

125 FERC ¶ 61,191
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

SG Resources Mississippi, L.L.C.

Docket No. RP08-606-000

ORDER DENYING REQUEST FOR WAIVER AND ALTERNATIVE PETITION FOR
RULEMAKING PROCEEDING

(Issued November 20, 2008)

1. On September 3, 2008, SG Resources Mississippi, L.L.C. (SGRM) filed a request for waiver of Commission regulations related to the posting of rates or, in the alternative, a petition for initiation of a rulemaking proceeding (September 3 filing). For the reasons discussed below, the Commission denies the request for waiver and the alternative petition for a rulemaking proceeding. However, contemporaneously with this order, the Commission is issuing a Notice of Inquiry (NOI) to consider whether the disparate reporting requirements for intrastate pipelines performing interstate service under section 311 of the Natural Gas Policy Act of 1978 (NGPA) have an adverse competitive effect on interstate storage providers, as alleged by SGRM.

Background

2. In Order No. 637,¹ the Commission revised its reporting requirements for interstate pipelines in order to provide more transparent pricing information and to permit more effective monitoring for the exercise of market power and undue discrimination. Section 284.13(b)(1), as adopted by Order No. 637, requires interstate pipelines to post on their Internet web site, with respect to each firm contract, the name of the shipper, the

¹ *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, at 31,320-31,326 (Order No. 637), *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099 (Order No. 637-A), *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).

rate charged, the contract quantity, the receipt and delivery points, the duration of the contract, and various other information. The pipeline must post this information no later than the first nomination under a transaction. Section 284.13(b)(2) requires that pipelines post similar information concerning interruptible service on a daily basis no later than the first nomination for service. Section 284.13(c) also requires interstate pipelines to file with the Commission on the first business day of each calendar quarter an index of its firm transportation and storage customers. The information required to be included in the Index of Customers does not include the rates paid by the customers.

3. Order No. 637 did not modify the Commission's reporting requirements in section 284.126(c) for intrastate pipelines performing interstate transportation and storage under section 311 of the NGPA. That section requires intrastate pipelines to file semi-annual reports of their storage activity, including the unit charge and total revenues received from each customer during the injection/withdrawal period. Section 284.126(b) requires section 311 pipelines to make similar reports concerning their transportation services on an annual basis.

Summary of Instant Filing

4. SGRM is an interstate pipeline regulated under the Natural Gas Act (NGA), operating a high deliverability salt dome natural gas storage facility in Mississippi. In its orders certificating SGRM, the Commission approved SGRM's proposal to charge market-based rates for its storage, hub, and wheeling services.² SGRM commenced service on May 8, 2008. It requests that the Commission grant interstate storage companies with market-based rates a waiver of the requirements in sections 284.13(b)(1)(iii) and (b)(2)(ii) that they post rates negotiated and charged under individual market-based rate contracts. SGRM does not request waiver of the other reporting requirements in section 284.13.

5. SGRM asserts that the waiver is necessary to maintain the confidentiality of commercially-sensitive information. SGRM contends that, without these waivers, mandatory disclosure of pricing information will continue to place SGRM and other similarly situated interstate storage providers at a significant disadvantage in negotiating with current and prospective customers and, in particular, relative to intrastate storage operators performing interstate service pursuant to NGPA section 311 subject to market-based rates. SGRM further asserts that requiring interstate storage operators authorized to charge market-based rates to comply with the subject posting requirement is fundamentally inconsistent with the Commission's goal of promoting a robustly competitive market for gas storage services that encourages new entry and expansion.

² *SG Resources Mississippi, L.L.C.*, 101 FERC ¶ 61,029 (2002), certificate amended, 118 FERC ¶ 61,048 (2007).

SGRM concludes that, as a result of the mandatory price posting requirements, competition among storage providers is less robust and fair.

