

SUPPORTING STATEMENT FOR

FERC-592, Marketing Affiliates of Interstate Pipelines

The Federal Energy Regulatory Commission (Commission) requests the Office of Management and Budget (OMB) review and extend its approval of FERC-592, Marketing Affiliates of Interstate Pipelines (FERC-592) an existing information collection. FERC-592 (OMB Control NO. 1902-0157) is approved through January 31, 2007. We estimate the annual reporting burden related to FERC-592 will be 9,913 total hours (an average of 117 hours per respondent) for complying with the requirements.

A. JUSTIFICATION

1. FERC-592

The Commission has the regulatory responsibility under Section 4 of the Natural Gas Act to ensure that pipeline rates are just and reasonable and not unduly discriminatory. Just and reasonable rates and services are needed to achieve two principal objectives. They should promote competitive and efficient markets, while mitigating market power and preventing undue discrimination, especially for the Commission's "prime constituency, captive customers vulnerable to pipelines' market power."¹ In short, the Commission's regulatory policy must seek to reconcile the objectives of fostering an efficient market that provides good alternatives to as many shippers as possible while at the same time creating a regulatory framework that is fair and protects captive customers without good alternatives.

In 1987 when the gas pipeline standards of conduct were issued in Order No. 497, the natural gas industry had witnessed a rapid growth of marketing affiliates and the Commission was concerned that pipelines were giving their marketing affiliates preferential treatment. As a result, the Commission issued certain rules intended to prevent interstate natural gas pipelines from providing preferential treatment to their marketing or brokering affiliates. The Standards of Conduct provided, in general, that pipelines and their marketing affiliates must function independently of each other. The Commission reserved the right to impose structural remedies, such as divorcement or divestiture, in specific cases where the circumstances demonstrate they are required.

In Order No. 637, the Commission expanded its affiliate regulations to provide more information to permit monitoring and self-policing of affiliate transactions. The

1 United Distribution Companies v. FERC, 88 F.3d 1105, 1123 (D.C. Cir. 1996).

Commission required those pipelines with marketing affiliates post certain information concerning their affiliates on their Internet web sites.² Posting of this information serves to deter undue discrimination and preference. These requirements apply only to pipelines that conduct transportation transactions with their marketing or brokering affiliates.

Significant changes have occurred since the standards of conduct were first adopted. In the gas industry, these changes include unbundling, capacity release, and e-commerce. When the standards of conduct were first initiated in 1987 for natural gas pipelines, pipelines were primarily affiliated with marketers, whereas in today's world, as a result of growth and consolidation, gas pipeline companies have a much wider array of affiliates in all sectors of the energy business. The gas energy has experienced consolidations in every sector — pipelines, producers, marketers, LDC/utilities and industrials. Marketing affiliates and non-marketing affiliates today, offer a variety of new services, such as bundled sales, asset management, price hedging, risk management, and electronic commodity trading. Currently, the gas standards of conduct exempt producers that sell from their own production, gatherers that sell from their own gathering facilities and local distribution companies (LDCs) that make on-system sales.

The reporting and recordkeeping requirements apply only to those interstate natural gas pipelines involved in transactions with affiliated marketing or brokering companies (expanded in RM01-10-000 Final Rule to include energy affiliates, see below). The filing of the pipelines' procedures enables the Commission to ensure compliance with the nondiscriminatory requirement of Order No. 636. Blanket certificates for transportation, natural gas sales, and storage service issued under Section 7(c) of the NGA also prohibit undue discrimination.

The FERC-592 data on transactions involving interstate pipelines and their affiliates are required to carry out the Commission's policies in accordance with the general authority in Sections 4, 5, 7, 8, 10, 14, 16, and 20 of the Natural Gas Act (NGA) (15 U.S.C. 717-717w).

