Supporting Statement for
FERC-551, Reporting of Flow Volume & Capacity by Intrastate Natural Gas and FERC-552, Annual Report of Natural Gas Transactions
As Proposed In Docket No. RM07-10-000 & AD 96-1-015
(Notice of Proposed Rulemaking Issued April 19, 2007)

The Federal Energy Regulatory Commission (Commission) requests Office of Management and Budget (OMB) review and approval of **FERC-551, Reporting of Flow Volume and Capacity by Intrastate Pipelines and FERC-552, Annual Report of Natural Gas Transactions. FERC-551 and 552** are new data requirements that amend Part 284 of the Commission's regulations in order to facilitate market transparency in natural gas markets as proposed in a Notice of Proposed Rulemaking (NOPR). The NOPR was issued on April 19, 2007, in Docket No. RM07-10-000.

The subject data collections will be affected because the proposed regulations will require: (a) daily posting of some natural gas flow information by intrastate pipelines; and (b) annual filings by buyers and sellers of natural gas in U.S. wholesale markets (that transact more than de minimis volumes) of aggregate annual purchase and sales information. These proposals exercise expanded Commission authority under section 23 of the Natural Gas Act,[1] which was added by the Energy Policy Act of 2005 (EPAct 2005) to require reporting from entities not under the Commission's traditional jurisdiction.[2]

We estimate that the total one-time annual reporting-burden related to the subject NOPR will be 38,757 hours (under FERC-551 32,757 hours and under FERC-552 6,000 hours). This is equal to an average of 183 hours per company under FERC-551 and 4 hours per company under FERC-552 if the Commission adopts the changes proposed in the subject NOPR in a final rule. All of the proposed changes in the subject NOPR are provided for under sections 4 and 5 of the Natural Gas Act (NGA), and section 23 of the NGA as added by section 316 of the Energy Policy Act of 2005 (EPAct 2005).

Background

The Commission's market-oriented policies for the wholesale electric and natural gas industries require that interested persons have broad confidence that reported market prices accurately reflect the interplay of legitimate market forces. Without confidence in the basic processes of price formation, market participants cannot have faith in the value of their transactions, the public cannot believe that the prices they see are fair, and it is more difficult for the Commission to ensure that jurisdictional prices are "just and reasonable"[3].

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1 To be codified at 15 U.S.C. 717t-2.

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

The performance of Western electric and natural gas markets early in the decade shook confidence in posted market prices for energy. In examining these markets, the Commission's staff found, inter alia, that some companies submitted false information to the publishers of natural gas price indices, so that the resulting reported prices were inaccurate and untrustworthy.[4] As a result, questions arose about the legitimacy of published price indices, remaining even after the immediate crisis passed. Moreover, market participants feared that the indices might have become even more unreliable, since reporting (which has always been voluntary) declined to historically low levels in late 2002.

The Commission recognized staff concerns about price discovery in electric and natural gas markets as early as January 2003, when, prior to passage of EPAct 2005, the Commission made use of its existing authority under the Natural Gas Act and the Federal Power Act to restore confidence in natural gas and electricity price indices. The Commission expected that, over time, improved price discovery processes would naturally increase confidence in market performance. On July 24, 2003, the Commission issued a Policy Statement on Electric and Natural Gas Price Indices (Policy Statement) that explained its expectations of natural gas and electricity price index developers and the companies that report transaction data to them.[5] On November 17, 2003, the Commission adopted behavior rules for certain electric market participants in its Order Amending Market-Based Rate Tariffs and Authorizations relying on section 206 of the Federal Power Act to condition market-based rate authorizations,[6] and for

3 See sections 4 and 5 of the Natural Gas Act, 15 U.S.C. 717c, 717d (2000); sections 205 and 206 of the Federal Power Act, 16 U.S.C. 824d, 824e (2000).

4 See Initial Report on Company-Specific Separate Proceedings and Generic Reevaluations; Published Natural Gas Price Data; and Enron Trading Strategies – Fact Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, Docket No. PA02-2-000 (August 2003).

5 Price Discovery in Natural Gas and Electric Markets, Policy Statement on Natural Gas and Electric Price Indices, 104 FERC ¶ 61,121 (Policy Statement). Subsequently, in the same proceeding, the Commission issued an Order on Clarification of Policy Statement on Natural Gas and Electric Price Indices, 105 FERC ¶ 61,282 (Dec. 12, 2003) (Order on Clarification of Policy Statement) and an Order on Further Clarification of Policy Statement on Natural Gas and Electric Price Indices, 112 FERC ¶ 61,040 (July 6, 2005) (Order on Further Clarification of Policy Statement).