6. SGRM states that, as it commenced the performance of jurisdictional services, SGRM personnel became concerned that the Commission's required posting of rates would disclose certain commercially-sensitive contract information in the form of individually negotiated prices for storage and hub services. SGRM asserts that compliance with the disclosure requirements will damage its competitive position relative to other storage providers operating in its market area and will disadvantage SGRM in negotiations with customers and prospective customers.

7. SGRM argues that the mandatory disclosure of commercially-sensitive contract pricing information provides prospective customers and competitors, such as NGPA section 311 intrastate storage providers that are not subject to this disclosure, with an unfair competitive advantage. SGRM asserts that the Commission has granted storage operators authorization to charge market-based rates based on the conclusion that the relevant markets were sufficiently competitive to constrain prices to just and reasonable levels. SGRM further asserts that the posting of previously negotiated market-based rates may prevent storage providers like SGRM from negotiating market-based rates that accurately reflect the then-current market value of storage services. SGRM contends that the posted rates can act as an artificial constraint on negotiations with prospective customers seeking to pay no more than the lowest historic posting, without regard for current market conditions. SGRM further contends that rate postings shift the focus of negotiations from the value the market and each customer may attribute to the proposed service to the rates the service provider has agreed to charge in earlier, often very different, transactions.

8. SGRM asserts that when its competitors, including other interstate and intrastate storage operators and would-be new market entrants, are informed of prices and customer identity, the most sensitive commercial information of a market-based rate storage provider, they are enabled to price selectively to undercut SGRM, and SGRM will not have access to its competitors' agreed-upon rates until after the fact, if at all. SGRM further asserts that the posting requirements place interstate gas storage operators, at a competitive disadvantage relative to NGPA section 311 intrastate storage projects, including several of its competitors and neighbors, which are not subject to the same posting requirements. SGRM contends that section 311 intrastate storage operators are generally successful in maintaining the confidentiality of their price information when they file their semi-annual reports of storage activity with the Commission.

9. SGRM asserts that these posting requirements have not changed significantly since Order No. 637 was issued in 2000 and were adopted to promote pricing transparency to enable customers to monitor pipeline discounting under cost-based rate regulation. SGRM further asserts that, since these posting regulations were adopted,

there has been unprecedented development of services that are offered at market-based rates, primarily by independent storage providers, yet the existing posting regulations continue to impose a price disclosure requirement on interstate storage operators that is fundamentally inconsistent with a market-based approach to storage service pricing. SGRM argues that the price posting requirement is not required for the protection of customers against exploitation where market-based rates have been authorized since customers cannot be forced to pay unreasonable rates and the Commission only grants such authorization to storage providers that demonstrate that they lack market power or otherwise satisfy the customer protection requirements of NGA section 4(f). SGRM asserts that the Commission has recognized that companies authorized to charge market-based rates should be treated differently from traditional cost-based rate service providers and has also recognized the need to maintain the confidentiality of commercially-sensitive information.

10. SGRM argues that symmetrical access to information is a critical element in contract negotiations in a competitive market. SGRM asserts that mandatory disclosure of one party's commercially-sensitive information places that party at a competitive disadvantage in other contract negotiations and undermines the benefits of market-based rates that Congress and the Commission have recognized as essential to promoting the development of needed natural gas storage infrastructure. SGRM further asserts that its certificate order, which it states is typical of market-based rate storage company certificate orders, includes the waivers of the Commission's regulations exempting SGRM from the Commission's regulations relating to the provision of cost-of-service information. SGRM contends that the recourse rates of companies regulated on a cost-of-service basis are already a matter of public record while the financial viability and success of a service provider authorized to charge market-based rates is directly dependent on its ability to negotiate appropriate pricing with each of its customers.

11. Alternatively, SGRM requests that, if the Commission denies the waivers of the Internet posting requirements requested here, the Commission instead initiate a rulemaking to determine whether the Commission's regulations should be modified to exempt storage providers authorized to charge market-based rates from the relevant portions of the Internet posting regulations.

