

141 FERC ¶ 61,035
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 154

[Docket No. RM12-14-000]

Annual Charge Filing Procedures for Natural Gas Pipelines

(Issued October 18, 2012)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission or FERC) is proposing to amend its regulations at 18 C.F.R. 154.402 to revise the filing requirements for natural gas pipelines that choose to recover Commission-assessed annual charges through an annual charge adjustment (ACA) clause. Currently, natural gas pipelines utilizing an ACA clause must make a tariff filing to reflect a revised ACA unit charge authorized by the Commission for that fiscal year. In order to reduce the regulatory burden on these pipelines, the Commission proposes to eliminate this annual filing requirement. In its place, the Commission proposes to require natural gas pipelines utilizing an ACA clause to incorporate the Commission-authorized annual charge unit rate by reference to that rate, as published on the Commission's website located at <http://www.ferc.gov>.

DATES: Comments are due [insert date 30 days after publication in the **FEDERAL REGISTER**]

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through <http://www.ferc.gov>. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- Mail/Hand Delivery: Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE, Washington, DC 20426.

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Gas Pipelines

Docket No. RM12-14-000

NOTICE OF PROPOSED RULEMAKING

(Issued October 18, 2012)

1. The Federal Energy Regulatory Commission (Commission or FERC) is proposing to amend its regulations at 18 C.F.R. 154.402 to revise the filing requirements for natural gas pipelines that choose to recover Commission-assessed annual charges through an annual charge adjustment (ACA) clause. Currently, natural gas pipelines utilizing an ACA clause must make a tariff filing to reflect a revised ACA unit charge authorized by the Commission for that fiscal year. In order to reduce the regulatory burden on these pipelines, the Commission proposes to eliminate this annual filing requirement. In its place, the Commission proposes to require natural gas pipelines utilizing an ACA clause to incorporate the Commission-authorized annual charge unit rate by reference to that rate, as published on the Commission's website located at <http://www.ferc.gov>.

I. Background

2. The Commission is required to “assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal

year.”¹ To accomplish this, the Commission created the annual charges program, which is designed to recover the costs of administering the natural gas, oil, and electric programs by calculating the costs of each program, net of filing fees, and properly allocating them among the three programs.² This proceeding applies only to the recovery of annual charges assessed to entities in the natural gas program.

3. The provisions governing the assessment of annual charges are codified in Part 382 of the Commission’s regulations.³ In brief, after the Commission calculates the costs of administering the natural gas regulatory program,⁴ it assesses those costs to natural gas pipeline companies (Pipelines).⁵ Each Pipeline is assessed a proportional

¹ See *Omnibus Budget Reconciliation Act*, Pub. L. No. 99-509, Title III, Subtitle E, § 3401, 1986 U.S. Code Cong. & Ad. News (100 Stat.) 1874, 1890-91 (*codified at* 42 U.S.C. 7178 (2012)).

² *Annual Charges Under the Omnibus Budget Reconciliation Act of 1986*, Order No. 472, FERC Stats & Regs. ¶ 30,746, *clarified by*, Order No. 472-A, FERC Stats. & Regs. ¶ 30,750, *order on reh’g*, Order No. 472-B, FERC Stats. & Regs. ¶ 30,767 (1987), *order on reh’g*, Order No. 472-C, 42 FERC ¶ 61,013 (1988).

³ 18 C.F.R. 382 (2012).

⁴ *Id.* at 382.102(d) (defining the “natural gas regulatory program” as the Commission’s regulation of the natural gas industry under the Natural Gas Act; Natural Gas Policy Act of 1978; Alaska Natural Gas Transportation Act; Public Utility Regulatory Policies Act; Department of Energy Organization Act; Outer Continental Shelf Lands Act; Energy Security Act; Regulatory Flexibility Act; Crude Oil Windfall Profit Tax Act; National Environmental Policy Act; National Historic Preservation Act).

⁵ For the purposes of this proceeding, we use the term natural gas pipeline company (Pipeline) as it is defined in 18 C.F.R. 382.101(a) (2012): “any person: (1) Engaged in natural gas sales for resale or natural gas transportation subject to the jurisdiction of the Commission under the Natural Gas Act whose sales for resale and

(continued...)

share of the Commission's costs of administering the natural gas program. That proportional share is based on the following:

the proportion of the total gas subject to Commission regulation which was sold and transported by each company in the immediately preceding calendar year to the sum of the gas subject to the Commission regulation which was sold and transported in the immediately preceding calendar year by all natural gas pipeline companies being assessed annual charges.⁶

For example, if a Pipeline sold and transported 10 percent of the total gas subject to the Commission's regulations, that Pipeline would be assessed 10 percent of the costs of the natural gas regulatory program in the form of an annual charge.

