ORAL ARGUMENT HAS NOT BEEN SCHEDULED

In the United States Court of Appeals for the District of Columbia Circuit

No. 11-1484

NORTHERN NATURAL GAS COMPANY,
Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

ON PETITION FOR REVIEW OF ORDERS OF THE FEDERAL ENERGY REGULATORY COMMISSION

BRIEF FOR RESPONDENT FEDERAL ENERGY REGULATORY COMMISSION

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JUNE 25, 2012

CIRCUIT RULE 28(a)(1) CERTIFICATE

A. Parties and *Amici*

The parties before this Court are identified in Petitioner Northern Natural Gas Company's brief.

B. Ruling Under Review

1. *Northern Natural Gas Co*., "Order Denying Abandonment Request," 135 FERC ¶ 61,048 (Apr. 21, 2011) ("Abandonment Order"), R. 62, JA ___; and

2. *Northern Natural Gas Co*., "Order Denying Rehearing," 137 FERC ¶ 61,091 (Oct. 28, 2011) ("Rehearing Order"), R. 66, JA___.

C. Related Cases

This case has not been before this Court or any other court, and counsel is not aware of any other related cases pending before this or any other court.

/s/ Holly E. Cafer
Holly E. Cafer
Attorney

June 25, 2012

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GLOSSARY

Abandonment Order	*Northern Natural Gas Co.*, 135 FERC ¶ 61,048 (Apr. 21, 2011), R. 62, JA ___
Applicants	Northern, Southern, Florida Gas Transmission Company, Transcontinental Gas Pipe Line Company, and Enterprise Field Services
Bcf	Billion cubic feet
Br.	Brief
Commission or FERC	Federal Energy Regulatory Commission
Dth	Dekatherm
JA	Joint Appendix
NGA	Natural Gas Act
Northern	Petitioner Northern Natural Gas Company
P	Paragraph number in a Commission order
R.	Record item number
Rehearing Order	*Northern Natural Gas Co.*, 137 FERC ¶ 61,091 (Oct. 28, 2011), R. 66, JA___
Southern	Intervenor Southern Natural Gas Company
System	Matagorda Offshore Pipeline System

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STATEMENT OF THE ISSUES

1) Whether Northern Natural Gas Company's ("Northern") challenge to the Federal Energy Regulatory Commission's ("Commission" or "FERC") discussion of the preferred form – general or limited – of a potential, future rate filing fails to satisfy the jurisdictional prerequisites of ripeness and standing.

2) Assuming jurisdiction, whether the Commission reasonably concluded that a general, rather than a limited, new rate case would be appropriate to address Northern's concerns regarding declining revenues for the pipeline facilities at issue.

3) Whether the Commission reasonably determined, on the basis of substantial evidence, and on balance after considering the interests of Northern and the shippers it serves, that Northern may not, at this time, abandon its offshore pipeline facilities because they remain necessary to serve continuing natural gas development in the Gulf of Mexico.

STATEMENT REGARDING JURISDICTION

Northern properly invokes this Court's jurisdiction under section 19(b) of the Natural Gas Act ("NGA"), 15 U.S.C. § 717r(b), except as to its claim that the Commission has precluded it from submitting a rate filing limited to addressing only the facilities at issue here. Br. 27-35. Northern's claim is premature, at best, and should be dismissed for failure to satisfy the jurisdictional prerequisites of ripeness and standing. *See infra* p. 14. Northern has not yet submitted a rate filing of any kind. The Commission has stated only that it believes a limited filing (with limited cost support) would be inappropriate, but has not rejected such a filing or barred any future filings. Accordingly, judicial intervention at this time is inappropriate as it "depend[s] on future events that may never come to pass, or that may not occur in the form forecasted." *Flint Hills Res. Alaska v. FERC*, 627 F.3d 881, 889 (D.C. Cir. 2010).

STATUTORY AND REGULATORY PROVISIONS

The pertinent statutes and regulations are contained in the Addendum.

INTRODUCTION

In the Commission proceedings below, Northern, together with the other owners (collectively, "Applicants") of the Matagorda Offshore Pipeline System ("System"), including Southern Natural Gas Company ("Southern"), an intervenor here, sought authorization to abandon System facilities and service. Abandonment Application, R. 1, JA___. The System provides transportation for shippers of natural gas developed in the Gulf of Mexico. The Applicants claim that abandonment is necessary due to declining use of the System, resulting from decreased natural gas production in the Gulf of Mexico. According to the Applicants, the System has become uneconomic to operate, and operation and maintenance of the System is increasingly costly and difficult.

In the orders on review, the Commission denied the abandonment application, finding that, at this time and on this record, the supply of gas has not decreased to the extent that continued service is unwarranted. *Northern Natural Gas Co.*, 135 FERC ¶ 61,048 (Apr. 21, 2011) ("Abandonment Order"), R. 62, JA ___, *reh'g denied*, 137 FERC ¶ 61,091 (Oct. 28, 2011) ("Rehearing Order"), R. 66, JA___. Relying on this Court's precedent, the Commission confirmed that the Applicants bore the burden of proof, and that a presumption applies in favor of continued service. Abandonment Order P 35 (citing cases), JA___. The Commission recognized both the declining throughput and the economic

uncertainty facing the System. *Id*. P 36, JA___. But, balancing the competing interests at stake, the Commission found these economic concerns outweighed – at least for now – by continuing, significant System use, as well as new natural gas development activities in the area, and the fact that abandonment would shut in most, if not all, area reserves. *Id*. PP 37-38, 44, JA___, ___.

Northern maintains that it is unable to negotiate increased rates or the sale of System facilities, but the Commission explained that Northern has an opportunity to recover its costs in a rate proceeding under NGA section 4, 15 U.S.C. § 717c. *Id*. P 41, JA___. While Northern objected, on rehearing, to the burden of a full rate case, the Commission explained that a limited rate proceeding would be inappropriate. Rehearing Order P 24, JA___. System rates are not segregated from the rates of the Applicants' other facilities; therefore, if Northern submits a rate change filing overall cost and revenue data would be appropriate. *Id*.

Here, as before the Commission, Northern disputes the Commission's denial of the abandonment application, as well as the Commission's conclusion that a general, rather than a limited, rate proceeding would be appropriate.

STATEMENT OF THE FACTS

I. Statutory And Regulatory Framework

Under the Natural Gas Act, the Commission has jurisdiction over the transportation and wholesale sale of natural gas in interstate commerce. 15 U.S.C.

§ 717(b). Section 7(c) of the NGA, 15 U.S.C. § 717f(c), requires natural gas companies to obtain a certificate of public convenience and necessity from the Commission before they can construct or operate interstate natural gas pipeline facilities. Section 7 certificates are issued upon a finding that the pipeline facilities are "or will be required by the present or future public convenience and necessity . . . ." NGA § 7(e), 15 U.S.C. § 717f(e).

As relevant here, NGA section 7(b) provides that the Commission may authorize abandonment of certificated facilities or services upon a finding that "the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permits such abandonment." 15 U.S.C. § 717f(b). This Court has interpreted NGA section 7(b) as providing that: (1) a certificated pipeline has "an obligation, deeply embedded in the law, to continue service;" and (2) "the burden of proof is on the applicant for abandonment to show that the 'public convenience and necessity' permits abandonment, that is, that the public interest 'will in no way be disserved' by abandonment." *Transcontinental Gas Pipe Line Corp. v. FPC*, 488 F.2d 1325, 1330 (D.C. Cir. 1973) (quoting *Michigan Consolidated Gas Co. v. FPC*, 283 F.2d 204, 214 (D.C. Cir. 1960)).

NGA section 4 requires rates for service on jurisdictional pipeline facilities to be "just and reasonable." 15 U.S.C. § 717c. Part 154 of the Commission's

regulations governs rate schedules and tariffs filed pursuant to NGA section 4. 18 C.F.R. pt. 154. Subpart D, 18 C.F.R. § 154.301 *et seq*., specifies detailed statements, data and materials to be filed by the natural gas company in support of a general section 4 rate case, addressing all of a company's jurisdictional rates. Subpart E, 18 C.F.R. § 154.400 *et seq*., provides substitute, abbreviated filing requirements for limited section 4 rate filings that do not address rates system-wide, such as periodic rate adjustments for fuel use and other trackers. *See Colo. Interstate Gas Co. v. FERC*, 599 F.3d 698, 701 (D.C. Cir. 2010) (discussing the use of a limited section 4 filing, an "accelerated process," for fuel trackers). Beyond those filings specified in Subpart E, the Commission has authorized the use of limited section 4 rate filings to allow natural gas companies an opportunity to recover certain types of costs in particular circumstances. *See Sea Robin Pipeline Co., LLC*, 130 FERC ¶ 61,191 at P 11 (2010) (allowing limited section 4 rate filing for hurricane-related expenses).

II. The Commission's Proceedings And Orders

A. The Matagorda Offshore Pipeline System And Abandonment Application

On March 5, 2010, the Applicants, consisting of Northern, Southern, Florida Gas Transmission Company, Transcontinental Gas Pipe Line Company, and Enterprise Field Services, filed with the Commission a request for authorization under NGA section 7(b) to abandon the offshore and onshore facilities known as

the Matagorda Offshore Pipeline System and the services currently provided on those facilities. Abandonment Order P 1, JA___. The facilities, constructed beginning in 1981, are located offshore in Texas state and federal waters and onshore in Refugio and Calhoun Counties, Texas. *Id*. P 1, JA___.

The entire System consists of 87 miles of jurisdictional and non-jurisdictional pipeline and other facilities. *Id*. P 2, JA___. The FERC-jurisdictional facilities consist of 67 miles of pipeline, starting at Matagorda Island Block 686 (a non-jurisdictional gathering facility) in federal waters offshore Texas and continuing to onshore interconnections with other pipelines in Refugio County, Texas. *Id*.; *see also* Abandonment Application, Ex. Z (map and schematic), JA___. The jurisdictional facilities include the Tivoli Dehydration Plant, which is jointly owned by Northern (86.56 percent) and Florida Gas (13.44 percent). Abandonment Order P 2, JA___. The System mainline that extends from Block 686 to the Tivoli Plant is jointly owned by Northern (68 percent), Southern (18.56 percent) and Florida Gas (13.44 percent). *Id*. Northern wholly owns the jurisdictional facilities downstream of the Tivoli Plant. *Id*. Southern also owns the 24-inch lateral that connects the mainline to Block 686. *Id*.

Applicants sought authorization to abandon all the facilities in-place, and to abandon, or cease to provide, all services on those facilities. *Id*. P 3, JA___. In support of their request, Applicants explained that the facilities were constructed to

serve the pipelines' merchant sale function. Applicants, however, are no longer merchants, but transporters of gas. Applicants still provide service on the facilities to area producers, but claim that the facilities are underutilized and uneconomic to operate. *Id*. P 4, JA___; Application at 8, JA___. The facilities have the capacity to transport 480,000 dekatherms ("Dth") of natural gas per day but, at the time of the application, were transporting less than 35,000 Dth per day. Application at 6, JA___; Abandonment Order P 4, JA___. Further, Applicants claim that operation and maintenance of the facilities have become increasingly costly and challenging. Abandonment Order P 5, JA___.

Prior to seeking abandonment authorization, Applicants attempted without success to sell the System to the producers and shippers who use the System, and to third parties. *Id*. P 6, JA___. The Applicants also offered negotiated rate contracts to the shippers, but all the parties could not agree on the terms. *Id*. P 7, JA___. The Applicants recognize the ongoing use of the System, but claim that abandonment is appropriate because alternative transportation is available for about 60 percent of the total gas transported on the System. *Id*. P 8, JA___; Application at 12, JA___.

The shippers and producers that use the System protested the abandonment application, claiming that abandonment would shut in natural gas and liquid

condensate production of numerous small producers in the Gulf of Mexico. Shippers' Joint Protest at 2-4, R. 6, JA___-___; Abandonment Order P 14, JA___.

B. Order Denying Abandonment

On April 21, 2011, the Commission denied the abandonment application. Abandonment Order P 1, JA___. As the Commission explained, the Applicants bear the burden of demonstrating, as required by NGA section 7(b), that "the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permits such abandonment." 15 U.S.C. § 717f(b); Abandonment Order P 34, JA___. The Commission's task is to balance the impacts of abandonment to the pipeline, customers and the public interest; under longstanding precedent a presumption in favor of continued service guides that balance. Abandonment Order PP 35 (citing *Transcontinental*, 488 F.2d at 1330), 44, JA___, ___.

Applying these standards, the Commission found that the Applicants have not adequately supported their claim that natural gas in the area is so depleted as to warrant abandonment. *Id*. PP 36-37, JA___. On balance, the Commission found that "the potential detriment to shippers and the general public from loss of [System] service outweighs any benefits" from abandonment. *Id*. P 44, JA___.

The Commission recognized that throughput is declining, but also found that at least 20,000 Dth per day of gas continues to flow on the System, and new well

development activities are continuing. *Id*. Further, the Commission determined that "no readily-accessible transportation alternatives" exist for System shippers, and no alternatives exist at all for 30 to 40 percent of the gas currently using the System. *Id*. P 38, JA___. The Commission acknowledged Applicants' concerns regarding maintenance and safety, but found that Applicants have not shown that the System is "unsafe to operate, nor have they demonstrated that their operational problems have been significantly increased by internal corrosion or that routine procedures have not been successful in preventing corrosion." *Id*.

With regard to System economics, the Commission explained that Northern's data show that revenue exceeded its operation and maintenance costs since 2003, except in 2007 and 2009, due to non-recurring costs for new facilities. *Id*. P 40, JA___. Due to declining throughput, Northern is at risk of operating the System with a negative cash flow. *Id*. P 41, JA___. But, the Commission found that immediate abandonment is not the only solution to this issue. Under the NGA, pipelines are "entitled to an opportunity to recover their reasonably incurred costs." *Id*. P 41, JA___. If the Applicants and shippers cannot agree on negotiated rates, an NGA section 4, 15 U.S.C. § 717c, rate case is the appropriate forum for resolution of updated rates. *Id*. P 43, JA___. If, subsequently, shippers refuse to take service under new rates and conditions, the Applicants can renew their

abandonment application. *Id*.; *see also id*. P 44 (abandonment denied without prejudice to renewal), JA___.

C. Rehearing Order

On rehearing, the Commission again concluded that the circumstances "do not warrant abandonment at this time." Rehearing Order P 25, JA___. The Commission explained that the presumption of continued service remains valid in an open-access transportation environment, particularly here where the Commission has determined that shippers do not have reasonable transportation alternatives. *Id*. P 18, JA___. With regard to maintenance and safety, the Commission reiterated that the Applicants have not alleged, much less demonstrated, that the System is unsafe to operate. *Id*. P 21, JA___. But, if the Applicants are "unable to maintain the safety of particular pipelines, abandonment would be granted." *Id*.

Addressing System economics, the Commission explained that the unwillingness of shippers to enter into firm transportation contracts does not require the Commission to authorize abandonment, but rather suggests the need for revised rates. *Id*. P 22, JA___. In response to Northern's claim that a section 4 rate case is inappropriate for the unique System circumstances (Northern Rehearing Request at 13, R. 64, JA___), the Commission explained that the decision to pursue a section 4 rate case is a business decision left, by the statute, to

the pipeline. *Id*. P 22, JA___. Northern suggested that a section 4 rate case limited to only the System could be acceptable, but the Commission responded that it did "not believe that a limited section 4 proceeding would be appropriate." *Id*. P 24, JA___. The Commission requires overall cost-of-service and revenue data in order to appropriately allocate pipeline costs among pipeline services. *Id*.

Northern's petition for review followed.

SUMMARY OF ARGUMENT

Both on the merits and as a matter of this Court's jurisdiction, Northern's challenges are, at best, premature. On the merits, the Commission found that while Northern faces economic and operational challenges, they do not warrant abandonment at this time. NGA section 7(b), as informed by the Court's and the Commission's precedent, sets a high standard for abandonment: The applicant must demonstrate that the public interest will not be disserved. Northern fails to recognize, and thus does not dispute, that the Applicants bore the burden of proof and that a presumption in favor of continued service applies. The Commission's factual findings, that the System continues to transport significant volumes of gas, that new gas development activities continue with substantial reserves remaining in the System area, and that transportation alternatives are non-existent or inadequate, are well-supported by the record.