6 Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,105 FERC ¶ 61,218, at P 1, superseded in part by Compliance for Public Utility market-Based Rate Authorization Holders, Order No. 674, 71 FR 9695 (Feb. 27, 2006), FERC Stats. and Regs. ¶31,208 (2006).

certain natural gas market participants in Amendments to Blanket Sales Certificates, relying on section 7 of the Natural Gas Act to condition blanket marketing certificates.[7] The behavior rules bar false statements and require certain market participants, if they report transaction data, to report such data in accordance with the Policy Statement. These participants must also notify the Commission whether or not they report prices to price index developers in accordance with the Policy Statement.[8] On November 19, 2004, the Commission issued an order that addressed issues concerning prices indices in natural gas and electricity markets and adopted specific standards for the use of price indices in jurisdictional tariffs.[9]

Congress recognized that the Commission might need expanded authority to mandate additional reporting to improve market confidence through greater price transparency and included in the Energy Policy Act of 2005 (EPAct 2005)[10] authority for the Commission to obtain information on wholesale electric and natural gas prices and availability. Under the Federal Power Act[11] and the Natural Gas Act[12], the Commission has long borne a responsibility to protect wholesale electric and natural gas consumers. EPAct 2005 emphasized the Commission’s responsibility for protecting the integrity of the markets themselves as a way of protecting consumers in an active market environment. In particular, Congress directed the Commission to facilitate price transparency “having due regard for the public interest, the integrity of [interstate energy] markets, [and] fair competition.”[13] In the new transparency provisions of section 23 of the Natural Gas Act and section 220 of the Federal Power Act,

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7 Amendments to Blanket Sales Certificates, Order No. 644, 68 FR 66,323 (Nov. 26, 2003), FERC Stats. and Regs. ¶ 31,153, at P 1 (2003) (citing 15 U.S.C. 717f (2000)), reh’g denied, 107 FERC ¶ 61,174 (2003) (Order No. 644-A).

8 Certain portions of the behavior rules were rescinded in Amendments to Codes of Conduct for Unbundled Sales Service and for Persons Holding Blanket Marketing Certificates, Order No. 673, 71 FR 9709 (Feb. 27, 2006), FERC Stats. and Regs. ¶ 31,207 (2006). The requirement to report transaction data in accordance with the Policy Statement and to notify the Commission of reporting status was retained in renumbered sections. 18 CFR 284.288(a), 284.403(a).

9 Price Discovery in Natural Gas and Electric Markets, 109 FERC ¶ 61,184, at P 73 (2004).

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

11 16 U.S.C. 824 et seq.

12 15 U.S.C. 717 et seq.

Congress provided that the Commission may, but is not obligated to, prescribe rules for the collection and dissemination of information regarding the wholesale, interstate markets for natural gas and electricity, and authorized the Commission to adopt rules to assure the timely dissemination of information about the availability and prices of natural gas and natural gas transportation and electric energy and transmission service in such markets.

Consistent with the directive to facilitate price transparency in natural gas and electric markets as well as to explore options for action under EPAct 2005's expansion of the Commission's authority, Commission staff met with interested entities in the summer of 2006. On September 26, 2006, staff conducted a workshop to review sources of energy market information with interested persons and to lay the groundwork for a technical conference held on October 13, 2006. In that conference, ideas for potential policy actions by the Commission were identified.[14]

Subject NOPR (Docket No. RM07-10-000)

On April 19, in Docket No. RM07-10-000 "Transparency Provisions of Section 23 of the Natural Gas Act; Transparency Provisions of the Energy Policy Act" the Commission made two proposals to facilitate market transparency in natural gas markets. The first proposal, designed to make available the information needed to track daily flows of natural gas throughout the United States, would create a requirement that intrastate pipelines post daily to the Internet the capacities of, and volumes flowing through, their major receipt and delivery points and mainline segments. Postings would be required within 24 hours from the close of the gas day on which gas flows, i.e., on or before 9:00 a.m. central clock time for flows occurring on the gas day that ended 24 hours before.

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13 Section 23(a)(1) of the Natural Gas Act, to be codified at 15 U.S.C. 717t-2(a)(1); see also section 220 of the Federal Power Act, to be codified at 16 U.S.C. 824t (identical language). Section 316 of EPAct 2005 added section 23 to the Natural Gas Act (natural gas transparency provisions); section 1281 of EPAct 2005 added section 220 to the Federal Power Act (electric transparency provisions) (together, the transparency provisions).

14 At the conference, the Commission convened two panels: (a) a panel of seven market participants to discuss price transparency in markets for the sale or transportation of physical natural gas in interstate commerce; and, (b) a panel of four market participants regarding price transparency in markets for the sale and transmission of electric energy in interstate commerce. See Transparency Provisions of the Energy Policy Act of 2005, Program for the Technical Conference, Docket No. AD06-11-000 (Oct. 6, 2006). In addition, for each panel, about ten representatives of information providers, such as price index publishers, attended to provide comment and answer questions.

