission's transparency authority. Second, it could be stated equally that if Congress intended to exclude intrastate (or non-interstate) pipelines from the Commission's authority under section 23 of the Natural Gas Act, it would have used the term "natural gas company" in section 23, instead of the term "any market participant."

35. Commenters' arguments that section 23 should be interpreted consistent with pre-EPA 2005 case law are likewise misplaced. Those cases apply the jurisdictional limits set forth in section 1 of the Natural Gas Act. These arguments run afoul of the principle of statutory construction that "Congress is presumed to be aware of an administrative or

judicial interpretation of a statute.”⁶⁹ Thus, Congress was presumably aware that prior to the enactment of section 23, the Natural Gas Act, as explained by TPA, “limit[ed] the gathering of intrastate data to gathering it from companies falling under the Commission’s jurisdiction.”⁷⁰ In using the term “any market participant,” Congress signaled its intent to expand the Commission’s transparency authority beyond the universe of natural gas companies to which it would otherwise be limited.⁷¹

3. Discussion: Section 1(c) of the Natural Gas Act

36. Several commenters, including a state commission, contended that the pipeline posting proposal as applied to intrastate pipelines would improperly interfere with states’ regulation of intrastate pipelines as set forth in section 1(c) of the Natural Gas Act, commonly known as the Hinshaw amendment. Section 1(c) of the Natural Gas Act reads:

⁶⁹ Lorillard v. Pons, 434 U.S. 575, 580 (1978) (internal citations omitted); accord 2A Norman J. Singer, Sutherland Statutory Construction sec. 45.12 (5th ed. 1992) (“legislative language will be interpreted on the assumption that the legislature was aware of . . . judicial decisions”).

⁷⁰ Comments of Texas Pipeline Association at 13 (citing Union Oil v. FPC, 542 F.2d 1036, 1039 (9th Cir. 1976)).

⁷¹ TPA observed that courts have held that the Commission cannot exceed its statutory authority. Reply Comments of TPA at 16-17 (citing Transmission Agency of Northern California v. FERC, 495 F.3d 663 (D.C. Cir. 2007) and United Distribution Cos. v. FERC, 88 F.3d 1105 (D.C. Cir. 1996)). This is an unremarkable and unassailable conclusion, but one that provides no guidance where the issue is not whether the Commission may exceed its statutory authority but what is the extent of the Commission’s transparency authority.

The provisions of this chapter shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission.⁷²

The Commission's proposal does not impermissibly interfere with states' regulation of Hinshaw pipelines. Under the Commission's proposal, states will continue to regulate the rates and services of those companies. As stated, section 23 of the Natural Gas Act does not authorize the Commission to undertake such comprehensive regulation and the Commission does not propose to do so. The Commission would require only that non-interstate pipelines, including Hinshaw pipelines, post information regarding their flows. Section 1(c) of the Natural Gas Act, in light of the later enacted EAct 2005, does not preclude such a posting requirement.

4. Discussion: Other

37. The Commission disagrees with DCP's argument that the burden of a posting requirement is related to the Commission's grant of a certificate of convenience and necessity under section 7 of the Natural Gas Act. DCP's argument ignores the mandate Congress set forth in the transparency provisions for the Commission to facilitate transparency. Nothing in section 23 indicates or even implies that the Commission's

⁷² 15 U.S.C. 717(c).

transparency authority depends on whether a market participant has a certificate of public convenience and necessity. Indeed, the use of the modifier “any,” as discussed above, demonstrates that Congress had not intention to limit the Commission authority to disseminate adequate information about the natural gas market.

38. Contrary to commenters’ assertions, the Commission’s interpretation of section 23 is consistent with the Commission’s interpretation of section 4A of the Natural Gas Act, which Congress also enacted in EAct 2005. In Order No. 670, the Commission stated that Congress chose the undefined term “any entity” in section 4A as a broader term than the existing defined term of “natural gas company.”⁷³ Similarly, in interpreting section 23, Congress chose the undefined term “any market participant” in section 23 as a broader term than the existing defined term “natural gas company.” Also, in Order No. 670, to determine the transactions subject to the Commission’s market manipulation authority, the Commission interpreted the section 4A phrase “in connection with” broadly.⁷⁴ To delineate what type of information the Commission could obtain and disseminate, in section 23 of the Natural Gas Act, Congress used the term “about,” which

⁷³ Order No. 670 at P 18.

⁷⁴ Section 4A of the Natural Gas Act reads:

It shall be unlawful for any entity, directly or indirectly, to use or employ, in connection with the purchase or sale of natural gas or the purchase or sale of transportation services subject to the jurisdiction of the Commission,

(continued...)

is a concept similarly as broad as the concept described by the phrase “in connection with.”

39. The Commission’s interpretation of section 23 is also consistent with its holdings in Order No. 636.⁷⁵ As described in subsequent orders, the Commission has not “requir[ed] intrastate pipelines to introduce all the features of open-access service that we have required of interstate pipelines” because requiring intrastate pipelines to do so “could make it unduly burdensome to participate in interstate markets, contrary to the intent of the [Natural Gas Policy Act of 1978].”⁷⁶ Here, the Commission proposes to impose only a posting burden on non-interstate pipelines that is equivalent to the posting requirements of interstate pipelines. In other respects, the burden on non-interstate pipelines remains far less than that on interstate pipelines in keeping with the Natural Gas

any manipulative or deceptive device or contrivance...in contravention of [Commission] rules and regulations.

15 U.S.C. 717t-2c-1 (2000 & Supp. V 2005). In Order No. 670, the Commission observed that the Supreme Court interpreted the phrase “in connection with” broadly in interpreting section 10(b) of the Securities Exchange Act. As noted in that order, section 4A “closely track[s] the prohibited conduct language in section 10(b) of the Securities Exchange Act of 1934, Securities Exchange Act of 1934, 15 U.S.C. 78j(b), and specifically dictate[s] that the terms ‘manipulative or deceptive device or contrivance’ are to be used “as those terms are used in section 10(b) of the Securities Exchange Act of 1934.” Order No. 670 at P 6.

⁷⁵ See, e.g., Order No. 636, FERC Stats. & Regs. ¶ 30,939, at 30,406 (permitting, but not requiring intrastate pipelines, to offer open-access, contract storage).

⁷⁶ EPGT Texas Pipeline, L.P., 99 FERC ¶ 61,295, at 62,252 (2002).

Policy Act of 1978. While in the past, the Commission exempted intrastate pipelines from open-access requirements, such as electronic bulletin boards,⁷⁷ any change in that exemption would be justified in order to further the Commission's transparency goals as set forth in section 23 of the Natural Gas Act.