The declining use of the System, while presenting operational and maintenance challenges, implicates fundamentally economic issues. The Commission is tasked with balancing the competing interests – the Applicants' economic interests against the shippers' interest and the public interest in continued System use. In light of the presumption of continued service, the Commission reasonably found that the need for continued, stable service – at least at this time – outweighs the Applicants' economic concerns.

In so doing, the Commission reminded the Applicants that under NGA section 4, they are entitled to an opportunity to recover reasonably incurred costs in a rate proceeding before the Commission. Thus, while the Commission denied the abandonment application, it did so without prejudice to the Applicants refiling their abandonment application if, following a new proceeding to establish appropriate rates, they remain unable to recover their costs. In other words, should conditions – operationally or economically – worsen, the Applicants may again seek abandonment.

Northern's challenge to the Commission's discussion of the appropriate form of a potential, future rate proceeding likewise fails for prematurity. Northern has not submitted, and the Commission has not rejected, a section 4 rate filing. The Commission's orders neither inflict nor threaten Northern with an imminent injury sufficient to satisfy the jurisdictional prerequisites of ripeness and standing.

Indeed, Northern states, for the first time before this Court, that it has "absolutely no objection," Br. 28, to providing the cost support data the Commission deems necessary for a general section 4 rate filing. The Commission has not barred any rate filing, and Northern may yet obtain the relief it seeks before the Commission. Moreover, to the extent that the Commission later rejects any rate filing Northern might submit, such a decision would be subject to this Court's review. The Court should deny Northern's invitation to engage in speculative, potentially unnecessary, review.

Even assuming that the Court has jurisdiction over Northern's claim that the Commission should accept its hypothetical limited section 4 rate filing, the Court should affirm the Commission's reasonable choice of procedures under its regulations. The Commission's decision is well-supported in light of the nature of the costs at issue and the Applicants' rates, and Northern has not demonstrated otherwise.

ARGUMENT

I. NORTHERN'S CHALLENGE TO THE COMMISSION'S DISCUSSION OF A POTENTIAL, FUTURE RATE FILING SHOULD BE DISMISSED FOR LACK OF JURISDICTION

Northern's claim that the Commission erred in "prohibiting," Br. 27, a limited section 4 rate filing is premature; it does not pass the jurisdictional thresholds of standing and ripeness. The Commission has neither rejected a rate

filing nor definitively stated that it would reject a particular type of rate filing. And, for the same reason, Northern does not face an adequate injury-in-fact stemming from the Commission's discussion of rates. Whether cast in terms of standing or ripeness, judicial intervention at this time is inappropriate as it "depend[s] on future events that may never come to pass, or that may not occur in the form forecasted." *Flint Hills Res. Alaska*, 627 F.3d at 889. As this Court has recognized an overlap between ripeness and standing, the Commission here addresses both. *See Am. Petroleum Institute v. EPA*, No. 09-1038, 2012 U.S. App. LEXIS 11601 (D.C. Cir. June 8, 2012) ("Part of the [ripeness] doctrine is subsumed into the Article III requirement of standing"); *see also Toca Producers v. FERC*, 411 F.3d 262, 265 (D.C. Cir. 2005) (ripeness "may be resolved without first addressing whether the producers have Article III standing" and the court may "choose among threshold grounds" for dismissal).

Under the ripeness doctrine, the Court "evaluate[s] both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967). "[T]he fitness of an issue for judicial decision depends on whether it is 'purely legal, whether consideration of the issue would benefit from a more concrete setting, and whether the agency's action is sufficiently final.'" *Atl. States Legal Found, Inc. v. EPA*, 325 F.3d 281, 284 (D.C. Cir. 2003) (citation omitted).

Northern's brief aptly demonstrates that the issue is not purely legal, and would benefit from a more concrete setting. Northern correctly suggests that determining whether a general or limited rate filing is appropriate is a fact-specific inquiry. Br. 23 (arguing that "[t]he facts make [the System] ideally suited to a limited [s]ection 4 filing"); 31 (same). And, the issue would benefit from crystallization through Commission action on an actual rate filing – should Northern choose to file. As Northern states, the Commission does not "know[] what type of limited [s]ection 4 filing Northern would propose." Br. 35. *See* Rehearing Order P 22 (Northern may file a rate case to recover its costs "if" it is underrecovering its costs and "if" pipeline throughput declines further), JA___. It is entirely possible that a future Northern rate filing, limited or general, could be accepted – particularly inasmuch as Northern states that it will provide the data the Commission requires. Br. 22 ("Northern is more than willing to provide whatever data the Commission deems necessary . . . ."), 28, 31, 32. But if not, a Commission order on an actual filing could specify any deficiency. *See Interstate Natural Gas Ass'n of Am. v. FERC*, 285 F.3d 18, 60 (D.C. Cir. 2002) (dismissing claims as unripe where FERC announced policy allowing particular types of rate filings, but no such filings had been submitted, and the Court had "no record on which to evaluate the nature – or indeed the existence – of [petitioner's] conceivable injury").

As most relevant here, the Commission's discussion of a potential, future NGA section 4 rate case lacks sufficient indicia of finality to justify judicial intervention at this time. Ordinarily, an agency order is final for purposes of appellate review when it "imposes an obligation, denies a right, or fixes some legal relationship as a consummation of the administrative process." *Papago Tribal Util. Auth. v. FERC*, 628 F.2d 235, 239 (D.C. Cir. 1980) (citation omitted). Here, the Commission merely stated that it "do[es] not believe that a limited section 4 rate proceeding would be appropriate." Rehearing Order P 24, JA__. Northern claims that "the Commission should at the very least allow Northern to submit a limited [s]ection 4 filing for Commission review." Br. 35, 44. But the Commission's orders do not bar or prohibit such a filing.

The Commission's order serves essentially as guidance to Northern on the type of section 4 filing and amount of cost support the Commission believes are best suited to future circumstances. Until Northern files, and the Commission reviews and either accepts or rejects such a filing, the Commission's action is not sufficiently final to justify review. If "[a]cceptance of a filing, coupled with scheduling of a hearing, is the initiation of an administrative proceeding," then a suggestion that a particular type of rate filing may be inappropriate – in the absence of an actual rate filing – can hardly be a final reviewable order. *Papago*, 628 F.2d at 240; *cf. Rio Grande Pipeline Co. v. FERC*, 178 F.3d 533 (D.C. Cir.

1999) (finding case ripe for review where agency orders definitively addressed the issue).

Northern's claim fails the second prong of the ripeness inquiry as well. Northern suffers no hardship at this time from the Commission's suggestion that a limited section 4 rate filing would be inappropriate. Northern has not submitted, and the Commission has not rejected, a rate filing. *See Tennessee Gas Pipeline Co. v. FERC*, 972 F.2d 376, 382 (D.C. Cir. 1992) (dismissing, as unripe, challenge to announced filing procedure where "[w]hether any [pipeline] will actually file the tariffs necessary to participate in this program or, assuming one does, the nature of any injury that the petitioner may in fact suffer, remains to be seen"). The possibility that a limited section 4 filing could be rejected – a matter of speculation in any event – causing further litigation, is insufficient to satisfy the hardship requirement. *See FTC v. Standard Oil Co. of California*, 449 U.S. 232, 244 (1980) (holding that even substantial litigation and unrecoverable associated costs are insufficient).

For the same reason, Northern has not suffered, and does not face an imminent, injury in fact for Article III standing purposes. An injury in fact must be both "concrete and particularized," and "actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-61 (1992). The potential rejection of a limited section 4 rate filing, which Northern may or may

not even file, falls far short of this standard. *See, e.g.*, *Alabama Mun. Distributors Group v. FERC*, 312 F.3d 470, 473 (D.C. Cir. 2002) (dismissing challenge to initial rates, set in NGA section 7 certificate proceeding, for lack of jurisdiction where final rates would not be determined until a later section 4 rate case); *PNGTS Shippers' Group v. FERC*, 592 F.3d 132, 138 (D.C. Cir. 2010) ("being forced to confront questions in a future legal proceeding does not rise to the level of injury required for Article III standing").

Any precedential effect of the Commission's Rehearing Order is likewise inadequate to satisfy Article III. *See North Carolina Util. Comm'n v. FERC*, 653 F.2d 655, 662-63 (D.C. Cir. 1981) (dismissing for lack of standing notwithstanding the projected use of an agency decision as precedent in future proceedings); *PNGTS Shippers' Group*, 592 F.3d at 136-38 (dismissing for lack of standing where agency orders established pipeline's certificated capacity, but deferred rate issues to a later section 4 rate proceeding). If the Commission relies on the Rehearing Order in a future proceeding to support rejection of a limited section 4 rate filing, Northern would be able "to attack the basis of any adverse finding in that proceeding." *North Carolina Util. Comm'n*, 653 F.2d at 662.

Particularly here, where Northern states that it has "absolutely no objection" to providing the data the Commission requires, Br. 28, there is also a substantial likelihood that Northern may yet receive the relief it seeks. *See Mississippi Valley*

Gas Co. v. FERC, 68 F.3d 503, 509 (D.C. Cir. 1995) (dismissing petition as unripe where there was a possibility that petitioner would receive the relief sought in subsequent hearings). And, on the other hand, if the Commission rejects a filing Northern submits, Northern will have the opportunity to seek judicial review of a final order rejecting its filing. *See Papago*, 628 F.2d at 241 n.16 (noting that orders rejecting rate filings are "genuinely final orders, disposing of all the issues in the case, and have been uniformly treated as immediately reviewable by the courts") (citing, *e.g.*, *FPC v. Texaco, Inc.*, 377 U.S. 33 (1964)).

Finally, both the interests of the judicial system and the Commission support deferring review until such time, if any, that the Commission acts on any rate filing submitted by Northern. *See, e.g.*, *Friends of Keeseville, Inc. v. FERC*, 859 F.2d 230, 235 (D.C. Cir. 1988) ("The central judicial interest in deferring resolution of this question lies in the possibility that if the issue is not adjudicated at this time, it may not require adjudication at all."). Any decision on the appropriate form of a section 4 rate filing is, as explained above, fact-specific. To the extent Northern actually submits such a filing, the Court's review will benefit from additional facts in the record and additional specificity in the Commission's orders. *See Mississippi Valley*, 68 F.3d at 509 (dismissing petition as unripe notwithstanding purely legal issue, where additional clarity from later application of the decision

with "possible benefit to both FERC and this court counsels in favor of a delay in review").

II. ASSUMING JURISDICTION, THE COMMISSION REASONABLY CONCLUDED THAT A LATER, LIMITED RATE FILING IS INAPPROPRIATE

Even assuming that the Court has jurisdiction over Northern's claim that the Commission should accept its hypothetical limited section 4 rate filing, the Commission's statement that such a filing would be inappropriate should be affirmed. Rehearing Order P 24, JA___. The Commission's decision is well-supported in light of the nature of the costs and the Applicants' rates at issue, and Northern has not demonstrated otherwise. The Commission has broad discretion to decide whether a filing substantially complies with its regulations. *See United Gas Pipe Line Co. v. FERC*, 707 F.2d 1507, 1512 (D.C. Cir. 1983).

As the Commission explained, a limited section 4 rate proceeding would be an inappropriate mechanism to change System rates. Rehearing Order P 24, JA___. The Commission "require[s] overall cost-of-service and revenue data . . . because applicants must demonstrate that . . . costs have been properly identified and allocated to those services' rates with respect to which changes are proposed." *Id*. System rates are not "segregated" from the rates for the remainder of the Applicants' pipeline facilities. Southern Br. 18; Northern Response to Data Request No. 6 (filed Oct. 6, 2010) (Northern's rates were set by a settlement

"whereby parties did not agree to any specific [System] cost, cost allocation or rate design. Therefore, there are no Statements or Schedules to identify [System] costs included in the currently effective rates."), R. 40, JA___; *see also* Southern Rehearing Request at 8-9, JA___-___. Thus, any change in System rates may affect cost allocation and rates for other facilities and services. Overall cost-of-service data are necessary to ensure that system-wide costs, such as labor and administrative overhead, are appropriately allocated. *See* Rehearing Order P 24 (complete data required to "determine whether the allocation variables or the allocated costs are just and reasonable") (citing cases), JA___.

Northern claims, for the first time on brief, that the Commission's refusal to preemptively green light a limited section 4 filing here is inconsistent with precedent. Br. 32-35. On rehearing before the agency, Northern argued that a limited NGA section 4 rate case would be appropriate in a single sentence without reference to precedent. Northern Rehearing Request at 13 ("Unless the Commission were to state that, in light of the unique [System] facts and circumstances, it would consider a limited [s]ection 4 rate filing focused only on [the System,] the Commission's suggestion to file a rate increase has absolutely no merit . . . ."), JA___. Northern's broad, unsupported argument to this Court fails to satisfy the statutory prerequisite that an argument presented on judicial review first be raised to the agency on rehearing with specificity. *See* NGA § 19(a), 15 U.S.C.

§ 717r(a) ("The application for rehearing shall set forth specifically the ground or grounds upon which such application is based."); NGA § 19(b), 15 U.S.C. § 717r(b) (objections must first be presented to the agency on rehearing). *See Pub. Serv. Elec. & Gas Co. v. FERC*, 485 F.3d 1164, 1170 (D.C. Cir. 2007) (finding objection not preserved for review where rehearing request had "merely noted the alleged error in a single opaque sentence" without citation to precedent); *see also Ind. Util. Regulatory Comm'n v. FERC*, 668 F.3d 735, 739 (D.C. Cir. 2012) (holding that an objection raised only generally was not preserved for review and noting that the court will "decline any invitation to exceed the jurisdiction conferred upon the court by statute"). Northern cannot fault the Commission for failing to respond to arguments it did not raise on rehearing. *See North Carolina v. FERC*, 112 F.3d 1175, 1192-1193 (D.C. Cir. 1997) ("Under these circumstances, the Commission cannot be asked to make silk purse responses to sow's ear arguments.") (internal citation omitted).

In any event, the Commission's decision here is fully consistent with agency precedent. First, this is an NGA section 7 abandonment proceeding; the cases on which Northern relies, Br. 32-35, are not. In each of the cases Northern references, the Commission acted in response to an actual NGA section 4 rate filing, either a general section 4 rate case or a tariff change filing, which sought to establish appropriate rate conditions and tariff provisions to allow for future limited section

4 filings. *See, e.g.*, *Sea Robin Pipeline Co., LLC*, 128 FERC ¶ 61,286 (2009), *on reh'g*, 130 FERC ¶ 61,191 (2010) (addressing tariff change filing submitted under 18 C.F.R. § 154.403); *Dominion Cove Point LNG, LP*, 135 FERC ¶ 61,261 (2011) (same); *Stingray Pipeline Co., LLC*, 135 FERC ¶ 61,099 (2011) (addressing a general section 4 rate filing); *Enbridge Offshore Pipelines (UTOS) LLC*, 133 FERC ¶ 61,106 (2010) (same). Northern has not yet made a section 4 rate filing of any kind.

Moreover, Northern has not demonstrated that its proposed limited section 4 rate case is of the type the Commission has permitted in other circumstances. The cases on which Northern relies involve changes to distinct, separately stated costs. They concern hurricane-related expenses, gas purchases necessary for operational integrity and other extraordinary losses. *See Sea Robin*, 130 FERC ¶ 61,191 (future hurricane related expenses); *Dominion*, 135 FERC ¶ 61,261 (operational gas purchases); *Chandeleur Pipe Line Co.*, 117 FERC ¶ 61,250 (2006) (past hurricane-related expenses). By contrast, Northern proposes to change the rates for all services provided on the System. As the Commission explained, because these rates are not stated separately from the Applicants' rates for other jurisdictional facilities and services, Northern presents a rate issue that is necessarily more complex than the simple surcharges and trackers involved in the cases on which it relies. *See* Rehearing Order P 24 ("Neither the parties . . . nor the

Commission can determine whether the allocation variables or the allocated costs are just and reasonable without the complete data required by the Commission's regulations.") (citing cases), JA___.