4. Pipelines are entitled to recover these annual charges from their customers, and they have two options for doing so. First, upon Commission approval, a Pipeline may adjust its rates annually to recover the annual charges through an ACA clause.⁷ Second, a Pipeline may seek to recover its annual charges through its general transportation rates.⁸

transportation exceed 200,000 Mcf at 14.73 psi (60°F) in any of the three calendar years immediately preceding the fiscal year for which the Commission is assessing annual charges; and (2) Not engaged solely in "first sales" of natural gas as that term is defined in section 2(21) of the Natural Gas Policy Act of 1978; and (3) To whom the Commission has not issued a Natural Gas Act Section 7(f) declaration; and (4) Not holding a limited jurisdiction certificate."

⁶ 18 C.F.R. 382.202 (2012).

⁷ *Id.* at 154.402.

⁸ Order No. 472, FERC Stats. & Regs. ¶ 30,746 at 30,629.

This proceeding proposes to modify only the first method, i.e., recovery of annual charges through an ACA clause, as it is widely used among Pipelines.

5. Order No. 472 recognized that although the Commission generally disfavors the use of tracking mechanisms, it is appropriate that Pipelines be permitted to pass through these annual charges directly to customers.⁹ Accordingly, the Commission provided Pipelines an option of passing along the annual charges to customers through a surcharge to their transportation rates reflected in the ACA clause.¹⁰ The Commission's requirements for Pipelines that choose to utilize an ACA clause are codified in section 154.402 of the Commission's regulations.¹¹

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.¹²

⁹ *Id.*

¹⁰ *Id.*

¹¹ 18 C.F.R. 154.402 (2012).

¹² *Id.* at 154.402(a).

6. Pipelines that seek to recover annual charges through an ACA clause must file a tariff record containing the following:

(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 [part 154 of the Commission's regulations].¹³

Additionally, the Commission requires these Pipelines to file revised tariff records to reflect changes to the ACA unit charge authorized by the Commission each fiscal year.¹⁴

7. Each year the Commission sets the ACA unit charge for the natural gas program in July.¹⁵ Pipelines that wish to begin collecting the ACA unit charge on the first day of the fiscal year are required to file revised tariff records reflecting changes in the ACA unit charge by September 1 of each year, to be effective October 1 of that year.¹⁶ So long as

¹³ *Id.* at 154.402(b).

¹⁴ *Id.* at 154.402(c).

¹⁵ The Commission publishes this change via a notice entitled, "FY [Year] Gas Annual Charges Correction for Annual Charges Unit Charge," which is available on the Commission's website, located at <http://www.ferc.gov>.

¹⁶ *See id.* at 382.102(i) (defining "fiscal year" as the twelve-month period that begins on the first day of October and ends on the last day of September); *see also id.* at 154.402(b)(3) (requiring the proposed effective date of the tariff change revising the ACA unit charge to be 30 days after the date the change is filed, unless a shorter period is specifically requested in a waiver petition and approved).

the Pipeline has paid its annual charge to the Commission, the Commission will accept the tariff records, and they will go into effect on October 1. To the extent that the ACA unit charge remains the same from one year to the next, existing Pipelines that already reflect that ACA unit charge in their tariffs need not make a filing for that year. This annual process is designed to ensure that Pipelines collect charges for the entire fiscal year, as defined in Part 382 of the Commission's regulations.

8. In 2011, the Commission received 134 filings to reflect the annual change in the ACA unit charge. In years in which the ACA unit charge does not change, there are fewer filings. However, some Pipelines, such as those that have recently gone into service and have been billed an annual charge, are still permitted to submit a filing to the Commission in order to pass along the annual charge to their customers.

II. Discussion

9. In an effort to reduce the regulatory burden associated with annual tariff filings to reflect the current year's ACA unit charge, the Commission proposes to eliminate the annual filing requirement for Pipelines utilizing an ACA clause. In its place, the Commission proposes to require Pipelines utilizing an ACA clause to incorporate the Commission-authorized ACA unit rate by reference to that rate, as published on the Commission's website. Accordingly, Pipelines that wish to continue utilizing an ACA clause would be required to make a one-time tariff revision that incorporates the

ACA unit charge published on the Commission's website into the Pipeline's tariff as the ACA unit charge for the relevant fiscal year.¹⁷

10. In proposing this change, the Commission is aware that in addition to the basic statutory requirement that all rates and charges be on file with the Commission,¹⁸ the filing requirements associated with the annual revisions to the ACA unit charge serve important practical functions. First, the annual tariff filing (and the Commission's acceptance of that filing) establishes an effective date upon which the Pipeline is entitled to begin collecting that fiscal year's ACA unit charge. Second, the annual filing provides the Commission with an opportunity to ensure that the Pipeline has actually paid the annual charge that it seeks to recover from customers.¹⁹

11. Because the annual filing requirement would be eliminated under the proposed reform and no longer serve these functions, the Commission's proposal is designed to replicate them. Accordingly, the Commission proposes to require Pipelines utilizing an ACA clause to incorporate by reference into their tariffs the ACA unit charge specified in the annual notice issued by the Commission entitled "FY [Year] Gas Annual Charges Correction for Annual Charges Unit Charge." This ACA unit charge shall be effective on

¹⁷ *See id.* at 382.102(i) (defining "fiscal year" as the twelve-month period that begins on the first day of October and ends on the last day of September).