The second proposal, designed to permit the annual estimate of (a) the size of the physical domestic natural gas market, (b) the use of index pricing in that market, (c) the size of the fixed-price trading market that produces price indices from the subset reported to index publishers, and (d) the relative size of major traders, would create an annual requirement that buyers and sellers of more than a de minimis volume of natural gas report numbers and volumes of relevant transactions to the Commission. As part of this proposal, the Commission would require each holder of blanket marketing certificate authority or blanket unbundled sales services certificate authority to notify the Commission as to whether it reports its transactions to publishers of electricity or natural gas price indices and whether any such reporting complies with certain standards. Currently, a holder of a blanket marketing certificate or a blanket unbundled sales service certificate is required to notify the Commission only when it changes its practice regarding such reporting. This part of the proposal would make notifications of reporting status more reliable.

A. Justification

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

Pursuant to sections 4, 5, and 16 of the NGA, (15 USC 717c - 717o, P.L. 75-688, 52 Stat. 822 and 830), and Title III of the NGPA, (15 USC 3301-3432, P.L. 95-621), a natural gas company must obtain Commission authorization for all rates and charges made, demanded, or received in connection with the transportation or sale of natural gas in interstate commerce. The Commission is authorized to investigate the rates charged by natural gas pipeline companies subject to its jurisdiction. If, after the investigation, the Commission is of the opinion that the rates are "unjust or unreasonable or unjustly discriminatory or unduly preferential," it is authorized to determine and prescribe just and reasonable rates. The NGA also provides the Commission with a means for considering the reasonableness of rates through settlement conferences or hearings.

With the passage of EPAct 2005, Congress affirmed a commitment to competition in wholesale natural gas and electricity markets as national policy, the fifth major federal law in the last 30 years to do so.[15] As part of this commitment to competition, in the transparency

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15 See Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776 (1992), codified as amended in scattered sections of 16 U.S.C.; Natural Gas Wellhead Decontrol Act of 1989, Pub. L. No. 101-60, 103 Stat. 157 (1989), codified in scattered section of 15 U.S.C.; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601-2645 (2000); Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3442 (2000).

provisions, Congress charged the Commission with assuring the integrity of the wholesale markets and assuring fair competition by facilitating price transparency in those markets. It also significantly strengthened the Commission's regulatory tools in the transparency provisions, specifically, in new section 220 of the Federal Power Act and new section 23 of the Natural Gas Act.

In new section 23(a)(1) of the Natural Gas Act, Congress provided the Commission's mandate:

> The Commission is directed to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce, having due regard for the public interest, the integrity of those markets, fair competition, and the protection of consumers.[16]

In new section 23(a)(2) of the Natural Gas Act, Congress left to the Commission's discretion whether to enact rules to carry out this mandate and provided that any rules implementing the transparency provisions provide for public dissemination of the information gathered:

> The Commission may prescribe such rules as the Commission determines necessary and appropriate to carry out the purposes of this section. The rules shall provide for the dissemination, on a timely basis, of information about the availability and prices of natural gas sold at wholesale and in interstate commerce to the Commission, State commissions, buyers and sellers of wholesale natural gas, and the public.[17]

In new section 23(a)(3) of the Natural Gas Act, Congress contemplated that the transparency provisions would differ from other provisions in the Natural Gas Act, both as to the entities covered by the Commission's jurisdiction and the possible involvement of third parties in implementing the rules. That section reads, with emphasis added:

> The Commission may –

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16 To be codified at 15 U.S.C. 717(v)(a)(1). The electric transparency provisions of the Federal Power Act are nearly identical as to the electric wholesale markets. Section 220 of the Federal Power Act, to be codified at 16 U.S.C. 824t. Because the Commission's proposals in the NOPR address natural gas transparency, the Commission is not analyzing the electric transparency provisions, although the Commission expects that analysis of electric transparency provisions would be substantially similar.

17 To be codified at 15 U.S.C. 717t-2(a).

> (A) obtain the information described in paragraph (2) [i.e., information about the availability and prices of natural gas sold at wholesale and interstate commerce] from any market participant; and
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> (B) rely on entities other than the Commission to receive and make public the information, subject to the disclosure rules in subsection (b).[18]

By using the term "any market participant," Congress deliberately expanded the universe subject to the Commission's transparency authority beyond the entities subject to the Commission's rate and certificate jurisdiction under other parts of the Natural Gas Act. The term "market participant" is not defined in the Natural Gas Act and is not on its face limited to otherwise jurisdictional entities.

