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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 284

Docket No. RM08-2-000; Order No. 720

Pipeline Posting Requirements under Section 23 of the Natural Gas Act

(November 20, 2008)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule

SUMMARY: In this Final Rule, the Commission adds regulations to require certain major non-interstate natural gas pipelines to post daily scheduled volume information and design capacity for certain points. The Commission also revises its regulations to require interstate natural gas pipelines to post information regarding the provision of no-notice service. The posting requirements will 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, 15 U.S.C. 717t-2 (2000 & Supp. V 2005).

EFFECTIVE DATE: This rule will become effective **[insert date 30 days after publication in the FEDERAL REGISTER]**

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Pipeline Posting Requirements under Section 23 of the Natural Gas Act	Docket No. RM08-2-000

FINAL RULE

ORDER NO. 720

(Issued November 20, 2008)

I. **Introduction and Summary**

1. This Final Rule implements the Commission's authority under section 23 of the Natural Gas Act (NGA),[1] as added by the Energy Policy Act of 2005 (EPAct 2005),[2] to facilitate transparency in markets for the sale or transportation of natural gas in interstate commerce by requiring major non-interstate pipelines and interstate pipelines to post certain data on their Internet websites. Specifically, the Final Rule requires major non-interstate pipelines, defined as those natural gas pipelines that deliver more than 50 million MMBtu per year, to post scheduled flow information and to post information for each receipt and delivery point with a design capacity greater than 15,000 MMBtu per

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

[2] Energy Policy Act of 2005, Pub. L. No. 109-58, sections 1261 et seq., 119 Stat. 594 (2005).

day. The Final Rule also requires that interstate pipelines post information regarding no-notice service.

2. The postings required here will increase price transparency in the interstate natural gas markets by providing information about the supply and demand fundamentals that underlie those markets. In this way, the Commission will meet the goal set forth by Congress in section 23 of the NGA "to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce,"[3] and, at the same time, will respond to commenters' concerns about the potential cost and burden of posting flow information.

II. Procedural Background

3. The posting requirements adopted here are grounded in the Commission's authority under section 23 of the NGA (as added by EPAct 2005), which directs the Commission, in relevant part, to obtain and disseminate "information about the availability and prices of natural gas at wholesale and in interstate commerce."[4] This provision enhances the Commission's authority to ensure confidence in the nation's natural gas markets. The Commission's market-oriented policies for the wholesale natural gas industry require that interested persons have broad confidence that reported

[3] Section 23(a)(1) of the NGA; 15 U.S.C. 717t-2(a)(1) (2000 & Supp. V 2005).

[4] Section 23(a)(2) of the NGA, 15 U.S.C. 717t-2(a)(2) (2000 & Supp. V 2005).

market prices accurately reflect the interplay of legitimate market forces. Without confidence in the efficiency of price formation, the true value of transactions is very difficult to determine.

4. On April 19, 2007, the Commission issued a Notice of Proposed Rulemaking (Initial NOPR) to explore methods to implement our authority under NGA section 23. In the Initial NOPR, the Commission set forth two separate proposals. The first proposal addressed an annual reporting requirement for certain natural gas market participants and the second proposal addressed a daily requirement for intrastate pipelines to post flow information.[5] On December 21, 2007, the Commission bifurcated the proceeding into two dockets: the Commission addressed the annual reporting requirement in a Final Rule issued in Docket No. RM07-10-000,[6] and addressed the daily posting requirement for natural gas pipelines in a new Notice of Proposed Rulemaking, in Docket No. RM08-2-000 (Posting NOPR).

[5] Initial NOPR at P 1-2. In this preamble, we use the term "flow information" generically to include both scheduled volume information and actual flow information. We use the term "scheduled volumes" herein because it is more precise: the terms "scheduled flows" or "scheduled flow volumes" could be confused with the term "actual flows." In the Posting NOPR, we used the terms "scheduled flows" and "scheduled flow volumes."

[6] Transparency Provisions of Section 23 of the Natural Gas Act, Order No. 704, 73 FR 1014 (Jan. 4, 2008), FERC Stats. and Regs. ¶ 31,260 (2007), order on reh'g, Order No. 704-A, 73 FR 55726 (Sept. 26, 2008), FERC Stats. & Regs. ¶ 31,275 (2008) reh'g pending.

5. In the Posting NOPR, we proposed to require both interstate and certain major non-interstate pipelines to post on public Internet websites capacity, daily scheduled flow and daily actual flow information. The proposal required posting of capacity and daily actual flow information by some intrastate pipelines, with some changes relative to the Initial NOPR. Under the proposal contained in the Posting NOPR, interstate pipelines would be required to post daily actual flow information in addition to the currently required posting of capacity and daily scheduling information. Major non-interstate pipelines would be required to post daily scheduled flow information in addition to capacity and daily actual flow information. As explained in the Posting NOPR, the Commission believed that the proposal would facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce.

6. The Commission issued the Posting NOPR to develop the record more fully, particularly as to the proposals regarding interstate natural gas pipelines. The Posting NOPR was intended to give interstate natural gas pipelines sufficient notice of the changes that seemed necessary to implement adequately section 23 of the NGA.[7] Also, in the Posting NOPR, we directed staff to hold a technical conference to address

[7] Posting NOPR at P 2.

implementation issues associated with the proposal, such as obtaining and posting actual flow information and obtaining and posting information from storage facilities.[8]

7. As directed by the Commission, staff held a technical conference on April 3, 2008. Comments on the Posting NOPR were due on March 13, 2008; reply comments on April 14, 2008. The Commission received fifty-five comments and nineteen reply comments.[9]

III. Authority for the Rule

A. Posting NOPR

8. In the Posting NOPR, we provided our interpretation of section 23 of the NGA and the Commission's authority to enhance transparency in the interstate natural gas markets. We concluded that Congress granted us broad authority in EPAct 2005, placing non-interstate pipelines within the Commission's transparency authority under section 23 of the GA 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. As we stated in both the Initial NOPR and Posting NOPR, "[w]hile distinctions between intrastate and interstate natural gas markets may be meaningful from

[8] Id. at P 8.

[9] A list of commenters and abbreviations for the commenters is contained in Appendix A.

a legal perspective, they are not meaningful from the perspective of market price formation."[10]

B. Comments

9. Several commenters agree that the Commission has broad transparency authority under section 23 of the NGA, including authority over non-interstate pipelines.[11] APGA supports the Commission's contention that the statute authorizes obtaining information from "any market participant" and not just "natural gas companies" as "tacit recognition that in order to collect the necessary information about the wholesale and interstate market, the Commission might well need to collect information from entities not historically subject to FERC jurisdiction."[12]

10. A significant number of commenters hold a different view, and contend that the term "any market participant," contained in section 23(a)(3)(A) of the NGA, does not include non-interstate pipelines. TPA asserts that the term "any market participant" is limited to the participants in wholesale interstate natural gas markets.[13] Thus, according to TPA, the Commission exceeds its authority under the transparency provisions by

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[10] Initial NOPR at P 20; Posting NOPR at P 25.

[11] APGA Comments at 3-4; TIPRO Comments at 1-2; Yates Comments at 4.

[12] APGA Comments at 4.

[13] TPA Comments at 35.

subjecting "'non-interstate' entities that do not participate in interstate sales markets" to its transparency authority.[14] Further, TPA contends that had "Congress sought to expand the Commission's jurisdiction to entities that do not participate in the interstate commerce market, it could have used the language 'affecting interstate commerce,' which has historically been read as a more expansive grant of authority."[15] Similarly, Chevron Pipelines contends that because Congress did not expressly include intrastate pipelines in section 23, "one must conclude that the Commission's jurisdiction was intended by Congress to be no greater following the enactment of section 23 than that which existed prior to the passage of that section."[16]

11. Certain commenters assert that, contrary to the Commission's conclusions, the de minimis exemption does not aid in the interpretation of the term "any market participant." TPA interprets the de minimis exemption to mean that "the Commission should not require those with a de minimis presence in the interstate market to be subject to an added reported burden."[17]

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[14] Id. at 36.

[15] Id. at 39 (citing City of Centralia v. FERC, 661 F.2d 787 (9th Cir. 1981) and Columbia Gas Transmission Corp., 3 FERC ¶ 61,115, at 61,239 n.1 (1978)).

[16] Chevron Pipelines Comments at 9-10.

[17] TPA Comments at 44.

12. Several commenters argue that section 1 of the NGA bars the Commission from obtaining and disseminating information from a non-interstate pipeline. TPA claims that sections 1(b) and 1(c) of the NGA limit the Commission's transparency authority under section 23 of the NGA.[18] TPA also contends that "extensive case law show[s] that Congress has consistently respected the distinction between interstate and intrastate sale and transportation of natural gas."[19] Similarly, Copano Energy believes that section 1(b) of the NGA precludes the Commission from exercising its transparency authority over transportation of natural gas wholly in intrastate commerce.[20] In support, Copano Energy points to Union Oil Company of America v. FPC,[21] in which the court stated that the "Natural Gas Act limits the gathering of intrastate data to gathering it from companies falling under the Commission's jurisdiction."[22] Commenters argue that because Congress did not revise section 1 of the NGA, that section precludes the Commission from exercising transparency authority over non-interstate pipelines.[23]

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[18] Id. at 42.

[19] Id. at 43.

[20] Copano Energy Comments at 6.

[21] 542 F.2d 1036 (9th Cir. 1976).

[22] Id. at 1039.

[23] See, e.g., Copano Energy Comments at 6.

13. Several commenters state that a posting rule on non-interstate pipelines would constitute improper regulation of a non-interstate pipeline's operations and rates. TPA contends that the pipeline posting requirement would "directly regulate the operations of non-interstate pipelines" because the posting of data regarding mainline segments would require many non-interstate pipelines "to define segments on their systems and to install metering equipment to measure gas at those segments."[24] Such meters, in turn, would affect the operations of pipelines, hinder efficiency and raise prices.[25] Similarly, DCP Midstream holds that a pipeline posting requirement would impermissibly interfere with states' regulation of intrastate gas pipelines. DCP Midstream reasons that the costs to meet the requirement would be borne by intrastate customers and rate payers which would encroach upon state ratemaking authority.[26]

14. Other commenters assert that two clauses in section 23 preclude the Commission's authority to obtain information about gas that flows on a non-interstate pipeline because such gas is sold only in intrastate commerce, not in interstate commerce. First, commenters contend that the statutory language in subsection (a)(1) "for the sale or transportation of physical natural gas in interstate commerce" limits the type of price

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[24] TPA Comments at 40.

[25] Id.

[26] DCP Midstream Comments at 7-8; see also Railroad Commission of Texas Comments at 7.

transparency that the Commission may facilitate.[27] Second, commenters contend that the statutory language in subsection (a)(2), which permits the Commission to issue rules that provide for the "disseminat[ion]… [of] information about the availability and prices of natural gas sold at wholesale and in interstate commerce," does not include information about gas that flows on a non-interstate pipeline, because it is not "sold at wholesale and in interstate commerce." [28] For instance, TPA argues that this language does not authorize the Commission to mandate the posting of "data about transportation of gas that may never be 'sold at wholesale and in interstate commerce,'" as it is "directed at increased transparency in sales and transportation in interstate commerce."[29]

C. Commission Determination

15. Section 23 of the NGA gives the Commission broad authority to facilitate price transparency in the interstate natural gas market. For that purpose, section 23 further authorizes the Commission to obtain and disseminate information. As now explained, the regulations promulgated in this Final Rule do not exceed that broad authority.

16. Section 23(a)(1) of the NGA directs the Commission to: "facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate

[27] See, e.g., Atmos Comments at 11-12.

[28] See, e.g., DCP Midstream Comments at 8-9. See also Atmos Comments at 11-12.

[29] TPA Comments at 35 (emphasis original).

commerce, having due regard for the public interest, the integrity of those markets, fair competition, and the protection of consumers."[30] Congress left to the Commission's discretion whether to enact rules to carry out this direction and provided that any rules implementing this section provide for public dissemination of the information gathered:

> The Commission may prescribe such rules as the Commission determines necessary and appropriate to carry out the purposes of this section. The rules shall 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 to the Commission, State commissions, buyers and sellers of wholesale natural gas, and the public. [[31]]

17. Further, section 23(a)(3)(A) of the NGA allows the Commission "to obtain the information… from any market participant."[32] By using the term "market participant," Congress deliberately expanded the universe of entities subject to the Commission's transparency authority beyond the entities subject to the Commission's traditional rates, terms, and conditions jurisdiction under other sections of the NGA. The term "market participant" is not defined in the NGA and is not on its face limited to otherwise jurisdictional entities. As we explained in the Posting NOPR, this authorization is

[30] 15 U.S.C. 717t-2(a)(1) (2000 & Supp. V 2005).

[31] 15 U.S.C. 717t-2(a)(2) (2000 & Supp. V 2005).

[32] Section 23(a)(3)(A) of the NGA; 15 U.S.C. 717t-2(a)(3)(A) (2000 & Supp. V 2005).

expansive. Congress was aware that other sections of the NGA limited the scope of entities subject to the Commission's traditional regulatory authority to natural gas companies as that term is defined in the statute, but chose not to apply this same limitation in section 23. Congress clearly recognized that the Commission might not obtain sufficient price transparency from those "natural gas companies" subject to our traditional regulatory authority. This is consistent with the Commission's findings here that a complete picture of the interstate natural gas market and the supply and demand fundamentals underlying that market require information from non-interstate natural gas pipelines.[33]

18. Moreover, the statutory language emphasizes the broad meaning of the phrase "market participant" by adding "any" as a descriptor. Our authority attaches not to a subset of market participants (for example, only those market participants traditionally subject to our regulation), but to any such participant.[34] Court precedent confirms that the word "any" gives the term it modifies (in this case, "market participant") an

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[33] We have recently stated in Order No. 704-A that the term "market participant" in section 23 of the NGA is not limited only to natural gas pipelines, but to all relevant segments of the natural gas supply and distribution chain. Order No. 704-A at P 37. As we discussed in this previous exercise of our authority under section 23 of the NGA, the statute grants broad latitude to the Commission to effectuate Congressional transparency goals.

[34] See Posting NOPR at P 28.

expansive meaning.[35] We believe that Congress used the expansive term "any market participant" because it intended to provide broad transparency authority to the Commission. By this choice, Congress recognized that the Commission may need to obtain information from a wide variety of entities in order to facilitate transparency.

19. The Commission disagrees with commenters who argue that section 1(b) of the NGA precludes the Commission from imposing the daily posting requirement on non-interstate pipelines. Section 1(b) of the NGA 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."[36] Likewise, we disagree that section 23 has limited application only to "natural gas companies." Section 1 is not referenced in section 23 and the term "natural gas company" is nowhere found in the section. Including such a reference would have been the simplest way for Congress to

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[35] Norfolk S. Ry. Co. v. Kirby, 543 U.S. 14, 31-32 (2004) (the word "any" gives the word it modifies an expansive reading); Dep't. 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).

[36] Section 1(b) of the NGA, 15 U.S.C. 717(b).

demonstrate an intent to limit the Commission's transparency authority only to entities which we already regulate.

20. We likewise disagree with certain commenters' arguments regarding application of pre-EPAct 2005 caselaw in this circumstance. The cases cited by commenters apply the jurisdictional limits set forth in section 1 of the NGA prior to the enactment of EPAct 2005.[37] 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."[38] Thus, Congress was presumably aware that prior to the enactment of section 23, the NGA could be construed as limiting the Commission's authority to obtain data on intrastate natural gas flows to obtaining it from companies falling under the Commission's jurisdiction.[39] In using the term "any market participant" instead of "natural gas company," Congress signaled its intent to expand the Commission's

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[37] See, e.g., Union Oil Co., 542 F.2d at 1039. In a post-EPAct 2005 case as noted by commenters, Transmission Agency of N. Cal. v. FERC, the U.S. Court of Appeals for the D.C. Circuit discussed the limits of the Commission's jurisdiction, but that court was not reviewing the NGA, let alone section 23. 495 F.3d 663 (D.C. Cir. 2007).

[38] 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").

[39] Union Oil Co., 542 F.2d at 1039 (Observing that the NGA limits the Commission's "gathering of intrastate data to gathering it from companies falling under the Commission's jurisdiction").

transparency authority beyond the universe of natural gas companies to which it would otherwise be limited. TPA observes that courts have held that the Commission cannot exceed its statutory authority.[40] 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.