RM01-10 NOPR (September 27, 2001)

On September 27, 2001, the Commission issued a Notice of Proposed Rulemaking (NOPR). In the NOPR, the Commission proposed to apply the standards of conduct to

2 The information to be posted includes a list of names of operating personnel and facilities shared by the interstate pipeline and its marketing affiliate, organizational charts showing the organizational structure of parent corporation, business units, job descriptions and organizational chain of command.

require a separation of the transmission function from all sales functions, including bundled retail sales and a restriction on preferential access to transmission information for the bundled sales function. All merchant function employees would need to be separated from transmission function employees, whether they are engaged in bundled retail sales or wholesale sales. Therefore, the transmission providers employees engaged in bundled sales functions for retail native load will be treated the same as wholesale merchant function employees. In addition, the transmission providers would have to implement measures to restrict native load sales employees' preferential access to transmission information.

Also in the NOPR under the proposed requirements, transmission providers would be required to apply the standards of conduct to their relationships with their affiliated producers, gatherers and LDCs.

The existing standards of conduct restricted the ability of interstate natural gas pipelines and electric utilities (transmission providers)³ to give their marketing affiliates or wholesale merchant functions undue preference over non-affiliated transportation customers. Both gas and electric standards of conduct relied on similar principles to prevent market power over transmission from being used in competitive commodity markets by:

- (1) separating employees engaged in transmission services from those engaged in commodity marketing services, i.e., marketing of sales of natural gas or electric energy; and
- (2) ensuring that all transmission customers, affiliated and non-affiliated, are treated on a nondiscriminatory basis.

The energy industry has also experienced an increase in merger activities, as well as a convergence of the gas and electric industries. These changes meant that pipelines and their affiliates not only deal in gas, but also in power, much of which is generated using natural gas.

The Commission was concerned that a transmission provider's market power could be transferred to its affiliated business because the existing rules do not cover all affiliate relationships. Specifically, the merged entity could exercise vertical market power in delivered natural gas service to raise costs of rival generators or inhibit entry of new generators into bulk power markets.

3 The Commission proposed to define a transmission provider as any public utility that owns, operates or controls interstate transmission facilities or any natural gas pipeline company subject to the current standards of conduct.

Although these standards of conduct limited transmission providers' ability to make or grant undue preferences to the wholesale merchant function of their businesses (in the electric area) or to marketing affiliates, they did not cover the transmission providers' other non-marketing affiliates, even though the Natural Gas Act and the Federal Power Act prohibit a natural gas pipeline company and a public utility from giving any entity an undue preference. Non-marketing affiliates of Transmission Providers compete against non affiliates for transmission services, in capacity release transactions, in power sales, and in siting new generation. For example, in the gas industry, non-marketing affiliates of interstate natural gas pipelines control large amounts of capacity on their affiliated pipelines, yet they are not covered by the standards of conduct because they did not actually hold pipeline capacity (functioning instead as asset managers) or they fitted within one of the existing exceptions, e.g., producers, gatherers and local distribution companies.⁴

The existing standards of conduct also did not address the sharing of confidential shipper information and transportation information with all energy affiliates.⁵ For example, if an interstate natural gas pipeline informs its affiliated asset manager about a proposed pipeline expansion or upcoming curtailment, the current standards of conduct do not require the pipeline to make the information available to non-affiliates, unless the asset manager is a Marketing Affiliate.

RM01-10 Final Rule (November 25, 2003)

On November 25, 2003, the Commission issued a Final Rule. In the Final Rule, the Commission replaced its existing rules under Parts 37 and 161 with comparable rules at Part 358. Under Parts 37 161 and 37, Transmission Providers posted specific information about their marketing affiliates or wholesale merchant functions on their respective OASIS nodes or Internet websites. The Final Rule required Transmission Providers to also post the same information on their OASIS or Internet websites with respect to their Energy Affiliates.

Transmission Providers continue to have economic incentives to show undue

4 See 18 CFR 161.2(2002)

5 The Commission defined an energy affiliate as any entity affiliated with a transmission provider (gas or electric) that engages in or is involved in transmission transactions or manages or controls transmission capacity or buys, sells, trades or administers natural gas or electric energy or engages in financial transactions relating to the sale or transmission of natural gas or electric energy. Under this definition, for example, a transmission provider would be required to treat affiliated asset managers as energy affiliates.

preferences toward their Energy Affiliates. The Commission adopted these new rules to close loopholes in existing rules and to give Transmission Providers specific guidance on how to eliminate undue discrimination and undue preferences in the provision of interstate transmission services, consistent with the directions of the NGA and the FPA. The Commission believes the revised standards of conduct ensures that Transmission Providers apply the standards of conduct to require a separation of the transmission function from all sales functions, including bundled retail sales and a restriction on preferential access to transmission information for the bundled sales function.