40. Finally, the Commission recognizes commenters' concern that the Commission's proposal could appear to lead to further regulation. As explained above, however, the Commission's transparency authority over non-interstate pipelines is limited to obtaining and disseminating information. The Commission has no interest in comprehensive regulation of non-interstate pipelines. The Commission reiterates, section 1 of the Natural Gas Act continues to exclude non-interstate pipelines from such comprehensive regulation.⁷⁸

III. Interstate Pipeline Posting Requirements

41. In the Initial NOPR, the Commission sought comment on whether it should revise its posting requirements applicable to interstate pipelines to require posting actual flow information.⁷⁹ The Commission raised the question because we proposed to require intrastate pipelines to post actual flow information, a requirement beyond that applied to interstate pipelines under § 284.13(d)(1) of the Commission's regulations, and because

⁷⁷ Order No. 636-B, 61 FERC ¶ 61,272, at 61,992, n.26.

⁷⁸ 15 U.S.C. 717.

⁷⁹ Initial NOPR at P 43.

posting of actual flow information could provide useful information regarding actual capacity use, for instance, by giving insight into the use of no-notice service.⁸⁰ In this regard, Commission Staff observed that its ability to monitor flows in the interstate pipeline system is limited in certain locations, by the lack of actual flow information. In the case of “no-notice” service,⁸¹ specifically, interstate pipeline schedules do not reflect actual flows. Consequently, information about interstate flows in areas using no-notice service is less useful. In its comments on the Initial NOPR, the Natural Gas Supply Association (NGSA) observed that, “[o]n heating season peak days or days with wide intra-day weather swings, no-notice volumes can be significant; therefore, scheduled flow volumes are not a proxy for physical flow and, thus, do not necessarily provide an accurate picture of underlying market fundamentals.”⁸² Similarly, Commission Staff observed that the gap between scheduled and actual flows occurs most commonly in the northern tier of the country, particularly, where a pipeline serves a local distribution company with significant space heating demand. In such circumstances, market observers find it more difficult to ascribe price behavior to physical changes in flows.

42. Public posting of information reflecting no-notice service could also prevent other forms of misconduct with direct effects on natural gas in interstate commerce.

⁸⁰ Initial NOPR at P 43.

⁸¹ See 18 CFR 284.7(a)(4).

⁸² NGSA Comments at 10.

Commission investigations of interstate and intrastate pipeline activity resulted in two settlements in which the settling party admitted it sought to obtain and exploit non-public storage inventory information to gain a competitive advantage in wholesale gas markets.⁸³ Though this proposal would make public flow information, not storage information, the importance of the non-public information is analogous. These admissions indicate that the lack of public flow information provides the opportunity for parties to engage in manipulative or unduly discriminatory behavior. By making major non-interstate pipeline flow information public, such transparency could discourage market participants from engaging in such manipulative or unduly discriminatory activity.

43. In this NOPR, the Commission proposes to require interstate pipelines to post actual flow information in addition to the capacity and scheduled flow information that interstate pipelines are currently required to post. Accordingly, the Commission proposes adding to § 284.13(d) this requirement: “An interstate pipeline must also provide in the

⁸³ Dominion Resources, Inc., 108 FERC ¶ 61,110 (2004) (Dominion Resources, DTI and DEC admit that DTI violated section 161.3(f) of the Commission’s regulations, former 18 CFR 161.3(f) (2003)); The Williams Companies, Inc., 111 FERC ¶ 61,392 (2005) (Transco admits that it violated section 161.3(f) of the Commission’s regulations, former 18 CFR 161.3(f) (2002)).

same manner [as other information is provided] access to information on actual flowing volumes at receipt points, on the mainline, at delivery points, and in storage fields.”⁸⁴

44. In response to the Initial NOPR, several commenters supported requiring interstate pipelines to post actual flow volumes.⁸⁵ The NGSA asserted that posting of actual flow data “could lead to even more accurate and near real-time indication of underlying market supply and demand fundamentals”⁸⁶ The National Association of Royalty Owners (NARO) contended that requiring interstate pipelines to post actual flow volumes would allow an “apples to apples” comparison with the postings of intrastate pipelines.⁸⁷

45. The Interstate Natural Gas Association of America (INGAA) opposed any proposal for interstate pipelines to post actual flows. INGAA contended that: (1) scheduled flows are adequate for market participants to estimate demand and supply conditions in order to price market transactions; (2) actual flows include operational data that is not relevant and may be counterproductive, such as flows reflecting maintenance activities, storage injection and withdrawal schedules, line pack management, balancing at interconnects, and blending to meet quality specifications not related to commercial flows and (3) the no-notice activity that would be captured by posting actual flows does

⁸⁴ Proposed 18 CFR 284.13(d).

⁸⁵ See, e.g., NGSA at 10; and Apache Corp. at 8-9.

⁸⁶ NGSA Comments at 10.

⁸⁷ NARO Comments at 4.

not reflect trading activity, but rather reflects storage withdrawals.⁸⁸ Williston Basin Interstate Pipeline Company (Williston) indicated that scheduled flow volumes were adequate and actual volumes not necessary.⁸⁹

46. In order to effectively balance the benefits of the additional flow information with the costs of such a requirement, the Commission seeks further information regarding both the benefits of the additional information available if actual flow volumes were posted by interstate pipelines, and the costs imposed on interstate pipelines to develop and post that information. In providing comments on this proposal, the Commission encourages commenters to support their comments by providing specific examples.

47. Regarding benefits, is information lost by not providing actual flows? What is the extent of any such lost information? How extensive is the use of no-notice service? Is information regarding operational flows, such as flows reflecting maintenance activities, storage injection and withdrawal schedules, line pack management, balancing at interconnects, and blending to meet quality specifications, useful to understand supply and demand fundamentals? Does the no-notice activity that would be captured by posting actual flows reflect trading activity or does it reflect storage withdrawals? Can trading activity and storage withdrawals be considered as separate activities? How?

⁸⁸ INGAA Comments at 3-4.

⁸⁹ Williston Reply Comments at 4.

48. Regarding costs, how is actual flow information collected today for operational, balancing, billing or other purposes? What process changes, if any, would be required for interstate pipelines to post actual flow information? How much time after flow would be required before such information would be available for posting? Would posting actual volumes reveal any information that might be harmful to any competitive interests? How could it be harmful?

IV. Postings by Non-Interstate Pipelines

49. In the Initial NOPR, the Commission proposed to require certain intrastate pipelines to post daily information regarding the capacity and actual flows at major receipt and delivery points and mainline segments. In the instant NOPR, the Commission proposes to require non-interstate pipelines to post scheduled flow information in addition to capacity and actual flow information.⁹⁰ Only a “major non-interstate pipeline” would be required to post information. For the purposes of this NOPR, a “major non-interstate pipeline” is defined as one that is not a “natural gas company” under section 1 of the Natural Gas Act and that flows greater than 10 billion cubic feet of natural gas per year, with two exceptions.⁹¹ The first exception is non-interstate pipelines that fall entirely upstream of a processing plant.⁹² The second exception is non-interstate

⁹⁰ Proposed 18 CFR 284.14(a).