21. For similar reasons, we do not find persuasive the argument that Congress could have expressed its intent to subject non-interstate pipelines to the Commission's transparency authority only by revising or amending section 1 of the NGA. First, section 1 of the NGA delineates the set of entities subject to the Commission's traditional ratemaking and certificate authority. If Congress amended section 1 of the NGA to apply to a new set of entities, it would have been providing the Commission not only a limited grant of transparency authority, but the broader grant of authority that section 1 entails. Second, altering the exceptions in section 1, as commenters suggested, is not the only way to alter the statute to give the Commission transparency authority. Section 23 could, and in fact did, confer such authority separately from our authority under section 1. Third, if Congress intended to exclude non-interstate pipelines from the Commission's

[40] Reply Comments of TPA at 16-17 (citing Transmission Agency of N. Cal., 495 F.3d 663 and United Distrib. Cos. v. FERC, 88 F.3d 1105 (D.C. Cir. 1996)).

authority under section 23 of the NGA, it would have used the term "natural gas company" in section 23, instead of the term "any market participant."

22. Nevertheless, while the authority granted to us in section 23 is broad, we do not mean to imply that the Commission's authority to obtain information from "any market participant" is plenary. In section 23, Congress limited our transparency authority in three respects. First, Congress directed the Commission to "facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce…."[41] Thus, any information collected and disseminated must be for the purpose of price transparency in those markets. We do not interpret this language to limit the Commission to obtaining information only about physical natural gas sales or transportation in those markets, however, provided that the information obtained and disseminated pertains to price transparency in those markets. Second, Congress required that the Commission's rules "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…."[42] Again, this language does not limit the type of information the Commission could collect to implement its mandate, provided that such information is "about" (i.e., pertains to) the "availability and prices of natural gas sold at wholesale and

[41] Section 23(a)(1) of the NGA; 15 U.S.C. 717t-2(a)(1) (2000 & Supp. V 2005).

[42] Section 23(a)(2) of the NGA; 15 U.S.C. 717t-2(a)(2) (2000 & Supp. V 2005).

in interstate commerce." Where transportation or sales of natural gas are not in interstate commerce, they nonetheless fall under the Commission's transparency mandate if they affect the availability and prices of natural gas at wholesale and in interstate commerce.

23. Perhaps the most important limitation on our transparency authority is contained in section 23(d)(2) which mandates an exemption from any reporting for "natural gas producers, processors, or users who have a de minimis market presence…."[43] It is noteworthy that this limitation does not exempt all producers and all processors from reporting, but exempts only producers that have a de minimis market presence and only processors that have a de minimis market presence. Section 1(b) of the NGA explicitly excludes these entities from the Commission's traditional regulation. If, as some commenters assert, Congress did not intend to give the Commission authority over any entity excluded by section 1(b) of the NGA, a de minimis exemption would have been unnecessary; in other words, section 23(d)(2) would have been surplusage. Congress is not presumed to enact surplus language.[44] To avoid this improper result, we interpret section 23 of the NGA to give effect to the de minimis language by interpreting the term

[43] Section 23(d)(2) of the NGA; 15 U.S.C. 717t-2(d)(2) (2000 & Supp. V 2005).

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

"any market participant" to include those entities otherwise excluded from the Commission's NGA jurisdiction by section 1(b) of the act.

24. The regulations promulgated by this Final Rule reflect Congress' limitations on the Commission's authority. The Commission's traditional regulatory authority remains limited to "natural gas companies" under section 1 of the act. Section 23 of the NGA authorizes the Commission only to obtain and disseminate information. The Commission is not regulating the intrastate operations of non-interstate pipelines; nor is the Commission regulating the rates or terms and conditions of service for non-interstate pipelines. Consistent with its limited transparency authority set forth in section 23 of the NGA, the Commission will require major non-interstate pipelines only to post information.

25. Based upon the text of section 23 of the NGA and the clear intent of Congress, we determine that we have ample authority to issue this Final Rule, including the promulgation of regulations requiring additional posting obligations on both interstate and major non-interstate pipelines.

IV. Need for the Rule

A. Posting NOPR

26. As discussed in the Posting NOPR, section 23 of the NGA is a clear expression of Congress' belief that the Commission may rightly perceive a need "to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate

commerce, having due regard for the public interest, the integrity of those markets, and the protection of consumers." Section 23 further provides that the Commission may issue such rules as it deems necessary and appropriate to "provide for the dissemination, on a timely basis, of information about the availability and prices of natural gas sold at wholesale and interstate commerce to the Commission, State commissions, buyers and sellers of wholesale natural gas, and the public." The Posting NOPR stated that natural gas markets function more efficiently, and market problems are more readily identifiable, if participants and observers have timely access to natural gas transportation data. As we stated in Order No. 636:

> The Commission believes that . . . it is vital to give all gas purchasers ([local distribution companies (LDCs)] and end users, such as industrials and gas-fired electric generators) the ability to make market-driven choices about the price of gas as a commodity and about the cost of delivering the gas. Simply put, efficiency in the national gas market can be realized only when the purchasers of a commodity know, in a timely manner, the prices of the distinct elements associated with the full range of services needed to purchase and then deliver gas from the wellhead to the burnertip. Only then will gas purchasers be able to purchase, based upon their needs, the exact services they want with full recognition of the prices that they would have to pay. And only then will the Commission be assured that all gas is transported to the market place on fair terms. What best serves the interests of gas purchasers -- the ability to make informed choices -- is also important for gas sellers.[45]

[45] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial

(continued…)

27. In the Posting NOPR, the Commission proposed that major non-interstate[46] natural gas pipelines post information on actual flows and scheduled volumes. The Commission defined a "major non-interstate pipeline" as one that is not a "natural gas company" under section 1 of the NGA[47] and that flows greater than 10 million (10,000,000) MMBtus of natural gas per year. Such a major non-interstate pipeline would post daily "capacity, scheduled flow volumes, and actual flow volumes at major points and mainline segments."[48] The Commission did not define "major points and mainline segments." The Commission proposed two exemptions to the definition of "major non-interstate pipeline." First, the Commission proposed to exempt non-interstate natural gas pipelines that "fall entirely upstream of a processing plant."[49] Second, the

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Wellhead Decontrol, Order No. 636, FERC Stats. & Regs. ¶ 30,939, at p. 30,393, order on reh'g, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, 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).

[46] In the Initial NOPR, the Commission used the term "intrastate pipeline." In the Posting NOPR, the Commission used the term "non-interstate pipeline." The latter term more accurately describes the scope of the rule, which is issued pursuant to section 23 of the NGA. This section applies to both interstate and non-interstate pipelines and does not use the term "intrastate pipeline."

[47] 15 U.S.C. 717 (2007).

[48] Posting NOPR at P 3.

[49] Id. at P 4.

Commission proposed to exempt non-interstate natural gas pipelines "that deliver more than 95 percent of the natural gas volumes they flow directly to end-users."[50] The Commission also proposed that interstate natural gas pipelines post information on actual flows,[51] in addition to the existing requirement to post capacity and scheduled flows.[52]

28. In the Posting NOPR, the Commission articulated three goals to be served by posting of flow information by non-interstate pipelines. 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 United States 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.[53]

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[50] Id.

[51] Id.

[52] Id.

[53] Id. at P 60.

B. Comments

29. A broad cross-section of the industry, representing producers, end-users, LDCs, and information providers, supports the goals of the pipeline posting requirement.[54] In the Posting NOPR, the Commission asked for comment on whether the pipeline posting proposal would "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."[55] Several commenters support posting requirements, particularly for non-interstate pipelines, as a means to meet this goal. NGSA states that "the [] proposed flow data posting requirement has the potential to provide market participants and regulators with additional information regarding underlying natural gas supply and demand fundamentals."[56] Similarly, APGA supports the Commission's rationale for obtaining daily flow information from major non-interstate pipelines.[57] IPAA also supports the posting of flow data from non-interstate pipelines, "but with a

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[54] See, e.g., NGSA Reply Comments at 5; TIPRO Comments at 3; APGA Comments at 4; Calpine Comments at 2-3; Bentek Comments at 3.

[55] Posting NOPR at P 71.

[56] NGSA Comments at 14.

[57] APGA Comments at 4.

close watch on the costs of compliance, as the producer is likely to end up bearing much of those costs."[58]

30. TIPRO contends that the pipeline posting proposal meets the goal of increasing transparency of supplies that affect prices.[59] Bentek, which collects and publishes information based on interstate flows, contends that requiring non-interstate pipelines to report daily flows and capacity "will significantly improve industry's ability to understand natural gas supply and demand issues throughout the country" making "the market more transparent, less volatile, more reliable, and more efficient."[60]

31. Some commenters argue that the posting proposal, particularly regarding non-interstate pipelines, is not justified. Atmos believes that the need for the information has not been demonstrated and that there is already sufficient price transparency in interstate markets.[61] Chevron Pipelines acknowledge that flow information from non-interstate pipelines may provide a more complete picture of supply and demand fundamentals, but

[58] IPAA Comments at 1.

[59] TIPRO Comments at 3.

[60] Bentek Comments at 12.

[61] Atmos Comments at 10-11.

state that such flow information would have a de minimis effect on market participants' assessments of supply and demand and pricing of physical natural gas transactions.[62]

32. Kinder Morgan Intrastate maintains that due to the bundled sales function and the highly variable types of services provided by intrastate pipelines, a snapshot of available capacity on a given pipeline at a given time would not necessarily reflect pricing fundamentals. Because Kinder Morgan Intrastate provides no-notice service to many industrial users and must reserve physical capacity to serve this no-notice service, it asserts that capacity is not available for other customers. Thus, it alleges, posted capacity information would send the wrong signals to the market because it would reflect the complexity of pipeline operations rather than the overall supply situation in the market.[63]

33. In the Posting NOPR, the Commission also asked for comment on whether the proposal would provide a clearer view of the effects on infrastructure, the industry, and the economy during periods when the United States natural gas delivery system is disturbed, for instance, due to hurricane damage to facilities in the Gulf of Mexico. Several commenters contend that the posting of flow information by non-interstate

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[62] Chevron Pipelines Comments at 25.

[63] Kinder Morgan Intrastate Comments at 16-17.

pipelines would support this goal.[64] Chevron Pipelines assert that the requirements on non-interstate natural gas pipelines already are sufficient to gain a sense of how a significant disruption may affect natural gas pipeline facilities.[65] TPA believes that significant disruptions such as hurricanes would preclude postings by non-interstate pipelines and evaluation of the impact of such disruptions on pipeline facilities could be obtained through less obtrusive means, such as contacting the pipeline.[66]

34. Finally, in the Posting NOPR, the Commission asked for comment on another goal of the pipeline posting proposal – whether the proposal would allow market observers to identify potentially manipulative activity. In response, several commenters assert that the posting of flow information by non-interstate pipelines would support this goal.[67]

35. By contrast, Chevron Pipelines declare that the information to be posted has no relation to pricing decisions, and therefore, the potential for misconduct by not making public such information is unfounded.[68] Kinder Morgan Intrastate expresses concern that

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[64] Yates Comments at 7; TIPRO Comments at 2; APGA Comments at 4; Royalty Owners Comments at 2-3.

[65] Chevron Pipelines Comments at 25.

[66] TPA Comments at 20.

[67] See, e.g., TIPRO Comments at 2; APGA Comments at 4; Royalty Owners Comments at 2-3; Yates Comments at 8.

[68] Chevron Pipelines Comments at 25.

postings by non-interstates pipelines would lead market participants to suspect price manipulation where none was occurring. In support, Kinder Morgan Intrastate provides the example of a net segment flow of zero due to forward-hauls and backhauls canceling each other out.[69] TPA adds that the Commission has not demonstrated how the proposed pipeline posting rule could be used to track manipulative behavior.[70]

36. Several commenters contend that there are alternatives available to daily posting of flow information by non-interstate pipelines. Commenters point to the following information as alternatives: postings of capacity and scheduling data for "points at which intrastate pipelines connect to the interstate grid;"[71] postings by interstate natural gas pipelines;[72] Bentek's "Texas Intrastate Report;"[73] data "filed annually by intrastate pipelines pursuant to section 311 of the Natural Gas Policy Act;"[74] price information provided by "NYMEX, CME, Globex, ICE and voice brokers, as well as price index

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[69] Kinder Morgan Intrastate Comments at 17.

[70] TPA Comments at 48.

[71] Id. at 21-22.

[72] Id. at 21.

[73] Id. at 23.

[74] Id. at 22.

publishers;"[75] state commission production data;[76] and information available from the United States Department of Energy's Energy Information Administration (EIA).[77] Genscape describes its natural gas pipeline flow monitoring product, which can measure flows on pipelines, and which Genscape uses presently to "monitor[ ] injections and withdrawals of gas at multiple storage facilities in Texas and Louisiana that are connected in whole or in part to intrastate pipeline systems."[78]

37. Commenters argue that a posting requirement on non-interstate pipelines would pose a competitive risk for non-interstate pipelines and for their customers. Atmos states: "the public dissemination of capacity information could provide competitors with insight into the pipeline's ability to continue to provide services to existing and prospective customers, which could influence the location of new facility construction or how offers are made to prospective customers."[79] Atmos describes a possible scenario in which two competing pipelines could serve one customer. When publicly disseminated information

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[75] Id.

[76] Id. at 22 n 59.

[77] Id. at 22.

[78] Reply Comments of Genscape, Inc., at 3, Docket No. AD06-11-000 (filed Aug. 23, 2007).

[79] Atmos Comments at 9.

shows that one of those pipelines is at capacity, the other would have the opportunity to raise its price.[80]

38. Calpine, however, supports a posting obligation for non-interstate pipelines, stating that requiring the same posting requirements on both non-interstate and interstate pipelines would eliminate an existing competitive advantage for non-interstate pipelines.[81]

C. Commission Determination

39. Based upon the comments received and the input from stakeholders at the technical conference, we continue to believe that this Final Rule is needed because the information currently provided by interstate pipelines presents an incomplete picture of the supply and demand fundamentals that underlie the interstate natural gas market. While, as discussed above, Congress has given authority to the Commission to obtain additional information from market participants to increase transparency, we acknowledge that section 23 of the NGA grants us discretion as to whether and how to utilize this authority. The current picture of the interstate natural gas market derives from information on scheduled natural gas volumes and available capacity posted by interstate

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[80] Id.

[81] Calpine Comments at 5.

pipelines. In compliance with the regulations adopted in Order No. 637,[82] interstate pipelines currently post daily information on the Internet about scheduled natural gas volumes for most of the continental United States. Shippers and other market participants rely on information posted by interstate pipelines to price both transportation and commodity transactions.[83] As we described in the Posting NOPR, market participants retrieve the posted information on scheduled volumes from the websites of interstate natural gas pipelines, which they use to estimate in near real-time a variety of supply and demand conditions including geographic and industrial sector consumption,

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[82] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637, 65 FR 10,156 (Feb. 25, 2000), FERC Stats. & Regs. ¶ 31,091, at 31,332, clarified, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, reh'g denied, Order No. 637-B, 92 FERC ¶ 61,062 (2000), aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC, 285 F.3d 18 (D.C. Cir. 2002), order on remand, 101 FERC ¶ 61,127 (2002), order on reh'g, 106 FERC ¶ 61,088 (2004), aff'd sub nom. American Gas Ass'n v. FERC, 428 F.3d 255 (D.C. Cir. 2005).

[83] In this regard, we disagree with commenters, such as Atmos, that increased transparency would harm competition. Such has not been our experience with interstate natural gas pipeline posting requirements. To the contrary, increased transparency has allowed for more informed decision making by market participants. In the scenario posited by Atmos (i.e., two pipelines, one of which is at capacity, that could serve a single customer), the posting of scheduled flow information at a particular point would typically not be sufficient to affect competition. Even if disclosure did have an effect, the effect would be to allow all market participants to make efficient determinations based upon equal access to relevant information.

storage injections and withdrawals and regional production.[84] This posted scheduled flow information contributes to market transparency by providing information about the supply and demand fundamentals that drive price movements.[85] Further, our staff relies on this posted information to perform oversight and enforcement functions. In sum, the existing posting requirements for interstate pipelines provide the Commission, market participants, and other market observers with a picture of the availability of natural gas (both the commodity and transportation needed to move the commodity to market centers).[86]

40. Nevertheless, this picture is incomplete. Because the Commission's existing pipeline posting regulations do not apply to non-interstate pipelines, market observers cannot determine the availability of natural gas and transportation on a non-interstate pipeline to the same extent as they could for an interstate pipeline. These gaps in information are significant because, as detailed further below, major gas flows between producing basins and interstate markets occur on non-interstate pipelines and are thus

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[84] Posting NOPR at P 55. See also Comments of Bentek, Docket No. AD06-11-000 (filed Oct. 11, 2006).

[85] See, e.g., Comments of Platt's at 11-13, Docket No. AD06-11-000 (filed Nov. 1, 2006) (information regarding the supply and demand of natural gas explains prices and such information is available from interstate pipelines, but not intrastate pipelines).