2. FERC-592 The information maintained and posted by the respondents is used by the Commission to monitor the pipeline's transportation, sales, and storage activities for its marketing affiliate to deter undue discrimination by pipeline companies in favor of their marketing affiliates. The information is also used by non-affiliated shippers or others (such as state commissions) to determine whether they have been harmed by affiliate preference and, in some cases, to prepare evidence for proceedings following the filing of a complaint.

3. In FERC-592, the Commission has shown a commitment to the use of information technology. For FERC-592 requirements, the Commission in Order No. 637 as noted above, requires pipelines to post certain affiliate information on the Internet and widely available to the public. With a single Internet connection, transmission customers are able to access information from any utility as well as be able to display information.

4. Commission filings and data requirements are periodically reviewed in conjunction with OMB clearance expiration dates. This includes a review of the Commission's regulations and data requirements to identify any duplication.

One of the objectives of RM01-10-000 was to consolidate the Commission's regulations with regard to standards of conduct. Both gas and electric standards of conduct rely on similar principles to prevent market power. The Commission consolidated the standards of conduct and applies them uniformly to all transmission providers and therefore reduces any overlap.

5. No small businesses are impacted under FERC-592 reporting data requirements. The proposed additions and revisions to the Commission's regulations will impact the day-to-day operations of natural gas pipeline companies whose operational status would exceed the SIC standards for a "small business concern" as implemented under the Regulatory Fairness Act (RFA).

6. It is not possible to collect the data less frequently. Only transmission providers owning, operating, and/or controlling facilities used for the transportation of natural gas in interstate commerce are required to comply with the proposed Commission's requirements. The required information will impose the least possible burden for companies while collecting the information used in monitoring transmission service. In addition, the information will be available to others (including small distribution utilities, independent power producers, marketers, local distribution companies, shippers and state commissions).

If the data were not updated regularly, the Commission and Industry would be placed at a disadvantage by not having the most current data for competitive and regulatory purposes available. The Commission needs access to up-to-date information to monitor self-implementing activities of the transmission providers to ensure that transmission services are being provided in a nondiscriminatory manner. The requirements of this data collection serve to meet two of the goals of the Commission's strategic plan, namely

Objective B: Prevent Accumulation and Exercise of Market Power

- Address market power in jurisdictional wholesale markets

Goal 3: Enforcement - Prevent Market Manipulation

- o Objective A: Provide Vigilant Oversight
 - Identify and remedy problems with structure and operations in energy markets
- o Objective B: Provide Firm but Fair Enforcement
 - Establish clear and fair processes
 - Conduct investigations promptly and impose penalties where appropriate
 - Encourage self-policing and -reporting of violations

7. All of the standards of conduct related data are to be displayed on Internet web sites and be available for downloading. With the exception of the written information describing how the standards are being implemented, the remainder of the information will be posted.

8. Commission procedures require that rulemaking notices be published in the Federal Register, thereby allowing all electric utilities, natural gas pipeline companies, state commissions, Federal agencies, and other interested parties an opportunity to submit

views, comments or suggestions concerning the proposal. These rulemaking procedures allow for public conferences to be held as required.

On July 26, 2006, the Commission published a notice in the Federal Register (71 FR 42369-423-70) seeking public comment on the continuation of this reporting requirement. No comments were received.

9. There are no payments or gifts to respondents under any circumstance.
10. All data filed is public information and, therefore, are not confidential. However, each request for confidential treatment will be reviewed by the Commission on a case-by-case basis.
11. There are no questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs and other matters that are commonly considered private in the reporting and recordkeeping requirements.
12. The Commission estimates there are 85 natural gas pipelines that are subject to the requirements of FERC-592.