⁹¹ Proposed 18 CFR 284.1.

⁹² Proposed 18 CFR 284.14(b)(1).

pipelines that deliver more than ninety-five percent (95%) of the natural gas volumes they flow directly to end-users.⁹³

A. Rationale

50. Through the information that would be obtained from the daily posting requirement on major non-interstate pipelines, the Commission, market participants, and the public could obtain a picture of daily supply and demand conditions that directly affect U.S. wholesale natural gas markets – a picture that is currently incomplete without information from major non-interstate pipelines.⁹⁴ Consequently, this proposal to increase information from certain major non-interstate pipelines would directly “facilitate price transparency for the sale... of physical natural gas in interstate commerce” as authorized in the natural gas transparency provisions.⁹⁵

51. The posted information from major non-interstate pipelines would qualify as, in the words of the transparency provisions, “information about the availability and prices of natural gas sold at wholesale and in interstate commerce.”⁹⁶ Notwithstanding their

⁹³ Proposed 18 CFR 284.14(b)(2).

⁹⁴ In this section, the Commission reiterates its discussion from the Initial NOPR.

⁹⁵ Section 23(a)(1) of the Natural Gas Act, 15 U.S.C. 717t-2(a)(1) (2000 & Supp. V 2005).

⁹⁶ Section 23(a)(2) of the Natural Gas Act, 15 U.S.C.A. 717t-2(a)(2) (2000 & Supp. V 2005).

status under section 1 of the Natural Gas Act, most major non-interstate pipelines today transport or buy and sell wholesale natural gas that eventually enters or at least impacts the interstate natural gas market. Further, supply and demand in non-interstate markets have a direct effect on prices of gas destined for interstate markets because both intrastate and interstate consumers draw on the same sources of supply. This is the case because of the statutory, regulatory and market changes that have taken place in the last three decades.

52. In the Natural Gas Policy Act of 1978, Congress allowed an intrastate pipeline to transport natural gas in interstate commerce on behalf of any interstate pipeline or local distribution company served by an interstate pipeline, without losing its intrastate status.⁹⁷ Congress likewise permitted an intrastate pipeline to sell natural gas to any interstate pipeline or any local distribution company served by any interstate pipeline, without losing its intrastate status.⁹⁸ In addition, at the same time that the Commission issued Order No. 636 in 1992, it promulgated a new subpart of Part 284 (revised several times in the past 15 years) that provides blanket authority to any person who is not an interstate pipeline (including intrastate pipelines) to make sales for resale of natural gas in

⁹⁷ See section 311(a)(2) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3371(a)(2); see also 18 CFR part 284, subpart C (Certain Transportation by Intrastate Pipelines).

⁹⁸ See section 311(b) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3371(b); see also 18 CFR part 284, subpart D (Certain Sales by Intrastate Pipelines).

interstate commerce.⁹⁹ This authorization is a limited jurisdiction sales certificate, which means that the holder does not become subject to the panoply of Natural Gas Act regulation by exercising its rights under the certificate.¹⁰⁰

53. The market understandably reacted to these statutory and regulatory changes since 1978. As relevant here, natural gas sold at or destined to be sold at wholesale in the interstate market is frequently exchanged or the transactions consummated at market hubs where interstate and non-interstate pipelines interconnect (e.g., Waha, Katy, Houston Ship Channel, and Carthage in Texas and at Henry Hub in Louisiana). Prices formed at these hubs are, in effect, prices for wholesale transactions in interstate commerce, even if a portion of the gas priced at each market hub is consumed intrastate. In addition, transfer of natural gas can take place directly between parties who ship gas on both interstate and non-interstate pipelines at any pipeline interconnection.

54. Currently, through the availability of information regarding daily scheduled flows of natural gas through interstate pipelines, market participants have an increased, daily understanding of natural gas markets, including regional conditions and the pipeline capacity available to resolve different geographic supply/demand balances. This is due in part to Order No. 637, where the Commission required posting of capacity and scheduled

⁹⁹ Order No. 636 FERC Stats. & Regs. ¶ 30,939, at 30,391.

¹⁰⁰ See 18 CFR part 284, subpart L (Certain Sales for Resale by Non-interstate Pipelines).

volume information on interstate pipelines with the direct intention of allowing shippers to monitor capacity availability.¹⁰¹ Accordingly, interstate pipelines must post available capacity information, specifically:

the availability of capacity at receipt points, on the mainline, at delivery points, and in storage fields, whether the capacity is available directly from the pipeline or through capacity release, the total design capacity of each point or segment on the system; the amount scheduled at each point or segment whenever capacity is scheduled, and all planned and actual service outages or reductions in service capacity.¹⁰²

In Order No. 637, the Commission anticipated that such postings would provide useful information regarding supply and demand fundamentals: The changes to the Commission's reporting requirements will enhance the reliability of information about capacity availability and price that shippers need to make informed decisions in a competitive market as well as improve shippers' and the Commission's ability to monitor marketplace behavior to detect, and remedy anticompetitive behavior.¹⁰³

¹⁰¹ Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services, Order No. 637, 65 FR 10156, at 10204-10205, (Feb. 25, 2000), FERC Stats. & Regs. ¶ 31,091, at 31,320-31,321 (2000); order on reh'g, Order No. 637-A, 65 FR 35706 (June 5, 2000), FERC Stats. & Regs. ¶ 31,099 (2000); order on reh'g, Order No. 637-B, 65 FR 47284 (Aug. 2, 2000), affirmed in relevant part, 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) (Order No. 637).

¹⁰² 18 CFR 284.13(d).

¹⁰³ Order No. 637, 65 FR at 10169.

55. Today, interested market participants as well as commercial vendors retrieve this information from the websites of interstate pipelines to obtain schedule information that is then used to estimate a variety of supply and demand conditions including geographic and industrial sector consumption, storage injections and withdrawals and regional production in almost real-time.¹⁰⁴ Market participants have come to rely on this information to help price transactions. Commission Staff has also come to rely on this information to perform its oversight and enforcement functions. In fact, market observers believe that posting of this information contributes to market transparency by revealing the underlying volumetric (or availability) drivers behind price movements.¹⁰⁵

56. Notwithstanding the contribution of posted interstate schedule information to the transparency of price and availability of natural gas, this information cannot provide a complete picture of natural gas flows in the United States – or even those flows directly relevant to the pricing of natural gas flowing in interstate commerce. Several major U.S. natural gas pricing points sit at the confluence of multiple interstate and non-interstate pipelines. A recent study by the U.S. Department of Energy’s Energy Information Administration (EIA) identified twenty-eight national market centers or pricing hubs, of

¹⁰⁴ See, e.g., Comments of Bentek Energy, LLC., Docket No. AD06-11-000 (filed Oct. 10, 2006).