Northern also relies heavily on *Enbridge*, 133 FERC ¶ 61,106, and *Stingray*, 135 FERC ¶ 61,099, but these cases are likewise unhelpful. *See* Br. 9-10. In these general section 4 rate cases, the pipelines proposed to address declining pipeline throughput with a tariff provision allowing future limited section 4 rate cases to implement annual transportation quantity adjustments. But, while the proposals in *Stingray* and *Enbridge* survived summary rejection, the cases ultimately settled and the Commission never addressed the issues presented in a final, reviewable order. Moreover, the interlocutory hearing orders on which Northern relies provide a useful reminder that the Commission's "general policy is not to permit a mechanism of this sort because a pipeline should change its general system rates in a general section 4 rate case where all rate factors will be reviewed." *Stingray*, 135 FERC ¶ 61,099 at P 33 ("Stingray has a high burden to justify its proposed departure"); *Enbridge*, 133 FERC ¶ 61,106 at P 30 (same).

Despite venturing well beyond its request for rehearing, Northern still has not demonstrated that the Commission's suggestion that a limited section 4 filing is inappropriate at this time is arbitrary and inconsistent with precedent. Assuming the Court reaches the merits of this issue, the Commission should be affirmed,

consistent with the broad discretion afforded agency determinations of whether to accept rate filings. *See, e.g.*, *United Gas Pipe Line*, 707 F.2d at 1512.

III. SUBSTANTIAL RECORD EVIDENCE SUPPORTS THE COMMISSION'S DENIAL OF THE ABANDONMENT APPLICATION

A. Standard Of Review

Commission orders are reviewed under the arbitrary and capricious standard of the Administrative Procedure Act. *See* 5 U.S.C. § 706(2)(A). The Commission's factual findings, if supported by substantial evidence, are conclusive. *See* 15 U.S.C. § 717r(b). The substantial evidence standard "requires more than a scintilla," but "can be satisfied by something less than a preponderance of the evidence." *Florida Mun. Power Ag. v. FERC*, 315 F.3d 362, 365-66 (D.C. Cir. 2003) (citations omitted). Merely pointing to some contradictory evidence is insufficient, as "the question [the Court] must answer . . . is not whether record evidence supports [the petitioner's] version of events, but whether it supports FERC's." *Cogeneration Ass'n of Cal. v. FERC*, 525 F.3d 1279, 1283 (D.C. Cir. 2008) (citations omitted).

Where, as here, the Commission's decision involves the balancing of competing interests, "[t]he court's responsibility is not to supplant the Commission's balance of these interests with one more nearly to its liking, but instead to assure itself that the Commission has given reasoned consideration to

each of the pertinent factors." *Permian Basin Area Rate Cases*, 390 U.S. 747, 792 (1968).

B. The Commission Appropriately Balanced The Competing Interests At Stake, And Its Factual Findings Are Well Supported

Under NGA section 7(b), the Commission may authorize abandonment when it finds that "the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permits such abandonment." 15 U.S.C. § 717f(b); Abandonment Order P 34, JA___. While Northern acknowledges this standard, it does not recognize two key aspects of its application: (1) the Applicants bear the burden of demonstrating satisfaction of the section 7(b) standard; and (2) there is a presumption in favor of continued service. Abandonment Order P 35, JA___. As the Commission explained, this standard "requires [it] to balance the claimed benefits of the proposed abandonment to the pipeline against any detriments to shippers or the general public." Rehearing Order P 25, JA___. The Commission weighed the evidence, in light of the presumption of continued service, and reasonably determined that the circumstances "do not warrant abandonment at this time." *Id*. Northern's complaints do not demonstrate that the Commission struck the wrong balance. *See Blumenthal v. FERC*, 552 F.3d 875, 885 (D.C. Cir. 2009) (FERC "must be given the latitude to balance the competing considerations and decide on the best resolution").

In support of its conclusion that the Applicants did not demonstrate that gas supplies are depleted to the extent that continued service is unwarranted, the Commission found that, based on this record, at this time: (1) the System continues to transport significant volumes of gas, Rehearing Order P 19, JA___, Abandonment Order P 37, JA___; (2) well development activities continue, with "substantial deposits" of gas remaining to be produced, Rehearing Order P 19, JA___, Abandonment Order P 37, JA___; and (3) adequate alternative transportation is not currently available, Abandonment Order P 38, JA___; Rehearing Order P 18, JA___.

1. The System continues to transport significant volumes of gas

Northern does not dispute that at least 20,000 Dth of gas continues to flow on the System each day, but claims that this is a "drop in the bucket" compared to the System's capacity. Br. 39. This amount alone may not be significant to Northern, but the Commission, consistent with its responsibility to balance the competing interests at stake, found it significant to both the shippers' interests and the public interest. Rehearing Order P 25, JA___; *see also* Shippers' Joint Protest at 4, 8-10 (shippers are captive customers dependent on the System to bring gas to market), JA___, ___-___.

Northern faults the Commission for, it asserts, relying exclusively on shippers' "narrow vested interests" to support the Commission's finding that

continued System usage is significant. Br. 38-39. It is not "narrow vested interests" that govern the Commission's decision. Rather, the broader public interest considerations that underlie the presumption of continued service inform the weight the Commission places on continued System use. *See* Abandonment Order P 35 ("continuity and stability of existing service are the primary considerations"), JA___; Rehearing Order P 16 (citing *Michigan Consol. Gas*, 283 F.2d at 214 (a pipeline has "an obligation, deeply embedded in the law, to continue service")), JA___. As the Commission explained in response to Southern's challenge on rehearing, the presumption of continued service remains equally valid in a modern, open-access transportation environment. Rehearing Order PP 17-18, JA___-___. Northern does not challenge the presumption here; Southern omits reference to the presumption entirely.

Unlike the situation in *Amerada Hess Corp*., 52 FERC ¶ 61,268, 61,996-97 (1990), relied upon by Southern, Southern Br. 11, where demand for gas had declined and the supplies served by the pipeline facilities were no longer needed to satisfy demand, here, demand for System gas continues. Thus, the Commission reasonably determined that, at this time, Northern has not satisfied its burden of demonstrating that continued service is unwarranted. Rehearing Order P 25, JA___.

2. New gas development activities continue, with substantial deposits of gas remaining to be produced

Continuing its consideration of the public interest, the Commission also relied upon evidence submitted by shippers demonstrating recent development activities, including new wells, and estimating 60 billion cubic feet ("Bcf") of gas reserves remaining to be developed in the immediate area of the System. *See* Abandonment Order P 37, JA___. The shippers estimate that production of the identified reserves will continue through 2021. *Id*. P 14, JA___; Shippers' Joint Protest at 7, JA___.

Northern suggests that the continuing decline in production and throughput warrant abandonment. Br. 37. The Commission acknowledged, and did not ignore, Br. 36, evidence of declining throughput. Indeed, as Northern notes, the Commission referenced an Energy Information Administration report forecasting continuing decline. *See* Abandonment Order P 36 n.25, JA___. But as the Commission suggested, the Applicants' announced intent to abandon the pipeline, in July 2009, *id*. P 6, JA___, has likely made "producers reluctant to invest in new production." *Id*. P 37, JA___; *see also* Shippers' Answer at 6-8 (filed July 22, 2010) (shipper deferred new development activities in light of potential abandonment), R. 27, JA___-___.

The evidence of continuing development and significant reserves supports the Commission's conclusion that important reserves may remain undeveloped if

the Commission grants abandonment. Abandonment Order P 37, JA___; *id*. P 8, JA___; Shippers' Supplemental Protest at 2-3 (filed Oct. 27, 2010) (discussing new reserves developed after the filing of the abandonment application), R. 46, JA___-___. The Commission's reasoning is not "wishful thinking," Br. 37, but a reasoned assessment of the credibility and weight of the evidence. *See Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520, 542 (D.C. Cir. 2010) ("[I]t is within the scope of the agency's expertise to make such a prediction about the market it regulates, and a reasonable prediction deserves our deference notwithstanding that there might also be another reasonable view.") (internal citation omitted).

The Commission is not, contrary Northern's assertion, Br. 40, requiring that reserves be depleted to zero in order to justify abandonment. But the statute and governing precedent set a high standard. Continued service must be "unwarranted," 15 U.S.C. § 717f(b), and the Commission has an obligation to protect the public interest. *Michigan Consol. Gas*, 283 F.2d at 214. The circumstances presented by the Applicants – who bore the undisputed burden of proof – do not satisfy this standard at this time.

3. Adequate alternative transportation is not available

The lack of adequate alternative transportation also supports the Commission's decision. Without continued System service, substantial amounts of gas – existing production, identified reserves, and as yet unidentified reserves –

would be shut-in. Abandonment Order P 38, JA___; Rehearing Order PP 18, 20, JA___, ___. The Commission found, and Northern does not dispute, that there are no readily-accessible transportation alternatives for any of the System shippers. Abandonment Order P 38, JA___. Two shippers could possibly construct pipelines to access 60 to 70 percent of the gas currently transported on the System, but the Commission found that this had not been shown to be cost-effective. *Id.* Moreover, no showing has been made that it would be cost-effective to construct new pipelines to reach the region's gas reserves. *Id.* And, Northern does not dispute that there is not "any alternative transportation for approximately 30 to 40 percent of the volumes currently flowing" on the System. *Id.*; *see also* Rehearing Order PP 18, 20, JA___.

Northern claims that the Commission itself should have conducted a detailed study of potential transportation alternatives. Br. 42. But in an NGA section 7(b) abandonment proceeding, the applicant – not the Commission – bears the burden of proof. Abandonment Order P 34, JA___; Rehearing Order P 16, JA___. Thus, it was up to Northern to provide record evidence that construction of new alternative facilities would be cost-effective. It did not do so. Accordingly, the Commission reasonably concluded that the "record does not contain sufficient information on which to base the suggested analysis." Rehearing Order P 20,

JA___; *see also* Abandonment Order P 38 ("it has not been demonstrated that those alternatives would be cost-effective"), JA___.

Moreover, the Commission reasonably determined that a cost-effectiveness analysis of potential transportation alternatives would "require so much speculation as to design, engineering, and other issues to render it of questionable validity and an unwise use of administrative resources." Rehearing Order P 20, JA___. Northern finds the Commission's conclusion "puzzling," Br. 42, but yet it did not – despite bearing the burden of proof – provide the Commission with any design, engineering or cost data to render a study non-speculative or otherwise useful. The Commission therefore reasonably determined that a detailed study of alternatives would be an unwise use of its limited resources. Rehearing Order P 20, JA___. This determination warrants this Court's deference. *See, e.g.*, *Domtar Me. Corp. v. FERC*, 347 F.3d 304, 314 (D.C. Cir. 2003) ("The agency . . . alone is cognizant of the many demands on it, its limited resources, and the most effective structuring and timing of proceedings to resolve those competing demands.") (citation omitted).

4. The Applicants are able to maintain System safety and integrity

Finally, Northern takes issue with the Commission's assessment of its efforts to control internal pipeline corrosion and maintain pipeline safety. Br. 42-43. The Commission reasonably concluded that, at this time, the Applicants are

able to control corrosion through routine procedures, and have not otherwise asserted that the System is not safe to operate. Abandonment Order P 39, JA___; Rehearing Order P 21, JA___. The Commission takes safety concerns seriously, and has both stated and demonstrated that it stands ready to grant abandonment "[s]hould [A]pplicants become unable to maintain the safety of particular pipelines." Rehearing Order P 21, JA___. *See Murray Energy Corp. v. FERC*, 629 F.3d 231, 237 (D.C. Cir. 2011) (affirming FERC orders as adequately ensuring pipeline safety).

Northern's suggestion that that the Commission awaits "serious damage or adverse environmental impact," Br. 43, contradicts both the Commission's orders and recent Commission history. The Commission plainly stated here that the Applicants may re-apply for abandonment if circumstances change, i.e. if they become unable to maintain the safety of System facilities. Rehearing Order P 21, JA___. Further, *Tennessee Gas Pipeline Co., LLC*, 138 FERC ¶ 62,299 (2012), cited by Northern, supports the Commission's reasoning here. In *Tennessee Gas*, the pipeline was taken out of service after leaks could not be controlled (and abandonment was unopposed). *Id*. at 64,995-96. Here, by contrast, Northern has been able to maintain pipeline safety (and abandonment is opposed).

The Commission's action with regard to the System itself demonstrates the Commission's commitment to safety. As noted in the Rehearing Order, after the

filing initiating this case, Southern sought to abandon a supply lateral that had been part of this proceeding because it anticipated that it would no longer be able to control internal corrosion. Rehearing Order P 21 n.7, JA___. As Southern explained, a producer notified Northern, the same petitioner here, which operated the supply lateral for Southern, that it would no longer be operating an interconnecting platform. Southern Abandonment Application, FERC Docket No. CP11-139-000 (filed Mar. 16, 2011). Northern had relied on that platform for conducting corrosion maintenance activities, and, with the cessation of production at the platform, informed Southern that it "can no longer address internal corrosion issues on the Supply Lateral, the result being that the operation of the Supply Lateral must cease." *Id*. at 4. Northern and Southern both fully understand that the Commission will grant abandonment when an applicant demonstrates that safety can no longer be assured; they simply have not made those allegations for the remainder of the System.

* * *

In reaching its ultimate determination to deny abandonment, the Commission examined the facts – as they stand at this time – and balanced the competing interests of the pipeline, shippers, and the public, in light of the presumption of continued service. Rehearing Order P 23, JA___. On the record before it, as presented by the Applicants who bore the burden of proof, the

Commission found that abandonment would not be consistent with the public interest. The Commission concluded that, on balance, the need for continued System service, to allow development of known and as yet undiscovered gas reserves to serve the Nation's demand, outweighs the Applicants' economic concerns. That conclusion is reasonable and deserves this Court's respect.

CONCLUSION

For the foregoing reasons, the petition for review should be dismissed for lack of jurisdiction as to Northern's claim concerning a future rate filing, and denied as to the remainder of Northern's challenges.

Respectfully submitted,

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June 25, 2012

Northern Natural Gas Co. v. FERC **FERC Docket No. CP10-82**
D.C. Cir. No. 11-1484

CERTIFICATE OF COMPLIANCE

In accordance with Fed. R. App. P. 32(a)(7)(C), I certify that the Brief of Respondent Federal Energy Regulatory Commission contains 7,990 words, not including the (i) cover page, (ii) certificates of counsel, (iii) tables of contents and authorities, (iv) glossary, and (v) addendum.

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June 25, 2012

ADDENDUM
Statutes and Regulations

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REGULATIONS

injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94–574, § 1, Oct. 21, 1976, 90 Stat. 2721.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(a).	June 11, 1946, ch. 324, § 10(a), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1976—Pub. L. 94–574 removed the defense of sovereign immunity as a bar to judicial review of Federal administrative action otherwise subject to judicial review.

§ 703. Form and venue of proceeding

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94–574, § 1, Oct. 21, 1976, 90 Stat. 2721.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(b).	June 11, 1946, ch. 324, § 10(b), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1976—Pub. L. 94–574 provided that if no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer as defendant.

§ 704. Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(c).	June 11, 1946, ch. 324, § 10(c), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

§ 705. Relief pending review

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 393.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(d).	June 11, 1946, ch. 324, § 10(d), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 393.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(e).	June 11, 1946, ch. 324, §10(e), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

ABBREVIATION OF RECORD

Pub. L. 85–791, Aug. 28, 1958, 72 Stat. 941, which authorized abbreviation of record on review or enforcement of orders of administrative agencies and review on the original papers, provided, in section 35 thereof, that: ''This Act [see Tables for classification] shall not be construed to repeal or modify any provision of the Administrative Procedure Act [see Short Title note set out preceding section 551 of this title].''

CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

§ 801. Congressional review

(a)(1)(A) Before a rule can take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

(i) a copy of the rule;

(ii) a concise general statement relating to the rule, including whether it is a major rule; and

(iii) the proposed effective date of the rule.

