

125 FERC ¶ 61,190
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 284

Docket No. RM09-2-000

Contract Reporting Requirements of Intrastate Natural Gas Companies

(Issued November 20, 2008)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Energy Regulatory Commission is considering whether to revise its contract reporting requirements for those natural gas pipelines that fall under the Commission's jurisdiction pursuant to section 311 of the Natural Gas Policy Act of 1978 or section 1(c) of the Natural Gas Act. This Notice of Inquiry will assist the Commission in determining what changes, if any, should be made to its regulations.

COMMENT DATE: Comments are due [insert date that is 60 days after publication in the **FEDERAL REGISTER**].

ADDRESSES: You may submit comments on the Notice of Inquiry, identified by Docket No. RM09-2-000, by one of the following methods:

- Agency web site: <http://www.ferc.gov>. Follow instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble.
- Mail: Commenters unable to file comments electronically must mail or hand

deliver an original and 14 copies of their comments to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, N.E., Washington, D.C. 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

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SUPPLEMENTARY INFORMATION:

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

Contract Reporting Requirements
of Intrastate Natural Gas Companies

Docket No. RM09-2-000

NOTICE OF INQUIRY

(Issued November 20, 2008)

1. In this Notice of Inquiry, the Federal Energy Regulatory Commission (Commission) seeks comments on whether the Commission should impose additional reporting requirements on (1) intrastate pipelines providing interstate services pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA)¹ and (2) Hinshaw pipelines providing interstate services subject to the Commission's Natural Gas Act (NGA) jurisdiction pursuant to blanket certificates issued under § 284.224 of the Commission's regulations.² In particular, the Commission is interested in exploring whether it should

¹ 15 U.S.C. 3372.

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

(continued...)

require section 311 and Hinshaw pipelines to post the details of their transactions with individual shippers in a manner more comparable to the reporting requirements applicable to interstate pipelines under § 284.13(b) of the Commission's Regulations.³

I. Background

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

F.3d 897, 898 (1995) (briefly summarizing the history of the Hinshaw exemption).

³ 18 CFR 284.13(b).

⁴ 15 U.S.C. 3371(c).

authorizing them to transport gas in interstate commerce in the same manner as intrastate pipelines may do under NGPA section 311.⁵

3. Subpart C of the Commission's Part 284 open access regulations (18 CFR 284.121-126) implements the provisions of NGPA section 311 concerning transportation by intrastate pipelines. Section 284.224 of the regulations provides for the issuance of blanket certificates to Hinshaw pipelines to provide open access transportation service "to the same extent that, and in the same manner" as intrastate pipelines are authorized to perform such service by Subpart C.

4. The Part 284, Subpart C, regulations require that intrastate pipelines performing interstate service under NGPA section 311 must do so on an open access basis.⁶

However, consistent with the NGPA's goal of encouraging intrastate pipelines to provide interstate service, the Commission has not imposed on intrastate pipelines all of the Part 284 requirements imposed on interstate pipelines. For example, when the Commission first adopted the Part 284 open access regulations in Order No. 436, the Commission exempted intrastate pipelines from the requirement that they offer open access service on

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

⁶ See 18 CFR 284.7(b), 284.9(b) and 284.122.

a firm basis.⁷ The Commission found that requiring intrastate pipelines to offer firm service to out-of-state shippers could discourage them from providing any interstate service, because such a requirement could progressively turn the intrastate pipeline into an interstate pipeline against its will and against the will of the responsible state authorities. Similarly, Order No. 636-B exempted intrastate pipelines from the requirements of Order No. 636.⁸ Those requirements included capacity release, electronic bulletin boards (now internet websites), and flexible receipt and delivery points.

5. In Order No. 637,⁹ the Commission modified the Part 284 regulations applicable to interstate pipelines in a number of ways. Among other things, the Commission revised

⁷ Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 436, FERC Stats. & Regs. ¶ 30,665, at 31,502 (1985).