Congress could have limited the scope of entities subject to the Commission's transparency authority by referring to "natural gas company" as defined in the Natural Gas Act[19] or by referring to sections 1, 3, or 7 of the Natural Gas Act[20]. The former approach would have excluded intrastate pipelines from the Commission's transparency authority. The latter approach would have entailed the jurisdictional limitations of those sections, which exclude from the Commission's jurisdiction first sales, sales of imported natural gas, sales of imported liquefied natural gas, and sales and transportation by entities engaged in production and gathering, local distribution, "Hinshaw" pipelines, or vehicular natural gas.[21] These limitations

18 To be codified at 15 U.S.C. 717t-2(a)(3).

19 Section 2(6) of the Natural Gas Act, 15 U.S.C. 717a(6).

20 15 U.S.C. 717, 717b, 717f.

21 Section 1(b)-(d) of the Natural Gas Act, 15 U.S.C. 717(b)-(d); section 3 of the Natural Gas Act, 15 U.S.C. 717b; section 7(f) of the Natural Gas Act, 15 U.S.C. 717f(f); see, also, section 601(a) of the Natural Gas Policy Act, 15 U.S.C. 3431(a). The Commission has previously explained that the Natural Gas Policy Act of 1978 (NGPA or Natural Gas Policy Act) and the Natural Gas Wellhead Decontrol Act of 1989 narrowed its jurisdiction under the Natural Gas Act:

Under the NGPA, first sales of natural gas are defined as any sale to an interstate or intrastate pipeline, LDC [Local Distribution Company] or retail customer, or any sale in the chain of transactions *prior* to a sale to an interstate or intrastate pipeline or LDC or retail customer.

do not apply to the Commission's transparency authority. Given Congress' use of the term "market participant," the Commission's transparency authority includes any person or form of organization, including, for instance, natural gas producers, processors and users.

The Commission's authority to obtain information from "any market participant" is not plenary. In the natural gas transparency provisions, Congress limited that authority in two respects: the scope of the markets at issue and the type of information to obtain and disseminate. First, Congress directed the Commission to "facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce…."[22] Thus; any information collected and disseminated must be for the purpose of price transparency in those markets. The Commission does not interpret this language to limit its ability to obtain information only about physical natural gas sales or transportation in those markets, provided that the information obtained and disseminated pertains to price transparency in those markets. Second, Congress provided that any rules "provide for the dissemination, on a timely basis, of information about the availability and prices of natural gas sold at wholesale and in interstate commerce…."[23] Thus, the Commission's authority is limited to "information about the availability and prices of natural gas sold at wholesale and in interstate commerce."[24] Again, this language does not limit the type of information the Commission could collect to implement its mandate, provided that

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NGPA Section 2(21)(A) sets forth a general rule stating that all sales in the chain from the producer to the ultimate consumer are first sales until the gas is purchased by an interstate pipeline, intrastate pipeline, or LDC. Once such a sale is executed and the gas is in the possession of a pipeline, LDC, or retail customer, the chain is broken, and no subsequent sale, whether the sale is by the pipeline, or LDC, or by a subsequent purchaser of gas that has passed through the hands of a pipeline or LDC, can qualify under the general rule as a first sale on natural gas. In addition to the general rule, NGPA Section 2(21)(B) expressly excludes from first sale status any sale of natural gas by a pipeline, LDC, or their affiliates, except when the pipeline, LDC, or affiliate is selling its own production.

Order No. 644 at P 14.

22 Section 23(a)(1) of the Natural Gas Act, to be codified at 15 U.S.C. 717t-2(a)(1).

23 Section 23(a)(2) of the Natural Gas Act, to be codified at 15 U.S.C. 717t-2(a)(2).

24 Id.

such information is "about" (i.e., pertains to) the "availability and prices of natural gas sold at wholesale and in interstate commerce." For instance, some transportation or sales of natural gas is not in interstate commerce, but, nonetheless, would affect the availability and prices of natural gas at wholesale and in interstate commerce.

The natural gas transparency provisions further provide that the Commission shall "rely on existing price publishers and providers of trade processing services to the maximum extent possible."[25] Thus, Congress authorized the Commission to rely on third parties to collect and disseminate transparency information. The Commission does not herein authorize or empower third parties to collect or disseminate information. Nonetheless, the Commission expects that third parties may use the information collected pursuant to the proposals in this NOPR and repackage it, if sufficient demand for such services arises in the information marketplace.[26]

Also, in the transparency provisions, Congress cautioned the Commission in providing for any dissemination of information pursuant to the transparency provisions to ensure that "consumers and competitive markets are protected from the adverse effects of potential collusion or other anticompetitive behaviors by untimely disclosure of transaction-specific information."[27]

Finally, new section 23(d)(2) of the natural gas transparency provisions mandates an exemption from any reporting for "natural gas producers, processors, or users who have a de minimis market presence…."[28] This paragraph does not exempt all producers and all processors from reporting, but exempts only producers that have a de minimis market presence and only processors that have a de minimis market presence.