¹⁸ 15 U.S.C. 717c (2006).

¹⁹ Order No. 472, FERC Stats. & Regs. ¶ 30,746 at 30,629-30 (explaining that Pipelines may only collect those annual charges that they have already paid to the Commission).

the first day of October following issuance of this notice and shall extend to the last day of September the following year (i.e., the duration of the fiscal year). However, the ACA unit charge shall only be incorporated by reference into the Pipeline's tariff, and thereby assessed to shippers, if the Pipeline has paid its annual assessment, as reflected on a new notice, entitled "Payment Status of Pipeline Billings – FY [Year]," that the Commission will issue each year. This notice will identify the Pipelines that have been assessed annual charges for a fiscal year and indicate whether they have paid their bills and are, therefore, authorized to recover the ACA unit charge from shippers. The Commission will issue the "Payment Status of Pipeline Billings – FY [Year]" notice on the last business day of the fiscal year, and provide updates as necessary. All of the documents can be found on the Annual Charges page of the Natural Gas section of the Commission's website, located at <http://www.ferc.gov>.

12. We emphasize that the only thing changed by this Proposed Rule is the filing requirement for those Pipelines that utilize an ACA clause. This Proposed Rule does not prevent Pipelines from continuing to recover annual charges assessed by the Commission through their transportation rates, as established in a general rate case. Nor does this Proposed Rule modify how the Commission calculates the costs of the natural gas regulatory program or how the ACA unit charge is calculated or assessed.

13. We are taking this action as part of our commitment to continually review our regulations and eliminate those requirements that impose an unnecessary burden on regulated entities. We find that our proposal to have Pipelines incorporate the ACA unit charge by reference to the notices published on the Commission's website will retain all

of the transparency and consumer safeguards embodied in the Commission's existing regulations. However, it will eliminate approximately 145 filings each year, thereby reducing the regulatory burden on the Pipelines and the Commission.

III. Compliance

14. The Commission proposes that Pipelines be required to implement the proposed changes in time for the 2014 fiscal year. Accordingly, the Commission proposes to require Pipelines utilizing an ACA clause to make a one-time compliance filing revising their tariffs to incorporate by reference the ACA unit charge published on the Commission's website, as discussed above. In order to give Pipelines subject to these proposed modifications adequate time to implement these changes, this compliance filing will be due 30 days after the Final Rule is published in the Federal Register. Pipelines will be required to seek an effective date of October 1, 2013, for these compliance filings.

IV. Information Collection Statement

15. The following collections of information contained in this proposed rule are being submitted to the Office of Management and Budget (OMB) for review under section 507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The following burden estimates reflect the time necessary for respondents to update their tariffs according to this proposed rule, as well as the avoided

burden as respondents will no longer have to file ACA charge tariff adjustments. The Commission estimates it will require eight hours per company to make the one time tariff changes proposed in this rule. In each year, including the first, the Commission estimates that filers will see a two hour per year reduction in burden from no longer filing ACA charge tariff adjustments. The following shows the burden hour impact of the proposed rule.

	Number of Respondents (A)	Number of Responses Per Respondent (B)	Total Number of Responses (A)*(B)=(C)	Average Burden Hours per Response (D)	Estimated Total Annual Burden (C)*(D)
Year 1 One-time tariff changes and burden reduction				6	870
Year 2 burden reduction				2	290
Year 3 burden reduction	145	1	145	2	290

The average annual burden associated with this rule over three years is 97 hours (870 hours – 290 hours – 290 hours = 290 hours; 290 hours / 3 years = 96.67 hours/year). Accordingly, the Commission estimates that each respondent, on average, should experience a net reduction in burden (2 hours per year) starting with the fifth year and in each year thereafter.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average cost for all respondents to be the following:²⁰

- One-time total cost of \$51,330 (870 hours * \$59/hour)
- Avoided cost per year of \$17,110 (290 hours * \$59/hour)

Title: FERC-542, Gas Pipeline Rates: Rate Tracking

Action: One-time filing and reduced future filings

OMB Control Number: 1902-0070

Respondents: Natural Gas Pipelines

Frequency of Responses: One-time implementation and future reduction in number of responses. Responses are mandatory

Necessity of Information: The proposals in this Proposed Rule would, if implemented, reduce the burden of interstate natural gas pipelines resulting from compliance with the Commission's regulations.