The burden estimate includes the time required to review the standards, search existing data sources, gather and maintain the data needed and complete and review the information and post as appropriate with the Commission. Details of the burden estimates are shown in the following table:

DATA COLLECTION (FERC-592)

	CUR RENT	PROP OSED	NEW
			INVENTORY
			OMB INV.
Estimated Number of Respondents			

			85
			85
Estimated number of responses/respondent/yr	1	1	1
Estimated annual number of responses	85	85	85
Estimated hours per information requirement	116.62	110.62	
116.62 Estimated hours per respondent for recordkeeping			6.0
6.0 Total estimated hours for recordkeeping			510
510			
Total estimated annual reporting burden hours	9,913	9,402.70	
9,402.70			
Total estimated burden hours	9,913	9,913*	9,913*
Estimated annual burden in OMB inventory	9,913		9,913*
9,913*			
Increase/decrease in burden hours			
* Rounded off			

13. Annualized Capital/Startup Costs

- The Commission's estimate for costs to comply with FERC-592 is based on:
- filing of written procedures explaining how transmission providers are implementing the standards of conduct;
 - posting on their Internet websites of notices announcing employee transfers from one function to another are posted;
 - posting on Internet websites ensuring information concerning discounts is available to all potential customers (not just affiliates) at the time of the offer (currently the information is posted 24 hours of the time gas first flows).

The Commission's estimate does not cover the separation of transmission providers' employees engaged in transmission system operations from employees in sales or marketing function or the transmission providers' employees in energy affiliates. This is difficult to quantify and can only be ascertained on a case by case basis.

Data

Employee

	Estimated
Collection	Estimated
	Hours
	Salary
	Start-
<u>Number</u>	Up
	<u>Burden</u>
	<u>Hours</u> \square
	<u>Per</u>
	<u>Year</u> x
	<u>Per</u>
	<u>Year</u>⁶ =
	<u>Costs</u>
FERC-592	9,402.70
	2080
	\$117,321
	=
	\$530,352.96

+ 510 hours @\$17 an hours staffing x \$925 (offsite storage) = \$8,019,750

6 The "salary" per employee with transmission providers in the natural gas and electric energy industries is assumed to be the same salary as per program employees at the Commission based on its appropriated budget for fiscal year 2006. The \$117,321 consists of \$96,235 in salaries and \$21,086 in overhead. In addition, the hourly rate for staffing responsible for recordkeeping activities was taken from the Bureau of Labor Statistics Occupational Series guidelines.

(recordkeeping)

Total

\$8,550,102.96

The cost per respondent is

\$
100,589.44

14. The estimated annualized cost to the Federal Government for FERC-592 is as follows:

Data

Analysis

Estimated

FERC

Data

Total

Cost

of Data

Salary

Collection

Clearance

One

Year's

(FTEs)

x

Per

Year +

(FY

'06) =

Number

Operation

FERC-592	2.5
	\$117,321
	\$
	6,089
	\$299,392
Total Cost	2.5
	\$117,321
	\$
	6,089
	\$299,392

The average cost per staff year reflects direct human resource's costs. These costs consist of direct labor and fringe benefit costs. The direct labor cost is that portion of staff salary that is charged to a collection of information activity. The fringe benefits cost consists of allowances and services provided to Government employees in addition to employee salaries. It is expressed as a percentage of the salary costs.

15. As reported in item #12, there is a change in the annual reporting burden. The Commission's initial estimates for the annual reporting burden as previously stated the Standards of Conduct Final Rule did not provide a breakout for recordkeeping activities. This submission corrects that initial estimate. Otherwise there is no change to the hours reported in OMB's inventory.

16. This is not a collection of information for which results are planned to be published.

17. It is not appropriate to display the expiration date for OMB approval of the information collected pursuant to Part 358 in the Code of Federal Regulations. The information collected is not collected on a standard, preprinted form which would avail itself of this display. The reporting requirements under FERC-592 are not filed on formatted/printed forms but rather based on posting requirements for Internet web sites.

18. The Commission seeks to note the following exceptions from the Certification:

Item no. 17 identifies why the OMB control number is not posted in the information collection. Item Part B. identifies that the Commission does not use statistical methodology for this information collection.

B. Collections of Information Employing Statistical Methods

This is not a collection of information employing statistical methods.