Notice of Filing, Interventions, Comments and Protests

12. Public notice of the instant filing was issued on September 8, 2008, with interventions and protests due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2008)). Pursuant to rule 214 (18 C.F.R. § 385.214 (2008)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

13. Tres Palacios Gas Storage LLC; Chestnut Ridge Storage LLC; Tarpon Whitetail Gas Storage, LLC; Liberty Gas Storage, LLC; Mississippi Hub, LLC; Niska Gas Storage LLC; Petal Gas Storage, L.L.C.; and Porte Barre Investments, L.L.C. (d/b/a Bobcat Gas Storage) filed comments in support of SGRM's filing. American Public Gas Association (APGA) filed comments asserting that the Commission should deny the requested waiver of the posting requirements, however, if the Commission believes the request for waiver warrants further consideration, it should establish a rulemaking proceeding to consider the matter. Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Southern Power Company (collectively SCS) filed comments stating that the proposal should be subject to the Commission's normal rulemaking process so that all affected parties can comment on it. The Natural Gas Supply Association, the Independent Petroleum Association of America, and the Process Gas Consumers Group (collectively the Associations), the American Gas Association (AGA), and Merrill Lynch Commodities, Inc. (Merrill Lynch) filed protests to SGRM's filing.

14. The Associations and AGA argue that SGRM's request for waiver should be denied. The Associations assert that SGRM remains subject to regulation by the Commission; together the authorization to charge market-based rates and further Commission action eliminating the posting requirement would prevent both customers and the Commission from monitoring potential changes in SGRM's market power status. The Associations are uncertain whether intrastate competitors can even be considered to operate in the same market as interstate storage providers since potential storage customers simply cannot obtain the same services from section 311 intrastate operators which are subject to different regulations and reporting requirements than interstate storage facilities.

15. AGA contends that public price reporting is an important check against the potential for the exercise of undue discrimination and market manipulation by those that have been granted market-based rate authority. AGA asserts that the posting requirement allows customers to determine whether the prices the storage provider offers in negotiation are just and reasonable based on prices paid by other similarly situated market participants. AGA further asserts that SGRM does not address how the Commission would fulfill its statutory obligations to prevent undue discrimination and detect and punish market manipulation if market-based rate storage providers were not required to make their pricing information publicly available. AGA contends that the Commission has been moving toward greater market transparency even in commodity markets where all market participants are considered to lack market power.

16. The Associations also argue that the Commission should not institute the requested rulemaking proceeding. The Associations assert that, as the Commission

recognized in Order No. 678³ only two years ago, posting ensures that the Commission receives sufficient information to know whether storage markets in which applicants have been authorized to charge market-based rates remain competitive. The Associations further assert that this finding has not changed, and SGRM has provided no factual evidence to the contrary. The Associations contend that storage operators with market-based rate authority nevertheless remain subject to regulation, and the Commission has the ability to take appropriate action if the required postings reveal changes in an operator's market power status. The Associations assert that eliminating these posting requirements would essentially insulate storage operators with market-based rate authority from regulation by preventing customers and the Commission from monitoring potential changes in an operator's market power status. The Associations further assert that only real-time monitoring can ensure that market participants are not subjected to market-power abuse for an extended period of time before the abuse is detected and ultimately corrected.

17. Merrill Lynch argues that SGRM's waiver will significantly and adversely impact the competitive storage market in which Merrill Lynch actively participates, as well as having detrimental consequences on competition and energy prices. Merrill Lynch asserts that, as a participant in the competitive interstate storage market, it actively monitors the website postings of the market-based rate storage providers to determine the rates paid by its competitors and to develop bids for capacity in the storage market. Merrill Lynch further asserts that the transparency resulting from these postings has allowed a more robust, competitive storage capacity market to develop and allows market participants to respond on a real time basis to changing market conditions. Merrill Lynch contends that the negative impact of market-based rate storage providers not posting pricing information is exacerbated by the fact that market-based storage providers are not subject to traditional cost-of-service recourse rates that provide certain protections and maximum rate certainty to shippers. Merrill Lynch further contends that the posting of pricing information by market-based storage providers provides the transparency necessary to ensure that the market is acting properly and that there is no hoarding of capacity or other undue discrimination or preference. Merrill Lynch asserts that this type of transparency is essential on a real-time basis and cannot be replaced with semi-annual storage reports or periodic audits or other checks by the Commission. Merrill Lynch further asserts that it is much more efficient for a market participant to quickly identify and address immediately any market manipulation or undue discrimination concerns. Merrill Lynch concludes that the transparency does not only protect storage customers