25 Section 23(a)(4) of the Natural Gas Act, to be codified at 15 U.S.C. 717t-2(a)(4).

26 The Commission reiterates in the NOPR its comments made previously regarding price index publishers, data hubs, and other trade processing services: we do not "endors[e] any particular entity or approach, but continue to encourage industry participants to find optimal solutions to better wholesale price formation." Order on Further Clarification of the Policy Statement at P 11.

27 Section 23(b)(2) of the Natural Gas Act, to be codified at 15 U.S.C. 717t-2(b)(2).

28 Section 23(d)(2) of the Natural Gas Act, to be codified at 15 U.S.C. 717t-2(d)(2).

2. HOW, BY WHOM, AND FOR WHAT PURPOSE THE INFORMATION IS TO BE USED AND THE CONSEQUENCES OF NOT COLLECTING THE INFORMATION

FERC-551 Reporting of Flow Volume and Capacity by Intrastate Pipelines

By adding information on intrastate pipeline flows to the information already available from interstate pipelines, the Commission, market participants, and the public will be able to develop a better understanding of daily supply and demand conditions that directly affect U.S. wholesale natural gas markets. While distinctions between intrastate and interstate natural gas markets may be meaningful from a legal perspective, they are not meaningful from the perspective of market price formation. The U.S. natural gas market produces geographically diverse prices through the direct influence of supply, demand and transportation availability, but without ever differentiating interstate from intrastate commerce. Consequently, this proposal to increase information from intrastate pipelines would directly "facilitate price transparency for the sale… of physical natural gas in interstate commerce" as authorized in the natural gas transparency provisions.[29]

Today, interested market participants as well as commercial vendors retrieve this information from the websites of interstate pipelines to obtain schedule information that is then used to estimate a variety of supply and demand conditions including geographic and industrial sector consumption, storage injections and withdrawals and regional production in almost real-time.[30] Market participants have come to rely on this information to help price transactions. Commission staff has also come to rely on this information to perform its oversight and enforcement functions. In fact, observers believe that this information posting has contributed to market transparency by revealing the underlying volumetric (or availability) drivers behind price movements.[31]

Notwithstanding the contribution of posted interstate schedule information to the transparency of price and availability of natural gas, this information cannot provide a complete

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29 Section 23(a)(1) of the Natural Gas Act, to be codified at 15 U.S.C. 717t-2(a)(1).

30 See, e.g., Comments of Bentek Energy, LLC., Docket No. AD06-11-000 (filed Oct. 10, 2006).

31 See, e.g., Comments of Platt's, at p. 11-13, Docket No. AD06-11-000 (information regarding the supply and demand of natural gas explains prices and such information is available from interstate pipelines, but not intrastate pipelines).

picture of natural gas flows in the United States – or even those flows directly relevant to the pricing of natural gas flowing in interstate commerce. Several major U.S. natural gas pricing points sit at the confluence of multiple interstate and intrastate pipelines. A recent study by the Department of Energy's Energy Information Administration (EIA) identified 28 national market centers or pricing hubs, of which 13 are served by a combination of interstate and intrastate pipelines.[32]

The Commission proposes to require posting of actual flow information from intrastate pipelines rather than scheduled volumes, as it does for interstate pipelines. Intrastate pipelines operate in different regulatory and business contexts from interstate pipelines, making scheduled volumes less helpful in estimating movement of natural gas. For example, interstate pipelines primarily operate as open access transporters, not as sellers of natural gas. Scheduled volumes represent the communication that must occur between the shipper and the pipeline to conduct most of their business. As a consequence, interstate receipt, transportation and delivery schedules, as updated before and through the delivery day, reflect actual flows on their systems as well.[33] In contrast, intrastate pipelines often sell gas directly to customers under a variety of regulatory regimes. Much of such gas can flow without being scheduled, especially for customers' variable requirements. Similarly, many direct pipeline purchases from the wellhead and from smaller gathering systems need not be scheduled. Given the different business models, and the likelihood that scheduling information on intrastate pipelines would be unhelpful, the Commission concludes that actual flow information, posted after-the-fact, would be needed to develop an understanding of these flows.

The daily posting of flow information by intrastate pipelines would provide several benefits to the functioning of natural gas markets in ways that would protect the integrity of physical, interstate natural gas markets, protect fair competition in those markets and consequently serve the public interest by better protecting consumers. First, by providing a more complete picture of supply and demand fundamentals, these postings would improve market participants' ability to assess supply and demand and to price physical natural gas transactions. Second, during periods when the U.S. natural gas delivery system is disturbed, for instance due to hurricane damage to facilities in the Gulf of Mexico, these postings would

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32 DEPARTMENT OF ENERGY, ENERGY INFORMATION ADMINISTRATION, NATURAL GAS MARKET CENTERS AND HUBS: A 2003 UPDATE, Oct. 2003, http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2003/market_hubs/mkthubs03.pdf

33 In the case of "no-notice" service, see 18 CFR 284.7(a)(4), interstate pipeline schedules do not reflect flows. Consequently, information about interstate flows in areas using no-notice service is less useful.

provide market participants a clearer view of the effects on infrastructure, the industry, and the economy as a whole. Finally, these postings would allow the Commission and other market observers to identify and remedy potentially manipulative activity.