(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the Comptroller General and make available to each House of Congress—

(i) a complete copy of the cost-benefit analysis of the rule, if any;

(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

(iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the chairman and ranking member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction in each House of the Congress by the end of 15 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

(3) A major rule relating to a report submitted under paragraph (1) shall take effect on the latest of—

(A) the later of the date occurring 60 days after the date on which—

(i) the Congress receives the report submitted under paragraph (1); or

(ii) the rule is published in the Federal Register, if so published;

(B) if the Congress passes a joint resolution of disapproval described in section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date—

(i) on which either House of Congress votes and fails to override the veto of the President; or

(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).

(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

(b)(1) A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule.

(2) A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.

(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of subsection (a)(3) may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

clude, in addition to the President, any agency, officer, or employee who may be designated by the President for the execution of any of the powers and functions vested in the President under this chapter.

(Feb. 22, 1935, ch. 18, § 11, 49 Stat. 33.)

DELEGATION OF FUNCTIONS

Ex. Ord. No. 6979, Feb. 28, 1935, which designated and appointed Secretary of the Interior to execute powers and functions vested in President by this chapter except those vested in him by section 715c of this title, was superseded by Ex. Ord. No. 10752, set out below.

Ex. Ord. No. 7756, Dec. 1, 1937, 2 F.R. 2664, which delegated to Secretary of the Interior powers and functions vested in President under this chapter except those vested in him by section 715c of this title, and authorized Secretary to establish a Petroleum Conservation Division in Department of the Interior, the functions and duties of which shall be: (1) to assist, in such manner as may be prescribed by Secretary of the Interior, in administering said act, (2) to cooperate with oil and gas-producing States in prevention of waste in oil and gas production and in adoption of uniform oil- and gas-conservation laws and regulations, and (3) to keep informed currently as to facts which may be required for exercise of responsibility of President under section 715c of this title, was superseded by Ex. Ord. No. 10752, set out below.

EX. ORD. NO. 10752. DELEGATION OF FUNCTIONS TO THE SECRETARY OF THE INTERIOR

Ex. Ord. No. 10752, Feb. 12, 1958, 23 F.R. 973, provided:

SECTION 1. The Secretary of the Interior is hereby designated and appointed as the agent of the President for the execution of all the powers and functions vested in the President by the act of February 22, 1935, 49 Stat. 30, entitled ''An Act to regulate interstate and foreign commerce in petroleum and its products by prohibiting the shipment in such commerce of petroleum and its products produced in violation of State law, and for other purposes,'' as amended (15 U.S.C. 715 *et seq.*), except those vested in the President by section 4 of the act (15 U.S.C. 715c).

SEC. 2. The Secretary of the Interior may make such provisions in the Department of the Interior as he may deem appropriate to administer the said act.

SEC. 3. This Executive order supersedes Executive Order No. 6979 of February 28, 1935, Executive Order No. 7756 of December 1, 1937 (2 F.R. 2664), Executive Order No. 9732 of June 3, 1946 (11 F.R. 5985), and paragraph (q) of section 1 of Executive Order No. 10250 of June 5, 1951 (16 F.R. 5385).

DWIGHT D. EISENHOWER.

§ 715k. Saving clause

If any provision of this chapter, or the application thereof to any person or circumstance, shall be held invalid, the validity of the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(Feb. 22, 1935, ch. 18, § 12, 49 Stat. 33.)

§ 715*l*. Repealed. June 22, 1942, ch. 436, 56 Stat. 381

Section, acts Feb. 22, 1935, ch. 18, § 13, 49 Stat. 33; June 14, 1937, ch. 335, 50 Stat. 257; June 29, 1939, ch. 250, 53 Stat. 927, provided for expiration of this chapter on June 30, 1942.

§ 715m. Cooperation between Secretary of the Interior and Federal and State authorities

The Secretary of the Interior, in carrying out this chapter, is authorized to cooperate with Federal and State authorities.

(June 25, 1946, ch. 472, § 3, 60 Stat. 307.)

CODIFICATION

Section was not enacted as a part act Feb. 22, 1935, which comprises this chapter.

DELEGATION OF FUNCTIONS

Delegation of President's authority to Secretary of the Interior, see note set out under section 715j of this title.

CHAPTER 15B—NATURAL GAS

Sec.

§ 717. Regulation of natural gas companies

(a) Necessity of regulation in public interest

As disclosed in reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) Transactions to which provisions of chapter applicable

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 for ultimate public consumption for domestic, commercial, industrial,

or any other use, and to natural-gas companies engaged in such transportation or sale, and to the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

(c) Intrastate transactions exempt from provisions of chapter; certification from State commission as conclusive evidence

The provisions of this chapter shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission. The matters exempted from the provisions of this chapter by this subsection are declared to be matters primarily of local concern and subject to regulation by the several States. A certification from such State commission to the Federal Power Commission that such State commission has regulatory jurisdiction over rates and service of such person and facilities and is exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction.

(d) Vehicular natural gas jurisdiction

The provisions of this chapter shall not apply to any person solely by reason of, or with respect to, any sale or transportation of vehicular natural gas if such person is—

(1) not otherwise a natural-gas company; or

(2) subject primarily to regulation by a State commission, whether or not such State commission has, or is exercising, jurisdiction over the sale, sale for resale, or transportation of vehicular natural gas.

(June 21, 1938, ch. 556, §1, 52 Stat. 821; Mar. 27, 1954, ch. 115, 68 Stat. 36; Pub. L. 102–486, title IV, §404(a)(1), Oct. 24, 1992, 106 Stat. 2879; Pub. L. 109–58, title III, §311(a), Aug. 8, 2005, 119 Stat. 685.)

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–58 inserted ''and to the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation,'' after ''such transportation or sale,''.

1992—Subsec. (d). Pub. L. 102–486 added subsec. (d).

1954—Subsec. (c). Act Mar. 27, 1954, added subsec. (c).

TERMINATION OF FEDERAL POWER COMMISSION; TRANSFER OF FUNCTIONS

Federal Power Commission terminated and functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, The Public Health and Welfare.

STATE LAWS AND REGULATIONS

Section 404(b) of Pub. L. 102–486 provided that: ''The transportation or sale of natural gas by any person who is not otherwise a public utility, within the meaning of State law—

''(1) in closed containers; or

''(2) otherwise to any person for use by such person as a fuel in a self-propelled vehicle,

shall not be considered to be a transportation or sale of natural gas within the meaning of any State law, regulation, or order in effect before January 1, 1989. This subsection shall not apply to any provision of any State law, regulation, or order to the extent that such provision has as its primary purpose the protection of public safety.''

EMERGENCY NATURAL GAS ACT OF 1977

Pub. L. 95–2, Feb. 2, 1977, 91 Stat. 4, authorized President to declare a natural gas emergency and to require emergency deliveries and transportation of natural gas until the earlier of Apr. 30, 1977, or termination of emergency by President and provided for antitrust protection, emergency purchases, adjustment in charges for local distribution companies, relationship to Natural Gas Act, effect of certain contractual obligations, administrative procedure and judicial review, enforcement, reporting to Congress, delegation of authorities, and preemption of inconsistent State or local action.

EXECUTIVE ORDER NO. 11969

Ex. Ord. No. 11969, Feb. 2, 1977, 42 F.R. 6791, as amended by Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, which delegated to the Secretary of Energy the authority vested in the President by the Emergency Natural Gas Act of 1977 except the authority to declare and terminate a natural gas emergency, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

PROCLAMATION NO. 4485

Proc. No. 4485, Feb. 2, 1977, 42 F.R. 6789, declared that a natural gas emergency existed within the meaning of section 3 of the Emergency Natural Gas Act of 1977, set out as a note above, which emergency was terminated by Proc. No. 4495, Apr. 1, 1977, 42 F.R. 18053, formerly set out below.

PROCLAMATION NO. 4495

Proc. No. 4495, Apr. 1, 1977, 42 F.R. 18053, terminated the natural gas emergency declared to exist by Proc. No. 4485, Feb. 2, 1977, 42 F.R. 6789, formerly set out above.

§ 717a. Definitions

When used in this chapter, unless the context otherwise requires—

(1) ''Person'' includes an individual or a corporation.

(2) ''Corporation'' includes any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, receiver or receivers, trustee or trustees of any of the foregoing, but shall not include municipalities as hereinafter defined.

(3) ''Municipality'' means a city, county, or other political subdivision or agency of a State.

(4) ''State'' means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States.

(5) ''Natural gas'' means either natural gas unmixed, or any mixture of natural and artificial gas.

(6) ''Natural-gas company'' means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

(7) ''Interstate commerce'' means commerce between any point in a State and any point

the issuance of the permit and to the exercise of the rights granted thereunder such conditions as the public interest may in its judgment require.

(b) In any case wherein the Secretary of Energy, the Secretary of State, and the Secretary of Defense cannot agree as to whether or not a permit should be issued, the Secretary of Energy shall submit to the President for approval or disapproval the application for a permit with the respective views of the Secretary of Energy, the Secretary of State and the Secretary of Defense.

SEC. 2. [Deleted.]

SEC. 3. The Secretary of Energy is authorized to issue such rules and regulations, and to prescribe such procedures, as it may from time to time deem necessary or desirable for the exercise of the authority delegated to it by this order.

SEC. 4. All Presidential Permits heretofore issued pursuant to Executive Order No. 8202 of July 13, 1939, and in force at the time of the issuance of this order, and all permits issued hereunder, shall remain in full force and effect until modified or revoked by the President or by the Secretary of Energy.

SEC. 5. Executive Order No. 8202 of July 13, 1939, is hereby revoked.

§ 717b–1. State and local safety considerations

(a) Promulgation of regulations

The Commission shall promulgate regulations on the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) pre-filing process within 60 days after August 8, 2005. An applicant shall comply with pre-filing process required under the National Environmental Policy Act of 1969 prior to filing an application with the Commission. The regulations shall require that the pre-filing process commence at least 6 months prior to the filing of an application for authorization to construct an LNG terminal and encourage applicants to cooperate with State and local officials.

(b) State consultation

The Governor of a State in which an LNG terminal is proposed to be located shall designate the appropriate State agency for the purposes of consulting with the Commission regarding an application under section 717b of this title. The Commission shall consult with such State agency regarding State and local safety considerations prior to issuing an order pursuant to section 717b of this title. For the purposes of this section, State and local safety considerations include—

(1) the kind and use of the facility;

(2) the existing and projected population and demographic characteristics of the location;

(3) the existing and proposed land use near the location;

(4) the natural and physical aspects of the location;

(5) the emergency response capabilities near the facility location; and

(6) the need to encourage remote siting.

(c) Advisory report

The State agency may furnish an advisory report on State and local safety considerations to the Commission with respect to an application no later than 30 days after the application was filed with the Commission. Before issuing an order authorizing an applicant to site, construct, expand, or operate an LNG terminal, the Commission shall review and respond specifically to the issues raised by the State agency described in subsection (b) of this section in the advisory report. This subsection shall apply to any application filed after August 8, 2005. A State agency has 30 days after August 8, 2005 to file an advisory report related to any applications pending at the Commission as of August 8, 2005.

(d) Inspections

The State commission of the State in which an LNG terminal is located may, after the terminal is operational, conduct safety inspections in conformance with Federal regulations and guidelines with respect to the LNG terminal upon written notice to the Commission. The State commission may notify the Commission of any alleged safety violations. The Commission shall transmit information regarding such allegations to the appropriate Federal agency, which shall take appropriate action and notify the State commission.

(e) Emergency Response Plan

(1) In any order authorizing an LNG terminal the Commission shall require the LNG terminal operator to develop an Emergency Response Plan. The Emergency Response Plan shall be prepared in consultation with the United States Coast Guard and State and local agencies and be approved by the Commission prior to any final approval to begin construction. The Plan shall include a cost-sharing plan.

(2) A cost-sharing plan developed under paragraph (1) shall include a description of any direct cost reimbursements that the applicant agrees to provide to any State and local agencies with responsibility for security and safety—

(A) at the LNG terminal; and

(B) in proximity to vessels that serve the facility.

(June 21, 1938, ch. 556, § 3A, as added Pub. L. 109–58, title III, § 311(d), Aug. 8, 2005, 119 Stat. 687.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

§ 717c. Rates and charges

(a) Just and reasonable rates and charges

All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is declared to be unlawful.

(b) Undue preferences and unreasonable rates and charges prohibited

No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to

any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Filing of rates and charges with Commission; public inspection of schedules

Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from June 21, 1938) 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.

(d) Changes in rates and charges; notice to Commission

Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Authority of Commission to hold hearings concerning new schedule of rates

Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, State commission, or gas distributing company, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.

(f) Storage services

(1) In exercising its authority under this chapter or the Natural Gas Policy Act of 1978 (15 U.S.C. 3301 et seq.), the Commission may authorize a natural gas company (or any person that will be a natural gas company on completion of any proposed construction) to provide storage and storage-related services at market-based rates for new storage capacity related to a specific facility placed in service after August 8, 2005, notwithstanding the fact that the company is unable to demonstrate that the company lacks market power, if the Commission determines that—

(A) market-based rates are in the public interest and necessary to encourage the construction of the storage capacity in the area needing storage services; and

(B) customers are adequately protected.

(2) The Commission shall ensure that reasonable terms and conditions are in place to protect consumers.

(3) If the Commission authorizes a natural gas company to charge market-based rates under this subsection, the Commission shall review periodically whether the market-based rate is just, reasonable, and not unduly discriminatory or preferential.

(June 21, 1938, ch. 556, § 4, 52 Stat. 822; Pub. L. 87–454, May 21, 1962, 76 Stat. 72; Pub. L. 109–58, title III, § 312, Aug. 8, 2005, 119 Stat. 688.)

REFERENCES IN TEXT

The Natural Gas Policy Act of 1978, referred to in subsec. (f)(1), is Pub. L. 95–621, Nov. 9, 1978, 92 Stat. 3350, as amended, which is classified generally to chapter 60 (§ 3301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of this title and Tables.

AMENDMENTS

2005—Subsec. (f). Pub. L. 109–58 added subsec. (f).

1962—Subsec. (e). Pub. L. 87–454 inserted ''or gas distributing company'' after ''State commission'', and struck out proviso which denied authority to the Commission to suspend the rate, charge, classification, or

service for the sale of natural gas for resale for industrial use only.

ADVANCE RECOVERY OF EXPENSES INCURRED BY NATURAL GAS COMPANIES FOR NATURAL GAS RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROJECTS

Pub. L. 102–104, title III, Aug. 17, 1991, 105 Stat. 531, authorized Federal Energy Regulatory Commission, pursuant to this section, to allow recovery, in advance, of expenses by natural-gas companies for research, development and demonstration activities by Gas Research Institute for projects on use of natural gas in motor vehicles and on use of natural gas to control emissions from combustion of other fuels, subject to Commission finding that benefits, including environmental benefits, to both existing and future ratepayers resulting from such activities exceed all direct costs to both existing and future ratepayers, prior to repeal by Pub. L. 102–486, title IV, § 408(c), Oct. 24, 1992, 106 Stat. 2882.

§ 717c–1. Prohibition on market manipulation

It shall be unlawful for any entity, directly or indirectly, to use or employ, in connection with the purchase or sale of natural gas or the purchase or sale of transportation services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance (as those terms are used in section 78j(b) of this title) in contravention of such rules and regulations as the Commission may prescribe as necessary in the public interest or for the protection of natural gas ratepayers. Nothing in this section shall be construed to create a private right of action.

(June 21, 1938, ch. 556, § 4A, as added Pub. L. 109–58, title III, § 315, Aug. 8, 2005, 119 Stat. 691.)

§ 717d. Fixing rates and charges; determination of cost of production or transportation

(a) Decreases in rates

Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however*, That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

(b) Costs of production and transportation

The Commission upon its own motion, or upon the request of any State commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas.

(June 21, 1938, ch. 556, § 5, 52 Stat. 823.)

§ 717e. Ascertainment of cost of property

(a) Cost of property

The Commission may investigate and ascertain the actual legitimate cost of the property of every natural-gas company, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation and the fair value of such property.