³ *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220 (Order No. 678), *order on reh'g and clarification*, Order No. 678-A, 117 FERC ¶ 61,190 (2006).

from undue discrimination or preference by the storage provider but it also plays a key role in the storage capacity marketplace by allowing market participants to know immediately what rates their competitors are paying and whether the market participant's bids for capacity are still competitive.

18. SGRM filed an answer to the protests (answer).⁴ SGRM argues that the rate posting requirements are not required for the protection of customers purchasing storage services from storage service providers which, the Commission has found, lack market power. The answer will be discussed in detail below.

Discussion

19. As discussed below, SGRM has failed to provide good cause to support its request for waiver of the posting requirements in section 284.13(b)(1)(iii) and (b)(2)(ii) of the Commission's regulations. Therefore, SGRM's request for waiver is denied. In addition, the Commission denies SGRM's alternative request that the Commission initiate a rulemaking to consider removing these posting requirements from its regulations. However, the Commission is contemporaneously issuing a NOI seeking comments on whether the Commission should impose additional reporting requirements on NGPA section 311 intrastate pipelines, including storage operators with market-based rates.

20. In Order No. 637, the Commission held that the section 284.13(b) transactional posting requirements are "necessary to provide shippers with the price transparency they need to make informed decisions, and the ability to monitor transactions for undue discrimination and preference. Shippers need to know the price paid for capacity over a particular path to enable them to decide, for instance, how much to offer for the specific capacity they seek."⁵

21. SGRM asserts that various changes since Order No. 637 adopted the transactional posting requirements in 2000 justify reconsidering their application to interstate storage companies with market-based rates. According to SGRM, the Commission adopted the posting requirements to enable pipeline customers to monitor pipeline discounting under cost-based rate regulation. However, SGRM points out, the Commission has authorized more than a dozen newly certificated interstate storage projects to charge market-based rates since 2000.⁶ SGRM also asserts that in 2005 Congress recognized the need for

⁴ The Commission's Rules of Practice and Procedure do not permit answers to protests (18 C.F.R. § 385.213(a)(2)(2008)). The Commission finds good cause to admit SGRM's answer since it will not delay the proceeding, may assist the Commission in understanding the issues raised, and will ensure a complete record.

⁵ Order No. 637, at 31,324.

⁶ SGRM's September 3, 2008 filing, at 9, n.11 and its answer, at 12, n.25.

market-based rates to encourage storage development with the addition of section 4(f) to the NGA by Energy Policy Act of 2005 (EPAct 2005),⁷ but SGRM contends that market-based rates are less likely to accomplish that goal, if storage providers must publicly disclose them.

22. None of these developments justifies exempting interstate storage companies with market-based rates from the requirements in section 284.13(b) that they post the rates charged in each storage transaction. Contrary to the suggestion of SGRM, Order No. 637 adopted the posting requirements for the purpose of enabling the Commission and shippers to monitor market-based transactions, as well as cost-based transactions, for undue discrimination and preference and to promote competition through price transparency. When the Commission adopted Order No. 637, it had already authorized a number of interstate storage companies, including new storage projects, to charge market-based rates.⁸ Moreover, Order No. 637 lifted the price cap on short-term capacity releases. The Commission found that these very facts reinforced the need for the section 284.13(b) transactional posting requirements. Thus, the Commission stated:

The reporting of detailed transactional information is necessary because the Commission is modifying its method of regulating the natural gas industry by replacing traditional regulatory controls, such as the price cap on short-term capacity releases, with competition. Thus, greater transactional information is necessary to ensure that competition flourishes, and that market power and undue discrimination remain in check in the new competitive environment. . . . The Commission finds it axiomatic that greater, more complete and detailed information about transactions will greatly improve shippers' ability to make informed decisions, and both shippers' and the Commission's ability to monitor the market.[⁹]

23. In addition, the Commission rejected arguments, similar to those SGRM makes here, that it should not require the transactional data to be made public, because such disclosure could cause competitive harm. For example, on rehearing of Order No. 637, Williston Basin Interstate Pipeline Co. argued that "the posting of the transactional

⁷ Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

⁸ See, e.g., *NE Hub Partners, L.P.*, 83 FERC ¶ 61,043 (1998); *Egan Hub Partners, L.P.*, 77 FERC ¶ 61,016 (1996); *Steuben Gas Storage Co.*, 72 FERC ¶ 61,102 (1995); *Avoca Natural Gas Storage*, 68 FERC ¶ 61,045 (1994); *Ouachita River Gas Storage Co.*, 68 FERC ¶ 61,402 (1994); *Petal Gas Storage Co.*, 64 FERC ¶ 61,190 (1993); and *Richfield Gas Storage System*, 59 FERC ¶ 61,316 (1992).

⁹ Order No. 637-A, at 31,612-3.

information will enable shippers to know their competitors' supply and markets, and what other shippers are paying, which might prevent Williston Basin from being able to negotiate the best price for the services it offers."¹⁰ In Order No. 637-A, the Commission held that keeping commercially-sensitive information about the prices charged in contracts for jurisdictional service confidential would violate the NGA. The Commission explained that "section 4 of the NGA and the NGA's general statutory scheme clearly contemplates full disclosure of contractual terms and prices, as a means of preventing undue discrimination or preference."¹¹ The Commission stated that section 4(b) of the NGA prohibits undue discrimination or preference and the immediately following section 4(c) sets forth the means for ensuring that such undue discrimination and preference do not occur.¹² Section 4(c) provides that:

Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time ... and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing *all rates and charges for any transportation or sale subject to the jurisdiction of the Commission*, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services. [Emphasis added.]

As the Commission concluded:

Although the NGA gives the Commission some discretion with respect to how to provide for the disclosure of rate schedules and contracts, clearly the *public disclosure of rate schedules and related contracts, in some manner, is required*. [Emphasis added.] [¹³]

24. In addition, in Order No. 637-A, the Commission, employing such discretion to temper any potential disadvantages from the disclosure requirements, granted rehearing and eliminated the requirements to post at the execution of contracts, which it noted may be significantly in advance of or after commencement of the contractual service.¹⁴ The

¹⁰ *Id.* at 31,613.

¹¹ *Id.* at 31,613.

¹² *Id.* at 31,613.

¹³ *Id.* at 31,614.

¹⁴ *Id.* at 31,615-617.

Commission required instead the posting of the transactional information no later than the first nomination under the service. SGRM's request that the Commission permit storage providers to report their prices only to the Commission and never publicly disclose them is contrary to NGA section 4(c)'s requirement that "every natural gas company . . . keep open . . . for public inspection . . . all rates."

25. There is also nothing in EAct 2005's adoption of section 4(f) of the NGA, or Order No. 678 implementing that section, to suggest that the Commission should change the conclusions it reached in Order Nos. 637 and 637-A. NGA section 4(f), as adopted by EAct 2005, permits the Commission to allow a natural gas storage provider placing new facilities in service to negotiate market based rates even if it is unable to show that it lacks market power if the Commission determines that the market-based rates are in the public interest and necessary to encourage the development of storage capacity in the area needing storage services and that the customers are adequately protected.