FERC-552 Annual Reporting of Natural Gas Transmission

Under the proposed reporting requirement, certain natural gas buyers and sellers would identify themselves to the Commission and report summary information about physical natural gas transactions for the previous calendar year including: (a) their total amount of physical[34] natural gas transactions by number and volume; (b) the breakdown of their transactions by purchases and sales; (c) the number and volume breakdown of their purchases and sales by whether they were conducted in monthly or daily spot markets; and, (d) the number and volume breakdown of their purchases and sales by type of pricing, in particular whether that pricing was fixed or indexed.

In addition, a natural gas seller would be required to state whether it operates under blanket certificate authority under § 284.402 of the Commission's regulations, and whether it reports transactions to price index publishers and whether any such reporting complies with the standards provided in § 284.403(a). Similarly, an interstate pipeline would be required to state whether it operates under blanket certificate authority under § 284.284 of the Commission's regulations, and whether it reports transactions to price index publishers and whether any such reporting complies with the standards provided in § 284.288(a).[35]

Congress directed the Commission to "facilitate price transparency in markets for the sale… of physical natural gas in interstate commerce," but that language does not limit the

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34 Although the standard contract for the most significant natural gas futures market traded on the New York Mercantile Exchange (NYMEX) requires physical delivery, the vast majority of those transactions do not go to delivery. For the purposes of this proposal, and despite the particulars of the futures contract language, the Commission intends to explicitly exclude volumes of futures transactions from consideration. Indeed, information about volumes of futures transactions is already publicly available through a variety of commercial means or directly through NYMEX at www.nymex.com, so collection of the information would be redundant and unnecessary.

35 The Commission recognizes that few if any interstate natural gas pipelines still make wholesale sales. Nevertheless, if they were to sell gas at wholesale in interstate commerce, they would be subject to the proposed rule. More relevant, of course, is the fact that all of their affiliates making wholesale sales in interstate commerce would be subject to the proposed rule.

Commission to seeking information regarding only sales.[36] Purchases of physical natural gas are also a part of such markets; there is no market for the sale of natural gas that does not include purchases. Nor does the natural gas transparency provision language that provides for the "dissemination… of information about the availability and prices of natural gas sold at wholesale and interstate commerce" restrict the Commission.[37] As a practical matter, information regarding purchases of natural gas is necessary to evaluate the reliability of information regarding sales of natural gas. Both types of information are necessary to obtain a useful gauge of price transparency in natural gas markets.

The implementation of these data requirements will help the Commission to carry out its responsibilities under the Natural Gas Act to monitor the activities and evaluate transactions of the natural gas industry to ensure competitiveness and to assure the improved efficiency of the industry's operations. The daily posting of flow information by intrastate pipelines is necessary to provide information regarding the price and availability of natural gas to market participants, State commissions, the FERC and the public. The annual filing of transaction information by market participants is necessary to provide information regarding the size of the physical natural gas market, the use of the natural gas spot markets and the use of fixed and index price transactions.

The Commission's Office of Enforcement and the Office of the General Counsel will use the data to improve the understanding of index pricing, for general industry oversight, and to supplement the documentation used during the Commission's audit process.

In summary: The daily posting of flow information by intrastate pipelines is necessary to provide information regarding the price and availability of natural gas to market participants, State commissions, the FERC and the public. The annual filing of transaction information by market participants is necessary to provide information regarding the size of the physical natural gas market, the use of the natural gas spot markets and the use of fixed and index price transactions.

Failure by the Commission to collect this information would mean that it is unable to monitor and evaluate transactions and operations of interstate and intrastate pipelines and perform its regulatory functions and statutory responsibilities as enumerated by the Energy Policy Act of 2005.

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36 Section 23(a)(1) of the Natural Gas Act, to be codified at 15 U.S.C. 717t-2(a)(1).

37 Section 23(a)(2) of the Natural Gas Act, to be codified at 15 U.S.C. 717t-2(a)(2) (emphasis added).

3. **DESCRIBE ANY CONSIDERATION OF THE USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN AND TECHNICAL OR LEGAL OBSTACLES TO REDUCING BURDEN**

There is an ongoing effort to determine the potential and value of improved information technology to reduce burden. As noted above, the Commission does not receive any of the information under FERC-551 data requirements as the information required is to be posted on the pipelines' Internet sites.