[86] See, e.g., id. at 11 (explaining that, to understand prices, "the marketplace must look to… information on [the] availability of and demand for natural gas….").

invisible to the market. Often, the availability and price of natural gas on large non-interstate pipelines affects the availability and price of natural gas nation-wide because these pipelines serve as important pricing points and gateways for flows to much of the United States. Interstate and non-interstate pipeline infrastructure is functionally inter-connected in the United States. The gaps in information about non-interstate flows result from the limitations on the Commission's authority over non-interstate pipelines prior to the enactment of EPAct 2005.

41. For instance, there is a significant lack of information about supply and demand fundamentals in the south-central region of the country: Texas, Louisiana, and Oklahoma, and in southern California. As we discussed in the Initial and Posting NOPRs, several major United States natural gas pricing points sit at the confluence of multiple interstate and non-interstate pipelines. A study by EIA identified twenty-eight national market centers, of which thirteen are served by a combination of interstate and non-interstate pipelines.[87] The table below shows the capacity of interstate and non-interstate pipelines connected to each of these thirteen locations. Significantly, as relevant here, at nine of these thirteen locations, non-interstate capacity is greater than interstate capacity.

[87] 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.

Table 1: Inter- and Intrastate Pipeline Delivery Capacity at Selected United States Natural Gas Pricing Points[88]

		Receipt and Delivery Capacity	
Hub Name	**State**	**Interstate Pipelines (MMcf/d)**	**Non-interstate Pipelines (MMcf/d)**
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

42. No place is more indicative of the integration of interstate and non-interstate pipelines than Henry Hub in Louisiana. Henry Hub acts as an interchange for natural gas, where numerous interstate and non-interstate pipelines meet. It serves as 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

[88] The information on this chart is derived from Table 2 of 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) updated utilizing data available from EIA for 2005.

futures contract has become important in determining a variety of monthly index prices used to set natural gas prices in a large number of transactions 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.[89] Because Henry Hub is connected to both interstate and non-interstate pipelines, the picture of flows and availability on the pipelines that feed into the Henry Hub is incomplete.

43. Figure 1 below demonstrates the integration of interstate and non-interstate flows in many of these markets. One cannot understand flow patterns on interstate natural gas pipelines nationwide without understanding flows on non-interstate pipelines in those areas. Non-interstate pipelines provide crucial physical links between interstate natural gas pipelines (particularly in Texas, Oklahoma, Louisiana, and California) as well as links between market hubs. Figure 1 shows major East-West flows of natural gas between the major production basins, such as Waha production area and major market locations, such as the Carthage Hub, but because such flows generally take place on non-interstate natural gas pipelines, they are invisible to market participants and other market observers.

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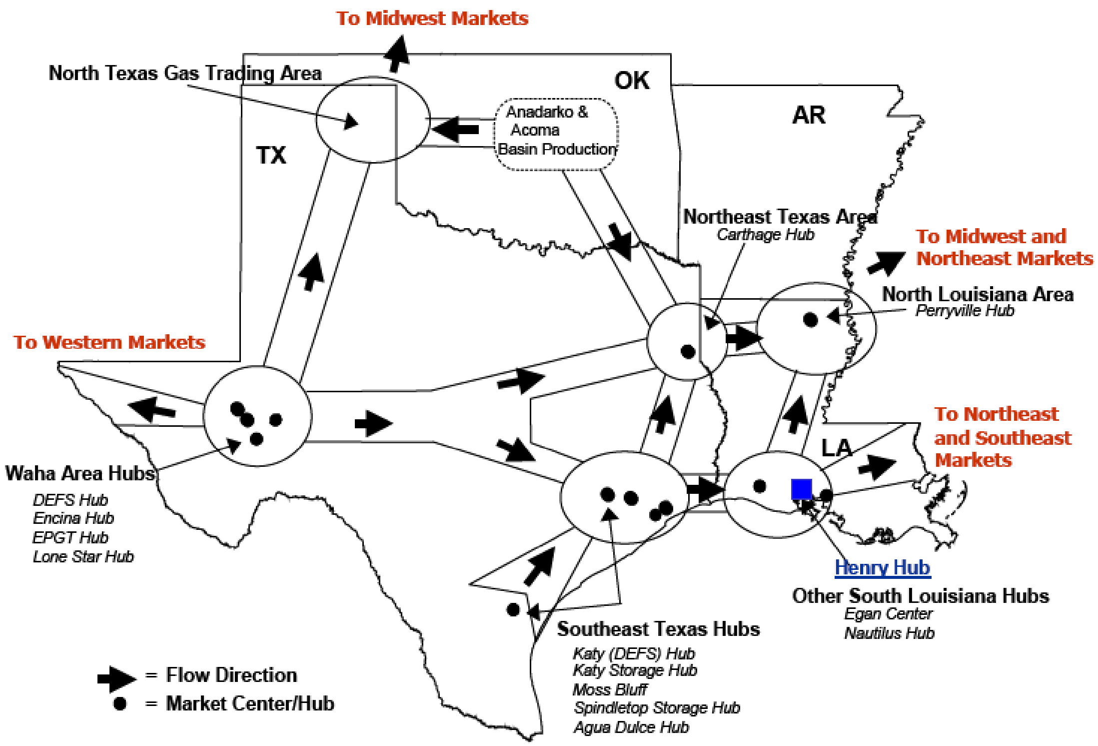
[89] Federal Energy Regulatory Commission, 2006 State of the Markets Report at 48-50 (Jan. 2007), www.ferc.gov/market-oversight/market-oversight.asp (follow link to the State of the Markets Full Report).

Figure 1
Texas and Louisiana Market Hubs and Their Connection to Other Regions in the United States



Note: DEFS = Duke Energy Field Services Co; EPGT = EPGT Texas Pipeline Co.
Source: Energy Information Administration, Office of Oil and Gas, Natural Gas Division, Natural Gas Market Hubs Database, as of August 2003.

44. The magnitude of missing market information is indicated in a comparison of the types of information available for interstate and non-interstate pipelines. Gas delivery data in Texas from interstate natural gas pipeline postings show approximately 1 bcf of

deliveries to Texas end users on any given day in 2006.[90] EIA shows that total average daily consumption of gas in Texas was approximately 9.4 Bcf/day in 2006.[91] This means that delivery information for 90 percent of the gas consumed in the state is only provided in the aggregate for all of Texas and published monthly with a lag of several months while 10 percent of the gas delivered is reported daily by receipt and delivery point. Therefore, nearly 90 percent of consumption was invisible to market participants and other market observers on a daily basis.

45. Purchasers of natural gas in interstate commerce draw on the same sources of supply as users and purchasers of intrastate natural gas. Intrastate markets often compete from basin to basin with interstate markets. Southern California, for example, competes with several large Texas markets for Waha supplies. Interstate/intrastate competition is expected to increase. Much of the recent Barnett Shale development in the Fort Worth basin in west Texas flows into intrastate systems before moving into interstate markets and, recently, two pipeline companies announced a major intrastate pipeline project that

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[90] While this EIA data is two years old, based upon our experience, we believe that similar circumstances exist in the market today.

[91] "EIA Natural Gas Consumption by End Use," http://www.tonto.eia.doe.gov/dnav/ng/ng_cons_sum_a_EPG0_VC0_mmcf_a.htm. (providing consumption figures by state).

would transport 1 Bcf/day from the Barnett Shale development.[92] In total, slightly more than 40 percent of total on-shore production in Texas is connected to interstate natural gas pipelines, close to 60 percent in Louisiana and almost 80 percent in Oklahoma.[93] Although daily volume scheduled to flow from non-interstate into those interstate natural gas pipelines can be observed, the supply dynamics that determine the availability of such volumes cannot be observed because they occur on non-interstate pipelines. A market participant that understands the flows on non-interstate pipelines will better understand the availability of supply for the interstate natural gas market, thereby, enhancing transparency.

46. Taken together, this information shows that market prices of physical natural gas in interstate commerce result from the aggregate of interstate and non-interstate pipeline flows. Because of this relationship, information about the flows on non-interstate pipelines would promote price transparency by providing market participants with highly relevant information as they make day-to-day economic choices.

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[92] "Enbridge, Atmos Energy propose new line to move 1 Bcf/d of northern Texas output," Inside FERC, Sept. 1, 2008 ("The Barnett Intrastate Gas Pipeline would connect Atmos Energy's Line X in Johnson Country, Texas, to Enbridge's Double D and Clarity Pipelines at Bethel in Anderson County, Texas.").

[93] To derive these figures, Commission staff compared information from Bentek on supply scheduled on interstate pipelines with EIA information on withdrawals and production. EIA Natural Gas Gross Withdrawals and Production for Texas and Oklahoma, http://www.tonto.eia.doe.gov/dnav/ng/ng_prod_sum_dcu_NUS_m.htm.

47. Additionally, the proposed pipeline capacity and volume postings would provide market participants – and entities charged with oversight of the markets – a clearer view of the effects on infrastructure, the industry, and the economy as a whole during periods when the United States natural gas delivery system is disturbed. For example, after the 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.[94] By monitoring receipt and delivery points for production facilities on interstate natural gas pipelines, market observers were able to obtain only a limited sense of production facility output.[95] Similarly, market participants, state commissions and other market observers were unable to assess effects on natural gas availability in the Gulf Coast, including, for instance, availability to the petrochemical industry. The significance and duration of these effects on this industry – vulnerable to energy price and availability disruptions – remain unclear. Regulations promulgated by this Final Rule will allow market

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[94] See, e.g., Comments on Initial NOPR of New York PSC at 2; Comments on Initial NOPR of Bentek at 15-16 & 21-22; Comments on Initial NOPR of APGA at 3-4; Transcript of the Oct. 13, 2006 Technical Conference (Tech. 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 PSC).

[95] Tech. Conference Tr. at 25 (Comments of Sheila Rappazzo) (describing how after the 2005 hurricanes data availability differed widely).

participants and other market observers to gain a much better picture of disruptions in natural gas flows in the case of future hurricanes in the Gulf region.[96]

48. Scheduled volume information would be useful whether a disruption were major or minor. TPA asserts that because pipeline facilities would be inaccessible during a major disruption, a non-interstate pipeline could not post flow information and, thus, a posting requirement would fail to meet this goal.[97] But, during a disruption, the fact that scheduled volumes were not posted, itself, would send a signal about the extent and duration of a disruption. It would be useful information during and following a disruption to know whether some points on a non-interstate were affected but not others. For example, following the landfall of hurricanes Gustav and Ike this past hurricane

[96] Along these lines, this Final Rule is consistent with Order No. 682 and with a recently developed survey by EIA. In Order No. 682, 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 No. 682-B order denying reh'g, 118 FERC ¶ 61,188 (2007). Recently, EIA developed Form EIA-757, "Survey of Natural Gas Processing Plants" which is used to "collect information on the capacity, status, and operations of natural gas processing plants and to monitor constraints of natural gas processing plants during periods of supply disruption in areas affected by an emergency, such as a hurricane." Department of Energy, Energy Information Administration, Form EIA-757, "Survey of Natural Gas Processing Plants", http://www.eia.doe.gov/oil_gas/natural_gas/survey_forms/drafteia757/ng757_instructions.pdf.

[97] TPA Comments at 20.

season, some pipelines in the affected areas were able to post information about flows before actual flows could resume.

49. We also believe that the regulations promulgated in this Final Rule will more readily allow the Commission and other market observers to identify and remedy potentially manipulative activity. The goal of identifying and remedying potential market manipulation conforms to the transparency directive in section 23 for the Commission to "hav[e] due regard for the public interest [and] the integrity of those markets…."[98] By this language, Congress intended that the improvement of the Commission's market oversight is a legitimate justification for prescribing a transparency rule. Monitoring and preventing manipulative or unduly discriminatory activity meets the Commission's responsibility for ensuring the integrity of the physical interstate natural gas markets.[99]

50. Information regarding availability on non-interstate pipelines could be used to discover potentially manipulative or unduly discriminatory behavior in physical natural gas sales or transportation. In the Commission's experience, the fact that a price for natural gas is not supported by supply and demand fundamentals may be an indication that a market participant has violated the NGA's prohibitions regarding undue

[98] Section 23(a)(1) of the NGA ; 15 U.S.C. 717t-2(a)(1) (2000 & Supp. V 2005).

[99] See Prohibition of Energy Market Manipulation, Order No. 670, FERC Stats. & Regs. ¶ 31,202, (2006).

discrimination or market manipulation. On a daily basis, as part of its oversight responsibilities, the Commission tracks natural gas prices to determine whether they are justified by supply and demand fundamentals. To do this, we rely on, among other things, the scheduled volume postings by interstate natural gas pipelines. This information also serves as an important tool to analyze natural gas markets. Similar postings by non-interstate pipelines would make this analysis more accurate because it would provide additional information currently lacking about supply and demand fundamentals, a point discussed above. With information from non-interstate pipelines, we can better account for how supply and demand fundamentals affect daily changes to physical prices for much of the gas transported to key interstate markets. For example, in overseeing markets, the Commission routinely checks for unused interstate natural gas pipeline capacity between geographically distinct markets with substantially different prices as a sign that flows may be managed to manipulate prices.

51. In summary, the posting of scheduled flow information by major non-interstate pipelines will increase transparency by meeting the three goals set forth in the Posting NOPR. Such postings will: (1) improve market participants' ability to assess supply and demand and to price physical natural gas transactions and transportation; (2) provide market participants a clearer view of the effects on infrastructure, the industry and the economy from disruptions to the United States natural gas delivery system, for instance due to hurricane damage to facilities in the Gulf of Mexico; and (3) allow the

Commission, market participants and other market observers to identify potentially manipulative activity.[100] We believe that these are worthy goals.

52. Further, we do not believe that these transparency goals can be met by less intrusive means or through reliance upon existing market data. For example, TPA refers to the "data filed annually by intrastate pipelines pursuant to Section 311 of the [Natural Gas Policy Act of 1978 (NGPA)]" as a possible substitute for this Final Rule.[101] Section 284.126(b) of the Commission's regulations requires intrastate pipelines providing section 311 transportation to file an annual report of volumes of section 311 transportation service, to be used to determine the rates applicable to section 311 service.[102] This existing data is inadequate to meet our transparency goals, however, because section 311 volumes are only a subset of all volumes transported by intrastate pipelines, the information is aggregated and is reported annually and, therefore, delayed by at least three months.

53. TPA also refers to "additional sources of natural gas price information," including, for example, "NYMEX, CME, Globex, ICE and voice brokers, as well as price index

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[100] Posting NOPR at 60.

[101] TPA Comments at 22 (citing 15 U.S.C. 717-717z).

[102] 18 CFR 284.126(b).

publishers."[103] These sources are not a useful substitute for the pipeline posting requirements. They do not provide any scheduled flow information and, thus, cannot explain the supply and demand fundamentals that underlie the prices in the same way as postings by non-interstate pipelines. Additionally, TPA generally refers to state commission production data available from Texas, Louisiana, and New Mexico.[104] However, this data includes only production data (and not other transportation volumes) and is only available on a monthly basis. Similarly, the data from production information websites does not include transportation volumes.[105]

54. TPA references various EIA reports as possible replacement sources for data regarding pipeline flows, [106] but none of these reports is an adequate substitute for the posting of scheduled volume information by major non-interstate pipelines; none of these sources provides scheduled pipeline-by-pipeline flow data on a daily basis. EIA Monthly Storage Reports provide only information about aggregated storage flows on a monthly or weekly basis. EIA Weekly Storage Reports provide only storage information, are issued only once each week, and provide aggregated data for three regions. Form EIA-

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[103] TPA Comments at 22.

[104] Id. at 22 n. 59.

[105] Id. at 22.

[106] Id. at 22 n. 59.

895 provides only production data aggregated by state. Form EIA-176 does not provide daily transportation information, and is significantly lagged and aggregated annually and by company. Form EIA-857 provides only "volume and cost data on natural gas delivered to residential, commercial, and industrial consumers"[107] estimated by reviewing a monthly sample of natural gas companies that deliver to consumers in the United States. The survey does not report disaggregated daily transactional data at receipt and delivery points, but instead only provides partial retail sales. While we appreciate the value of EIA's data collection and publications, we are not persuaded that these activities are adequate substitutes for the daily, point-specific postings required by this Final Rule.

55. As for Genscape's work monitoring flows on pipelines, its project does not provide sufficient coverage of non-interstate pipelines as it appears limited to storage facilities in Texas and Louisiana and some major interstate pipelines. Most importantly, Genscape's services are available only for a fee and only to subscribers. The Commission's intent in this Final Rule is to increase transparency for the public's benefit.