¹⁰⁵ See, e.g., Comments of Platt’s, at 11-13, Docket No. AD06-11-000 (information regarding the supply and demand of natural gas explains prices and such information is available from interstate pipelines, but not intrastate pipelines).

which thirteen are served by a combination of interstate and non-interstate pipelines.¹⁰⁶

The table below shows the capacity of interstate and non-interstate pipelines connected to each of these thirteen hubs.

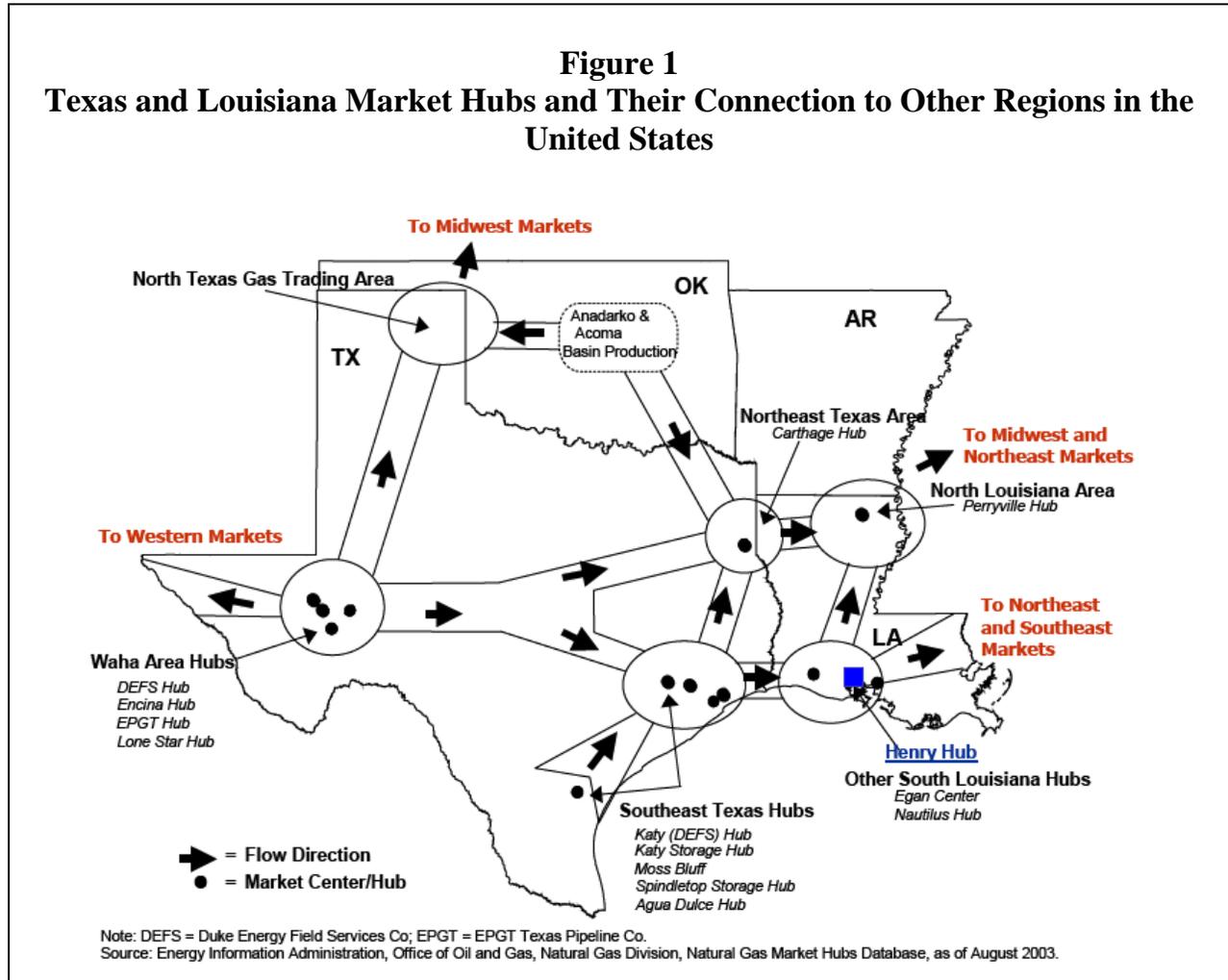
<u>Hub Name</u>	<u>State</u>	<u>Receipt and Delivery Capacity</u>	
		<u>Interstate Pipelines (MMcfd)</u>	<u>Non-interstate Pipelines (MMcfd)</u>
Carthage	TX	1,120	1,355
Henry Hub	LA	2,770	1,215
Katy – Enstor	TX	1,370	3,815
Katy – DEFS	TX	260	2,360
Mid Continent	KS	1,112	627
Moss Bluff	TX	1,050	1,800
Nautilus	LA	1,200	1,350
Perryville	LA	3,652	350
Aqua Dulce	TX	855	835
Waha - Lone Star	TX	810	1,140
Waha – Encina	TX	525	800
Waha - El Paso	TX	1,165	1,660
Waha – DEFS	TX	300	1,850

Source: Unpublished Energy Information Administration update to March 2005 of information presented in *Natural Gas Market Centers and Hubs: A 2003 Update*, October 2003.

57. Many of these pricing points are closely connected to other regions of the United States, influencing prices across the country. The figure below shows the location and

¹⁰⁶ Department Of Energy, Energy Information Administration, Natural Gas Market Centers And Hubs: A 2003 Update, Oct. 2003, http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2003/market_hubs/mkthubs03.pdf

flow patterns of natural gas moving between interstate and non-interstate markets through several of these pricing points.



58. One pricing point directly connected to both interstate and non-interstate pipelines is Henry Hub, Louisiana, the location for delivery of natural gas under the New York Mercantile Exchange's (NYMEX) futures contract. Monthly settlement of NYMEX's Henry Hub natural gas future contract has become important in determining a variety of

monthly index prices used to set natural gas prices in a variety of transactions, some in interstate commerce, particularly along the East Coast and Gulf Coast of the United States. The nature of this influence is detailed in Commission Staff's 2006 State of the Markets Report.¹⁰⁷

59. Further, purchasers of natural gas in interstate commerce draw on the same sources of supply as users and buyers of natural gas in intrastate commerce. For example, much of the recent Barnett Shale development in the Fort Worth basin flows into intrastate systems before moving into interstate markets. In total, slightly more than forty percent of total on-shore production in Texas is connected to interstate pipelines, less than sixty percent in Louisiana and less than eighty percent in Oklahoma.¹⁰⁸ Though daily volume flowing from non-interstate into interstate pipelines can be estimated, the supply dynamics that make these volumes available cannot.

60. The daily posting of flow information by major non-interstate pipelines would provide several benefits to the functioning of natural gas markets in ways that would protect the integrity of physical, interstate natural gas markets, protect fair competition in

¹⁰⁷ Federal Energy Regulatory Commission, 2006 State of the Markets Report at 48-50 (Jan. 2007), www.ferc.gov/market-oversight/market-oversight.asp, (follow link to the State of the Markets Full Report).