4. **DESCRIBE EFFORTS TO IDENTIFY DUPLICATION AND SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSE(S) DESCRIBED IN INSTRUCTION NO. 2**

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. To date, no duplication of the proposed data requirements have been found. The Commission staff is continuously reviewing its various filings in an effort to alleviate duplication. There are no similar sources of information available that can be used or modified for use for the purpose described in Item A (1.).

5. **METHODS USED TO MINIMIZE BURDEN IN COLLECTION OF**

INFORMATION INVOLVING SMALL ENTITIES

There are few small businesses that are impacted under the FERC-551 & FERC-552 reporting/data requirements. The proposal to require daily postings by intrastate pipelines will not impact small entities. Natural gas pipelines are classified under NAICS code, 486210, Pipeline Transportation of Natural Gas.[38] A natural gas pipeline is considered a small entity for the purposes of the Regulatory Flexibility Act if its average annual receipts are less than $6.5 million.[39] The Commission does not believe that any intrastate pipeline has receipts less than $6.5 million. Thus, the daily posting proposal will not impact small entities.

The proposal to require annual reporting of physical natural gas transactions will have minimal impact on small entities.[40] By incorporating a de minimis exemption into the regulations, the Commission has reduced the number of small entities subject to the requirements; de minimis entities without blanket certificates will not be required to report. This reporting proposal will affect small entities but the burden on them will be minimal. For each entity, small or otherwise, that is required to comply with the annual reporting requirement, the Commission estimates that the compliance would require a one-time cost of approximately $4,000 and an annual cost thereafter of $400. Although some costs would increase for market participants with a greater number of transactions, the Commission expects that that increase would be likely offset because such entities would have already compiled information regarding their transactions in the aggregate. The Commission bases its one-time cost estimate on an assumption that it would take approximately one person one week to set up the reporting and file the report initially and that their time costs $100 per hour. The Commission bases its annual

38 This industry comprises establishments primarily engaged in the pipeline transportation of natural gas from processing plants to local distribution systems. 2002 North American Industry Classification System (NAICS) Definitions, http://www.census.gov/epcd/naics02/def/ND486210.HTM.

39 See Table of Small Business Size Standards, U.S. Small Business Administration (effective July 31, 2006), available at http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.

40 For the purposes of analyzing the impact of the proposed filing requirement on small entities, the Commission classifies market participants under the NAICS category of "Natural Gas Distribution," Code 221210, which includes gas marketers and establishments, engaged in gas distribution. Under that classification, a small entity is any entity with less than 500 employees. See Table of Small Business Size Standards, U.S. Small Business Administration (effective July 31, 2006), available at http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.

estimate on an assumption that it would take one person four hours to compile the information and that his or her time costs $100 per hour. On an annualized basis, costs would amount to approximately $1,200 per entity. This amount is not a significant burden on small entities.

In establishing a de minimis threshold for reporting, which would apply to all market participants, the Commission seeks to require reporting from only those market participants whose transactions could have an effect on the price for the sale of physical natural gas in interstate commerce and to obtain reporting from a sufficient number of market participants to ensure, in the aggregate, an accurate picture of the physical natural gas market as a whole. To this end, the Commission proposes to define such a de minimis market participant as a market participant that engages in physical natural gas transactions that amount by volume to less than 2,200,000 MMBtus annually. [41] This figure is based on the rather simple calculation of one-ten thousandth (1/10,000th) of the annual physical volumes consumed in the United States, which is approximately 22 trillion cubic feet (Tcf) (or roughly 22,000,000,000 MMBtus).[42] Consequently, a de minimis market participant would trade the equivalent of less than one standard NYMEX futures contract per day. Although a market participant that contracts for 1/10,000th of the nation's annual physical volume may appear to have little effect on natural gas prices, that participant may be transacting only at one location and, thus, have a much greater pricing effect there. Although the Commission does not expect annual physical volumes consumed in the United States to remain constant, the figure of 22 Tcf is a useful snapshot of consumption and a useful starting-point for setting the de minimis exemption.

The proposed reporting requirement would also shift the notification regarding the index reporting practices of companies selling under blanket certificates to this annual form and away from the prior practice of a letter notification upon a change in company policy. Consequently, if a market participant makes use of its blanket certificate authority, even if its sales are de minimis, it would still be required to report, but only its identification information, whether it reports transaction information to price index publishers, and whether any such reporting complies with the regulations governing reporting to price index publishers. This proposal would be codified at § 284.403(a) for blanket marketing certificate holders and at § 284.288(a)

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41 Proposed 18 CFR 284.401 (defining de minimis market participant). The Commission proposes to define a market participant as "any buyer or seller that engaged in physical natural gas transactions for the previous calendar year." Proposed 18 CFR 284.401.