56. We also believe that the goals of this Final Rule outweigh the burdens to be placed upon non-interstate and interstate pipelines. Based upon our experience, as a matter of business acumen and good operational practice, most if not all of the gas control divisions of the affected companies currently have ready access to the information

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[107] http://www.tonto.eia.doe.gov/dnav/ng/TblDefs/ng_statdetails.html.

captured by this Final Rule. Pipelines already track flows on points with a design capacity equal to or greater than 15,000 MMBtu/day to ensure the operational integrity of their systems; to plan and schedule operations; to monitor and control the pipelines; and to respond to and correct abnormal operations. Natural gas pipeline schedulers need this information on a daily basis so that they can match supply to nominated demand and maintain system balance. Furthermore, some companies that own several major non-interstate pipelines also own interstate natural gas pipelines, which already post scheduled volume information. For such companies, the requirement is a familiar one and they should have the infrastructure in place, or easily put in place, to meet the requirement on their major non-interstate pipelines.

V. Pipeline Posting Requirements

A. Overview

57. Based on the comments received and the discussion at the technical conference held on April 3, 2008, the Commission will modify the proposal in the Posting NOPR in a number of significant ways. We have increased the minimum delivery threshold defining major non-interstate pipelines from 10 to 50 million MMBtu per year. Also, we have determined that neither major non-interstate pipelines nor interstate pipelines will be required to post actual flow information at this time. Instead, the regulations promulgated in this Final Rule require major non-interstate pipelines to post scheduled flow information at each receipt and delivery point with a design capacity greater than

15,000 MMBtu per day, and interstate pipelines to post certain information on no-notice service.[108] Further, we provide for a number of exemptions and clarifications of the new posting requirements that we believe will further limit the burden on entities subject to the Final Rule. We address the salient aspects of the regulations in turn, below.

B. Definition of Major Non-Interstate Pipeline

1. Posting NOPR

58. In the Posting NOPR, the Commission proposed that only major non-interstate pipelines would be required to post flow information. The Posting NOPR provisionally defined a "major non-interstate pipeline" as "a pipeline that fits the following criteria: (1) it is not a 'natural gas company' under section 1 of the NGA; and (2) it flows annually more than 10 million (10,000,000) MMBtu of natural gas measured in average receipts or in deliveries for the past 3 years."[109] The Commission asked for comment on the proposed 10 million MMBtu delivery threshold and whether it should be increased or decreased.[110]

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[108] Under 18 CFR 284.7(a)(4), an interstate natural gas pipeline must provide no-notice service, which is defined as "a firm transportation service under which firm shippers may receive delivery up to their firm entitlements on a daily basis without penalty."

[109] Posting NOPR at P 67.

[110] Id.

2. Comments

59. Several commenters support both a delivery threshold approach and the 10 million MMBtu delivery threshold proposed in the Posting NOPR.[111] Copano Energy supports a 10 million MMBtu threshold but adds that only jurisdictional flows should be counted for that delivery threshold.[112]

60. Several commenters seek an increase in the proposed delivery threshold. Contending that a 10 million MMBtu delivery threshold is unnecessarily low, NGSA suggests that the delivery threshold should be 50 million MMBtu.[113] Relying upon EIA data regarding intrastate pipelines, NGSA contends that a 50 million MMBtu delivery threshold would capture approximately 90 percent of the intrastate pipeline volumes and apply to only 57 intrastate pipelines. By contrast, according to NGSA, a 10 million MMBtu threshold would capture 99 percent of such volumes and apply to approximately 100 intrastate pipelines. NGSA contends that the benefit from this increase in reported volumes that would result from establishing a lower threshold is not sufficient to justify greater costs related to implementation of a 10 million MMBtu delivery threshold.[114]

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[111] Bentek Comments at 6; see also TIPRO Comments at 2.

[112] Copano Energy Comments at 10.

[113] NGSA Comments at 5-6.

[114] Id. at 5-6.

Similarly, Chevron Pipelines proposes raising the delivery threshold; it proposes a delivery threshold for reporting based on daily flows of 100,000 mcf/day (which equates to 36.5 MMBtu/year).[115]

61. Calpine supports a greater delivery threshold and proposes setting out two minimum thresholds based on gross and net throughput levels. It would set a de minimis daily volume threshold of 100,000 Dth (100,000 MMBtu) of net throughput, net of gas consumed by directly connected end-users, or 300,000 Dth (300,000 MMBtu) of gross peak day throughput.[116]

62. TPA suggests that the Commission adopt the delivery threshold used in FERC Form No. 2, 50 million Dth (50 million MMBtu), so that only non-interstate pipelines that transported over 50 million Dth (50 million MMBtu) in each of the three prior years would be required to post.[117]

63. Shell seeks clarification regarding the calculation of the proposed delivery threshold. It contends that the use of thermal units, i.e., MMBtu, is more appropriate than volumetric units, i.e., Bcf. Shell suggests that the word "average" should be added in front of the word "deliveries" so the calculation would apply both to average receipts

[115] Chevron Pipelines Comments at 23-24.

[116] Calpine Comments at 6-7.

[117] TPA Comments at 45; see also Kinder Morgan Intrastate Comments at 21; NGSA Comments at 5.

and/or deliveries. Shell seeks clarification if the three-year average is a rolling average and whether it should be calculated annually. It also seeks clarification on whether the delivery threshold should be applied on a facility-by-facility basis or corporate wide.[118]

3. <u>Commission Determination</u>

64. In consideration of the comments filed in this proceeding, the Commission will define a major non-interstate pipeline as a pipeline that "(1) is not a 'natural gas company' under section 1 of the NGA; and (2) delivers annually more than 50 million MMBtu of natural gas measured in average receipts or in average deliveries for the past three years."[119] The definition adopted in this Final Rule differs substantially from that proposed in the Posting NOPR and adopts a five-fold increase in the delivery threshold. Further, the definition bases the threshold on deliveries instead of flows. In addition, the definition clarifies that the delivery threshold should be determined on a facility-by-facility basis.

65. As an initial matter, we believe that a delivery threshold of 50 million MMBtu provides sufficient information to meet the Commission's goal of tracking daily flows of natural gas adequately throughout the United States by providing flow information in areas for which interstate natural gas pipeline posting is not adequate. EIA Form 176

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[118] Shell Comments at 27-29.

[119] See new section 284.14(a).

data demonstrates the reach of the 50 million MMBtu threshold. Excluding deliveries by interstate natural gas pipelines, pipelines that deliver greater than 50 million MMBtu annually account for 75 percent of total non-interstate volumes delivered in the United States.[120] While the EIA Form 176 categories are not a precise match to the data required to be posted by this Final Rule, the categories are sufficiently similar to show that the 50 million MMBtu delivery threshold will provide a significant amount of flow information to the Commission, market participants, and observers and improve the understanding of the supply and demand fundamentals affecting interstate markets. Assuming this data is representative, capturing roughly three-fourths of non-interstate pipelines would be a significant stride in filling in the gaps regarding flows in the United States.[121]

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[120] Derived from EIA Form 176 data for 2006 based on the ratio of non-interstate pipelines reporting deliveries greater than 50 million MMBtu per year to total deliveries on all non-interstate pipelines. NGSA estimates that a 50 million MMBtu threshold would capture 90 percent of the relevant intrastate pipeline volumes. NGSA comments at 5-6. We have been unable to duplicate NGSA's methodology used to derive this figure, although we note that NGSA has included certain interstate volumes and excluded some non-interstate volumes in its calculations.

[121] We believe that a 50 million MMBtu annual threshold for "major non-interstate pipelines" is appropriate since this threshold includes almost all non-interstate pipelines that interconnect with major hubs. However, experience with pipeline postings following implementation of this Final Rule could lead us to revisit this determination in the future.

66. The 50 million MMBtu delivery threshold is likewise consistent with the threshold used in the Commission's FERC Form No. 2 requirements. FERC Form No. 2 is a compilation of financial and operational information filed by interstate natural gas pipelines. An interstate natural gas pipeline must file a FERC Form No. 2 if it transports or stores for a fee volumes of natural gas greater than 50 million Dth.[122] If an interstate natural gas pipeline transports or stores for a fee volumes of natural gas less than 50 million Dth, it is not considered a major pipeline and files FERC Form No. 2A, which entails a lesser accounting burden.

67. By adopting the significantly higher 50 million MMBtu delivery threshold, the Commission also will eliminate compliance burdens on many smaller pipelines which may have fewer resources to meet the posting requirement. We agree with various commenters that the 10 million MMBtu delivery threshold in the Posting NOPR would have burdened smaller pipelines without providing a proportionate amount of useful information. A review of EIA Form 176 data for those pipelines that describe themselves to EIA as intrastate pipelines is illustrative. Under a 10 million MMBtu delivery threshold, thirty-seven of such pipelines would be required to post. In contrast, under a

[122] 18 CFR 260.1(b).

50 million MMBtu delivery threshold, only sixteen of such pipelines will be required to post. [123]

68. Additionally, the Commission clarifies the definition of major non-interstate pipeline in a few other respects. The Commission uses the term “deliveries” instead of “flows” for determining the threshold. We believe that the term “deliveries” is a more precise term and is more easily understood by both pipelines and their customers. Further, the delivery threshold for defining a “major non-interstate pipeline” must be measured by a non-interstate pipeline’s average deliveries for the previous three calendar years. If in the previous three calendar years, a non-interstate pipeline’s deliveries averaged greater than 50 million MMBtu then it would be required to post the information required under this Final Rule. This approach, too, is consistent with the Commission’s FERC Form No. 2 requirements.[124]

[123] Looking at the EIA data another way also supports the 50 million MMBtu delivery threshold. The 50 million MMBtu threshold would capture 85 major non-interstate pipelines that do not qualify under the exemptions. These 85 pipelines flow greater than 75 percent of total non-interstate volumes, according to the EIA Form 176 data. The Commission’s definition of “major non-interstate” does not match exactly the categories used by EIA. Thus, these numbers may differ.

[124] See FERC Form No. 2, Instructions, p. i, http://www.ferc.gov/docs-filing/eforms/form-2/form-2.pdf (“Each natural gas company whose combined gas transported or stored for a fee exceed 50 million dekatherms in each of the previous three years must submit FERC Form Nos. 2 and 3-Q”).

C. Scheduled Flow Information on Major Non-Interstate Pipelines

1. Posting NOPR

69. In the Posting NOPR, the Commission proposed to require major non-interstate pipelines to post information regarding capacity, scheduled flow volumes, and actual flow volumes.[125]

2. Comments

70. Several commenters assert that scheduled volume information would provide sufficient insight on supply and demand fundamentals to meet the Commission's transparency goals. TPA, for example, claims that "[t]he use of scheduled volumes is widespread within the natural gas industry and is the current standard used by interstate natural gas pipelines" and would provide the transparency that the Commission wants at minimal costs.[126] Similarly, Kinder Morgan Intrastate maintains that actual flows do not reflect the actual supply and demand picture due to, for instance, back-hauls, operational balancing agreements, equipment outages, and other operating conditions.[127] Commenters object to the requirement that non-interstate pipelines post actual flows as overly burdensome. For example, Kinder Morgan Intrastate objects to the cost of posting

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[125] Posting NOPR at P 22 and 49.

[126] TPA Comments at 8.

[127] Kinder Morgan Intrastate at 13-14.

scheduled volumes; it estimates that the proposal would cost $250,000 for information technology modifications to obtain and post scheduled volumes and another $250,000 for information technology modifications to obtain and post actual flow volumes.[128] TPA recommends posting of only scheduled volumes rather than actual volumes as a way to significantly reduce the costs of compliance with the Final Rule.[129]

71. TIPRO supports the posting of actual flows as a way to verify scheduled activity as compared to actual activity, but acknowledges that posting of actual flows may not be feasible on a daily basis and that should be taken into account in the final rulemaking.[130]

3. Commission Determination

72. We will not require major non-interstate pipelines to post actual flow information. As noted by Kinder Morgan Intrastate, the information gained from requiring non-interstate pipelines to post actual flows would not be that much greater than that gained from the posting of scheduled volumes, particularly given that non-interstate pipelines are not required to provide no-notice service (although some do).

73. We recognize that some non-interstate pipelines will incur costs to comply with this rule, including the posting of scheduled volumes. However, we believe that the

[128] Kinder Morgan Intrastate at 12. Kinder Morgan estimates additional costs for obtaining flow information at segments, which is not required in the Final Rule.

[129] TPA Comments at 6-7.

[130] TIPRO Comments at 4.

benefits of posting and the need for this rule outweigh those costs. In any event, we do not believe that the costs are as great as those estimated by commenters. Commenters' estimated costs included the cost of metering at segments, but posting at segments is not a requirement of this Final Rule.[131] Similarly, commenters' estimated costs include the cost of new metering and the posting of actual flow information, but posting actual flow is, likewise, not a requirement of this Final Rule. We also disagree with Kinder Morgan Intrastate's estimated $250,000 in costs to obtain and post volumetric information.[132] The Commission believes that this figure is too great because, as discussed by TPA, "most of the information already collected by intrastate pipelines relates to scheduled volumes at receipt and delivery points…." [133]

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[131] Our decision not to require posting by segment is discussed <u>infra</u>.

[132] Kinder Morgan Intrastate at 12.

[133] Our staff's research indicates that such costs could be less than $30,000 for major non-interstate pipelines. The estimate includes both the software and labor costs associated with implementing the rule. Software costs include a one-time capital cost (amortized over ten years) to create a standard informational posting website for reporting scheduled volumes and the monthly fees associated with maintaining this site. In addition, the cost factors daily labor costs to upload this information on the Internet and to have an attorney or compliance office review these postings on a routine basis.

D. Receipt and Delivery Point Posting for Major Non-Interstate Pipelines

1. Posting NOPR

74. The Posting NOPR sought comments regarding whether the Commission's transparency goals could be sufficiently advanced through the posting of flows in and out of major market hubs and, if so, which hub-related data should be reported.[134] The Commission suggested two possible approaches to postings by non-interstate pipelines. First, under a delivery threshold approach, whether a non-interstate pipeline posts flow information depends on the amount of flows or deliveries the non-interstate pipeline flows or delivers annually at the hub. Second, under a market hub approach, or market hub alternative, whether a non-interstate pipeline posts flow information depends on whether it interconnects to a major market hub. The Commission sought comment on adopting a market hub approach, but did not propose a market hub approach.

75. The Posting NOPR also proposed that non-interstate pipelines post flow information for "major points or segments." We did not delineate for which "major points or segments" a major, non-interstate pipeline should post but requested comment on the subject. The Posting NOPR proposed that non-interstate pipelines post "on a daily

[134] Posting NOPR at P 75.

basis on an Internet web site and in downloadable file formats, in conformity with section 284.12 of this chapter, equal and timely access to" flow information.[135]

2. Comments

76. Several commenters support a market hub approach (as opposed to a points or segment-based approach) for determining which non-interstate pipelines should post flow information.[136] Chevron Pipelines argue that a market hub approach would "ensure and facilitate more accurate pricing with little loss of meaningful information."[137] EOG Resources supports posting at the thirteen market hubs referred to in the Initial and Posting NOPRs because it would more likely provide meaningful information on flows affecting wholesale natural gas markets and would cost less than the proposed posting requirement.[138] Atmos also advocates posting at the thirteen hubs because the hubs represent market points where index prices are regularly published and the market hubs

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[135] See new section 284.14(a).

[136] See, e.g., National Fuel Distribution Comments at 2.

[137] Chevron Pipelines Comments at 27.

[138] EOG Resources Comments at 11; see also Oklahoma Corporation Commission Comments at 4; Shell Comments at 11-17.

"come closer than any other points to satisfying the statutory requirement that the information be about physical pricing at wholesale and interstate commerce."[139]

77. Yates asserts that a market hub approach would address the lack of supply and demand information in production areas because the thirteen major market hubs are located in the major production areas in Louisiana and Texas.[140] Supply and demand information, according to this commenter, is available for other production areas through interstate postings.[141] Similarly, because the market hub approach focuses on the Gulf Coast, Yates claims, it would address the goal of understanding the effects of a major disruption in that area.[142]

78. Other commenters oppose adoption of a market hub approach. Royalty Owners contend that limiting the postings to hubs would exclude vast, relevant segments of the intrastate system. For instance, Royalty Owners declare that, since Oklahoma does not have one of the thirteen market hubs listed in the Posting NOPR, every pipeline in the state could be exempt, yet Oklahoma is the third largest producing state with

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[139] Atmos Comments at 7.

[140] Yates Comments at 6-8.

[141] Yates Comments at 7.