¹⁰⁸ Benteq Energy, LLC analysis of supply scheduled into interstate pipelines compared with EIA data from its table Natural Gas Gross Withdrawals and Production for Texas and Oklahoma available at http://tonto.eia.doe.gov/dnav/ng/ng_prod_sum_dcu_NUS_m.htm.

those markets and consequently serve the public interest by better protecting consumers. First, by providing a more complete picture of supply and demand fundamentals, these postings would improve market participants' ability to assess supply and demand and to price physical natural gas transactions. Second, during periods when the U.S. natural gas delivery system is disturbed, for instance due to hurricane damage to facilities in the Gulf of Mexico, these postings would provide market participants a clearer view of the effects on infrastructure, the industry, and the economy as a whole. Finally, these postings would allow the Commission and other market observers to identify and remedy potentially manipulative activity. We discuss each of these points in turn.

61. First, the proposed daily capacity and volume postings by major non-interstate pipelines would improve market participants' ability to assess supply and demand and price physical natural gas transactions by providing a more complete picture of supply and demand fundamentals.¹⁰⁹ As discussed above and noted in comments filed in these proceedings, interstate pipeline information does not provide a complete picture of the

¹⁰⁹ See, e.g., Comments of Platt's at 11, Docket No. AD06-11-000 (filed Nov. 1, 2006) (explaining that, to understand prices, "the marketplace must look to... information on [the] availability of and demand for natural gas...").

supply and demand fundamentals that apply to interstate commerce because much of the natural gas in the U.S. is moved through the non-interstate pipeline system.¹¹⁰

62. Second, the proposed daily non-interstate pipeline capacity and volume postings would provide market participants – and the Commission in its market oversight efforts – a clearer view of the effects on infrastructure, the industry, and the economy as a whole during periods when the U.S. natural gas delivery system is disturbed. For example, after landfall of hurricanes Katrina and Rita in late 2005, even the most interested of governmental and commercial market observers were not able to obtain complete information regarding the output by potentially-damaged production facilities.¹¹¹ By monitoring receipt and delivery points for production facilities on interstate pipelines, market observers were able to obtain only a limited sense of production facility output.¹¹² Similarly, market participants, state commissions and other market observers were unable

¹¹⁰ See Comments of Platt's at 13, Docket No. AD06-11-000 (filed Nov. 1, 2006) (stating that much of the fundamental supply and demand data is missing from natural gas markets and advocating for reporting by intrastate pipelines).

¹¹¹ See, e.g., Comments of Public Service Commission of New York (NYPSC) at 2; Comments of Bentek Energy LLC at 15-16 & 21-22; Comments of APGA at 3-4; Comments of NARO at 2; Transcript of the Oct. 13, 2006 Technical Conference (Tr.), at 25, Transparency Provisions of the Energy Policy Act of 2005, Docket No. AD06-11-000 (Comments of Sheila Rappazzo, Chief of Policy Section of the Office of Gas and Water of the New York State Department of Public Service).

¹¹² Tr. 25 (Comments of Sheila Rappazzo) (describing how after the 2005 hurricanes data availability differed widely).

to assess effects on natural gas consumption in the Gulf Coast, including consumption by the petrochemical industry, for some period. The significance and duration of these effects on this industry – vulnerable to energy price and availability disruptions – remain unclear. This proposal would allow interested governmental and private parties to gain a much better picture of disruptions in natural gas flows in the case of future hurricanes in the Gulf region.¹¹³

63. Third, the proposed daily non-interstate pipeline capacity and volume postings would allow the Commission and other market observers to identify and remedy potentially manipulative activity more actively by tracking price movement in the context of natural gas flows.¹¹⁴ In particular, information regarding availability on non-interstate pipelines could be used to track manipulative or unduly discriminatory behavior intended

¹¹³ Along these lines, this proposal is consistent with a recent Commission final rule and a proposed survey by EIA. On August 23, 2006, the Commission revised its reporting regulations to require jurisdictional natural gas companies to report damage to facilities due to a natural disaster or terrorist activity that results in a reduction in pipeline throughput or storage deliverability. Revision of Regulations to Require Reporting of Damage to Natural Gas Pipeline Facilities, Order No. 682, 71 FR 51098 (Aug. 29, 2006), FERC Stats. and Regs. ¶ 31,227 (2006), order on reh'g, 118 FERC ¶ 61,118 (2007). On January 30, 2007, EIA proposed to survey natural gas processing plants “to monitor their operational status and assess operations of processing plants during a period when natural gas supplies are disrupted.” Agency Information Collection Activities, 72 FR 4248 (Jan. 30, 2007). The purpose of the survey would be to “inform the public, industry, and the government about the status of supply and delivery activities in the area affected by the disruption.” Id.

¹¹⁴ See Comments of NGSAs at 8-10.

to cause harm to consumers by distorting market prices in interstate commerce. For example, Commission Staff overseeing markets routinely check for unused interstate pipeline capacity between geographically distinct markets with substantially different prices as a sign that flows may be managed to manipulate prices. Given the importance of non-interstate pipeline connections to thirteen major pricing hubs, including Henry Hub, as discussed above, the lack of flow information on non-interstate pipelines hinders the Commission's market oversight and enforcement efforts.

64. This benefit comports with EAct 2005, in which Congress directed the Commission to facilitate price transparency in physical, interstate natural gas markets “with due regard for the public interest, the integrity of those markets, fair competition, and the protection of consumers.”¹¹⁵ By this language, Congress intended that the improvement of Commission market oversight activities is a legitimate justification for proposing rules under the natural gas transparency provisions. Monitoring and preventing manipulative or unduly discriminatory activity would meet the Commission's responsibility for ensuring the integrity of the physical interstate natural gas markets. The proposal to make non-interstate pipeline information available to the public would assist the Commission in fulfilling that responsibility.

¹¹⁵ Section 23(a)(1) of the Natural Gas Act, 15 U.S.C. 717t-2(a)(1) (2000 & Supp. V 2005).

B. Revisions to the Proposal Set Forth in the Initial NOPR

65. The Commission has developed a more particular definition of the types of non-interstate pipelines that would be required to post. The Commission is not interested in burdening smaller non-interstate pipelines like gathering systems, or individual consumers to post daily information regarding capacity, scheduled flow volumes, and actual flow volumes at major points and mainline segments. Consequently, the Commission has altered its proposal from the initial NOPR that used the term “intrastate pipeline” to the current proposal which defines “major non-interstate pipeline” to capture directly U.S. wholesale natural gas transportation systems of significant size and contribution to overall wholesale gas flows across the United States. The Commission seeks comment on this proposal. In providing comments, again, the Commission encourages commenters to support their comments by providing specific examples.