26. In Order No. 678 implementing section 4(f), the Commission rejected arguments, similar to SGRM's assertions in this proceeding, that storage providers with market-based rate authorization should be exempted from the section 284.13 reporting requirements, because they had already shown an absence or mitigation of market power. The Commission stated that:

Regarding the applicability of §284.13 reporting requirements, we disagree . . . that we should not impose these requirements on storage providers granted market-based rates, but rather impose a reporting regime modeled after the electric quarterly reports. Under the Commission's Part 284 program, all open-access transporters and storage providers are required to post or file with the Commission transaction reports, quarterly index of customer reports, and semi-annual storage reports. These reports are required of all open-access service providers and provide crucial transparency. This information allows both the Commission and market participants to monitor the market and detect undue discrimination.^[15]

27. The Commission also rejected a five-year reporting requirement stating that:

The Commission believes that existing reporting requirements and its ongoing market monitoring programs generally give us sufficient information to know whether storage markets where applicants have been authorized to charge market-based rates remain competitive, and the

¹⁵ Order No. 678, at P 78.

Commission has the ability to take appropriate action if market-power issues arise. [¹⁶]

The Commission further stated that:

Storage providers also must report the rates and terms of storage service transactions under §284.13(b) at the time service commences. These reports will provide the opportunity to detect potential undue discrimination or preference in storage rates or services. The Commission reminds storage operators that this requirement will be monitored closely by our oversight and audit staff to assure full compliance. [¹⁷]

28. SGRM argues that the Commission's decision to maintain the posting and reporting requirements for market-based rates storage providers in Order No. 678 is not applicable in this case since SGRM is only proposing that rate information be given confidential treatment with continued access to the Commission. However, as the Commission noted in Order No. 678, the posting requirements allow not only the Commission but also market participants to monitor the market and detect undue discrimination and, in any event, as described above NGA section 4(b) requires the public disclosure of rates.¹⁸

29. SGRM also points to various other actions by the Commission which it asserts demonstrate that the Commission recognizes the need for competitively sensitive information to be kept confidential. First, it points out that in Order No. 712,¹⁹ modifying the Commission's capacity release regulations in order to facilitate Asset Management Arrangements (AMA),²⁰ the Commission found that certain details of AMAs are commercially-sensitive and, thus, should remain confidential. However, Order No. 712 required that the posting of capacity releases implementing AMAs must include all the information which section 284.13(b) requires to be posted for all capacity releases, including the rate to be paid by the asset manager to the pipeline. The

¹⁶ Order No. 678, at P 90.

¹⁷ *Id.* P 175.

¹⁸ *Id.* P 78.

¹⁹ *Promotion of a More Efficient Capacity Release Market*, Order No. 712, FERC Stats. & Regs. ¶ 31,271 (2008).

²⁰ AMAs are those arrangements under which a capacity holder releases some or all of its pipeline capacity to an asset manager who agrees to either purchase from, or supply the gas needs, of the capacity holder.

Commission also modified section 284.13(b) to add a requirement that the posting include (1) the fact that the release is to an asset manager and (2) the asset manager's delivery or purchase obligation to the releasing shipper. Thus, Order No. 712 did not exempt AMA capacity releases from any of the section 284.13(b) posting requirements related to the sale of jurisdictional interstate pipeline capacity. All that the Commission held was that the posting of such a release did not need to include other details in an AMA between the releasing shipper and its asset manager, particularly information concerning the gas commodity aspects of the AMAs.²¹

30. Second, SGRM cites various other cases in which it asserts that the Commission has recognized that public disclosure of commercially sensitive information, such as pricing, can result in competitive harm. For example, it states that, in discovery disputes the Commission has held that, if the requested documents give the party seeking such documents an unfair advantage they should be treated confidentially, citing, *e.g.*, *Mojave Pipeline Co.*, 38 FERC ¶ 61,249, at 61,842 (1987), and the Commission weighs the competitive harm of releasing commercially-sensitive information against the opponents need for the information, citing *Pacific Gas Transmission Co.*, 44 FERC ¶ 61,209 (1988). However, the documents at issue in those cases were not contracts for jurisdictional services subject to the NGA section 4(c) requirement that they be filed with the Commission and kept open for public inspection.