[142] Id. at 7-8.

approximately 8.8 percent of the nation's total production.[143] TIPRO similarly opposes limiting the proposal to only pipelines that flow in and out of major hubs because significant information would be lost and the transparency goals would not be met.[144]

79. Commenters also addressed possible postings by receipt and delivery points. Several commenters object to the fact that the Posting NOPR did not define the "major points of receipt and delivery" at which non-interstate pipeline would be required to post flow information. Atmos believes that the lack of a definition of major points hindered the ability to comment on the burden and costs of the proposal.[145] NGSA suggests requiring the posting of flow information at receipt and delivery points that flow on average more than 15 mmcf/day and at all metered points.[146] PGC requests that the Final Rule exclude posting at points serving private pipelines or LDC bypasses, noting the Commission's comments that it was not interested in posting for "extremely small points connected to one or a few customers."[147]

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[143] Royalty Owners Comments at 2.

[144] TIPRO Comments at 2.

[145] Atmos Comments at 5; see also TPA Comments at 32; Calpine Comments at 9-11.

[146] NGSA Comments at 7-10.

[147] PGC Comments at 2.

80. Several commenters express concern that the public posting of flow information at receipt and delivery points could result in a competitive disadvantage for individual customers.[148] TPA objects to the posting of design capacity for a point as it would allow a determination of a non-interstate pipeline's available capacity.[149] Kinder Morgan Intrastate contends that the posting proposal would harm its end-use customers by causing the release of confidential information.[150] To avoid this result, Kinder Morgan Intrastate suggests that the Commission exempt the reporting of information regarding deliveries made to power generators, LDCs and industrial customers. [151] Calpine seeks to keep confidential an individual customer's transportation volumes and consumption patterns by excluding individual customer laterals and focusing the posting requirement on high-volume segments with multiple shippers.[152] But, as to confidentiality, Bentek observes that data for power plants and nearly 800 industrial facilities that are directly connected to interstate natural gas pipelines is posted daily with "no apparent adverse

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[148] See, e.g., Atmos Comments at 8.

[149] TPA Comments at 16.

[150] Kinder Morgan Intrastate Comments at 19.

[151] Id. at 22.

[152] Calpine Comments at 5.

impact."[153] Bentek concludes that the Commission should not "protect something in the non-interstate context that is not protected in the interstate context."[154]

81. Several commenters object to posting information on segments. Atmos opposes posting information at segments because it does not measure flows at segments.[155] Atmos also states that it has 1,200 receipt and delivery points on its system and thousands of minor ones resulting in a multitude of possible postings for segments.[156] PG&E urges the Commission to focus on receipt and delivery points on non-interstate pipelines, rather than on mainline segments because posting at segments would not provide any information that is not already apparent from posting capacity, scheduled volume and actual flows at receipt and delivery points.[157] In this regard, other commenters maintain that the requirement to post flows at segments would create a significant burden.[158] TPA explains that the estimates of costs from the proposed requirement to post flow information arises from the assumption that the proposal entails reporting at segments:

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[153] Bentek Comments at 9.

[154] Id.

[155] Atmos Comments at 5.

[156] Id. at 6.

[157] PG&E Comments at 5.

[158] See, e.g., TPA Comments at 25-26; Atmos Comments at 5.

> the burdens and costs associated with the proposed rule would be substantially greater than the Commission estimated. A large reason for this is that intrastate pipelines do not typically collect information related to segment flow – most of the information already collected by intrastate pipelines relates to scheduled volumes at receipt and delivery points, rather than segments.[159]

For instance, Atmos estimates that determining actual gas flows at major pipeline segments would require a capital investment of at least $13 million.[160] Kinder Morgan Intrastate estimates that installing meters to measure flow at segments would cost approximately $62.7 million.[161] The ONEOK Gathering Companies observe that narrowly defining the term "major point or mainline segment" in proposed section 284.14(a) would reduce the number of new meters that would need to be installed, operated and maintained and would thus keep the burden to a minimum.[162] TPA contends that adding segment meters to a pipeline would cause a drop in pressure.[163]

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[159] TPA Comments at 25.

[160] Atmos Comments at 5.

[161] Kinder Morgan Intrastate at 11.

[162] ONEOK Gathering Companies Comments at 12-13.

[163] TPA Comments at 41.

3. Commission Determination

82. The Commission determines that a major non-interstate pipeline must post scheduling information for each receipt and delivery point with a design capacity of equal to or greater than 15,000 MMBtu/day (a point-based delivery threshold). In addition, a non-interstate pipeline must post the design capacity for each such point. Specific information that is to be posted is discussed below.[164] Postings at market hubs or for segments will not be required.

a. Posting at Receipt and Delivery Points

83. The delivery threshold approach adopted herein will provide broader, more useful information about the supply and demand fundamentals that underlie the interstate natural gas market than a hub-based approach and at a cost less than a segment-based approach. The delivery threshold approach is not limited to a few market hubs or published pricing points. It will provide information about flows that either eventually feed into market hubs or that affect pricing at those market hubs. Such market hubs or published pricing points are generally already relatively liquid -- the delivery threshold approach will promote transparency at less liquid and currently less transparent points.

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[164] We remind pipelines that must comply with this Final Rule that the Commission has established a help desk to facilitate responses to questions regarding compliance with our regulations. See Obtaining Guidance on Regulatory Requirements, 123 FERC ¶ 61,157 (2008).

84. Posting points' design capacity will allow the Commission and market participants to better determine availability, a key component of supply and demand fundamentals. Market observers may estimate availability by subtracting scheduled volumes from design capacity. Requiring the posting of design capacity will allow shippers and other market observers to understand the availability of transportation that affects interstate wholesale markets. Further, this approach is consistent with the Commission's policies for interstate natural gas pipelines. In Order No. 637, the Commission stated that interstate natural gas pipelines had the option of posting at either (i) receipt and delivery points or (ii) segments. It has been our experience that most, but by no means all, interstate pipelines elect to post by receipt and delivery point and not by segment.

85. Some commenters object to the threshold approach as not advancing transparency in the interstate market because, for example, as they claim "[v]ery few intrastate delivery or receipt points and no intrastate segments exist at the same location as published pricing indices. If these points do not represent established pricing points for the interstate market, there is no advancement of the increased price transparency goal from the proposed reporting."[165] This criticism assumes that only flow information for a published pricing point can promote transparency. First, this assumption is incorrect because prices are affected by flows that feed a pricing point or that affect the supply

[165] Atmos Comments at 7.

available to a pricing point. Second, this assumption incorrectly assumes that price transparency is solely about the price of natural gas at published price indices. Price transparency also includes the price of transportation of natural gas. Congress contemplated that this price transparency would be derived from not only information about prices but also information about availability. Section 23 of the NGA authorizes the Commission to obtain "information about the availability" of natural gas, in addition to information about the "prices" of natural gas. Unlike the market hub approaches, the delivery threshold approach would obtain information regarding availability of transportation broadly which would facilitate price transparency of both "sales and transportation of physical natural gas in interstate commerce…."[166]

86. We believe that a delivery threshold will be less burdensome for major non-interstate pipelines than either a hub-based or segment-based approach as many such pipelines already collect such information. These pipelines may incur some additional costs to comply with the Final Rule's posting requirements, however, we believe the substantial transparency benefits, discussed above, outweigh those costs. In any event, the Commission expects that compliance costs will not be nearly as great as those estimated by some commenters. As discussed above, most commenters' cost estimates include the cost of metering at segments, but posting at segments is not a requirement.

[166] Section 23(a)(1) of the NGA; 15 U.S.C. 717t-2(a)(1) (2000 & Supp. V 2005).

Other cost estimates include the cost of metering and posting actual flow information, but posting actual flow information is, likewise, not a requirement.

87. Only a few commenters provided cost estimates that did not assume obtaining and posting flow information for pipeline segments and that did not assume obtaining and posting actual flow information. Kinder Morgan Intrastate, for example, estimated a cost of $250,000 for obtaining and posting scheduled volume information.[167] The Commission believes that this figure is likely exaggerated because, as noted by TPA, "most of the information already collected by intrastate pipelines relates to scheduled volumes at receipt and delivery points."[168] We believe that the costs of collecting existing scheduled volume information and posting it on a website is likely to be far less.[169]

88. Lastly, we have carefully considered the arguments by some commenters that additional pipeline postings could affect the competitive position of customers who have a dedicated delivery point with a design capacity equal to or greater than 15,000 MMBtu/day on a major, non-interstate pipeline. In this respect, the regulations that we adopt here may affect "fair competition, and the protection of consumers" --

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[167] Kinder Morgan Intrastate at 12.

[168] TPA Comments at 25.

[169] As noted above, supra note 130, our staff's research indicates that such costs could be less than $30,000 per year.

considerations that the Commission must take into account pursuant to section 23(a)(1) of the NGA. Nonetheless, information about the scheduled volumes to a customer with a delivery point with a capacity greater than 15,000 MMBtu/day will provide useful information to the Commission, market participants, and other market observers and will greatly increase market transparency. We believe that this benefit outweighs the concerns about publicly posting information about scheduled volumes to such a customer. Further, we understand that such customers would be placed in the same situation as customers on interstate natural gas pipelines with whom they often compete.[170] Currently, interstate natural gas pipelines post daily scheduled volumes for delivery points dedicated to a single customer regardless of the size of the meter. There have been no indications that competitive balance has been harmed since the interstate requirement to post was instituted.

89. The Commission will require all postings to be public; we will not provide for posting information to be kept confidential as requested by some commenters. In section 23(a)(2) of the NGA, Congress called for any transparency rule to provide for the "dissemination, on a timely basis, of information about the availability and prices of

[170] Those customers whose delivery point has a design capacity of less than 15,000 MMBtu/day would not be affected. Those customers of non-interstate pipelines that did not flow greater than 50 million MMBtu per year also would not be affected.

natural gas sold at wholesale and interstate commerce to the Commission, State commissions, buyers and sellers of wholesale natural gas, and the public."[171]

90. In this Final Rule we determine that each major non-interstate pipeline must post information for each receipt or delivery point with a design capacity equal to or greater than 15,000 MMBtu/day. We believe that this threshold represents significant load at delivery points (major pipeline interconnections, substantial industrial use, etc.) and major receipt points. However, the 15,000 MMBtu/day threshold should be sufficiently large so as to exclude insignificant or minor points on a pipeline system. To put this threshold in context, 15,000 MMBtu/day corresponds roughly to the gas used by an 85 MW baseload gas fired power plant at a relatively efficient heat rate of 7,500 Btu/kWh – a facility that could serve over 40,000 households each with a 2 kW load.

91. The Commission will require posting based on each receipt and delivery point's design capacity rather than average flows at a point because posting at points based on design capacity should be less burdensome for pipelines. The average flows over a receipt or delivery point may change from year-to-year and designation of posting points based upon fluctuating averages would require pipelines to add and subtract points from

[171] Section 23(a)(2) of the NGA; 15 U.S.C. 717t-2(a)(2) (2000 & Supp. V 2005) (emphasis added).

posting on a rolling basis. By comparison, points' design capacities are relatively fixed and lend themselves to stable posting requirements.

92. In the circumstance where the design capacity of a receipt or delivery point could vary according to operational or usage conditions, a major non-interstate pipeline must post the design capacity for the most common operating conditions of its system during peak periods. This guidance is identical to that provided to interstate natural gas pipelines in Order No. 637 regarding postings. Also consistent with our directives in Order No. 637, a pipeline's posting of the total design capacity of a point is not a daily posting requirement, but pipelines must update this information from time-to-time as changes in design capacity occur.

93. The Commission will not require major non-interstate pipelines to post information for each point that has a meter as suggested by NGSA. Such a requirement would not be uniform for each pipeline as some systems have significantly more physical meter points than others. Further, such a requirement could create a disincentive for a major non-interstate pipeline to install new meters.

94. The Commission will require that a major, non-interstate pipeline post the following scheduled volume information for each receipt and delivery point that has a design capacity equal to or greater than 15,000 MMBtu/day: Transportation Service Provider Name, Posting Date, Posting Time, Nomination Cycle, Location Name, Additional Location Information if Needed to Distinguish Between Points, Location

Purpose Description (Receipt, Delivery, or Bilateral), Design Capacity, Scheduled Volume, Available Capacity, Measurement Unit (Dth, MMBtu, or MCf).

95. Regarding the timing of postings, the Commission considers that scheduled flow information that is not provided on a daily basis is simply untimely and of vastly diminished use to market participants. We believe that, in this regard, our interstate natural gas pipeline postings set an appropriate standard: postings should occur at least on a daily basis. Further, this standard conforms to Congress' direction in section 23 of the NGA, which requires that our transparency rules "provide for the dissemination, on a timely basis, of information about the availability and prices of natural gas…."[172]

96. These postings will provide information comparable to the daily postings made by interstate natural gas pipelines. Major non-interstate pipelines must post scheduled volumes according to a daily posting deadline. Currently, interstate natural gas pipelines must provide at least four nomination cycles to their shippers with the following nomination: timely, evening, intra-day 1, and intra-day 2.[173] Once these volumes are scheduled, they must be posted on the public Internet under Operationally Available Capacity section of an interstate natural gas pipeline's Informational Postings according

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[172] Section 23(a)(2) of the NGA (emphasis added); 15 U.S.C. 717t-2(a)(2) (2000 & Supp. V 2005).

[173] Standard 1.3.2, Nominations Related Standards, North American Energy Standards Board, Wholesale Gas Quadrant, July 31, 2002.

to the following cycle deadlines: timely (no later than 4:30 p.m. central clock time for the day prior to gas flow); evening (no later than, 9:00 p.m. central clock for the day prior to gas flow); intra-day 1 (no later than 5:00 p.m. on flow day); and intra-day 2 (no later than 9:00 p.m. on flow day). Currently, major non-interstate pipelines employ a variety of nomination deadlines on their systems. Some use the standard North American Energy Standards Board (NAESB) guidelines followed by interstate natural gas pipelines; others do not have specific nomination deadlines.

97. The Commission will require that major non-interstate pipelines post scheduled volumes no later than 10:00 p.m. central clock time the day prior to gas flow. This deadline occurs after interstate natural gas pipelines are required to post their evening cycle schedule confirmations by receipt and delivery point. The deadline enables non-interstate pipelines ample time to review their gas control set-up for the next day and limits the burden of posting to a single, daily reporting cycle.

98. Regarding comments made by TPA, the Commission clarifies that the pipeline posting regulations do not impose NAESB requirements on non-interstate pipelines. Rather, the proposed regulations required a major non-interstate pipeline to post daily its scheduled volumes, "in conformity with § 284.12 of this chapter…." The commenter erroneously assumes that this would require a non-interstate pipeline to conform to all of section 284.12 instead of to conform with the manner of posting set forth in that section. The Commission clarifies that posting pipelines need only comply with the <u>manner of</u>

posting outlined in section 284.12 and need not comply with all other requirements of that section.

b. Posting at Market Hubs or by Segment

99. The Commission identified, in the Initial and Posting NOPRs, thirteen market hubs served by both interstate and non-interstate pipelines as a way to illustrate and provide examples of the wider range of deficient information about the physical natural gas market. We asked for comment on whether these thirteen hubs should help determine which non-interstate pipelines should post flow information.[174] Some commenters seized on these thirteen market hubs as a way to define the particular points at which pipelines that should post flow information. While the Commission adopts a posting method based upon points of receipt and delivery, the Commission appreciates the effort that commenters expended in evaluating the Posting NOPR and proposing other alternatives (including posting at market hubs) as well as comments on posting by segment. We now explain why we are not adopting any of these alternatives.

100. The market hub alternatives proposed by NGSA and TPA focus on locations which have obvious import to understanding pricing in the interstate markets. However, we believe that a hub-based approach would be unwieldly at best and would not provide the data needed to meet the Commission's transparency goals. The market hub

[174] Posting NOPR at P 71.

alternatives would require posting only by those non-interstate pipelines that connect to major market hubs. These alternatives would be quite difficult to implement and would provide insufficient information to market participants.

101. The market hub alternatives also present too great a challenge in trying to keep up with the constantly changing nature and location of market hubs. Even the initial identification of relevant market hubs would present a challenge. Market hubs are uniform only in that they serve as pricing points; they are not uniform physically. There is a wide variety of hub types: pooling points, salt-cavern based storage hubs, and pipeline hubs (including one, two, or even three different pipelines). In spite of this lack of uniformity, a pipeline posting would require physical posting as if every market hub were physically the same. In such circumstances, posting information would not be comparable among different hubs and the resulting data would be of marginal value.