66. The Commission also proposes to limit the daily posting requirement by limiting the definition of “major non-interstate pipeline” based on whether the non-interstate pipeline flows more than 10 million MMBtus of natural gas per year. The intention is to focus on non-interstate pipelines of significant size and that consequently make a significant contribution to wholesale U.S. natural gas flows. Too low a limit would pick up non-interstate pipelines too small to contribute to wholesale market flows of natural gas. Too high a limit would lose information about flows that affect wholesale pricing, either directly by losing information at major hubs, or less directly by missing important

components of wholesale demand or supply not attached to interstate pipelines. By way of contrast, Platts reports that total reporting for its next-month indices at all geographical locations across the country over the past 12 months (November 2006 through October 2007) totaled only a little more than 8 billion cubic feet last year.¹¹⁶ Thus, by rough comparison, movements of that size on a pipeline could easily affect wholesale prices in any particular location. According to EIA statistics from its 2005 Form 176 filings by companies that do business (at least in part) as intrastate pipelines, the 10 million MMBtu threshold would capture 102 pipelines.¹¹⁷ The number of these non-interstate pipelines qualifying as major non-interstate pipelines required to post information would be further reduced by the other criteria, such as excluding non-interstate pipelines that fall entirely upstream of processing plants and those that deliver more than ninety-five percent (95%) of the natural gas volumes they flow directly to end-users.

67. The Commission seeks comment on these criteria. For the volume criterion, are average flows of 10 billion cubic feet of natural gas per year too low a threshold for non-interstate pipelines to require posting at major points and mainline segments? Too high?

¹¹⁶ As reported on the natural gas.org informational website, maintained by the Natural Gas Supply Association, <http://www.naturalgas.org/business/marketactivity.asp> (as of November 29, 2007).

¹¹⁷ See Comments of Bentek Energy, LLC, Attachment A, Docket Nos. RM07-10-000 and AD06-11-000 (filed Aug. 21, 2006).

68. The Commission would exempt from the daily posting requirement two types of non-interstate pipelines that meet the volume criterion. First, a major non-interstate pipeline that lies entirely upstream of a processing plant would be exempt.¹¹⁸ The Commission seeks comment on its proposed exemption of a non-interstate pipeline that lies entirely upstream of processing plants. If these non-interstate pipelines were excluded from the pipeline posting requirement, would significant information useful for determining price and availability of natural gas likely be lost?

69. Second, the Commission proposes to exempt any major non-interstate pipeline that makes greater than ninety-five percent (95%) of its deliveries directly to end-users. The Commission seeks comment on this exemption.¹¹⁹ If these non-interstate pipelines were excluded from the pipeline posting requirement, would significant information useful for determining price and availability of natural gas likely be lost? Overall, are there any other categories of major non-interstate pipelines that should be exempt from the daily posting requirements?

70. The comments on the Initial NOPR inform the Commission's revised proposal to limit posting to major non-interstate pipelines. In its comments on the Initial NOPR, affiliates Agave Energy Corp. and Yates Petroleum Corp. (Agave-Yates) urged the

¹¹⁸ Proposed 18 CFR 284.214(b)(1).

¹¹⁹ Proposed 18 CFR 284.214(b)(2).

Commission to limit the requirement for daily posting of flow data to those intrastate pipelines with receipt or delivery points connected to the 13 major market hubs served by both interstate and intrastate pipelines.¹²⁰ Bentek Energy LLC (Bentek) proposed determining on a case by case basis which intrastate pipelines should post.¹²¹ As for this approach, Bentek observed that it “would solve the issue of small regional pipelines being too small to meet a threshold applied nationally, but would require considerable analysis by the Commission to implement [including] ongoing analysis as pricing points change periodically.”¹²² The Commission seeks further comment on which non-interstate pipelines should be subject to the daily posting proposal.

71. The Commission seeks comment on whether this proposal would meet the three purposes discussed above. Specifically, would the proposal: (1) provide a more complete picture of supply and demand fundamentals and improve market participants’ ability to assess supply and demand and to price physical natural gas transactions; (2) provide, during periods when the U.S. natural gas delivery system is disturbed, for instance due to hurricane damage to facilities in the Gulf of Mexico, a clearer view of the effects on infrastructure, the industry, and the economy as a whole; and (3) allow the Commission and other market observers to identify and remedy potentially manipulative

¹²⁰ Comments of Agave-Yates at 9-10; Reply Comments of Agave-Yates at 1-2.

¹²¹ Reply Comments of Bentek Energy LLC at 6.

¹²² Reply Comments of Bentek Energy LLC at 6.

activity?¹²³ Alternatively, would these three purposes be met if the Commission limited the pipeline posting proposal to those non-interstate pipelines with receipt or delivery points connected to the 13 major market hubs served by both interstate and intrastate pipelines?

72. In the Initial NOPR, the Commission sought comment on how to define “major” receipt and delivery points and mainline segments on intrastate pipelines for the purpose of any posting requirement. Developing an operational definition of “major” receipt and delivery points and mainline segments on major non-interstate pipelines is crucial to making the proposal work effectively and reasonably. The Commission stated that it “does not wish to include extremely small points connected to one or a few customers, which it would consider burdensome and possibly even anti-competitive in certain cases.”¹²⁴

73. Commenters provided suggestions for which receipt and delivery points on non-interstate pipelines should be subject to the posting requirement. The NARO commented that it would like to see as many points posted as possible explaining that more than ninety percent of flows in Texas occur in pipelines that move more than 5,000

¹²³ See, supra, at P 61-64.

¹²⁴ Initial NOPR at P 39.

MMBtu/day.¹²⁵ The Texas Alliance of Energy Producers (Texas Alliance) said that the definition of “major points” should capture flows at locations used to establish market prices (i.e., index points), with the definition crafted to capture enough points to reduce the opportunity for market manipulation.¹²⁶ The Petroleum Association of Wyoming (PAW) said the definition of “major points” should be limited to those on interstate pipelines.¹²⁷ Copano Energy LLC, in its reply comments, said that (at most) the posting requirement should apply to major market hubs and centers identified by the Energy Information Administration and other current market hubs or centers for which a daily price is published by a nationally recognized industry publication.¹²⁸ Crosstex Energy Services stated that the Commission should, at most, require the posting of available capacity and scheduled flow volumes (not actual flow information) at receipt and delivery points (not segments) at the 13 major interstate/intrastate pricing hubs identified in the NOPR as directly affecting interstate pricing.¹²⁹ The Kinder Morgan Texas Intrastate Pipeline Group (Kinder Morgan) stated that posting of scheduled quantities at

¹²⁵ NARO Comments at 2-3.

¹²⁶ Texas Alliance Comments at 12.

¹²⁷ PAW Comments at 2.

¹²⁸ Copano Reply Comments at 3.