Internal Review: The Commission has reviewed the requirements pertaining to proposed modification of the Commission's regulations and made a preliminary determination that the proposed revisions are necessary to reduce the burden imposed by the Commission on

²⁰ The cost figures are derived by multiplying the total hours to prepare a response (hours) by an hourly wage estimate of \$59 (a composite estimate that includes legal, technical and support staff wages and benefits obtained from the Bureau of Labor Statistic data at http://bls.gov/oes/current/naics3_221000.htm and <http://www.bls.gov/news.release/ecec.nr0.htm> rates).

the natural gas industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

16. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, e-mail: DataClearance@ferc.gov, phone: (202) 502-8663, fax: (202) 273-0873].

17. Comments concerning the collection of information and the associated burden estimate, should be sent to the Commission in this docket and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, telephone: (202) 395-4638, fax: (202) 395-4718].

V. Environmental Analysis

18. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.²¹ The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.²² The actions proposed here fall within categorical exclusions in the Commission's

²¹ *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

²² 18 C.F.R. 380.4.

regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.²³ Therefore, an environmental assessment is unnecessary and has not been prepared as part of this NOPR.

VI. Regulatory Flexibility Act

19. The Regulatory Flexibility Act of 1980 (RFA)²⁴ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.²⁵ The SBA has established a size standard for pipelines transporting natural gas, stating that a firm is small if its annual receipts are less than \$25.5 million.²⁶

20. The regulations proposed here impose requirements only on interstate pipelines, the majority of which are not small businesses. Most companies regulated by the Commission do not fall within the RFA's definition of a small entity. Approximately 145 entities would be potential respondents subject to data collection FERC-545

²³ See 18 C.F.R. 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

²⁴ 5 U.S.C. 601-612.

²⁵ 13 C.F.R. 121.101.

²⁶ 13 C.F.R. 121.201, subsection 486.

reporting requirements. Nearly all of these entities are large entities. For the year 2011 (the most recent year for which information is available), only 15 companies not affiliated with larger companies had annual revenues of less than \$25.5 million. Moreover, these requirements are designed to benefit all customers, including small businesses. The Commission estimates that the one-time cost per small entity is \$354.²⁷ In the future, small entities should see a cost savings related to avoiding an annual ACA charge adjustment filing. The Commission does not consider the estimated \$354 impact per entity to be significant. Accordingly, pursuant to § 605(b) of the RFA, the Commission certifies that this proposed rule should not have a significant economic impact on a substantial number of small entities.

VII. Comment Procedures

21. The Commission invites interested persons to submit written comments on the proposed regulation modifications promulgated in this NOPR, as well as any related matters or alternative proposals that commenters may wish to discuss. Comments are due [insert date 30 days from publication in the **FEDERAL REGISTER**]. Comments must refer to Docket No. RM12-14-000, and must include the commenter's name, the organization they represent, if applicable, and their address. Comments may be filed either in electronic or paper format.

²⁷ This number is derived by multiplying the hourly figure (6) by the cost per hour (\$59). $6 \text{ hrs} * \$59/\text{hr} = \354

22. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

23. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

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

VIII. Document Availability

25. 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.

26. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and

Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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

List of subjects in 18 CFR Part 154

Natural gas, Pipelines, Reporting and recordkeeping requirements

By direction of the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 154.402, Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 154-RATE SCHEDULES AND TARIFFS

1. The authority citation for part 154 continues to read as follows:

Authority: 15 U.S.C. 717-717w; 31 U.S.C. 9701; 42 U.S.C. 7102-7352.

2. Revise section 154.402 to read as follows:

§ 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). Prior to the start of each fiscal year, the Commission will post on its website the amount of annual charges to be flowed through per unit of energy sold or transported (ACA unit charge) for that fiscal year. A company's ACA clause must be filed with the Commission and must incorporate by reference the ACA unit charge for the upcoming fiscal year as posted on the Commission's website. A company must incorporate by reference the ACA unit charge posted on the Commission's website in each of its rate schedules applicable to sales or transportation deliveries. The company must apply the ACA unit charge posted on the Commission's website 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. Upon payment to the Commission of its annual charges, the ACA unit charge for that fiscal year will be incorporated by reference into the company's tariff, effective throughout that fiscal year.

(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 record containing:

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

(2) A statement that the ACA unit charge, as revised annually and posted on the Commission's website, is incorporated by reference into the company's tariff,

(3) For companies with existing ACA clauses, a proposed effective date of the tariff change of October 1, 2013; for companies seeking to utilize an ACA clause after October 1, 2013, a proposed effective date 30 days after the filing of the tariff record, 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

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