102. After market hubs were initially determined, ongoing challenges would remain. A regulatory listing of market hubs would need to be established and maintained, yet trading in the market determines which market hubs are, in fact, relevant to the market as a whole. This list of relevant market hubs would need to be constantly modified as trading trends evolved. For instance, on July 2, 2008, Gas Daily reported on numerous changes involving price reporting and the establishment of new trading hubs, including El Paso South Mainline. El Paso South Mainline is a market hub that, under a market hub approach, could be considered as a market hub at which interconnected pipelines

should post flow information. New pipelines would also change which market hubs were important to the overall transparency of the market.[175] The listing of specific hubs could not keep up with this constantly changing market, would require the commitment of significant Commission resources, and would result in perpetual regulatory uncertainty regarding posting obligations. Each time a market hub were added to the list of relevant hubs, a new set of pipelines would be required to begin posting information.

103. An additional drawback, particular to NGSA's proposed market hub approach, would be determining how far upstream of the market hub a non-interstate pipeline should post data. NGSA proposes only postings of flow information at the pipeline immediately connected to the market hub.[176] This limitation would result in too little information: it would provide flow information only at the immediate interconnecting pipeline. The Commission, market participants, and observers would lose significant information from a supply-chain standpoint.

104. The TPA market hub alternative would provide even less information and less benefit to market participants and observers. Because the TPA market hub alternative would not include points upstream of the market hub interconnection, this alternative would provide no information about the availability of transportation to the market hub.

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[175] IPAA Comments at 3.

[176] NGSA Reply Comments at 2.

The Commission's experience with postings by interstate natural gas pipelines suggests that the value of such posting is to understand the availability of supply at different points on a pipeline, not just the one point at the interconnection. Further, if the market hub interconnection is with an interstate natural gas pipeline, the interstate natural gas pipeline already posts scheduled volume information for that receipt point, thus rendering the TPA proposal redundant for many points.[177]

105. Similarly, based upon comments we received in response to the Posting NOPR, we will not require posting of data by segment. As noted by TPA, "most of the information already collected by intrastate pipelines relates to scheduled volumes at receipt and delivery points, rather than segments."[178] Thus, the requirement in the Final Rule focuses on obtaining and posting information already collected by intrastate pipelines: we will require posting of scheduled volumes and posting by receipt and delivery points, rather than segments.[179]

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[177] The AGA states, in objecting to posting such points for local distribution companies, that requiring the posting of "daily information for receipt and delivery points that are interconnections with interstate pipelines would be unnecessarily redundant and would add no valuable information to the Commission's or others' understanding of the supply and demand conditions that directly affect the U.S. wholesale gas markets." AGA Comments at 15.

[178] TPA Comments at 25.

[179] We note that some non-interstate pipelines currently post data regarding pipeline use and availability by segment. We wish to make clear that the Final Rule does

(continued…)

106. We also appreciate the burden that would be placed upon major non-interstate pipelines if we were to adopt a segment-based posting approach. Nearly every commenter that discussed segment-based posting acknowledged that the costs of such a methodology would be substantial.[180] We adopt a receipt and delivery point-based approach that will capture much of the same data as a segment-based approach, but that is less burdensome to implement.

E. Exemptions to the Major Non-Interstate Pipeline Posting Requirements

107. In consideration of the comments received in response to the Posting NOPR, the Commission adopts three exemptions: for non-interstate pipelines upstream of a processing plant; for non-interstate pipelines that deliver almost exclusively to retail end-users; and for storage providers. First, a major non-interstate pipeline will be exempt from the posting requirement if it "fall[s] entirely upstream of a processing, treatment or dehydration plant."[181] This language excludes from the definition not only non-interstate pipelines located upstream of a processing plant but also those located upstream of a

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not preclude pipelines from posting such data. The Final Rule requires the posting of specific data by major non-interstate pipelines at certain points of receipt and delivery. A pipeline is free to post any additional data (e.g., additional points, postings by segment, etc.) that it believes would be useful to its customers or as required by other regulatory bodies.

[180] See, e.g., TPA Comments at 25-26.

[181] See new section 284.14(b)(1).

treatment or dehydration plant. Second, the Commission modifies the end-use exemption, excluding a non-interstate pipeline if it delivers more than 95 percent of its natural gas volumes directly to retail end-users.[182] To determine eligibility for the retail exception, a major non-interstate pipeline must measure volumes by "average deliveries over the preceding three calendar years."[183] Third, the Commission provides a general exemption for storage providers.[184]

1. Non-Interstate Pipelines that are Upstream of a Processing, Treatment, or Dehydration Plant

a. Posting NOPR

108. In the Posting NOPR, the Commission proposed that non-interstate pipelines located upstream of a processing plant would be exempt from the proposed regulations[185] and requested comment on this proposal.[186]

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[182] See new section 284.14(b)(2).

[183] See new section 284.14(b)(4).

[184] See new section 284.14(b)(3).

[185] Posting NOPR at P 69.

[186] Id. at P 68.

b. Comments

109. Commenters generally support the exemption for pipelines upstream of the processing plant as price formation relies more on flows downstream of the processing plant.[187] However, several commenters seek to clarify and, in some ways, expand the definition of processing plant. These commenters request that the exemption be expanded to exclude pipelines upstream of a treatment plant.[188] Dow Pipeline seeks to include nitrogen processing in the definition of processing.[189] Regency seeks to expand the exemption to exclude any pipeline upstream of a processing, treatment or dehydration plant used to remove liquid hydrocarbons or other substances from natural gas to meet transmission pipeline quality specifications.[190] NGSA contends that a major non-interstate pipeline that lies upstream from another major non-interstate pipeline and delivers solely into a single non-interstate pipeline should be exempted from the posting requirement because its volume will be reported by the downstream pipeline.[191]

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[187] See, e.g., Chevron Pipelines Comments at 22-23; TIPRO Comments at 5.

[188] Copano Energy Comments at 8-9; ONEOK Gathering Companies Comments at 5; TPA Comments at 32.

[189] Dow Pipeline Comments at 2-3.

[190] Regency Comments at 11-13.

[191] NGSA Comments at 6.

110. Several commenters seek an exemption specifically for gathering pipelines.[192] These commenters argue that the exemption for pipelines upstream of a processing plant would not exclude all gathering pipelines.[193] They note that the exemption for pipelines upstream of a processing plant was justified in part as a way to exempt gathering pipelines, but that it does not exempt all gathering pipelines.[194] Shell asserts that a production and/or gathering line should not be considered a "pipeline" and request that the Commission define pipeline. [195]

111. Some commenters assert that if gathering systems were required to post at all of their receipt and delivery points, the burden would be too great. For instance, Regency, which operates gathering systems, estimates that requiring posting of its gathering system would cost $6-10 million.[196] These commenters request that the Commission exempt gathering pipelines by using the "primary function test." [197] Dow Pipeline argues that, if

[192] Enbridge Comments at 2-4; EOG Resources Comments at 8-10; Gas Processors Comments at 3-5; TPA Comments at 30-31.

[193] ONEOK Gathering Companies Comments at 5-11; Crosstex Comments at 5; Enbridge Comments at 4-6

[194] Gas Processors Comments at 3-5.

[195] Shell Comments at 18-20.

[196] Regency Comments at 8-9.

[197] Copano Energy Comments at 8-9; Encana Comments at 5-8; EOG Resources Comments at 10-11; Kinder Morgan Intrastate Comments at 21.

any portion of a major non-interstate pipeline located upstream of a processing plant, the pipeline should be excluded from the posting requirement.[198]

112. Several commenters note that many gathering facilities are downstream of a processing plant. [199] For instance, ONEOK Gathering Companies maintain that the proposed exemption for a pipeline that lies upstream of a processing facility is insufficient to exempt gathering facilities because gathering facilities have facilities downstream of a processing facility. This fact, ONEOK Gathering Companies describe, is recognized in the Commission's primary function test for determining a gathering facility in which one factor is the location of the processing plant.[200] The fact that the Commission did not delineate for which points a pipeline would post makes such an exemption even more necessary, according to ONEOK Gathering Companies, as the burden would be too great.[201]

c. Commission Determination

113. The Commission adopts an exemption for major non-interstate pipelines that lie entirely upstream of a processing, treatment, or dehydration plant. The focus of this Final

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[198] Dow Pipeline Comments at 2-3.

[199] DCP Midstream Comments at 5.

[200] ONEOK Gathering Companies Comments at 7.

[201] Id. at 7-9.

Rule is to make available information on flows of gas that may be sold in interstate natural gas markets. Prior to processing, treatment, or dehydration, natural gas is generally not of sufficient quality to serve as a fungible product to use in evaluating supply and demand fundamentals underlying the interstate natural gas market. We clarify that nitrogen processing, as suggested by Dow Pipeline, would be considered processing at a processing plant for purposes of this exemption. Additionally, as requested by TPA, the Commission clarifies that a pipeline may be upstream of a processing plant if it flows into another line that flows into a processing plant.

114. The Commission will not provide a general exemption for gathering pipelines. The increased delivery threshold of 50 million MMBtu and the exemption for pipelines that lie entirely upstream of a processing, treatment, or dehydration plant should be sufficient to exclude most gathering pipelines. Further, these exemptions as written will serve as a bright-line test for determining whether a major non-interstate pipeline should post. This contrasts with the "primary function test" advocated by some commenters. Adopting an exemption based on the "primary function test" would require a Commission determination of each gathering pipeline's eligibility and would be burdensome for pipelines seeking to determine whether they must post information. Moreover, the "primary function test" is a test adopted by the Commission to determine whether a facility would fall outside of the scope of our traditional NGA jurisdiction under section 1 of the act. Use of this test could further confuse the distinction that the

Commission makes here between its traditional section 1 and its new section 23 jurisdiction.

115. We also decline to adopt an exemption for pipelines that lie partially upstream and partially downstream of a processing, treatment, or dehydration plant. Such an accommodation would confuse the exemption and create compliance difficulties. In any event, again, we believe that the increased threshold mitigates any compliance difficulties posed for such pipelines.

2. Non-Interstate Pipelines that Deliver More than Ninety-Five Percent of Volumes to Retail Customers

a. Posting NOPR

116. In the Posting NOPR, the Commission proposed that major non-interstate pipelines that deliver 95 percent of their volumes to end-users would be exempt from the posting requirements and requested comment on this proposal.[202]

b. Comments

117. Several commenters support an exemption for pipelines delivering almost exclusively to end-users contending that it would not result in a loss of significant market

[202] Posting NOPR at P 69.

information.[203] Indeed, some commenters request that a proposed exemption be expanded to include non-interstate pipelines that transport 80 percent of flows to end-users.[204] Calpine seeks to lower the end-use threshold from 95 percent to 90 percent and asserts that such pipelines do not have a major impact on gas flow. Calpine contends that unforeseen outages of a large gas-consuming facility could cause a non-interstate pipeline to no longer be eligible for the exemption. Calpine acknowledges that this possibility is lessened by averaging deliveries over a three-year period as was proposed.[205]

118. AGA proposes to exempt any pipeline in which flows to non-end-users amounted to less than 10 million MMBtu. AGA is concerned that without its additional exemption, a pipeline that flowed more than the delivery threshold of 10 million MMBtu but whose flows to non-end-users were more than 500,000 MMBtu would be captured.[206] Dow Chemical requests a categorical exemption for non-interstate pipelines that are owned or

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[203] Dow Chemical Comments at 2; Dow Pipeline Comments at 2-3; Chevron Pipelines Comments at 23.

[204] ONEOK Gathering Companies Comments at 14-15; TPA Comments at 46-47; Kinder Morgan Intrastate Comments at 22-23.

[205] Calpine Comments at 7-8.

[206] AGA Comments at 2.

operated by end-users and that are used to transport natural gas for use by such end-users.[207]

119. Duke maintains that gas consumed by an LDC in the normal course of operations, such as fuel and lost-and-unaccounted for gas, should be included in the gas deemed delivered directly to end-users for purposes of this exemption.[208] Duke contends that such gas facilitates performance by an LDC of its core function and is not pertinent to the United States wholesale market.[209] Duke also argues that deliveries by one LDC to another LDC should be considered deliveries to another end-user for the purposes of the exemption.[210] Duke reasons that such gas has left the interstate system.[211]

c. Commission Determination

120. With one substantial modification, the Commission adopts the exemption proposed in the Posting NOPR. Major non-interstate pipelines that flow greater than

[207] Dow Chemical Comments at 2.

[208] Duke Comments at 7; see also AGA Comments at 11.

[209] Duke Comments at 7.

[210] Id. at 7-8; see also AGA Comments at 13.

[211] Duke Comments at 8.

95 percent of their volumes directly to retail customers (rather than all end-users) are exempted from the posting requirements.[212]

121. Recently, in Order No. 704-A, the Commission held that data regarding transactions with consumers at retail would not significantly assist us to fulfill our transparency responsibilities under section 23 of the NGA.[213] There, we drew a distinction between a broad category of end-use transactions and transactions that occur at retail. As we discussed in that order, many end-use transactions have substantial impact on wholesale energy markets.[214] For these reasons, we will define the exemption in the same terms described in Order No. 704-A and exempt pipelines delivering 95 percent of their flow volumes under <u>retail</u> transactions (<u>i.e.</u>, bundled transactions through an LDC at a state-approved tariff rate) to consumers.

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[212] Dow Intrastate requests clarification for its non-interstate pipeline that can deliver both to a processing plant and an end-user. It seeks to fit the non-interstate pipeline into one of the exemptions. The non-interstate pipeline delivers directly into a processing plant but can also deliver directly to an end-user. According to Dow Intrastate, in those circumstances, a pipeline could not qualify for the end-use exemption because 95 percent of the gas does not go to an end-user, it is delivered to the processing plant. It appears that the pipeline that Dow Intrastate describes does not lie entirely upstream of a processing plant. If the modified delivery point threshold adopted in this Final Rule does not address Dow Intrastate's concern, it may file for a waiver of the regulations and the Commission will consider the matter in light of the facts presented.

[213] Order No. 704-A at P 40-43.

[214] <u>Id.</u> at P 40.

122. In light of the increase in the delivery threshold from 10 to 50 million MMBtu, we do not adopt the proposal of AGA to further expand this exemption. AGA proposes to exempt any pipeline in which flows to non-end-users amounted to less than 10 million MMBtu. AGA is concerned that without its additional exemption, a pipeline that flowed just more than the delivery threshold of 10 million MMBtu but whose flows to non-end-users were more than 500,000 MMBtu would be required to post.[215] Because the Commission herein increases the delivery threshold proposed in the Posting NOPR, AGA's concern is alleviated because such a non-interstate pipeline would not be required to post.

123. Also, because of the increase in the delivery threshold, we will not lower the threshold for this exemption to 80 percent as requested by several commenters[216] or to 90 percent as proposed by Calpine. Lowering the retail delivery exemption to 80 or 90 percent would allow some major non-interstate pipelines to avoid posting a significant amount of receipts and deliveries that are not made to consumers, which could result in the loss of a large amount of information about the interstate natural gas market. Further, we believe that commenters' concerns largely are addressed by the increased delivery

[215] AGA Comments at 2.

[216] ONEOK Gathering Companies Comments at 14-15; TPA Comments at 46-47; Kinder Morgan Intrastate Comments at 22-23.

threshold of 50 million MMBtu and by the requirement that the end-use percentages be determined on a three-year average.

124. We find Calpine's "concern[] that the ninety-five (95%) volume level is set too high to allow for unforeseen outages that affect large gas-consuming facilities" to be misplaced. Such outages could result in gas being redirected away from an end-user to a wholesale purchaser. This also could result in the pipeline delivering more than 5 percent of its flows to non-end-users therefore triggering the posting requirement. In such a circumstance, posting would be properly required.

125. In response to other comments, we clarify that volumes transported from one LDC to another should not be deemed deliveries to retail consumers for purposes of the end-user exemption.[217] The Commission will not exempt a non-interstate pipeline that delivers solely into a single non-interstate pipeline as suggested by NGSA.[218] NGSA reasons that the downstream, non-interstate pipeline would post the flows at its receipt point. That may not be the case where the downstream, non-interstate pipeline does not meet the delivery threshold and is not required to post.

[217] Duke Comments at 7.

[218] NGSA Comments at 6.

126. Natural gas consumed or utilized for operational reasons by the posting pipeline (such as for fuel or lost-and-unaccounted for gas) is deemed to be gas consumed "at retail" for purposes of determining whether a pipeline fits within this exemption.

3. Non-Interstate Storage Providers

a. Posting NOPR

127. In the Posting NOPR, the Commission sought further comment from storage providers regarding the effect of the proposed rule on their businesses. Specifically, the Commission asked for comment on whether storage providers should provide data in aggregate form and whether an individual storage facility loses negotiating strength when its customers know the supply of available storage capacity.[219]

b. Comments

128. Some commenters support the proposal.[220] For example, Calpine supports a daily posting requirement for storage providers, otherwise "[t]he supply chain would be incomplete."[221] Calpine contends that the information currently available about interstate

[219] Posting NOPR at P 76-77.