¹²⁹ Crosstex Reply Comments at 8.

major hub points where index prices are published would be less burdensome than the NOPR proposal.¹³⁰

74. Comments on the Initial NOPR on how to define “major” receipt and delivery points and mainline segments, in many cases, focused less on developing effective operational definitions than they did on jurisdictional and burden issues. The goal of the pipeline posting proposal is to allow the development of a more complete and more immediate picture of wholesale natural gas flows across the United States, regardless of the traditional regulatory authority under which a particular pipeline operates, at a reasonable cost. To accomplish this task, the Commission needs to develop a stronger record about the possible measurement points on major non-interstate pipelines that could contribute valuable information at a reasonable trade-off with costs of implementation. Consequently, the Commission seeks further comment on which points should be posted by major non-interstate pipelines. In order to effectively balance the benefits of a better understanding of national natural gas flows based on more detailed flow information against the costs of the equipment and systems necessary to deliver that information, the Commission seeks comment regarding how to determine the points at which it should require posting of flow information. Again, the Commission encourages commenters to support their assertions with specific examples.

¹³⁰ Kinder Morgan Reply Comments at 12.

75. In particular, related to Kinder Morgan's comments, could sufficient information be developed with posting only of flows in and out of major pipeline hubs? In that case, how should those hubs be determined? Should they be limited only to those hubs for which index prices are produced? By looking only at flows into and out of major pipeline hubs for which index prices are produced, would market participants lose information important to the assessment of national supply and demand balances lost? What other criteria could be used to make the determination of points to be posted? Is a volumetric limit sufficient? If a line sees flows in both directions during the day, is a net directional flow for the day valuable, or confusing?

V. Storage Information and Non-Public Postings

76. Prompted by comments of storage providers in response to the Initial NOPR, the Commission seeks comment on how its posting proposal herein would affect storage providers. By way of background, in its comments, Enstor Operating Company (Enstor), an independent gas storage service provider with market-based rates, said it should not be required to post information regarding scheduled flows because gas storage information is readily available.¹³¹ If required to post information, the Commission should provide for non-public reporting and analysis of flow data and disseminate such information to

¹³¹ Comments of Enstor at 4.

the public only in aggregated form.¹³² Enstor stated that if its flow information were public, it would lose negotiating strength in the marketplace because its customers with multiple service options would know storage capacity available at its facility, even though it would have no knowledge of such customers' needs and limited knowledge about capacity levels at competing, regulated storage facilities.¹³³ Enstor cautioned that release of flow data from individual storage facilities would lead to the practice of reading other market participants' movements and buying or selling in front of anticipated future movements to take advantage of resulting price swings, which would raise prices.¹³⁴ Without non-public treatment of its flow data, Enstor contended that its margins would be squeezed and it would make less money.¹³⁵ Enstor added that aggregated information disseminated by the Commission would be more useful to end-users than disaggregated data.¹³⁶

77. In order to assess the concerns expressed by Enstor (notably the only storage provider to raise this concern), the Commission seeks comments on the following questions. Regarding flows of gas in the United States, does existing gas storage

¹³² Comments of Enstor at 9.

¹³³ Comments of Enstor at 8; Reply Comments of Enstor at 5.

¹³⁴ Reply Comments of Enstor at 6.

¹³⁵ Reply Comments of Enstor at 8.

¹³⁶ Reply Comments of Enstor at 10.

information provide the same value of the information that would be collected in the Commission's proposal? Interested commenters should compare the benefits of requiring storage providers to post flow information publicly with the benefits and costs of providing information to the public only in aggregated form. Those address this issue should address whether non-public reporting to the Commission would support the goals of the natural gas transparency provisions to "facilitate price transparency for the sale... of physical natural gas in interstate commerce"?¹³⁷ Further, commenters addressing the application of the pipeline posting proposal to storage facility should answer the following questions: Can individual storage facilities lose negotiating strength when its customers know the supply of available storage capacity? Would release of flow data from individual storage facilities lead to increased prices? How many storage facilities would likely face this situation if required to post flow information? Would fewer storage facilities face this situation if the pipeline posting proposal were modified to reduce the number of points to be posted, for example, by limiting posting to lines running into or out of major pipeline hubs?

VI. Information Collection Statement

78. The Office of Management and Budget (OMB) regulations require it to approve certain reporting and recordkeeping (information collection) requirements imposed by an

¹³⁷ Section 23(a)(1) of the Natural Gas Act, 15 U.S.C. 717t-2(a)(1) (2000 & Supp. V 2005).

agency.¹³⁸ In this NOPR, the Commission makes two proposals that would require the posting or collection of information, one for interstate and one for major non-interstate pipelines.¹³⁹ The Commission is submitting notification of these proposed information collection requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act of 1995.¹⁴⁰

79. One proposal, to require interstate pipelines to post actual flow information, would impose an additional information collection burden on interstate pipelines. The other proposal, to require major non-interstate pipelines to post actual flow information, would impose an additional information collection burden on major non-interstate pipelines. Interstate and major non-interstate pipelines already collect flow information for major receipt and delivery points. Certain non-interstate pipelines have asserted in the Initial NOPR that costs would be quite high if additional equipment was needed to meet quick posting deadlines. However, given that this information is used in their business within fairly quick periods, the Commission still believes that the burden that would be imposed

¹³⁸ 5 CFR 1320.11.

¹³⁹ The OMB regulations cover both the collection of information and the posting of information. 5 CFR 1320.3(c). Thus, the proposal to post information would create an information collection burden.

¹⁴⁰ 44 U.S.C. 3507(d).

by this proposed requirement is largely for the collection and posting of this information in the required format.¹⁴¹

80. OMB regulations require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

¹⁴¹ See 5 CFR 1320.3(b)(2) (“The time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records) will be excluded from the “burden” if the agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.”)

Public Reporting Burden:

The start-up and annual burden estimates for complying with this proposed rule are as follows:

Data Collection	No. Of Respondents ¹⁴²	No. of Daily Postings per Respondent	Estimated Annual Burden Hours per Respondent	Total Annual Hours For All Respondents	Estimated Start-Up Burden Per Respondent
Part 284 FERC-551					
Major Non-Interstate Pipeline Postings	102	365	365	37,230	2,080 hours
Additional Interstate Pipeline Postings	109	365	365	39,785	520 hours
Total	211	-	-	77,015	-

The total annual hours for collection (including recordkeeping) for all respondents is estimated to be 77,015 hours.

¹⁴² The Commission estimated the number of respondents for major non-interstate pipelines from EIA information. See Department of Energy, Energy Information Administration, U.S. Intrastate Natural Gas Pipeline Systems, http://www.eia.doe.gov/pub/oil_gas/natural_gas/analysis_publications/ngpipeline/PIPEintra.xls. The Commission estimated the number of respondents that would be interstate pipelines also from EIA information. See Department of Energy, Energy Information Administration, Thirty Largest U.S. Interstate Natural Gas Pipeline Systems, 2005, http://www.eia.doe.gov/pub/oil_gas/natural_gas/analysis_publications/ngpipeline/MajorInterstatesTable.html (Listing thirty largest interstate pipelines and referencing seventy-nine other interstate pipelines).