(b) Inventory of property; statements of costs

Every natural-gas company upon request shall file with the Commission an inventory of all or any part of its property and a statement of the original cost thereof, and shall keep the Commission informed regarding the cost of all additions, betterments, extensions, and new construction.

(June 21, 1938, ch. 556, § 6, 52 Stat. 824.)

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

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

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

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

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

service for the sale of natural gas for resale for industrial use only.

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(June 21, 1938, ch. 556, § 4A, as added Pub. L. 109–58, title III, § 315, Aug. 8, 2005, 119 Stat. 691.)

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(b) Inventory of property; statements of costs

Every natural-gas company upon request shall file with the Commission an inventory of all or any part of its property and a statement of the original cost thereof, and shall keep the Commission informed regarding the cost of all additions, betterments, extensions, and new construction.

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

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

(c) Certificate of public convenience and necessity

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

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

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

(A) natural gas sold by the producer to such person; and

(B) natural gas produced by such person.

(d) Application for certificate of public convenience and necessity

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

(e) Granting of certificate of public convenience and necessity

Except in the cases governed by the provisos contained in subsection (c)(1) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.

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

(1) The Commission, after a hearing had upon its own motion or upon application, may determine the service area to which each authorization under this section is to be limited. Within such service area as determined by the Commission a natural-gas company may enlarge or extend its facilities for the purpose of supplying increased market demands in such service area without further authorization; and

(2) If the Commission has determined a service area pursuant to this subsection, transportation to ultimate consumers in such service area by the holder of such service area determination, even if across State lines, shall be subject to the exclusive jurisdiction of the State commission in the State in which the gas is consumed. This section shall not apply to the transportation of natural gas to another natural gas company.

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

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

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

When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the prac-

neys, examiners, and experts as may be necessary for carrying out its functions under this chapter ''without regard to the provisions of other laws applicable to the employment and compensation of officers and employees of the United States'' are omitted as obsolete and superseded.

As to the compensation of such personnel, sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the Classification Act of 1923 and all other laws or parts of laws inconsistent with the 1949 Act. The Classification Act of 1949 was repealed by Pub. L. 89–554, Sept. 6, 1966, §8(a), 80 Stat. 632, and reenacted as chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees. Section 5102 of Title 5 contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Office of Personnel Management to determine the applicability to specific positions and employees.

Such appointments are now subject to the civil service laws unless specifically excepted by those laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to the Act of Nov. 26, 1940, ch. 919, title I, §1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5.

''Chapter 51 and subchapter III of chapter 53 of title 5'' substituted in text for ''the Classification Act of 1949, as amended'' on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5.

AMENDMENTS

1949—Act Oct. 28, 1949, substituted ''Classification Act of 1949'' for ''Classification Act of 1923''.

REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, §8, 80 Stat. 632, 655.

§ 717r. Rehearing and review

(a) Application for rehearing; time

Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b) of this section, the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.

(b) Review of Commission order

Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which is supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(c) Stay of Commission order

The filing of an application for rehearing under subsection (a) of this section shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(d) Judicial review

(1) In general

The United States Court of Appeals for the circuit in which a facility subject to section 717b of this title or section 717f of this title is proposed to be constructed, expanded, or operated shall have original and exclusive jurisdiction over any civil action for the review of an order or action of a Federal agency (other than the Commission) or State administrative agency acting pursuant to Federal law to

Subpart D—Material To Be Filed With Changes

§ 154.301 Changes in rates.

(a) Except for changes in rates pursuant to subparts E, F and G, of this part, any natural gas company filing for a change in rates or charges, except for a minor rate change, must submit, in addition to the material required by subparts A, B, and C of this part, the Statements and Schedules described in § 154.312.

(b) A natural gas company filing for a minor rate change must file the Statements and Schedules described in § 154.313.

(c) A natural gas company filing for a change in rates or charges must be prepared to go forward at a hearing and sustain, solely on the material submitted with its filing, the burden of proving that the proposed changes are just and reasonable. The filing and supporting workpapers must be of such composition, scope, and format as to comprise the company's complete case-in-chief in the event that the change is suspended and the matter is set for hearing. If the change in rates or charges presented are not in full accord with any prior Commission decision directly involving the filing company, the company must include in its working papers alternate material reflecting the effect of such prior decision.

[Order 582, 60 FR 52996, Oct. 11, 1995, as amended by Order 582–A, 61 FR 9628, Mar. 11, 1996]

§ 154.302 Previously submitted material.

(a) If all, or any portion, of the information called for by this part has already been submitted to the Commission within six months of the filing date of this application, or is included in other data filed pursuant to this part, specific reference thereto may be made in lieu of resubmission.

(b) If a new FERC Form No. 2 or 2–A is required to be filed within 60 days from the end of the base period, the new FERC Form No. 2 or 2–A must be filed concurrently with the rate change filing. There must be furnished to the Director, Office of Energy Market Regulation, with the rate change filing, one copy of the FERC Form No. 2 or 2–A.

[Order 582, 60 FR 52996, Oct. 11, 1995, as amended by Order 699, 72 FR 45325, Aug. 14, 2007; Order 701, 72 FR 61054, Oct. 29, 2007]

§ 154.303 Test periods.

Statements A through M, O, P, and supporting schedules, in § 154.312 and § 154.313, must be based upon a test period.

(a) If the natural gas company has been in operation for 12 months on the filing date, then the test period consists of a base period followed by an adjustment period.

(1) The base period consists of 12 consecutive months of the most recently available actual experience. The last day of the base period may not be more than 4 months prior to the filing date.

(2) The adjustment period is a period of up to 9 months immediately following the base period.

(3) The test period may not extend more than 9 months beyond the filing date.

(4) The rate factors (volumes, costs, and billing determinants) established during the base period may be adjusted for changes in revenues and costs which are known and measurable with reasonable accuracy at the time of the filing and which will become effective within the adjustment period. The base period factors must be adjusted to eliminate nonrecurring items. The company may adjust its base period factors to normalize items eliminated as nonrecurring.

(b) If the natural gas company has not been in operation for 12 months on the filing date, then the test period must consist of 12 consecutive months ending not more than one year after the filing date. Rate factors may be adjusted as in paragraph (a)(4) of this section but must not be adjusted for occurrences anticipated after the 12-month period.

(c)(1) Adjustments to base period experience, or to estimates where 12 months' experience is not available, may include the costs for facilities for which either a permanent or temporary certificate has been granted, provided such facilities will be in service within

the test period; or a certificate application is pending. The filing must identify facilities, related costs and the docket number of each such outstanding certificate. Subject to paragraph (c)(2) of this section, adjustments to base period experience, or to estimates where 12 months' experience is not available, may include any amounts for facilities that require a certificate of public convenience and necessity, where a certificate has not been issued by the filing date but is expected to be issued before the end of the test period. Adjustments to base period may include costs for facilities that do not require a certificate and are in service by the end of the test period.

(2) When a pipeline files a motion to place the rates into effect, the filing must be revised to exclude the costs associated with any facilities that will not be in service as of the end of the test period, or for which certificate authorization is required but will not be granted as of the end of the test period. At the end of the test period, the pipeline must remove from its rates costs associated with any facility that is not in service or for which certificate authority is required but has not been granted.

(d) The Commission may allow reasonable deviation from the prescribed test period.

[Order 582, 60 FR 52996, Oct. 11, 1995, as amended by Order 582–A, 61 FR 9629, Mar. 11, 1996]

§ 154.304 Format of statements, schedules, workpapers and supporting data.

(a) All statements, schedules, and workpapers must be prepared in accordance with the Commission's Uniform System of Accounts.

(b) The data in support of the proposed rate change must include the required particulars of book data, adjustments, and other computations and information on which the company relies, including a detailed narrative explanation placed at the beginning of the specific statement or schedule to which they apply, explaining each proposed adjustment to base period actual volumes and costs.

(c) Book data included in statements and schedules required to be prepared or submitted as part of the filing must be reported in a separate column or columns. All adjustments to book data must also be reported in a separate column or columns so that book amounts, adjustments thereto, and adjusted amounts will be clearly disclosed. All adjustments must be supported by a narrative explanation placed at the beginning of the specific statement or schedule to which they apply.

(d) Certain of the statements and schedules of §154.313 are workpapers. Any data or summaries reflecting the books of account must be supported by accounting workpapers setting forth all necessary particulars from which an auditor may readily identify the book data included in the filing and verify that such data are in agreement with the company's books of account.

[Order 582, 60 FR 52996, Oct. 11, 1995, as amended by Order 582–A, 61 FR 9629, Mar. 11, 1996]

§ 154.305 Tax normalization.

(a) *Applicability.* An interstate pipeline must compute the income tax component of its cost-of-service by using tax normalization for all transactions.

(b) *Definitions.* (1) *Tax normalization* means computing the income tax component as if transactions recognized in each period for ratemaking purposes are also recognized in the same amount and in the same period for income tax purposes.

(2) *Commission-approved ratemaking* method means a ratemaking method approved by the Commission in a final decision. This includes a ratemaking method that is part of an approved settlement or arbitration providing that the ratemaking method is to be effective beyond the term of the settlement or arbitration.

(3) *Income tax purposes* means for the purpose of computing actual income tax under the provisions of the Internal Revenue Code or the income tax provisions of the laws of a State or political subdivision of a State (including franchise taxes).

(4) *Income tax component* means that part of the cost-of-service that covers

income tax expenses allowable by the Commission.

(5) *Ratemaking purposes* means for the purpose of fixing, modifying, accepting, approving, disapproving, or rejecting rates under the Natural Gas Act.

(6) *Tax effect* means the tax reduction or addition associated with a specific expense or revenue transaction.

(7) *Transaction* means an activity or event that gives rise to an accounting entry.

(c) *Reduction of, and addition to, Rate Base.* (1) The rate base of an interstate pipeline using tax normalization under this section must be reduced by the balances that are properly recordable in Account 281, ''Accumulated deferred income taxes-accelerated amortization property''; Account 282, ''Accumulated deferred income taxes—other property'': and Account 283, ''Accumulated deferred income taxes—other.'' Balances that are properly recordable in Account 190, ''Accumulated deferred income taxes,'' must be treated as an addition to rate base. Include, as an addition or reduction, as appropriate, amounts in Account 182.3, Other regulatory assets, and Account 254, Other regulatory liabilities, that result from a deficiency or excess in the deferred tax accounts (see paragraph (d) of this section) and which have been, or are soon expected to be, authorized for recovery or refund through rates.

(2) Such rate base reductions or additions must be limited to deferred taxes related to rate base, construction, or other costs and revenues affecting jurisdictional cost-of-service.

(d) *Special rules.* (1) This paragraph applies:

(i) If the rate applicant has not provided deferred taxes in the same amount that would have accrued had tax normalization always been applied; or

(ii) If, as a result of changes in tax rates, the accumulated provision for deferred taxes becomes deficient in, or in excess of, amounts necessary to meet future tax liabilities.

(2) The interstate pipeline must compute the income tax component in its cost-of-service by making provision for any excess or deficiency in deferred taxes.

(3) The interstate pipeline must apply a Commission-approved ratemaking method made specifically applicable to the interstate pipeline for determining the cost-of-service provision described in paragraph (d)(2) of this section. If no Commission-approved ratemaking method has been made specifically applicable to the interstate pipeline, then the interstate pipeline must use some ratemaking method for making such provision, and the appropriateness of such method will be subject to case-by-case determination.

(4) An interstate pipeline must continue to include, as an addition or reduction to rate base, any deficiency or excess attributable to prior flow-through or changes in tax rates (paragraphs (d)(1)(i) and (d)(1)(ii) of this section), until such deficiency or excess is fully amortized in accordance with a Commission approved ratemaking method.

§ 154.306 Cash working capital.

A natural gas company that files a tariff change under this part may not receive a cash working capital adjustment to its rate base unless the company or other participant in a rate proceeding under this part demonstrates, with a fully developed and reliable lead-lag study, a net revenue receipt lag or a net expense payment lag (revenue lead). Any demonstrated net revenue receipt lag will be credited to rate base; and, any demonstrated net expense payment lag will be deducted from rate base.

§ 154.307 Joint facilities.

The Statements required by § 154.312 must show all costs (investment, operation, maintenance, depreciation, taxes) that have been allocated to the natural gas operations involved in the subject rate change and are associated with joint facilities. The methods used in making such allocations must be provided.

§ 154.308 Representation of chief accounting officer.

The filing must include a statement executed by the chief accounting officer or other authorized accounting representative of the filing company representing that the cost statements, supporting data, and workpapers, that purport to reflect the books of the company do, in fact, set forth the results shown by such books.

§ 154.309 Incremental expansions.

(a) For every expansion for which incremental rates are charged, the company must provide a summary with applicable cross-references to § 154.312 and § 154.313, of the costs and revenues associated with the expansion, until the Commission authorizes the costs of the incremental facilities to be rolled-in to the pipeline's rates. For every expansion that has an at-risk provision in the certificate authorization, the costs and revenues associated with the facility must be shown in summary format with applicable cross-references to § 154.312 and § 154.313, until the Commission removes the at-risk condition.

(b) The summary statements must provide the formulae and explain the bases used in the allocation of common costs to each incremental facility.

§ 154.310 Zones.

If the company maintains records of costs by zone, and proposes a zone rate methodology based on these costs, the statements and schedules in § 154.312 and § 154.313 must reflect costs detailed by zone.

§ 154.311 Updating of statements.

(a) Certain statements and schedules in § 154.312, that include test period data, must be updated with actual data by month and must be resubmitted in the same format and with consecutive monthly totals for each month of the adjustment period with a single set of updates encompassing a 12-month period. The updated statements or schedules must be filed 45 days after the end of the test period. The updated filing must be provided to parties specifically requesting them. The updated filing must reference the associated docket number and must be filed in the same format, form, and number as the original filing.

(b) The statements and schedules in § 154.312 to be updated are: Statements C, D and H–4; Schedules B–1, B–2, C–3, D–2, E–2, E–4, G–1, G–4, G–5, G–6, H–1 (1)(a), H–1 (1)(b), H–1 (1)(c), H–1 (2)(a) through H–1 (2)(k), H–2 (1), H–3 (3), I–4, and I–6.

(c) This requirement to file updates may be extended by the Secretary pursuant to § 375.302 of this chapter.

[Order 582–A, 61 FR 9629, Mar. 11, 1996]

§ 154.312 Composition of Statements.

(a) *Statement A.* Cost-of-service Summary. Summarize the overall gas utility cost-of-service: operation and maintenance expenses, depreciation, taxes, credits to cost-of-service, and return as developed in other statements and schedules.

(b) *Statement B.* Rate Base and Return Summary. Summarize the overall gas utility rate base shown in Statements C, D, E, and Schedules B–1 and B–2. Show the application of the claimed rate of return to the overall rate base.

(1) *Schedule B–1.* Accumulated Deferred Income Taxes (Account Nos. 190, 282, and 283). Show monthly book balances of accumulated deferred income taxes for each of the 12 months during the base period. List all items for which the accumulated deferred income taxes are calculated. In adjoining columns, show additions and reductions for the adjustment period balance and the total adjusted balance. Separately identify the individual components and the amounts in these accounts that the company seeks to include in its rate base.

(2) *Schedule B–2.* Regulatory Asset and Liability. If the pipeline seeks recovery of such balances in rate base, show monthly book balances of regulatory assets (Account 182.3) and liabilities (Account 254) for each of the 12 months during the base period. In adjoining columns, show additions and reductions for the adjustment period balance and the total adjusted balance.

Separately identify the individual components and the amounts in these accounts that the company seeks to include in its rate base. Identify any specific Commission authority that required the establishment of these amounts. Regulatory asset or liability net of deferred tax amounts should be included. Also, separately state the gross amounts of the regulatory asset and liability.

(c) *Statement C.* Cost of Plant Summary. Show the amounts of gas utility plant classified by Accounts 101, 102, 103, 104, 105, 106, 107, 117.1, and 117.2 as of the beginning of the 12 months of actual experience, the book additions and reductions (in separate columns) during the 12 months, and the book balances at the end of the 12-month period. In adjoining columns, show the claimed adjustments, if any, to the book balances and the total cost of plant to be included in rate base. For Account 117, also provide the volumes by subaccount. State the method used for accounting for system gas recorded in Account 117.2. Explain all adjustments in the following schedules.