[220] Calpine Comments at 12.

[221] Id. at 13.

storage facilities is "often too delayed or too aggregated to provide effective daily flow information" and information about non-interstate storage providers is even less useful.[222]

129. Storage providers generally object to the proposal, claiming, for example, that the proposal is anti-competitive in nature,[223] the information is already available through other means,[224] or that the daily posting requirements would produce distorted aggregate data and may yield inaccuracies.[225] They oppose both (i) the posting of flow information by storage providers who qualify as major non-interstate pipelines, and; (ii) the posting by a non-interstate pipeline of flow information at a receipt or delivery point that serves a storage provider.

130. In response to the Commission's inquiry regarding the effect of the proposal on a storage provider's negotiating position, commenters warn that revealing their actual storage position would cause them to lose negotiating strength,[226] which could make the

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[222] Id.

[223] Enstor Comments at 3-5; Dow Chemical Comments at 2.

[224] See Jefferson Island Comments at 4-6; NISKA Comments at 4-5; Nisource Comments at 4-5; Williston Basin Comments at 16; EnergySouth Comments at 2, 5.

[225] Nisource Comments at 5; Total Peaking Comments at 11.

[226] Williston Basin Comments at 17.

storage business less profitable, discourage continued and new storage services, lower storage supply and increase prices.[227] As explained by Enstor:

> a rule that requires [a storage provider] to reveal all daily injections and withdrawals into and out of each of its storage facilities would, in effect, reveal to the world what [its] storage position is on each day in each such storage facility.[228]

131. Similarly, EnergySouth comments that revealing such competitively-sensitive information about individual facilities would degrade storage providers' competitive abilities and provide "one-sided information advantage" to storage purchasers.[229] This result, storage providers allege, would run contrary to section 23(a)(1) of the NGA, which requires the Commission to facilitate price transparency "having due regard for… fair competition" among other goals.[230]

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[227] EnergySouth Comments at 13.

[228] Enstor Comments at 6 n. 22; see also EnergySouth Comments at 2 and 11; Jefferson Island Comments at 7-8; NISKA Comments at 6-8; Nisource Comments at 5 and 7-8; Williston Basin Comments at 17; Chevron Pipelines Comments at 32; Enstor Reply Comments at 10.

[229] EnergySouth Comments at 2, 11-12; see also EnergySouth Reply Comments at 1-2.

[230] Section 23(a)(1) of the NGA; 15 U.S.C. 717t-2(a)(1) (2000 & Supp. V 2005).

132. Commenters also claim that the release of flow data from individual storage facilities could lead to increased prices.[231] For instance, NiSource asserts that the posting of regionally specific storage volumes could result in artificially high prices, particularly where storage assets are operated on an integrated basis.[232] Further, commenters suggest that flow information from storage providers would not be useful to market participants or the Commission.[233] National Fuel Supply comments that "information about daily flows at each individual field has only operational, not commercial, significance, and its disclosure would place a burden on National Fuel Supply and other storage providers without facilitating price transparency."[234]

133. Several commenters state that the posting for storage providers should be done on an aggregated basis rather than on a facility-by-facility basis.[235] Otherwise, NiSource reasons, market participants may use daily storage data to artificially increase natural gas

[231] See Chevron Pipelines Comments at 32; EnergySouth Comments at 2, 13; Nisource Comments at 9.

[232] Nisource Comments at 9.

[233] Total Peaking Comments at 11; National Fuel Supply Comments at 6; Williston Basin Reply Comments at 7.

[234] National Fuel Supply Comments at 6; National Fuel Supply Reply Comments at 5-6.

[235] See Enstor Comments at 5; Nisource Comments at 5; EnergySouth Comments at 10-11; Bentek Comments at 10; Comments of National Fuel Supply at 6.

prices when they believe demand is rising.[236] Others contend that an aggregated posting by storage providers should parallel the postings of interstate storage providers. According to Enstor, many interstate natural gas pipelines post one aggregated, system-wide storage capacity number for all of their storage fields, regardless of the number of storage facilities.[237] Enstor explains that if the Commission deems it necessary to require non-interstate storage providers to post daily storage capacity and withdrawal and injection capacities, the Commission should require all storage providers to report this information by specific location rather than by the entirety of their systems.[238]

134. Some commenters request clarification regarding possible storage provider postings. PG&E requests that the Commission clarify that by requiring storage providers to post "capacity" information, it would not be requiring storage providers to post inventory data.[239] PG&E does not object to posting information concerning injections into and withdrawals from its storage facilities on an aggregated basis.[240]

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[236] NiSource Comments at 5.

[237] Enstor Comments at 8.

[238] Id. at 9.

[239] PG&E Comments at 7; NISKA Comments at 7.

[240] PG&E Comments at 7.

135. Commenters propose different ways to limit storage provider posting obligations to address the above concerns. They suggest that the Commission exempt storage providers providing storage service under section 311 of the NGPA under market-based-rates[241] or allow storage providers to post such information on a confidential, non-public basis.[242] EnergySouth comments that "[m]arket-based rate storage providers lacking market power should be regulated under less intrusive gas market transparency rules, if under any such rules, than pipelines providing transportation services."[243]

c. Commission Determination

136. In response to the comments received, the Commission will exempt non-interstate storage providers from the requirement to post information on the Internet.[244] As discussed above, the Commission and other market observers would benefit substantially by increased transparency regarding the flow of natural gas on major non-interstate pipelines. We agree, however, with certain commenters that the Commission's

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[241] See Chevron Pipelines Comments at 29; Jefferson Island Comments at 10; NISKA Comments at 4; see also Enstor Comments at 7 (stating that the Commission should put all storage providers on the same playing field and not exempt some operators from posting information because it is inherently not fair to entities taking on the "additional burden").

[242] See PG&E Comments at 7; NISKA Comments at 5; Chevron Pipelines Comments at 30-31.

[243] EnergySouth Reply Comments at 3.

[244] See new section 284.14(a)(3).

transparency goals may not be substantially enhanced by a requirement that non-interstate storage providers separately post flow information. The Commission here does not require the posting of information regarding natural gas storage inventories for the same reason that it does not seek production information. The focus of the Final Rule is on the flow, not strictly the supply, of natural gas within the United States.

137. Regarding flows into and out of non-interstate storage providers, we determine that relevant information is already captured by the requirements imposed on non-interstate pipelines in the promulgated regulations. That is, a major non-interstate pipeline with a receipt or delivery point at a connection with a storage provider is required to post scheduled flow data if the point has a design capacity greater than 15,000 MMBtu per day. We believe that this posting will be sufficient to capture relevant flow information into and out of storage facilities. Further, as major non-interstate pipelines are already required by this Final Rule to post data for such points, requiring similar postings by storage providers would be duplicative and unduly burdensome.

138. We disagree with the concerns raised by certain non-interstate storage provider commenters regarding competitive issues related to the posting of flow data. First, the Final Rule does not require storage providers to post any information. Rather, the information relating to flows into and out of storage facilities that the Commission requires to be posted is in the control of interconnected non-interstate pipelines. Second, the Commission is not requiring the posting of inventory or storage capacity data. Under

these circumstances, we do not believe that the postings required in this Final Rule would have any deleterious effect on competition.

4. Other Exemptions and Safe Harbor

a. Posting NOPR

139. While the Posting NOPR did not specifically suggest additional exemptions from the propose posting requirements, it solicited comments from interested entities regarding all aspects of the rule.

b. Comments

140. Cranberry Pipeline requests an exemption for intrastate pipelines, such as itself, with a relatively small web-like configuration rather than a long-line system. Furthermore, Cranberry Pipeline requests an exemption for intrastate pipelines that operate in concentrated and transparent markets (such as Appalachia) in which supply and demand information is readily available.[245]

141. Freeport requests that the Commission clarify that the definition of "major non-interstate pipeline" does not include facilities authorized pursuant to section 3 of the NGA that do not render stand-alone transportation service.[246] Freeport asserts that

[245] Cranberry Pipeline Comments at 5-7.

[246] Freeport Comments at 1.

because its sendout pipeline is more akin to a production facility than to a "major non-interstate pipeline," it should not be subject to a posting requirement.[247]

142. SEMCO urges the Commission to exempt major non-interstate pipelines that sell and transport natural gas in the Alaska natural gas market because there are no market hubs in Alaska.[248] For its part, Marathon contends that the Commission does not have jurisdiction over Alaskan pipelines and explains that natural gas pipeline activities in Alaska do not impact interstate commerce.[249]

143. Several commenters advocate for a safe harbor provision for good faith compliance.[250] TPA argues in favor of a safe harbor provision.[251] ONEOK Gathering advocates for "safe harbor" provisions to ensure upstream pipelines are not unfairly punished if posted capacities are based on reasonable assumptions about downstream

[247] Id. at 4.

[248] SEMCO Comments at 4-5.

[249] Marathon Comments at 2-8.

[250] AGA Comments at 18; Atmos Comments at 13; Copano Energy Comments at 12.

[251] TPA Comments at 33; Crosstex Comments at 33.

pressures that differ from actual pressures.[252] OGT explains that capacity on upstream pipelines varies due to the pressures of downstream pipelines.[253]

144. In contrast, Royalty Owners state that any Final Rule should not contain a safe harbor contending that the Commission should be able to accommodate the few instances of honest mistakes -- "Penalties are in place for a reason."[254]

145. AGA requests that distribution companies with Commission-approved service area determinations under section 7(f) of the NGA be excluded from the Final Rule, as such companies are considered "natural gas companies" under section (2)(6) of the NGA.[255]

146. Several commenters contend that the Commission should clarify that Hinshaw pipelines are not subject to the posting requirements for major, non-interstate pipelines. As explained by PSCo, a Hinshaw pipeline should not fall within the definition of "major, non-interstate pipeline" under the proposed regulation.[256] PSCo also contends that flow information from a Hinshaw pipeline would not be useful in meeting the Commission's goals for the pipeline posting requirements.

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[252] ONEOK Gathering Comments at 18.

[253] Id.

[254] Royalty Owners Comments at 2.

[255] AGA Comments at 6; Louisville Gas and Electric Co. Comments at 3-4.

[256] PSCo Comments at 3-4; see also AGA Comments at 6-7.

c. **Commission Determination**

147. The Commission will not provide a separate exemption for pipelines in "concentrated and transparent markets" as requested by Cranberry Pipeline.[257] The increase in the threshold for the definition of major non-interstate pipelines should accommodate Cranberry Pipeline's request for an exemption for "smaller" pipelines. It would be extremely difficult to create a test for what is a "concentrated and transparent" market. Such a test would create an undue burden on a pipeline and an unnecessary administrative burden on the Commission.

148. Likewise, we decline to provide a separate exemption for sendout pipelines covered under section 3 of the NGA as requested by Freeport LNG. The flow information from such pipelines, if they were to meet the 50 million MMBtu delivery threshold, would provide valuable information to market participants, market observers and the Commission. Peak sendout at liquefied natural gas facilities may represent material volumes of natural gas within a region or trading location and, therefore, may significantly explain changes in prices.

149. Similar reasoning applies to our decision not to categorically exclude Hinshaw pipelines or LDCs operating under a section 7(f) service area determination from the

[257] Cranberry Pipeline describes these types of entities as intrastate pipelines that operate in concentrated and transparent markets (such as Appalachia) in which supply and demand information is readily available. Cranberry Pipeline Comments at 5-7

posting requirements in this Final Rule. Hinshaw pipelines and entities that serve an interstate service area under NGA section 7(f) that meet or exceed the 50 million MMBtu delivery threshold are sizeable entities and flows on these pipelines may have substantial effect on the natural gas market, especially regionally.

150. However, we will not impose the requirements of the Final Rule on non-interstate pipelines in Alaska. At this time, such pipelines do not have a sufficiently significant impact on the interstate natural gas market so as to warrant their inclusion in the Final Rule.

151. The Commission will not adopt a "safe harbor" for posting. The Commission articulated a safe harbor in the Policy Statement on Price Indices,[258] which grants a data provider that adopts certain reporting standards a rebuttable presumption that data submitted to index developers is accurate, timely, and submitted in good faith. However, a similar perpetual safe harbor is not warranted regarding the posting requirements set forth in this Final Rule. The Policy Statement on Price Indices sets forth standards that data providers could choose to adopt should they voluntarily elect to provide data to price index developers. One goal of the Policy Statement on Price Indices was to "encourage [industry participants] voluntarily to report energy transactions to providers or price

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[258] Price Discovery in Natural Gas and Electric Markets; Policy Statement on Natural Gas and Electric Price Indices, 104 FERC ¶ 61,121 (2003), clarified, 109 FERC ¶ 61,184 (2004).

indices." The safe harbor that we adopted in the Policy Statement on Price Indices was a direct extension of this policy goal.

152. The posting requirements set forth in this Final Rule are mandatory posting requirements adopted consistent with the directives of EPAct 2005, not the voluntary reporting of price data to an index developer. There is no policy need to provide an incentive for posting the information required in this Final Rule similar to the encouragement to reporting price data to index developers. Other mandatory requirements, such as the filing of FERC Form No. 2, do not include such a safe harbor. For this reason, we are not persuaded that a perpetual safe harbor is warranted.[259]

F. Posting of No-Notice Service Information by Interstate Pipelines

1. Posting NOPR

153. The Posting NOPR proposed to require interstate natural gas pipelines to post actual flow information within 24 hours of the close of the gas day on which it flowed.[260] This proposed requirement, the Commission stated, would disseminate information about

[259] Recently, in Order No. 704-A, the Commission declined to adopt a perpetual safe harbor for the annual reporting requirement for Form No. 552. FERC Stats. & Regs. ¶ 31,275 at P 69. While we did adopt a one-year safe harbor for 2009 filings of Form No. 552, we decline to do so here. As discussed below, interstate pipelines will be required to comply with the promulgated posting requirements within 60 days of the publication of this Final Rule in the Federal Register. Major non-interstate pipelines must comply within 150 days of publication. We are confident that pipelines subject to this Final Rule will be able to comply with the new regulations in a timely manner.

[260] Posting NOPR at P 4.

no-notice service for interstate pipelines.[261] The Commission observed that posting of actual flow information could fill the gap between scheduled and actual flows and allow market observers to ascribe price behavior with physical changes in flows, particularly in the northern tier of the country where no-notice service is more prevalent.[262] The Posting NOPR also observed that posting of actual flow information could reduce the opportunities for market participants to exploit non-public flow information.[263] We sought comments about implementation of the requirement to post actual flows on interstate natural gas pipelines in order to better understand the costs and benefits of such posting.[264]

2. Comments

154. Several commenters oppose the requirement that interstate pipelines post actual flow information as too burdensome in relation to the minimal information that would be gleaned. For example, INGAA contends that information regarding actual flows do not further market transparency because they do not reflect ongoing market dynamics rather

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[261] Id. at P 41.

[262] Id.

[263] Id. at P 42.

[264] Id. at P 2, 46.

they trace to transactions that have already been completed.[265] Further, according to INGAA, actual flows are independent of the contract paths that INGAA asserts define market transactions.[266] Several commenters contend, without specificity, that the posting of actual flows will be costly.[267]

155. Several commenters argue that the current posting of scheduled volume information provides sufficient transparency and there is no evidence that the posting of actual flows would increase transparency.[268] Spectra states that scheduled volumes postings contain better and more timely data for the market than actual flow postings would contain.[269] Spectra also points out that the market currently uses scheduled volume data to make decisions, and there is no evidence that the market is currently functioning in any way other than efficiently. [270] National Fuel Supply states that no-notice volumes are not important to understanding the market and "the Commission should not be concerned that information about no-notice volumes could be exploited in a

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[265] INGAA Comments at 12; see also Chevron Pipelines Comments at 12-13.

[266] INGAA Comments at 13.

[267] See, e.g., id. at 17-18.

[268] Id. at 7; National Fuel Supply Comments at 4; Spectra Comments at 8; Williston Basin Comments at 3-5.

[269] Spectra Comments at 7; see also NiSource Comments at 5.

[270] Spectra Comments at 8.

manipulative or discriminatory manner"[271] Similarly, Kinder Morgan Interstate maintains that the Commission offers no support that the posting of no-notice activity would prevent misconduct.[272]

156. Several commenters argue that the posting of actual flow information could confuse market participants due, for instance, to timing differences between when the original imbalances occur and when they are cleared.[273] Commenters object to including actual flow information because it would include operational flows, such as flows reflecting maintenance activities, line pack management, blending and balancing, which are not relevant to the price formation process. [274] Kinder Morgan Interstate contends that no-notice activity is not useful in establishing future prices and does not reflect current market conditions; thus, it would not enhance price transparency.[275]

157. On the other hand, some commenters support the posting of actual flow information by interstate pipelines. Calpine asserts that actual daily flow information would allow an assessment of how accurately scheduled volumes reflect the actual

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[271] National Fuel Supply Comments at 4-5.