⁸ Pipeline Service Obligations, and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations; Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636-B, 61 FERC ¶ 61,272, at 61,992 n.26 (1992), order on reh'g, 62 FERC ¶ 61,007 (1993), aff'd in part and remanded in part sub nom. United Distribution Cos. v. FERC, 88 F.3d 1105 (D.C. Cir. 1996), order on remand, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

⁹ Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637, FERC Stats. & Regs. ¶ 31,091, clarified, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, reh'g denied, Order No. 637-B, 92 FERC ¶ 61,062 (2000), aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC, 285 F.3d 18 (D.C. Cir. 2002), order on remand, 101 FERC ¶ 61,127 (2002), order on reh'g, 106 FERC ¶ 61,088 (2004), aff'd sub nom. American Gas Ass'n v. FERC, 428 F.3d 255 (D.C. Cir. 2005).

the reporting requirements for interstate pipelines in order to provide more transparent pricing information and to permit more effective monitoring for the exercise of market power and undue discrimination. Section 284.13(b), as adopted by Order No. 637, requires interstate pipelines to post on their internet websites basic information on each transaction with individual shippers. Interstate pipelines must post on their website the following details about new transactions, including revisions to a contract, no later than the first nomination under a transaction:

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

6. Section 284.13(c) of the Commission's regulations also requires interstate pipelines to file with the Commission on the first business day of each calendar quarter an index of its firm transportation and storage customers and to publish the same information on their website. The information required to be included in the Index of Customers does not include the rates paid by the customers. Section 284.13(d) requires interstate pipelines to

provide on their websites “equal and timely access to information relevant to the availability of all transportation services whenever capacity is scheduled.” Section 284.13(e) requires interstate pipelines to file semi-annual reports of their storage injection and withdrawal activities, including the identities of the customers, the volumes into and withdrawn from storage for each customer and the unit charge and total revenues received.

7. Order No. 637 did not modify the reporting requirements for NGPA section 311 intrastate pipelines and Hinshaw pipelines provided in § 284.126(c) of the Commission’s regulations. That section only requires section 311 and Hinshaw pipelines to file semi-annual reports of their storage injection and withdrawal activity. The reports must be filed within 30 days of the end of each complete injection and withdrawal period and must include: the identity of each customer injecting or withdrawing gas from storage; the docket where the storage injection or withdrawal rates were approved; the maximum storage quantity and daily withdrawal quantity applicable to each customer; the volumes each customer injected or withdrew from storage; and the unit charge and total revenues received from each customer during the injection/withdrawal period. Section 284.126(b) of the Commission’s regulations requires section 311 pipelines to make similar reports concerning their transportation services on an annual basis.¹⁰

¹⁰ Some section 311 intrastate storage and transportation operators submit these

(continued...)

8. Recently, an interstate storage provider with market-based rates, SG Resources Mississippi, L.L.C. (SGRM) filed a request for waiver of the §§ 284.13(b)(1)(iii) and (b)(2)(ii) requirements that interstate pipelines post the rates charged in firm and interruptible transactions no later than first nomination for service.¹¹ SGRM requested the waiver for both itself and all interstate storage providers with market-based rates. It contended that the mandatory disclosure of commercially sensitive pricing information provides prospective customers and competitors, such as NGPA section 311 intrastate storage providers that are not subject to this disclosure, with an unfair competitive advantage. In the alternative, SGRM requested that the Commission initiate a rulemaking proceeding to determine whether the Commission's regulations should be modified to exempt storage providers authorized to charge market-based rates from the relevant portions of the Internet posting regulations. A number of other interstate storage providers with market-based rates filed comments in support of SGRM's requests. A number of natural gas industry trade associations and a natural gas commodities trading firm filed in opposition of SGRM's request.

reports subject to a request for privileged treatment under §§ 388.112 or 385.1112 of the Commission's regulations. In such instances, the reports are treated as privileged at least until another party asks that they be made public.

¹¹ See Docket No. RP08-606-000, SGRM September 3, 2008 Petition.