(1) *Schedule C–1.* End of Base and Test Period Plant Functionalized. Demonstrate the ending base and test period balances for Plant in Service, in columnar form, by detailed plant account prescribed by the Commission's Uniform System of Accounts for Natural Gas Companies (part 201 of this chapter) with subtotals by functional classifications, e.g., Intangible Plant, Manufactured Gas Production Plant, Natural Gas Production and Gathering Plant, Products Extraction Plant, Storage Plant, Transmission Plant, Distribution Plant, and General Plant. Show zones, to the extent required by §154.310, and expansions, to the extent required by §154.309. Separately identify those facilities and associated costs claimed for the test period that require certificate authority but such authority has not been obtained at the time of filing. Give the docket number of the certificate proceeding.

(2) *Schedule C–2.* Show, for Accounts 106 and 107, a list of work orders claimed in the rate base. Give the work order number, docket number, description, amount of each work order, and the amounts of each type of undistributed construction overhead. Work orders amounting to $500,000 or less may be grouped by category of items.

(3) *Schedule C–3.* A cross-reference to updated information in the company's FERC Form No. 2 may be substituted for this Schedule. Give details of each storage project owned and storage projects under contract to the company, showing cost by major functions. Show base and system gas storage quantities and associated costs by account for the test period and for the 12 months of actual experience with monthly inputs and outputs to system gas.

(4) *Schedule C–4.* This schedule is part of the workpapers. State the methods and procedures followed in capitalizing the allowance for funds used during construction and other construction overheads. This schedule must be provided only in situations when the pipeline has changed any of its procedures since the last filed FERC Forms No. 2 or 2–A.

(5) *Schedule C–5.* This schedule is part of the workpapers. Set forth the cost of Plant in Service carried on the company's books as gas utility plant which was not being used in rendering gas service. Describe the plant. This schedule must be provided only if there is a significant change of $500,000 or more since the end of the year reported in the company's last FERC Form No. 2 or 2–A.

(d) *Statement D.* Accumulated Provisions for Depreciation, Depletion, and Amortization. Show the accumulated provisions for depreciation, depletion, amortization, and abandonment (Account 108, detailed by functional plant classification, and Account 111), as of the beginning of the 12 months of actual experience, the book additions and reductions during the 12 months, and the balances at the end of the 12-month period. In adjoining columns, show adjustments to these ending book balances and the total adjusted balances. All adjustments must be explained in the supporting material. Any authorized negative salvage must be maintained in a separate subaccount of account 108, and shall not include any amounts related to asset retirement obligations. For each functional plant

classification, show depreciation reserve associated with offshore and onshore plant separately. The following schedules and additional material must be submitted as part of Statement D:

(1) *Schedule D–1.* This schedule is part of the workpapers. Show the depreciation reserve book balance applicable to that portion of the depreciation rate not yet approved by the Commission, the depreciation rates, the docket number of the order approving such rate, and an explanation of any difference. Reflect actual end of base period depreciation reserve functionalized and test period depreciation reserve functionalized. Show accumulated depreciation and amortization, in columnar form, for the ending base and test period balances by functional classifications of Accumulated Depreciation reserve. (Examples are provided in Schedule C–1). For each functional plant classification, show depreciation reserve associated with offshore and onshore plant separately.

(2) *Schedule D–2.* This schedule is part of the workpapers. Give a description of the methods and procedures used in depreciating, depleting, and amortizing plant and in recording abandonments. This schedule must be filed only if a policy change has been made effective since the period covered by the last annual report on FERC Form No. 2 or 2–A was filed with the Commission.

(e) *Statement E.* Working Capital. Show the components of working capital in sufficient detail to explain how the amount of each component was computed. Components of working capital, other than cash working capital, may include an allowance for the average of 13 monthly balances of materials and supplies and prepayments actually expended and gas for resale. To the extent the applicant files to adjust the average of any 13 monthly balances, workpapers must be submitted that support the adjustment(s). Show the computations, cross-references, and sources from which the data used in computing claimed working capital are derived. The following schedules and material must be submitted as part of Statement E:

(1) *Schedule E–1.* Show the computation of cash working capital claimed as an adjustment to the gas company's rate base. Any adjustment to rate base requested must be based on a fully-developed and reliable lead-lag study. The components of the lead-lag study must include actual total company revenues, purchased gas costs, storage expense, transportation and compression of gas by others, salaries and wages, administrative and general expenses, income taxes payable, taxes other than income taxes, and any other operating and maintenance expenses for the base period. Cash working capital allowances in the form of additions to rate base may not exceed one-eighth of the annual operating expenses, as adjusted, net of non-cash items.

(2) *Schedule E–2.* Set forth monthly balances for materials, supplies, and prepayments in such detail as to disclose, either by subaccounts regularly maintained on the books or by analysis of the principal items included in the main account, the nature of such charges.

(3) *Schedule E–3.* For FERC Accounts 117.3, 164.1, 164.2 and 164.3, show the quantities and the respective costs of natural gas stored at the beginning of the test period, the input, output and balance remaining in Dth and associated costs by months. The method of pricing input, output and balance, and the claimed adjustments shall be disclosed and clearly and fully explained. Pipelines using the inventory method for system gas should not include any system gas inventory balances in this schedule.

(f) *Statement F–1.* Rate of Return Claimed. Show the percentage rate of return claimed and the general reasons therefor. Where any component of the capital of the filing company is not primarily obtained through its own financing, but is primarily obtained from a company by which the filing company is controlled, as defined in the Commission's Uniform System of Accounts, then the data required by these statements must be submitted with respect to the debt capital, preferred stock capital, and common stock capital of such controlling company or any intermediate company through which such funds have been secured. Furnish the Commission staff a copy of the latest prospectus issued by

the filing natural gas company, any superimposed holding company, or subsidiary companies.

(g) *Statement F–2.* Show

(1) The capitalization, capital structure, cost of debt capital, preferred stock capital, and the claimed return on stockholders' equity;

(2) The weighted cost of each capital class based on the capital structure; and,

(3) The overall rate of return claimed.

(h) *Statement F–3.* Debt Capital. Show the weighted average cost of debt capital based upon the following data for each class and series of long-term debt outstanding according to the balance sheet, as of the end of the 12-month base period of actual experience and as of the end of the 9-month test period.

(1) Title.

(2) Date of issuance and date of maturity.

(3) Interest rate.

(4) Principal amount of issue: Gross proceeds; Underwriters' discount or commission: Amount; Percent gross proceeds; Issuance expense: Amount; Percent gross proceeds; Net proceeds; Net proceeds per unit.

(5) Cost of money: Yield to maturity based on the interest rate and net proceeds per unit outstanding determined by reference to any generally accepted table of bond yields. The yield to maturity is to be expressed as a nominal annual interest rate. For example, for bonds having semiannual payments, the yield to maturity is twice the semiannual rate.

(6) If the issue is owned by an affiliate, state the name and relationship of the owner.

(7) If the filing company has acquired, at a discount or premium, some part of its outstanding debt which could be used in meeting sinking fund requirements, or for other reasons, separately show: The annual amortization of the discount or premium for each series of debt from the date of reacquisition over the remaining life of the debt being retired; and, the total discount and premium, as a result of such amortization, applicable to the test period.

(i) *Statement F–4.* Preferred Stock Capital. Show the weighted average cost of preferred stock capital based upon the following data for each class and series of preferred stock outstanding according to the balance sheet, as of the end of the 12-month base period of actual experience and as of the end of the nine-month test period.

(1) Title.

(2) Date of issuance.

(3) If callable, call price.

(4) If convertible, terms of conversion.

(5) Dividend rate.

(6) Par or stated amount of issue: Gross proceeds; Underwriters' discount or commission: Amount; Percent gross proceeds; Issuance expenses: Amount; Percent gross proceeds; Net proceeds; Net proceeds per unit.

(7) Cost of money: Annual dividend rate divided by net proceeds per unit.

(8) State whether the issue was offered to stockholders through subscription rights or to the public.

(9) If the issue is owned by an affiliate, state the name and relationship of the owner.

(j) *Statement G.* Revenues, Credits, and Billing Determinants.

(1) Show in summary format the information requested below on revenues, credits and billing determinants for the base period and the base period as adjusted. Explain the basis for adjustment to the base period. The level of billing determinants should not be adjusted for discounting.

(i) *Revenues.* Provide the total revenues, from jurisdictional and non-jurisdictional services, classified in accordance with the Commission's Uniform System of Accounts for the base period and for the base period as adjusted. Separate operating revenues by major rate component (e.g., reservation charges, demand charges, usage charges, commodity charges, injection charges, withdrawal charges, etc.) from revenues received from penalties, surcharges or other sources (e.g., ACA, GRI, transition costs). Show revenues by rate schedule and by receipt and delivery rate zones, if applicable. Show separately the revenues for firm services under contracts with a primary term of less than one year. For services provided through released capacity,

identify total revenues by rate schedule and by receipt and delivery rate zones, if applicable.

(ii) *Credits.* Show the principal components comprising each of the various items which are reflected as credits to the cost-of-service in preparing Statement A, Overall Cost-of-service for the base period and the base period as adjusted. Any transition cost component of interruptible transportation revenue must not be treated as operating revenues as defined above.

(iii) *Billing Determinants.* Show total reservation and usage billing determinants for the base period and the base period as adjusted, by rate schedule by receipt and delivery rate zones, if applicable. Show separately the billing determinants for firm services under contracts with a primary term of less than one year. For services provided through released capacity, identify billing determinants by rate schedule and by receipt and delivery rate zones, if applicable.

(2) The Schedules G–1 through G–6 must be filed at the FERC and served on all state commissions having jurisdiction over the affected customers within fifteen days after the rate case is filed. Schedules G–1 through G–6 must also be served on parties that request such service within 15 days of the filing of the rate case.

(i) *Schedule G–1.* Base Period Revenues. For the base period, show total actual revenues and billing determinants by month by customer name, by rate schedule, by receipt and delivery zone, if applicable, by major rate component (*e.g.,* reservation charges) and totals. Billing determinants must not be adjusted for discounting. Provide actual throughput (i.e., usage or commodity quantities, unadjusted for discounting) and actual contract demand levels (unadjusted for discounting). Provide this information separately for firm service under contracts with a primary term of less than one year. Separate operating revenues from revenues received from surcharges or other sources (e.g., ACA, GRI, transition costs). Identify customers who are affiliates. Identify rate schedules under which costs are allocated and rate schedules under which revenues are credited for the base period with cross-references to the other filed statements and schedules.

(ii) *Schedule G–2.* Adjustment Period Revenues.

(A) Show revenues and billing determinants by month, by customer name, by rate schedule, by receipt and delivery zone, if applicable, by major rate component (e.g., reservation charges) and totals for the base period adjusted for known and measurable changes which are expected to occur within the adjustment period computed under the rates expected to be charged. Billing determinants must not be adjusted for discounting. Provide projected throughput (i.e., usage or commodity quantities, unadjusted for discounting) and projected contract demand levels (unadjusted for discounting). Provide this information separately for firm service under contracts with a primary term of less than one year. Separate operating revenues from revenues received from surcharges or other sources (e.g., ACA, GRI, transition costs). Identify customers who are affiliates. Identify rate schedules under which costs are allocated and rate schedules under which revenues are credited for the adjustment period with cross-references to the other filed statements and schedules.

(B) Provide a reconciliation of the base period revenues and billing determinants and the revenues and billing determinants for the base period as adjusted.

(iii) *Schedule G–3.* Specify, quantify, and justify each proposed adjustment (capacity release, plant closure, contract termination, etc.) to base period actual billing determinants, and provide a detailed explanation for each factor contributing to the adjustment. Include references to any certificate docket authorizing changes. Submit workpapers with all formulae.

(iv) *Schedule G–4.* At-Risk Revenue. For each instance where there is a separate cost-of-service associated with facilities for which the applicant is ''at risk,'' show the base period and adjustment period revenue by customer or customer code, by rate schedule, by receipt and delivery zone, if applicable, and as 12-month totals. Provide this information by month unless otherwise agreed to by interested parties and if

monthly reporting is consistent with past practice of the pipeline. However, if seasonal services are involved, or if billing determinants vary from month to month, the information must be provided monthly. Provide projected throughput (i.e., usage or commodity quantities, unadjusted for discounting) and projected contract demand levels (unadjusted for discounting).

(v) *Schedule G–5*. Other Revenues.

(A) Describe and quantify, by month, the types of revenue included in Account Nos. 490–495 for the base and test periods. Show revenues applicable to the sale of products. Show the principal components comprising each of the various items which are reflected as credits to cost-of-service in Statement A.

(B) To the extent the credits to the cost-of-service reflected in Statement A differ from the amounts shown on Schedule G–5, compare and reconcile the two statements. Quantify and explain each proposed adjustment to base period actuals. For Account No. 490, show the name and location of each product extraction plant processing gas for the applicant, and the inlet and outlet monthly dth of the pipeline's gas at each plant. Show the revenues received by the applicant by product by month for each extraction plant for the base period and proposed for the test period.

(C) Separately state each item and revenue received for the transportation of liquids, liquefiable hydrocarbon, or nonhydrocarbon constituents owned by shippers. For both the base and test periods, indicate by shipper contract: The quantity transported and the revenues received.

(D) Separately state the revenues received from the release by the pipeline of transportation and compression capacity it holds on other pipeline systems. The revenues must equal the revenues reflected on Schedule I–4(iv).

(vi) *Schedule G–6*. Miscellaneous Revenues. Separately state by month the base and adjustment period revenues and the associated quantities received as penalties from jurisdictional customers; the revenues received from cash outs and other imbalance adjustments; and, the revenues received from exit fees.

(k) *Statement H–1*. Operation and Maintenance Expenses. Show the gas operation and maintenance expenses according to each applicable account of the Commission's Uniform System of Accounts for Natural Gas Companies. Show the expenses under columnar headings, with subtotals for each functional classification, as follows: Operation and maintenance expense by months, as booked, for the 12 months of actual experience, and the 12-month total; adjustments, if any, to expenses as booked; and, total adjusted operation and maintenance expenses. Provide a detailed narrative explanation of, and the basis and supporting workpapers for, each adjustment. The following schedules and additional material must be submitted as part of Statement H–1:

(1) *Schedule H–1 (1)*. This schedule is part of the workpapers. Show the labor costs, materials and other charges (excluding purchased gas costs) and expenses associated with Accounts 810, 811, and 812 recorded in each gas operation and maintenance expense account of the Uniform System of Accounts. Show these expenses, under the columnar headings, with subtotals for each functional classification, as follows: operation and maintenance expenses by months, as booked, for the 12 months of actual experience, and the 12-month total; adjustments, if any, to expenses as booked; and total adjusted operation and maintenance expenses. Disclose and explain all accrual on the books at the end of the base period or other normalizing accounting entries for internal purposes reflected in the monthly expenses presented per book. Explain any amounts not currently payable, except depreciation charged through clearing accounts, included in operation and maintenance expenses.

(2) *Schedule H–1 (1)(a)*. Labor Costs.

(3) *Schedule H–1 (1)(b)*. Materials and Other Charges (Excluding Purchased Gas Costs and items shown in Schedule H–1 (1)(c)).

(4) *Schedule H–1 (1)(c)*. Quantities Applicable to Accounts Nos. 810, 811, and 812. Show the quantities for each of the contra-accounts for both base and test periods.

(5) *Schedule H–1 (2)*. This schedule is part of the workpapers. Show, for the

12 months of actual experience and claimed adjustments: A classification of principal charges, credits and volumes; particulars of supporting computations and accounting bases; a description of services and related dollar amounts for which liability is incurred or accrued; and, the name of the firm or individual rendering such services. Expenses reported in Schedules H–1 (2)(a) through H–1 (2)(k) of $100,000 or less per type of service may be grouped.