[272] Id.

[273] Williston Basin Comments at 3-5.

[274] Id. at 5-7; Chevron Pipelines Comments at 16; Total Peaking Comments at 12.

[275] Kinder Morgan Interstate Comments at 10.

volumes associated with activities in the real-time market, which "is especially critical in times of constraints caused by unplanned events or outages."[276] APGA supports posting of actual flow volume as it would provide market observers an important "missing piece of the puzzle" to understand what is transpiring in the market, both operationally and as to supply and demand fundamentals.[277] The New York PSC supports obtaining actual flows from not just interstate pipelines, but also intrastate pipelines, as the data would provide market participants with increased understanding of daily trends in natural gas markets, including regional conditions and pipeline capacity available to resolve regional supply/demand imbalances, especially during peak demand or emergency conditions.[278]

158. Bentek's comments suggest that the posting of actual volumes is one option to obtain data to ensure that no-notice service is transparent on interstate pipelines, but, alternatively, proposed that market observers rely on publication of no-notice volumes.[279]

159. Several commenters respond specifically to the Posting NOPR's inquiry as to whether no-notice activity is reflected in trading activity or storage activity. Chevron Pipelines responds that the only no-notice activity that would equate to trading activity is

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[276] Calpine Comments at 4.

[277] APGA Comments at 3-4.

[278] New York PSC Comments at 1.

[279] Bentek Comments at 3-5.

storage injections.[280] Kinder Morgan Interstate contends that no-notice activity on their pipelines generally reflect storage withdrawals because the trading activity associated with storage withdrawals would have already occurred when the gas was purchased and injected into storage.[281] Williston Basin states that on its system no-notice volumes are exclusively associated with storage activity.[282] Chevron Pipelines describe no-notice service as commonly associated with two types of transactions: storage injections/withdrawals and imbalance management, including balancing under Operating Balancing Agreements.[283]

3. Commission Determination

160. While the Commission will not require interstate natural gas pipelines to post information regarding all actual flows, this Final Rule requires interstate natural gas pipelines to post the volumes of no-notice service flows[284] at each receipt and delivery

[280] Chevron Pipelines Comments at 17.

[281] Kinder Morgan Interstate Comments at 9.

[282] Id.

[283] Chevron Pipelines Comments at 13-14.

[284] See 18 CFR 284.7(a)(4) (requiring pipelines to provide no-notice service).

point before 11:30 a.m. central clock time (the timely cycle under NAESB Nomination Standard 1.32) three days after the day of gas flow.[285]

161. The Commission requires an interstate pipeline to provide no-notice service if such service was provided as of the effective date of Order No. 636.[286] Accordingly, firm shippers that receive no-notice service can receive delivery of gas on demand up to their firm entitlements on a daily basis without incurring daily balancing and scheduling penalties. No-notice service is usually used by shippers when gas load is much higher than has been nominated and scheduled the previous day (due, perhaps, to unanticipated cold or hot temperatures). However, while Order No. 636 and its progeny mandated the adoption of no-notice service, the Commission has previously not required Internet posting of no-notice volumes.

162. The absence of reporting of no-notice service means that the market cannot see large and unexpected increases in gas demand and therefore cannot understand price formation during such occasions. Information on no-notice volumes is valuable even posted after the no-notice gas flows because it allows market participants and other

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[285] Total Peaking, Venice Gathering, and DCP Midstream sought in this proceeding to exempt specific interstate natural gas pipelines from the existing posting requirement. We believe the current posting requirements on interstate pipelines should not be reduced at this time and do not adopt any exemptions to that requirement. As always, interstate pipelines may request a waiver from the requirements.

[286] See Order No. 636-A at p. 30,574.

market observers to understand the historical patterns of flows and will enable them to better predict future no-notice flows. Requiring interstate pipelines to post no-notice volumes will meet the goals of the Commission with less of a burden on interstate natural gas pipelines than full posting of actual flows.

163. The posting of no-notice service will be of particular importance in the northern tier of the country during extreme weather conditions. As we pointed out in the Posting NOPR, the gap between scheduled and actual flows occurs most commonly in this region of the country 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. Further, as observed by NGSA, "[o]n heating season peak days or days with wide intra-day weather swings, no-notice volumes can be significant; therefore, scheduled volumes are not a proxy for physical flow and, thus, do not necessarily provide an accurate picture of underlying market fundamentals."[287]

164. The Commission has received many hotline and other informal calls from shippers with complaints about available service on interstate pipelines. Often, callers indicate confusion regarding discrepancies in pipeline postings of scheduled volumes that indicate that capacity should be available and a pipeline's refusal to provide same-day service on

[287] NGSA Comments on the Initial NOPR at 10.

the grounds that there is no capacity available. This lack of available capacity is very often due to the use of no-notice service. Posting information about no-notice service, even after the fact, will make availability on interstate natural gas pipelines more transparent, consistent with section 23 of the NGA.[288]

165. Public posting of no-notice service information could also prevent other forms of misconduct with direct effects on natural gas in interstate commerce. The lack of public flow information could provide 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 activities. Therefore, we disagree with commenters that suggest that transparency will not be enhanced via the posting of no-notice flows.

166. We believe this requirement to post no-notice service information would not be unduly burdensome for interstate pipelines. An interstate natural gas pipeline should already have information on the no-notice service it provides. Additionally, pipelines already have the existing information technology (i.e., Internet websites) for posting such information. We further reduce the posting burden for posting no-notice service by requiring such posts to occur within seventy-two hours after the applicable gas day. This compares to a twenty-four hour deadline as originally suggested in the Posting NOPR.

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[288] Section 23(a)(2) of the NGA; 15 U.S.C. 717t-2(a)(2) (2000 & Supp. V 2005).

VI. Effective Date of the Final Rule and Compliance Deadlines

167. The Final Rule will become effective 30 days following publication in the Federal Register. Interstate pipelines subject to these new posting requirements must comply with the regulations promulgated herein no later than 60 days following such publication. Interstate pipelines already have Internet websites in place and likely have ready means in-place to capture data necessary to post information regarding no-notice service. Under these circumstances, we believe that a 60-day deadline is sufficient time for all interstate pipelines to comply with the regulations.

168. While some major non-interstate pipelines have websites and data collection abilities similar to interstate pipelines, others may need additional time to put procedures in place to comply with the instant posting requirements. Therefore, we will give major non-interstate pipelines 150 days following publication of this Final Rule to come into compliance with the new regulations. This time will allow them sufficient time to update their information technology systems and establish an Internet website for the postings. This time frame for compliance will allow them to complete the current heating season without the need to implement new posting procedures while ensuring that new postings are available prior to the next heating season. While one commenter, Kinder Morgan Intrastate, estimated it would take one year "to complete the necessary IT upgrades and

data reorganization,"[289] that estimate assumed a requirement for obtaining and posting both actual flows and scheduled volumes on both mainline segments and on receipt and delivery points. As the regulations promulgated here do not require obtaining and posting actual flows or obtaining scheduled volumes from segments, Kinder Morgan Intrastates' estimate is excessive.

VII. Information Collection Statement

169. The Office of Management and Budget (OMB) regulations require it to approve certain reporting and recordkeeping (information collection) requirements imposed by an agency.[290] In this Final Rule, the Commission will set forth two requirements for the posting or collection of information, one for interstate and one for major non-interstate pipelines.[291] The Commission has submitted 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.[292]

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[289] Kinder Morgan Intrastate at 8.

[290] 5 CFR 1320.11.

[291] 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.

[292] 44 U.S.C. 3507(d).

170. The requirement for interstate natural gas pipelines to post information about no-notice service, would impose an additional information collection burden on interstate natural gas pipelines. The other requirement for major non-interstate pipelines to post scheduled volume information would impose an additional information collection burden on major non-interstate pipelines. Interstate and major non-interstate pipelines already collect this information, but do not necessarily post it. Certain non-interstate pipelines have asserted in comments on the Posting NOPR that costs would be quite high if additional equipment were needed to meet quick posting deadlines. However, given that this information is used in their business, the Commission still believes that the burden that would be imposed by this proposed requirement is largely for the collection and posting of this information in the required format.[293] Further, certain non-interstate pipelines provide burden estimates based on posting for all receipt and delivery points and by mainline segment and based on measuring and posting actual flow information. These estimates are too high because, as explained in this preamble, the Commission will not require posting at mainline segments and does not require posting at all receipt and delivery points, rather it will require posting at each receipt and delivery point that has a

[293] 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.").

design capacity greater than 15,000 MMBtu/day. Finally, the Commission has reduced the number of non-interstate pipelines that will be required to post by raising the delivery threshold used to define a major non-interstate pipeline from 10 million MMBtu per year to 50 million MMBtu per year in deliveries. For interstate natural gas pipelines, the Commission reduced the burden by not requiring the posting of actual flow information; instead, the Commission will require that interstate natural gas pipelines post information on no-notice transportation. Elsewhere in this preamble, the Commission has further addressed comments regarding the burden of the requirements.

171. OMB regulations require OMB to approve certain information collection requirements imposed by agency rule. The Commission submitted notification of this rule to OMB.

Public Reporting Burden:

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

Data Collection	No. of Respondents	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	80	2	365	29,200	40

Data Collection	No. of Respondents	No. of Daily Postings per Respondent	Estimated Annual Burden Hours per Respondent	Total Annual Hours For All Respondents	Estimated Start-Up Burden Per Respondent
Additional Interstate Natural Gas Pipeline Postings	101	1	183	18,433	8
Total	181			47,633	

The total annual hours for collection (including recordkeeping) for all respondents is estimated to be 47,633 hours.

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	$142	$30,000	$30,142
Additional Interstate Natural Gas Pipeline Postings	$0	$ 5,000	$ 5,000

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.

Necessity of the Information: The daily posting of additional 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 Commission 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.

VIII. Environmental Analysis

172. 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.[294] The actions taken here fall within categorical exclusions in

[294] Regulations Implementing the National Environmental Policy Act of 1969, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (1987).

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.[295] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

IX. Regulatory Flexibility Act

173. The Regulatory Flexibility Act of 1980 (RFA)[296] 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 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

[295] 18 CFR 380.4(a)(5) and (a)(27).

[296] 5 U.S.C. 601-612.

entities. Natural gas pipelines are classified under NAICS code, 486210, Pipeline Transportation of Natural Gas.[297] 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.[298] 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. In this Final Rule, the Commission will reduce the number of major non-interstate pipelines that will be subject to the posting requirements by reducing the delivery threshold from 10 million MMBtu/year to 50 million MMBtu/year. Further, the Commission as explained above considered alternatives for obtaining and disseminating daily the information on scheduled volumes.

X. Document Availability

174. In addition to publishing the full text of this document in the Federal Register, the Commission will provide all interested persons an opportunity to view and/or print the

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[297] 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.

[298] 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).

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, NE, Room 2A, Washington DC 20426.

175. 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.

176. 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.

XI. Effective Date and Congressional Notification

177. These regulations are effective [**insert date 30 days from publication in Federal Register**]. The Commission will determine, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule [is or is not] a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of subjects in 18 CFR Part 284

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, Code of Federal Regulations, 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:

(1) Is not a "natural gas company" under section 1 of the Natural Gas Act; and

(2) Delivers annually more than fifty (50) million MMBtu (million British thermal units) of natural gas measured in average deliveries for the previous three calendar 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 information about the volumes of no-notice transportation provided pursuant to § 284.7(a)(4). This information must be posted at each receipt and delivery point before 11:30 a.m. central clock time three days after the day of gas flow.

* * * * *

4. Section 284.14 is added to read as follows:

§ 284.14. Posting Requirements of major non-interstate pipelines.

(a) Daily posting requirement. A major non-interstate pipeline must provide on a daily basis on an Internet website and in downloadable file formats equal and timely access to information relevant to the design capacity of each receipt or delivery point that has a design capacity equal to or greater than 15,000 MMBtu/day and the amount scheduled at each such point whenever capacity is scheduled. For each such point on its system, a major non-interstate pipeline must provide the following information: Transportation Service Provider Name, Posting Date, Posting Time, Nomination Cycle, Location Name, Additional Location Information if Needed to Distinguish Between Points, Location Purpose Description (Receipt, Delivery, or Bilateral), Design Capacity, Scheduled Volume, Available Capacity, and Measurement Unit (Dth, MMBtu, or MCf). The information in this subsection must remain posted for a period of one year.

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

(1) Those that fall entirely upstream of a processing, treatment, or dehydration plant;

(2) Those that deliver more than 95 percent of the natural gas volumes they flow directly to retail end-users as measured by average deliveries over the preceding three calendar years; and,

(3) Storage providers.

Appendix A: List of Commenters and Abbreviations.

Commenter	Abbreviation
1. Alliance Pipeline L.P.	Alliance
2. American Gas Association	AGA
3. American Public Gas Association	APGA
4. Atmos Pipeline-Texas	Atmos
5. Bear Paw Energy L.L.C. and Oneok Field Services Company L.L.C.	ONEOK Gathering Companies
6. BENTEK Energy, L.L.C.	Bentek
7. Bridgeline Holdings, L.P., Chevron Midstream Pipeline LLC, Chevron Keystone Gas Storage, LLC, Sabine Pipe Line LLC, and Chandeleur Pipe Line Company	Chevron Pipelines or CVX Pipelines
8. Calpine Corporation	Calpine
9. Copano Energy, L.L.C.	Copano Energy
10. Cranberry Pipeline Corporation	Cranberry Pipeline
11. Crosstex Energy Services, LP	Crosstex
12. DCP Midstream, LLC	DCP Midstream
13. Dow Chemical Company	Dow Chemical
14. Dow Interstate Gas Company	Dow Interstate
15. Dow Pipeline Company	Dow Pipeline
16. EnergySouth, Inc.	EnergySouth
17. Duke Energy Corporation	Duke
18. Enbridge Energy Company, Inc.	Enbridge
19. Encana Oil & Gas (USA) Inc.	Encana
20. Enstor Operating Company, LLC	Enstor
21. EOG Resources, Inc., Pecan Pipeline Company, and Pecan Pipeline (North Dakota), Inc.	EOG Resources
22. Gas Processors Association	Gas Processors
23. Freeport LNG Development, L.P.	Freeport
24. Independent Petroleum Association of America	IPAA
25. Interstate Natural Gas Association of America	INGAA
26. Jefferson Island Storage & Hub, L.L.C.	Jefferson
27. Kinder Morgan Interstate Pipelines	Kinder Morgan Interstate
28. Kinder Morgan Texas Intrastate Pipeline Group	Kinder Morgan Intrastate
29. LaGrange Acquisition L.P.	LaGrange

Commenter	Abbreviation
30. Liberty Gas Storage, LLC	Liberty Gas Storage
31. Louisville Gas and Electric Company	Louisville Gas and Electric
32. Marathon Oil Company	Marathon
33. National Association of Royalty Owners	Royalty Owners
34. National Fuel Gas Distribution Corporation	National Fuel Distribution
35. National Fuel Gas Supply Corporation	National Fuel Supply
36. Natural Gas Supply Association	NGSA
37. New York Public Service Commission	New York PSC
38. NISKA Gas Storage LLC	NISKA
39. NiSource Gas Transmission & Storage Companies	NiSource
40. NorthWestern Energy Corporation	NorthWestern
41. Oklahoma Corporation Commission	Oklahoma Corporation Commission
42. Oneok Gas Transportation, L.L.C., and Oneck Westex Transmission, L.L.C.	ONEOK Gathering
43. Pacific Gas & Electric Company	PG&E
44. Process Gas Consumers Group	PGC
45. Public Service Company of Colorado	PSCo
46. Railroad Commission of Texas	Railroad Commission of Texas
47. Regency Energy Partnership	Regency
48. Ryan Cole	Ryan Cole
49. SEMCO Energy Gas Company, Enstar Natural Gas Company, and Alaska Pipeline Company	SEMCO
50. Shell Offshore Inc.	Shell
51. SPECTRA Energy Transmission, LLC and Spectra Energy Partners, LP	Spectra
52. Texas Independent Producers and Royalty Owners	TIPRO
53. Texas Pipeline Association	TPA
54. Total Peaking Services, L.L.C.	Total Peaking
55. Venice Gathering System, L.L.C.	Venice Gathering
56. Williston Basin Interstate Pipeline Company	Williston Basin
57. Yates Petroleum Corporation and Agave Energy Corporation	Yates