31. Finally, SGRM argues that there has been no response to its contention that the posting requirements can inflict real competitive harm with no offsetting market benefit. SGRM contends that the posting requirements may prevent it from negotiating market-based rates which accurately reflect market value by shifting the bargaining power to its potential customers and gives its potential customers and competitors an unwarranted competitive advantage. SGRM asserts that potential customers will seek to pay no more than the lowest posting from earlier, often very different transactions without regard to current market conditions. SGRM contends that using such rates as the starting point for subsequent negotiations inappropriately disadvantages the storage operator and undermines the benefits of market-based rates. SGRM also states that it must compete with intrastate storage companies providing interstate service under NGPA section 311, and the Commission has authorized a number of those companies to charge market-based rates. However, the section 284.13(b) transactional posting requirements do not apply to NGPA section 311 pipelines. Rather, section 284.126 only requires those pipelines to file semi-annual reports of their storage activity, including the unit charge and total revenues received from each customer. SGRM also states that many section 311 pipelines file their reports with a request that they be treated as confidential pursuant to section 388.112 of the Commission's regulations, which permits such reports to remain confidential unless someone requests their release. SGRM concludes that this means that

²¹ Order No. 712, at P 172-177.

one group of competitors can maintain the confidentiality of their prices, while another cannot and this state of affairs is not consistent with the notion that all storage providers should compete on a level playing field.

32. While SGRM asserts that the posting of rates will lead customers to seek the lowest rates without regard for market conditions to the contrary the Commission believes, as discussed above, such posting will better inform all market participants of current market conditions. As the Commission recognized in Order No. 637-A, providing the posted rates resulting from previous negotiations to potential customers in the development of market-based rates leads to greater transparency and competition. As the Commission found, in Order No. 637-A, with respect to the competitive harm to individual firms:

while disclosure of the transactional information may cause some commercial disadvantage to individual entities, it will benefit the market as a whole, by improving efficiency and competition. Buyers of services need good information in order to make good choices among competing capacity offerings. Without the provision of such information, competition suffers.
[²²]

33. Merrill Lynch, a potential customer of SGMR, asserts, in its protest, consistent with the Commission's findings in Order No. 637-A, that this transparency has allowed a more robust and competitive storage capacity market to develop and market participants to respond on a real time basis to changing market conditions, including the rates competitors are paying. Further, as Merrill Lynch asserts, this transparency helps facilitate identification of any undue preference or discrimination in order that it be addressed. In any event, as discussed above, the posting of these rates is required by the NGA.

34. For all the reasons discussed above, the Commission denies SGRM's request that we waive the section 284.13(b) transactional posting requirements for interstate storage companies with market-based rates, as well as its alternative request that we initiate a rulemaking proceeding to consider revising section 284.13(b) to exempt storage providers with market-based rates. However, as described above, SGRM has raised a concern that our disparate reporting requirements for interstate pipelines and NGPA section 311 intrastate pipelines providing interstate service may provide the intrastate pipelines with a competitive advantage. Contemporaneously with this order, the Commission is issuing a NOI to consider (1) whether the disparate reporting requirements do have an adverse competitive effect on the interstate pipelines, as alleged by SGRM and other interstate storage providers filing comments in this proceeding, and

²² Order No. 637-A, at 31,614-615.

(2) if so, whether the Commission should modify the posting requirements for NGPA section 311 intrastate pipelines in order to make them more comparable to the section 284.13(b) posting requirements for interstate pipelines.

The Commission orders:

(A) SGRM's request for waiver of the Commission's regulations is denied.

(B) SGRM's petition for initiation of a rulemaking proceeding is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.