Information Posting Costs: The average annualized cost for each respondent is projected to be the following (savings in parenthesis):

	Annualized Capital/Startup Costs (10 year amortization)	Annual Costs	Annualized Costs Total
FERC-551			
Major Non-Interstate Pipeline Postings	\$20,800	\$36,500	\$57,300
Additional Interstate Pipeline Postings	\$5,200	\$36,500	\$41,700

Title: FERC- 551.

Action: Proposed Information Posting and Information Filing.

OMB Control No: 1902-0243.

Respondents: Business or other for profit.

Frequency of Responses: Daily posting requirements and annual filing requirements.

Necessity of the Information: The daily posting of additional flow information by interstate and major non-interstate pipelines is necessary to provide information regarding the price and availability of natural gas to market participants, state commissions, the FERC and the public. The posting would contribute to market transparency by aiding the understanding of the volumetric/availability drivers behind price movements; it would provide a better picture of disruptions in natural gas flows in the case of disturbances to

the pipeline system; and it would allow the monitoring of potentially manipulative or unduly discriminatory activity.

Internal Review: The Commission has reviewed the requirements pertaining to natural gas pipelines and determined they are necessary to provide price and availability information regarding the sale of natural gas in interstate markets.

81. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information posting requirements. The Commission seeks comment on these estimates.

82. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, [Attention: Michael Miller, Office of the Chief Information Officer], phone: (202) 502-8415, fax: (202) 208-2425, e-mail: Michael.Miller@ferc.gov. Comments on the requirements of the proposed rule also may be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

83. Comments on the requirements of the proposed rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington,

D.C. 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]
(202)395-4650 or oira_submission@omb.eop.gov.

VII. Environmental Analysis

84. 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.¹⁴³ The actions taken here fall within categorical exclusions in the Commission's regulations for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that require no construction of facilities.¹⁴⁴ Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

VIII. Regulatory Flexibility Act

85. The Regulatory Flexibility Act of 1980 (RFA)¹⁴⁵ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA requires consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant

¹⁴³ Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (1987).

¹⁴⁴ 18 CFR 380.4(a)(5) and (a)(27).

¹⁴⁵ 5 U.S.C. 601-612.

economic impact on such entities. The RFA does not, however, mandate any particular outcome in a rulemaking. At a minimum, agencies are to consider the following alternatives: establishment of different compliance or reporting requirements for small entities or timetables that take into account the resources available to small entities; clarification, consolidation, or simplification of compliance and reporting requirements for small entities; use of performance rather than design standards; and exemption for certain or all small entities from coverage of the rule, in whole or in part. The proposal to require daily postings by interstate and non-interstate pipelines will not impact small entities. Natural gas pipelines are classified under NAICS code, 486210, Pipeline Transportation of Natural Gas.¹⁴⁶ A natural gas pipeline is considered a small entity for the purposes of the Regulatory Flexibility Act if its average annual receipts are less than \$6.5 million.¹⁴⁷ The Commission does not believe that any pipeline that would be required to post under the proposal in this NOPR has receipts less than \$6.5 million. Thus, the daily posting proposal will not impact small entities.

¹⁴⁶ This industry comprises establishments primarily engaged in the pipeline transportation of natural gas from processing plants to local distribution systems. 2002 North American Industry Classification System (NAICS) Definitions, <http://www.census.gov/epcd/naics02/def/ND486210.HTM>.

¹⁴⁷ See U.S. Small Business Administration, Table of Small Business Size Standards, http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf (effective July 31, 2006).

IX. Comment Procedures

86. The Commission incorporates by reference the comments filed in Docket No. RM07-10-000 into the instant docket and will consider them in this proceeding. In addition, 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 **[Insert_Date 45 days from publication in the FEDERAL REGISTER]**. Reply comments are due **[Insert_Date 75 days from publication in the FEDERAL REGISTER]**. Comments must refer to Docket No. RM08-2-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments may be filed either in electronic or paper format.

87. Comments may 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. 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.

88. 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.

X. Document Availability

89. 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 D.C. 20426.

90. 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.

91. 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, or the Public Reference Room at (202) 502-

8371, TTY (202)502-8659. E-mail the Public Reference Room at
public.referenceroom@ferc.gov.

List of subjects in 18 CFR Part 284

Continental Shelf; Incorporation by reference; Natural gas; Reporting and recordkeeping requirements.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

For the reasons discussed in the preamble, the Federal Energy Regulatory Commission proposes to amend 18 CFR chapter I as follows:

- 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 § 284.1, paragraphs (d) is added to read as follows:

§ 284.1 Definitions.

* * * * *

(d) Major non-interstate pipeline means a pipeline that fits the following criteria:

- (1) It is not a “natural gas company” under section 1 of the Natural Gas Act;

and

- (2) It flows annually more than 10 million (10,000,000) MMBtus of natural gas measured in average receipts or in deliveries for the past 3 years.

- 3. In § 284.13, paragraph title and paragraph (d)(1) are revised to read as follows:

§ 284.13 Reporting requirements for interstate pipelines.

* * * * *

(d) Capacity and flow information. (1) * * * An interstate pipeline must also provide in the same manner access to information on actual flowing volumes at receipt points, on the mainline, at delivery points, and in storage fields. This information must be posted within 24 hours from the close of the gas day on which gas flows, i.e., on

or before 9:00 a.m. central clock time for flows occurring on the gas day that ended 24 hours before.

* * * * *

4. Section 284.14 is added to read as follows:

§ 284.14. Flow information of major non-interstate pipelines.

(a) Daily posting requirement. A major non-interstate pipeline must provide on a daily basis on an Internet web site and in downloadable file formats, in conformity with § 284.12 of this chapter, equal and timely access to information relevant to the capacity of major points and mainline segments and the amount scheduled at each such major point or mainline segment whenever capacity is scheduled. A major non-interstate pipeline must also provide in the same manner access to information on actual flowing volumes at major points and mainline segments. This information must be posted within 24 hours from the close of the gas day on which gas flows, i.e., on or before 9:00 a.m. central clock time for flows occurring on the gas day that ended 24 hours before.

(b) Exemptions to daily posting requirement. The following categories of major non-interstate pipelines are exempt from the reporting requirement of § 284.14(a):

- (1) Those that fall entirely upstream of a processing plant; and
- (2) Those that deliver more than ninety-five percent (95%) of the natural gas volumes they flow directly to end-users.

(3) To determine eligibility for the exemption in paragraph 284.14(b)(2), a major non-interstate pipeline must measure volumes by average deliveries over the preceding three calendar years.