(6) *Schedule H–1 (2)(a)*. Accounts 806, 808.1, 808.2, 809.1, 809.2, 813, 823, and any other account used to record fuel use or gas losses. Provide details of each type of expense.

(7) *Schedule H–1 (2)(b)*. Accounts 913 and 930.1. Advertising Expenses. Disclose principal types of advertising such as TV, newspaper, etc.

(8) *Schedule H–1 (2)(c)*. Account 921. Office Supplies and Expenses.

(9) *Schedule H–1 (2)(d)*. Account 922. Administrative Expenses Transferred Credit.

(10) *Schedule H–1 (2)(e)*. Account 923. Outside Services Employed.

(11) *Schedule H–1 (2)(f)*. Account 926. Employee Pensions and Benefits.

(12) *Schedule H–1 (2)(g)*. Account 928. Regulatory Commission Expenses.

(13) *Schedule H–1 (2)(h)*. Account 929. Duplicate Charges. Credit.

(14) *Schedule H–1 (2)(i)*. Account 930.2. Miscellaneous General Expenses.

(15) *Schedule H–1 (2)(j)*. Intercompany and Interdepartmental Transactions. Provide a complete disclosure of all corporate overhead allocated to the company. If the expense accounts contain charges or credits to and from associated or affiliated companies or nonutility departments of the company, submit a schedule, or schedules, as to each associated or affiliated company or nonutility department showing:

(i) The amount of the charges, or credits, during each month and in total for the base period and the adjustment period.

(ii) The FERC Account No. charged (or credited).

(iii) Descriptions of the specific services performed for, or by, the associated/affiliated company or nonutility department.

(iv) The bases used in determining the amounts of the charges (credits). Explain and demonstrate the derivation of the allocation bases with underlying calculations used to allocate costs among affiliated companies, and identify (by account number) all costs paid to, or received from affiliated companies which are included in a pipeline's cost-of-service for both the base and test periods.

(16) *Schedule H–1 (2)(k)*. Show all lease payments applicable to gas operation contained in the operation and maintenance accounts. Leases of $500,000 or less may be grouped by type of lease.

(l) *Statement H–2*. Depreciation, Depletion, Amortization and Negative Salvage Expenses. Show, separately, the gas plant depreciation, depletion, amortization, and negative salvage expenses by functional classifications. For each functional plant classification, show depreciation reserve associated with offshore and onshore plant separately. Show, in separate columns: expenses for the 12 months of actual experience; adjustments, if any, to such expense; and, the total adjusted expense claimed. Explain the bases, methods, essential computations, and derivation of unit rates for the calculation of depreciation, depletion, and amortization expense for the 12 months of actual experience and for the adjustments. The amounts of depreciable plant must be shown by the functions specified in paragraph C of Account 108, Accumulated Provisions for Depreciation of Gas Utility Plant, and Account 111, Accumulated Provision for Amortization and Depletion of Gas Utility Plant, of the Commission's Uniform System of Accounts for Natural Gas Companies, and, if available, for each detailed plant account (300 Series) together with the rates used in computing such expenses. Explain any deviation from the rates determined to be just and reasonable by the Commission. Show the rate or rates previously used together with supporting data for the new rate or rates used for this filing. The following schedule and additional material must be submitted as a part of Statement H–2:

(1) *Schedule H–2 (1)*. Depreciable Plant.

(i) Reconcile the depreciable plant shown in Statement H–2 with the aggregate investment in gas plant shown in Statement C, and the expense charged to other than prescribed depreciation, depletion, amortization, and negative salvage expense accounts. Identify the amounts of plant costs and associated plant accounts used as the bases for depreciation expense charged to clearing accounts. For each functional plant classification, show depreciation reserve associated with offshore and onshore plant separately.

(ii) Schedule H–2 (1) must be updated, as set forth in §154.310, with actual depreciable plant and reconciled with updated Statement C.

(m) *Statement H–3.* Income Taxes. Show the computation of allowances for Federal and State income taxes for the test period based on the claimed return applied to the overall gas utility rate base. To indicate the accounting classification applicable to the amount claimed, the computation of the Federal income tax allowance must show, separately, the amounts designated as current tax and deferred tax. Section 154.306, Tax Normalization, is incorporated in these instructions by reference. All the requirements of this section apply to Schedule H–3. The following schedules and additional material must be submitted as a part of Statement H–3:

(1) *Schedule H–3 (1).* This schedule is part of the workpapers. Show the income tax paid each State in the current and/or previous year covered by the test period.

(2) *Schedule H–3 (2).* This schedule is part of the workpapers. Show the computation of an updated reconciliation between book depreciable plant and tax depreciable plant and accumulated provision for deferred income taxes, for the base period or latest calendar or fiscal year (depending on the company's reporting period). Regulatory asset or liability net of deferred tax amounts should be included in this reconciliation. Also, separately state the gross amounts of the regulatory asset and liability.

(n) *Statement H–4.* Other Taxes. Show the gas utility taxes, other than Federal or state income taxes, in separate columns, as follows: Tax expense per books for the 12 months of actual experience (separately identify the amounts expensed or accrued during the period); adjustments, if any, to amounts booked; and, the total adjusted taxes claimed. Show the kind and amount of taxes paid under protest or in connection with taxes under litigation. Show taxes by state and by type of tax. The following schedules and additional material must be submitted as a part of Statement H–4:

(1) *Schedule H–4.* This schedule is part of the workpapers. Show the computations of adjusted taxes claimed in Statement H(4).

(o) *Statement I.* Statement I consists of the following Schedules:

(1) *Schedule I–1.* Functionalization of Cost-of-service. Show the overall cost-of-service contained in Statement A as supported by Statements B, C, D, E, G (revenue credits), and H:

(i) *Schedule I–1(a).* Separate overall cost-of-service by function of facility.

(ii) *Schedule I–1(b).* Separate the transmission, storage, and gathering facilities between incremental and non-incremental facilities. If the pipeline proposes to directly assign the costs of specific facilities, it must provide a separate cost-of-service for every directly assigned facility (e.g., lateral or storage field).

(iii) *Schedule I–1(c).* If the pipeline maintains records of costs by zone and proposes a zone rate methodology based on those costs separately state transmission, storage, and gathering costs, for each zone.

(iv) *Schedule I–1(d).* Show the method used to allocate common and joint costs to various functions including the allocation of A&G. Provide the factors underlying the allocation of general costs (e.g., miles of pipe, cost of plant, labor). Show the formulae used and explain the bases for the allocation of common and joint costs.

(2) *Schedule I–2.* Classification of Cost-of-service.

(i) For each functionalized cost-of-service provided in Schedule I–1 (a), (b), and (c), show the classification of costs between fixed costs and variable costs and between reservation costs and usage costs. The classification must be for each element of the cost-of-service

(e.g., depreciation expenses, state income taxes, revenue credits). For operation and maintenance expenses and revenue credits, the classification must be provided by account and by total.

(ii) Explain the basis for the classification of costs.

(iii) Explain any difference between the method for classifying costs and the classification method underlying the pipeline's currently effective rates.

(3) *Schedule I–3.* Allocation of Cost-of-service.

(i) If the company provides gas sales and transportation as a bundled service, show the allocation of costs between direct sales or distribution sales and the other services. If the company provides unbundled transportation, show the allocation of costs between services with cost-of-service rates and services with market-based rates, including products extraction, sales, and company-owned production. If the cost-of-service is allocated among rate zones, show how the classified cost-of-service is allocated among rate zones by function. If the pipeline proposes to establish rate zones for the first time, or to change existing rate zone boundaries, explain how the rate zone boundaries are established.

(ii) Show how the classified costs of service provided in Schedule I–2 or Schedule I–3 (i) are allocated among the pipeline's services and rate schedules.

(iii) Provide the formulae used in the allocation of the cost-of-service. Provide the factors underlying the allocation of the cost-of-service (e.g., contract demand, annual billing determinants, three-day peak). Provide the load factor or other basis for any imputed demand quantities.

(iv) Explain any changes in the basis for the allocation of the cost-of-service from the allocation methodologies underlying the currently effective rates.

(4) *Schedule I–4.* Transmission and Compression of Gas by Others (Account 858). Provide the following information for each transaction for the base and adjustment period:

(i) The name of the transporter.

(ii) The name of the rate schedule under which service is provided, and the expiration date of the contract.

(iii) Monthly usage volumes.

(iv) Monthly costs.

(v) The monthly revenues for volumes flowing under released capacity. The revenues in Schedule I–4 (iv) must also be reflected, separately, as a credit in Schedule G–5.

(5) *Schedule I–5.* Gas Balance. Show by months and total, for the 12 months of actual experience, the company's Gas Account, in the form required by FERC Form No. 2 pages 520 and 521. Show corresponding estimated data, if claimed to be different from actual experience. Provide the basis for any variation between estimated and actual base period data.

(p) *Statement J.* Comparison and Reconciliation of Estimated Operating Revenues With Cost-of-service. Compare the total revenues by rate schedule (Schedule G–2) to the allocated cost-of-service (Statement I). Identify any surcharges that are reflected in Statement N or in Statement I.

(1) *Schedule J–1.* Summary of Billing Determinants. Provide a summary of all billing determinants used to derive rates. Provide a reconciliation of customers' total billing determinants as shown on Schedule G–2 with those used to derive rates in Schedule J–2. Provide an explanation of how any discount adjustment is developed. If billing determinants are imputed for interruptible service, explain the method for calculating the billing determinants.

(2) *Schedule J–2.* Derivation of Rates. Show the derivation of each rate component of each rate. For each rate component of each rate schedule, include:

(i) A reference (by page, line, and column) to the allocated cost-of-service in Statement I.

(ii) A reference to the appropriate billing determinants in Schedule J–1.

(iii) Explain any changes in the method used for the derivation of rates from the method used in developing the underlying rates.

(q) *Statement K.* [Reserved]

(r) *Statement L.* Balance Sheet. Provide a balance sheet in the form prescribed by the Commission's Uniform System of Accounts for Natural Gas Companies as of the beginning and end of the base period. Include any notes. If the natural gas company is a member of a group of companies, also provide a balance sheet on a consolidated basis.

(s) *Statement M.* Income Statement. Provide an income statement, including a section on earnings, in the form prescribed by the Commission's Uniform System of Accounts for Natural Gas Companies for the base period. Include any notes. If the natural gas company is a member of a system group of companies, provide an income statement on a consolidated basis.

(t) *Statement N.* [Reserved]

(u) *Statement O.* Description of Company Operations. Provide a description of the company's service area and diversity of operations. Include the following:

(1) Only if significant changes have occurred since the filing of the last FERC Form No. 2 or 2–A, provide a detailed system map.

(2) A list of each major expansion and abandonment since the company's last general rate case. Provide brief descriptions, approximate dates of operation or retirement from service, and costs classified by functions.

(3) A detailed description of how the company designs and operates its systems. Include design temperature.

(v) *Statement P.* Explanatory Text and Prepared Testimony. Provide copies of prepared testimony indicating the line of proof which the company would offer for its case-in-chief in the event that the rates are suspended and the matter set for hearing. Name the sponsoring witness of all text and testimony. Statement P must be filed concurrently with the other schedules.

[Order 582, 60 FR 52996, Oct. 11, 1995, as amended by Order 582–A, 61 FR 9629, Mar. 11, 1996; Order 631, 68 FR 19622, Apr. 21, 2003]

§ 154.313 Schedules for minor rate changes.

(a) A change in a rate or charge that, for the test period, does not increase the company's revenues by the smaller of $1,000,000 or 5 percent is a minor rate change. A change in a rate level that does not directly or indirectly result in an increased rate or charge to any customer or class of customers is a minor rate change.

(b) In addition to the schedules in this section, filings for minor rate changes must include Statements L, M, O, P, I–1 through I–4, and J of § 154.312.

(c) The schedules of this section must contain the principal determinants essential to test the reasonableness of the proposed minor rate change. Any adjustments to book figures must be separately stated and the basis for the adjustment must be explained.

(d) Schedules B–1, B–2, C, D, E, H, H–2, and H–4 of § 154.313, must be updated with actual data by month and must be resubmitted in the same format and with consecutive 12 month running totals, for each month of the adjustment period. The updated statements or schedules must be filed 45 days after the end of the test period. The updated filing must reference the associated docket number and must be filed in the same format, form, and number as the original filing.

(e) Composition of schedules for minor rate changes.

(1) *Schedule A.* Overall Cost-of-service by Function. Summarize the overall cost-of-service (operation and maintenance expenses, depreciation, taxes, return, and credits to cost-of-service) developed from the supporting schedules below.

(2) *Schedule B.* Overall Rate Base and Return. Summarize the overall gas utility rate base by function. Include the claimed rate of return and show the application of the claimed rate of return to the overall rate base.

(3) *Schedule B–1.* Accumulated Deferred Income Taxes (Account Nos. 190, 281, 282, and 283). Show monthly book balances of accumulated deferred income taxes for each of the 12 months during the base period. In adjoining columns, show additions and reductions for the adjustment period balance and the total adjusted balance.

(4) *Schedule B–2.* Regulatory Asset and Liability. Show monthly book balances of regulatory asset (Account 182.3) and liability (Account 254) for each of the 12 months during the base period. In adjoining columns, show additions and reductions for the adjustment period balance and the total adjusted balance. Only include these accounts if recovery of these balances are reflected in the company's costs. Identify the specific Commission authority which required the establishment of these accounts.

(5) *Schedule C.* Cost of Plant by Functional Classification as of the End of the Base and Adjustment Periods.

(6) *Schedule D.* Accumulated Provisions for Depreciation, Depletion, Amortization, and Abandonment by Functional Classifications as of the Beginning and as of the End of the Test Period.

(7) *Schedule E.* Working Capital. Show the various components provided for in § 154.312, Statement E.

(8) *Schedule F.* Show the rate of return claimed with a brief explanation of the basis.

(9) *Schedule G.* Revenues and Billing Determinants.

(i) Show in summary format the information requested below on revenues and billing determinants for the base period and the base period as adjusted. Schedule G must be submitted to all customers of the pipeline that received service during the base period or are expected to receive service during the base period as adjusted and on State commissions having jurisdiction over the affected customers.

(A) *Revenues.* Provide the total revenues by rate schedule from jurisdictional services, classified in accordance with the Commission's Uniform System of Accounts for the base period and for the base period as adjusted. Separate operating revenues by major rate component (e.g., reservation charges, demand charges, usage charges, commodity charges, injection charges, withdrawal charges, etc.) from revenues received from penalties, surcharges or other sources (e.g., ACA, GRI, transition costs). For services provided through released capacity, identify total revenues by rate schedule and by receipt and delivery rate zones, if applicable.

(B) *Billing Determinants.* Show total reservation and usage billing determinants by rate schedule for the base period and the base period as adjusted. For services provided through released capacity, identify total billing determinants by rate schedule and by receipt and delivery rate zones, if applicable.

(ii) Schedule G–1 must be filed at the Commission and on all state commissions having jurisdiction over the affected customers within 15 days after the rate case is filed. Schedule G–1 must also be served on parties that request such service within 15 days of the filing of the rate case.

(A) *Schedule G–1.* Adjustment Period Revenues.

(*1*) Show revenues and billing determinants by month, by customer name, by rate schedule, by major rate component (e.g., reservation charges) and totals for the base period adjusted for known and measurable changes which are expected to occur within the adjustment period computed under the rates expected to be charged. Show commodity billing determinants by rate schedule. Billing determinants must not be adjusted for discounting. Provide projected throughput (i.e., usage or commodity quantities, unadjusted for discounting) and projected contract demand levels (unadjusted for discounting). Separate operating revenues from revenues received from surcharges or other sources (e.g., ACA, GRI, transition costs). Identify customers who are affiliates. Identify rate schedules under which costs are allocated and rate schedules under which revenues are credited for the adjustment period with cross-references to the other filed statements and schedules.

(*2*) Provide a reconciliation of the base period revenues and billing determinants and the revenues and billing determinants for the base period as adjusted.