9. In a contemporaneous order, the Commission is denying the request for waiver and the alternative petition for a rulemaking proceeding.¹² In that order, the Commission finds that the fact some interstate storage companies have been authorized to charge market-based rates does not justify exempting them from the requirements in § 284.13(b) that they post the rates charged in each storage transaction. The Commission explains that Order No. 637 adopted the posting requirements for the purpose of enabling the Commission and shippers to monitor market-based rate transactions, as well as cost-based transactions, for undue discrimination and preference and to promote competition through price transparency. As the Commission stated in Order No. 637:

The reporting of detailed transactional information is necessary because the Commission is modifying its method of regulating the natural gas industry by replacing traditional regulatory controls, such as the price cap on short-term capacity releases, with competition. Thus, greater transactional information is necessary to ensure that competition flourishes, and that market power and undue discrimination remain in check in the new competitive environment. . . . The Commission finds it axiomatic that greater, more complete and detailed information about transactions will greatly improve shippers' ability to make informed decisions, and both shippers' and the Commission's ability to monitor the market.¹³

10. In addition, the Commission rejects SGRM's contention that it should not require the transactional data to be made public, because such disclosure could cause competitive harm. The Commission finds that, while disclosure of the transactional information may

¹² SGRM, 125 FERC ¶ 61,191 (2008).

¹³ Order No. 637-A, FERC Stats. & Regs. ¶ 31,099 at 31,612-3.

cause some commercial disadvantage to individual entities, it benefits the market as a whole, by improving efficiency and competition.¹⁴ The Commission also finds that SGRM's request that the Commission permit storage providers to report their prices only to the Commission, and not publicly disclose them, is contrary to NGA section 4(c)'s requirement that "every natural gas company . . . keep open . . . for public inspection . . . all rates."¹⁵

II. Discussion

11. While the Commission is rejecting SGRM's waiver request and reaffirming that all interstate pipelines must post the information required by § 284.13(b) of the Commission's regulations, the Commission is issuing this Notice of Inquiry to consider (1) whether the disparate reporting requirements for interstate and NGPA section 311 and Hinshaw pipelines have an adverse competitive effect on the interstate pipelines and (2) if so, whether the Commission should modify the posting requirements for section 311 intrastate pipelines and Hinshaw pipelines in order to make them more comparable to the § 284.13(b) posting requirements for interstate pipelines.

12. SGRM and other interstate storage providers with market-based rates have raised a concern that our disparate reporting requirements for interstate pipelines and section 311

¹⁴ SGRM, 125 FERC ¶ 61,191 at P 32-33.

¹⁵ 15 U.S.C. 717c(c).

intrastate pipelines may provide the intrastate pipelines with a competitive advantage.

Although the interstate storage providers have sought to remedy any competitive disadvantage by seeking an exemption from the § 284.13(b) price disclosure requirements, an alternative remedy would be to extend the interstate reporting requirements to NGPA section 311 and Hinshaw pipelines.

13. The Commission recognizes that “Congress intended that intrastate pipelines should be able to compete in the transportation market without bearing the burden of full regulation by FERC under the Natural Gas Act.”¹⁶ Consistent with that fact, the Commission has not extended all of the Part 284 open access requirements to NGPA section 311 intrastate pipelines or to Hinshaw pipelines. However, the U.S. Court of Appeals for the District of Columbia Circuit has also held that the Commission “must provide a reasonable justification for excluding” an intrastate pipeline from a requirement that binds interstate pipelines.¹⁷ Similarly, the Commission has held that it may grant intrastate facilities “additional flexibility,” but not if lighter regulation would “harm any party [or] impede the Commission’s goal of fostering a national pipeline grid.”¹⁸

¹⁶ Mustang Energy Corp. v. Federal Energy Regulatory Comm’n, 859 F.2d 1447, 1457 (10th Cir. 1988), cert. denied, 490 U.S. 1019 (1988); see also EPGT Texas Pipeline, 99 FERC ¶ 61,295 (2002).