(10) *Schedule H.* Operation and Maintenance Expenses. Show the gas operation and maintenance expenses according to each applicable account of the Commission's Uniform System of Accounts for Natural Gas Companies. The expenses must be shown under appropriate columnar-headings, by labor, materials and other charges, and purchased gas costs, with subtotals for each functional classification: Operation and maintenance expense by months, as booked, for the 12 months of actual experience, and the total thereof; adjustments, if any, to expenses as booked; and, total adjusted operation and maintenance expenses claimed. Explain all adjustments. Specify the month or months during which the adjustments would be applicable.

(11) *Schedule H–1*. Workpapers for Expense Accounts. Furnish workpapers for the 12 months of actual experience and claimed adjustments and analytical details as set forth in §154.312, Schedule H–1 (3).

(12) *Schedule H–2*. Depreciation, Depletion, Amortization and Negative Salvage Expenses. Show, separately, the gas plant depreciation, depletion, amortization, and negative salvage expenses by functional classifications. For each functional plant classification, show depreciation reserve associated with offshore and onshore plant separately. The bases, methods, essential computations, and derivation of unit rates for the calculation of depreciation, depletion, amortization, and negative salvage expenses for actual experience must be explained.

(13) *Schedule H–3*. Income Tax Allowances Computed on the Basis of the Rate of Return Claimed. Show the computation of allowances for Federal and State income taxes based on the claimed return applied to the overall gas utility rate base.

(14) *Schedule H–3 (1)*. This schedule is part of the workpapers. Show the computation of an updated reconciliation between book depreciable plant and tax depreciable plant and accumulated provision for deferred income taxes, for the base period or latest calendar or fiscal year (depending on the company's reporting period).

(15) *Schedule H–4*. Other Taxes. Show the gas utility taxes, other than Federal or state income taxes in separate columns, as follows: Tax expense per books for the 12 months of actual experience;) adjustments, if any, to amounts booked; and, the total adjusted taxes claimed. Provide the details of the kind and amount of taxes paid under protest or in connection with taxes under litigation. The taxes must be shown by states and by kind of taxes. Explain all adjustments.

§154.314 Other support for a filing.

(a) Any company filing for a rate change is responsible for preparing prior to filing, and maintaining, workpapers sufficient to support the filing.

(b) If the natural gas company has relied upon data other than those in Statements A through P in §154.312 in support of its general rate change, such other data must be identified and submitted.

§154.315 Asset retirement obligations.

(a) A natural gas company that files a tariff change under this part and has recorded an asset retirement obligation on its books must provide a schedule, as part of the supporting workpapers, identifying all cost components related to the asset retirement obligations that are included in the book balances of all accounts reflected in the cost of service computation supporting the proposed rates. However, all cost components related to asset retirement obligations that would impact the calculation of rate base, such as gas plant and related accumulated depreciation and accumulated deferred income taxes, may not be reflected in rates and must be removed from the rate base calculation through a single adjustment.

(b) A natural gas company seeking to recover nonrate base costs related to asset retirement obligations in rates must provide, with its filing under §154.312 or §154.313, a detailed study supporting the amounts proposed to be collected in rates.

(c) A natural gas company who has recorded asset retirement obligations on its books but is not seeking recovery of the asset retirement costs in rates, must remove all asset retirement obligations related cost components from the cost of service supporting its proposed rates.

[Order 631, 68 FR 19622, Apr. 21, 2003]

Subpart E—Limited Rate Changes

§154.400 Additional requirements.

In addition to the requirements of subparts A, B, and C of this part, any proposal to implement a limited rate change must comply with this subpart.

§154.401 RD&D expenditures.

(a) *Requirements*. Upon approval by the Commission, a natural gas company may file to recover research, development, and demonstration (RD&D) expenditures in its rates under this subpart.

(b) *Applications for rate treatment approval.* (1) An application for advance approval of rate treatment may be filed by a natural gas company for RD&D expenditures related to a project or group of projects undertaken by the company or as part of a project undertaken by others. When more than one company supports an RD&D organization, the RD&D organization may submit an application that covers the organization's RD&D program. Approval by the Commission of such an RD&D application and program will constitute approval of the individual companies' contributions to the RD&D organization.

(2) An application for advance approval of rate treatment must include a 5-year program plan and must be filed at least 180 days prior to the commencement of the 5-year period of the plan.

(3) A 5-year program plan must include at a minimum:

(i) A statement of the objectives for the 5-year period that relates the objectives to the interests of ratepayers, the public, and the industry and to the objectives of other major research organizations.

(ii) Budget, technical, and schedule information in sufficient detail to explain the work to be performed and allow an assessment of the probability of success and a comparison with other organizations' research plans.

(iii) The commencement date, expected termination date, and expected annual costs for individual RD&D projects to be initiated during the first year of the plan.

(iv) A discussion of the RD&D efforts and progress since the preparation of the program plan submitted the previous year and an explanation of any changes that have been made in objectives, priorities, or budgets since the plan of the previous year.

(v) A statement identifying all jurisdictional natural gas companies that will support the program and specifying the amounts of their budgeted support.

(vi) A statement identifying those persons involved in the development, review, and approval of the plan and specifying the amount of effort contributed and the degree of control exercised by each.

(c) Applications must describe the RD&D projects in such detail as to satisfy the Commission that the RD&D expenditures qualify as valid, justifiable, and reasonable.

(d) Within 120 days of the filing of an application for rate treatment approval and a 5-year program plan, the Commission will state its decision with respect to acceptance, partial acceptance, or rejection of the plan, or, when the complexity of issues in the plan so requires, will set a date certain by which a final decision will be made, or will order the matter set for hearing. Partial rejection of a plan by the Commission will be accompanied by a decision as to the partial level of acceptance which will be proportionally applied to all contributions listed for jurisdictional companies in the plan. Approval by the Commission of a 5-year plan constitutes approval for rate treatment of all projects identified as starting during the first year of the approved plan. Continued rate treatment will depend upon review and evaluation of subsequent annual applications and 5-year program plans.

§ 154.402 ACA expenditures.

(a) *Requirements.* Upon approval by the Commission, a natural gas pipeline company may adjust its rates, annually, to recover from its customers annual charges assessed by the Commission under part 382 of this chapter pursuant to an annual charge adjustment clause (ACA clause). The ACA clause must be filed with the Commission and indicate the amount of annual charges to be flowed through per unit of energy sold or transported (ACA unit charge). The ACA unit charge will be specified by the Commission at the time the Commission calculates the annual charge bills. A company must reflect the ACA unit charge in each of its rate schedules applicable to sales or transportation deliveries. The company must apply the ACA unit charge to the usage component of rate schedules with two-part rates. A company may recover annual charges through an ACA unit charge only if its rates do

not otherwise reflect the costs of annual charges assessed by the Commission under §382.106(a) of this chapter. The applicable annual charge, required by §382.103 of this chapter, must be paid before the company applies the ACA unit charge.

(b) *Application for Rate Treatment Authorization.* A company seeking authorization to use an ACA unit charge must file with the Commission a separate ACA tariff sheet or section containing:

(1) A statement that the company is collecting an ACA per unit charge, as approved by the Commission, applicable to all the pipeline's sales and transportation rate schedules,

(2) The per unit charge of the ACA,

(3) The proposed effective date of the tariff change (30 days after the filing of the tariff sheet or section, unless a shorter period is specifically requested in a waiver petition and approved), and

(4) A statement that the pipeline will not recover any annual charges recorded in FERC Account 928 in a proceeding under subpart D of this part.

(c) Changes to the ACA unit charge must be filed annually, to reflect the annual charge unit rate authorized by the Commission each fiscal year.

[Order 582, 60 FR 52996, Oct. 11, 1995, as amended by Order 714, 73 FR 57535, Oct. 3, 2008]

§154.403 Periodic rate adjustments.

(a) This section applies to the passthrough, on a periodic basis, of a single cost item or revenue item for which passthrough is not regulated under another section of this subpart, and to revisions on a periodic basis of a gas reimbursement percentage.

(b) Where a pipeline recovers fuel use and unaccounted-for natural gas in kind, the fuel reimbursement percentage must be stated in the tariff either on the tariff sheet stating the currently effective rate or on a separate tariff sheet or section in such a way that it is clear what amount of natural gas must be tendered in kind for each service rendered.

(c) A natural gas company that passes through a cost or revenue item or adjusts its fuel reimbursement percentage under this section, must state within the general terms and conditions of its tariff, the methodology and timing of any adjustments. The following must be included in the general terms and conditions:

(1) A statement of the nature of the revenue or costs to be flowed through to the customer;

(2) A statement of the manner in which the cost or revenue will be collected or returned, whether through a surcharge, offset, or otherwise;

(3) A statement of which customers are recipients of the revenue credit and which rate schedules are subject to the cost or fuel reimbursement percentage;

(4) A statement of the frequency of the adjustment and the dates on which the adjustment will become effective;

(5) A step-by-step description of the manner in which the amount to be flowed through is calculated and a step-by-step description of the flowthrough mechanism, including how the costs are classified and allocated. Where the adjustment modifies a rate established under subpart D of this part, the methodology must be consistent with the methodology used in the proceeding under subpart D of this part;

(6) Where costs or revenue credits are accumulated over a past period for periodic recovery or return, the past period must be defined and the mechanism for the recovery or return must be detailed on a step-by-step basis. Where the natural gas company proposes to use a surcharge to clear an account in which the difference between costs or revenues, recovered through rates, and actual costs and revenues accumulate, a statement must be included detailing, on a step-by-step basis, the mechanism for calculating the entries to the account and for passing through the account balance.

(7) Where carrying charges are computed, the calculations must be consistent with the methodology and reporting requirements set forth in §154.501 using the carrying charge rate required by that section. A natural gas company must normalize all income tax timing differences which are the result of differences between the period in which expense or revenue enters into the determination of taxable income and the period in which the expense or revenue enters into the determination of pre-tax book income. Any balance

upon which the natural gas company calculates carrying charges must be adjusted for any recorded deferred income taxes.

(8) Where the natural gas company discounts the rate component calculated pursuant to this section, explain on a step-by-step basis how the natural gas company will adjust for rate discounts in its methodology to reflect changes in costs under this section.

(9) If the costs passed through under a mechanism approved under this section are billed by an upstream natural gas company, explain how refunds received from upstream natural gas companies will be passed through to the natural gas company's customers, including the allocation and classification of such refunds;

(10) A step-by-step explanation of the methodology used to reflect changes in the fuel reimbursement percentage, including the allocation and classification of the fuel use and unaccounted-for natural gas. Where the adjustment modifies a fuel reimbursement percentage established under subpart D of this part, the methodology must be consistent with the methodology used in the proceeding under subpart D of this part;

(11) A statement of whether the difference between quantities actually used or lost and the quantities retained from the customers for fuel use and loss will be recovered or returned in a future surcharge. Include a step-by-step explanation of the methodology used to calculate such surcharge. Any period during which these differences accumulate must be defined.

(d) *Filing requirements.* (1) Filings under this section must include:

(i) A summary statement showing the rate component added to each rate schedule with workpapers showing all mathematical calculations.

(ii) If the filing establishes a new fuel reimbursement percentage or surcharge, include computations for each fuel reimbursement or surcharge calculated, broken out by service, classification, area, zone, or other subcategory.

(iii) Workpapers showing the allocation of costs or revenue credits by rate schedule and step-by-step computations supporting the allocation, segregated into reservation and usage amounts, where appropriate.

(iv) Where the costs, revenues, rates, quantities, indices, load factors, percentages, or other numbers used in the calculations are publicly available, include references by source.

(v) Where a rate or quantity underlying the costs or revenue credits is supported by publicly available data (such as another natural gas company's tariff or EBB), the source must be referenced to allow the Commission and interested parties to review the source. If the rate or quantity does not match the rate or quantity from the source referenced, provide step-by-step instructions to tie the rate in the referenced source to the rate in the filing.

(vi) Where a number is derived from another number by applying a load factor, percentage, or other adjusting factor not referenced in paragraph (d)(1)(i) of this section, include workpapers and a narrative to explain the calculation of the adjusting factor.

(2) If the natural gas company is adjusting its rates to reflect changes in transportation and compression costs paid to others:

(i) The changes in transportation and compression costs must be based on the rate on file with the Commission. If the rate is not on file with the Commission or a discounted rate is paid, the rate reflected in the filing must be the rate the natural gas company is contractually obligated to pay;

(ii) The filing must include appropriate credits for capacity released under §284.243 of this chapter with workpapers showing the quantity released, the revenues received from the release, the time period of the release, and the natural gas pipeline on which the release took place; and,

(iii) The filing must include a statement of the refunds received from each upstream natural gas company which are included in the rate adjustment. The statement must conform to the requirements set forth in §154.501.

(3) If the natural gas company is reflecting changes in its fuel reimbursement percentage, the filing must include:

(i) A summary statement of actual gas inflows and outflows for each

month used to calculate the fuel reimbursement percentage or surcharge. For purposes of establishing the surcharge, the summary statement must be included for each month of the period over which the differences defined in paragraph (c) of this section accumulate.

(ii) Where the fuel reimbursement percentage is calculated based on estimated activity over a future period, the period must be defined and the estimates used in the calculation must be justified. If any of the estimates are publicly available, include a reference to the source.

(4) The natural gas company must not recover costs and is not obligated to return revenues which are applicable to the period pre-dating the effectiveness of the tariff language setting forth the periodic rate change mechanism, unless permitted or required to do so by the Commission.

[Order 582, 60 FR 52996, Oct. 11, 1995, as amended by Order 714, 73 FR 57535, Oct. 3, 2008]

Subpart F—Refunds and Reports

§ 154.501 Refunds.

(a) *Refund Obligation.* (1) Any natural gas company that collects rates or charges pursuant to this chapter must refund that portion of any increased rates or charges either found by the Commission not to be justified, or approved for refund by the Commission as part of a settlement, together with interest as required in paragraph (d) of this section. The refund plus interest must be distributed as specified in the Commission order requiring or approving the refund, or if no date is specified, within 60 days of a final order. For purposes of this paragraph, a final order is an order no longer subject to rehearing. The pipeline is not required to make any refund until it has collected the refundable money through its rates.

(2) Any natural gas company must refund to its jurisdictional customers the jurisdictional portion of any refund it receives which is required by prior Commission order to be flowed through to its jurisdictional customers or represents the refund of an amount previously included in a filing under §154.403 and charged and collected from jurisdictional customers within thirty days of receipt or other time period established by the Commission or as established in the pipeline's tariff.

(b) *Costs of Refunding.* Any natural gas company required to make refunds pursuant to this section must bear all costs of such refunding.

(c) *Supplier Refunds.* The jurisdictional portion of supplier refunds (including interest received), applicable to periods in which a purchased gas adjustment clause was in effect, must be flowed through to the natural gas company's jurisdictional gas sales customers during that period with interest as computed in paragraph (d) of this section.

(d) *Interest on Refunds.* Interest on the refund balance must be computed from the date of collection from the customer until the date refunds are made as follows:

(1) At an average prime rate for each calendar quarter on all excessive rates or charges held (including all interest applicable to such rates and charges) on or after October 1, 1979. The applicable average prime rate for each calendar quarter must be the arithmetic mean, to the nearest one-hundredth of one percent, of the prime rate values published in the Federal Reserve Bulletin, or in the Federal Reserve's ''Selected Interest Rates'' (Statistical Release G, 13), for the fourth, third, and second months preceding the first month of the calendar quarter.

(2) The interest required to be paid under paragraph (d)(1) of this section must be compounded quarterly.

(3) The refund balance must be either:

(i) The revenues resulting from the collection of the portion of any increased rates or charges found by the Commission not to be justified; or

(ii) An amount agreed upon in a settlement approved by the Commission; or

(iii) The jurisdictional portion of a refund the natural gas company receives.

(e) Unless otherwise provided by the order, settlement or tariff provision requiring the refund, the natural gas company must file a report of refunds, within 30 days of the date the refund

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CERTIFICATE OF SERVICE

In accordance with Fed. R. App. P. 25(d), and the Court's Administrative Order Regarding Electronic Case Filing, I hereby certify that I have, this 25th day of June 2012, served the foregoing upon the counsel listed in the Service Preference Report via email through the Court's CM/ECF system or via U.S. Mail, as indicated below:

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