¹⁷ ANR v. FERC, 71 F.3d at 902.

¹⁸ EPGT Texas Pipeline, 99 FERC ¶ 61,295, at 62,252-3 (2002).

14. Accordingly, comments are requested to assist in evaluating whether changes in the Commission's posting requirements should be considered in order to remove any competitive disadvantage between interstate pipelines, on the one hand, and intrastate pipelines providing interstate transportation and storage services under section 311 of the NGPA and Hinshaw pipelines providing such service pursuant to a §284.224 blanket certificate. Specifically, the Commission requests comments on the following questions:

1. What are the competitive impacts of the current differences in reporting requirements applicable to interstate pipelines subject to the § 284.13 reporting requirements and section 311 and Hinshaw pipelines subject to the § 284.126 reporting requirements? Are the competitive effects greater where the competing pipelines have market-based rates, than where the competing pipelines have cost-based rates? Does competition between interstate pipelines, on the one hand, and section 311 and Hinshaw pipelines, on the other, occur primarily in the context of storage services or is there also significant competition in the context of transportation services?
2. Should the reporting requirements for interstate pipelines in § 284.13 be extended to all section 311 and Hinshaw pipelines providing interstate transportation and storage services? Should

- the reporting requirements in § 284.13 only be required for section 311 and Hinshaw pipelines with authority to provide interstate services at market-based rates?
3. To what extent would market transparency be enhanced by requiring section 311 and Hinshaw pipelines providing interstate services to comply with the requirements of § 284.13?
 4. Should the reporting requirements for interstate pipelines in § 284.13 only be extended to larger section 311 and Hinshaw pipelines and, if so, what measurement should be used to separate larger section 311 and Hinshaw pipelines from smaller storage providers?
 5. Should all of the § 284.13 reporting requirements be imposed on section 311 and Hinshaw pipelines or only some of those requirements? If the latter, which of the § 284.13 reporting requirements are necessary to avoid adverse competitive effects and promote transparency?
 6. Would extending the § 284.13 reporting requirements to section 311 and Hinshaw pipelines have a material effect on the amount of intrastate transportation and storage capacity made available in the interstate market?

7. Would a periodic report filed more frequently than semi-annually but short of a daily posting requirement provide the necessary level of price transparency to address the issues raised by SGRM and other storage developers in Docket No. RP08-606-000?

8. Should section 311 and Hinshaw pipelines be prohibited from submitting their § 284.126 (b) and (c) annual transportation and semi-annual storage reports subject to a request for privileged treatment under §§ 385.1112 and 388.112 of the Commission's regulations? If so, does that provide the necessary level of price transparency to address the issues raised by SGRM and other storage developers in Docket No. RP08-606-000?

III. Procedure for Comments

15. The Commission invites interested persons to submit comments, and other information on the matters, issues, and specific questions identified in this notice. Comments are due [insert date that is 60 days from the date of publication in the **FEDERAL REGISTER**]. Comments must refer to Docket No. RM09-2-000, and must include the commenter's name, the organization it represents, if applicable, and its address.

16. To facilitate the Commission's review of the comments, commenters are requested to provide an executive summary of their position. Commenters are requested to identify

each specific question posed by the Notice of Inquiry that their discussion addresses and to use appropriate headings. Additional issues the commenters wish to raise should be identified separately. The commenters should double-space their comments.

17. Comments may be filed on paper or electronically via the eFiling link on the Commission's web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

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

IV. Document Availability

19. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal

business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington DC 20426.

20. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number (excluding the last three digits) in the docket number field.

21. User assistance is available for eLibrary and the Commission's website during normal business hours. For assistance, please contact the Commission's Online Support at 1-866-208-3676 (toll free) or 202-502-6652 (e-mail at FERCOnlineSupport@ferc.gov) or the Public Reference Room at 202-502-8371, TTY 202-502-8659 (e-mail at public.referenceroom@ferc.gov).

By direction of the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.