42 Department of Energy, Energy Information Administration, Natural Gas Summary, Data Series: Total Consumption, 2006, http://tonto.eia.doe.gov/dnav/ng/ng_sum_lsum_dcu_nus_a.htm.

for interstate pipelines with unbundled sales service certificates. The Commission would impose these requirements on all blanket certificate holders regardless of size.[43]

6. CONSEQUENCE TO FEDERAL PROGRAM IF COLLECTION WERE CONDUCTED LESS FREQUENTLY.

As noted above, the daily posting of flow information by intrastate pipelines provides several benefits to the functioning of natural gas markets in ways to protect the integrity of physical, interstate natural gas markets, protect fair competition in those markets and consequently serve the public interest by better protecting consumers including:

(a) improving market participants' ability to assess supply and demand and to price physical natural gas transactions;
(b) providing market participants a clearer view of the effects on infrastructure, the industry, and the economy as a whole particularly as result severe natural changes as reflected in hurricane damage; and
(c) allows the Commission and other market observers to identify and remedy potentially manipulative activity.

To have effective monitoring, the Commission needs timely information. Any reporting period longer than daily postings hinders the Commission in meeting this objective and the Commission would be responding to information that is either stale or no longer relevant nor would the Commission be able under the Natural Gas Act to ensure both competitiveness and improved efficiency of the industry's operations. The daily posting of flow information by intrastate pipelines is necessary to provide information regarding the price and availability of natural gas to market participants, State commissions, the FERC and the public.

The annual filing of transaction information by market participants is necessary to provide information regarding the size of the physical natural gas market, the use of the natural gas spot markets and the use of fixed and index price transactions. This reporting frequency meets the provisions of OMB's guidance.

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43 The Commission makes this proposal under section 4, 5 and 7 of the Natural Gas Act, 15 U.S.C. 717c, 717d, and 717f (2000), and, thus, is not required to create a de minimis exception for holders of blanket marketing certificates or for interstate pipelines that have blanket unbundled sales services certificates.

7. **EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION**

These proposed information collection requirements meet all of OMB's section 1320.5 requirements.

FERC-551 The data provided under FERC-551 as noted above will not be filed with the Commission but instead be posted on the pipelines' Internet websites.

FERC-552 The data provided in FERC-552 will be an annual filing with the Commission that will be filed electronically using Commission developed software and downloaded from its web site.

8. **DESCRIBE EFFORTS TO CONSULT OUTSIDE THE AGENCY: SUMMARIZE PUBLIC COMMENTS AND THE AGENCY'S RESPONSE TO THESE COMMENTS**

The Commission's procedures require that the rulemaking notice be published in the Federal Register, thereby allowing all pipeline companies, state commissions, federal agencies, and other interested parties an opportunity to submit comments, or suggestions concerning the proposal. The rulemaking procedures also allow for public conferences to be held as required.

As noted above, Congress directed the Commission to facilitate price transparency. Consistent with that directive as well as to explore options for action under EPAct 2005's expansion of the Commission's authority, Commission staff met with interested entities in the summer of 2006. On September 26, 2006, staff conducted a workshop to review sources of energy market information with interested persons and to lay the groundwork for a technical conference held on October 13, 2006. In that conference, ideas for potential policy actions by the Commission were identified.[44]

9. **EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS**

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44 At the conference, the Commission convened two panels: (a) a panel of seven market participants to discuss price transparency in markets for the sale or transportation of physical natural gas in interstate commerce; and, (b) a panel of four market participants regarding price transparency in markets for the sale and transmission of electric energy in interstate commerce. See Transparency Provisions of the Energy Policy Act of 2005, Program for the Technical Conference, Docket No. AD06-11-000 (Oct. 6, 2006). In addition, for each panel, about ten representatives of information providers, such as price index publishers, attended to provide comment and answer questions.

There are no payments or gifts to respondents in the proposed rule.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

The Commission generally does not consider the data posted concerning transactions to be confidential. Specific requests for confidential treatment to the extent permitted by law will be entertained pursuant to 18 C.F.R. Section 388.110.

11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE THAT ARE CONSIDERED PRIVATE

There are no questions of a sensitive nature proposed in the subject NOPR.

12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION

The burden estimate of 32,537 hours (an average of 183 hours per entity) for information requirements collections under FERC-551, as proposed in the subject NOPR, is based on the presumption that intrastate pipelines already collect flow information for receipt and delivery points and, therefore, the burden that would be imposed by this proposed requirement is only for the posting of this information in the required format.

The burden estimate of 6,000 hours (an average of 4 hours per entity) for information requirements/collections under FERC-552 as proposed in the subject NOPR, The proposal to require market participants to file annually a form regarding their physical natural gas transactions would impose an information collection burden on market participants. Again, we presume that market participants already collect transaction information and, thus, the burden imposed by this proposed requirement is only for completing and submitting the form.

A detailed summary of FERC-551 and FERC-552 burden estimates is shown below:

DATA REQUIREMENT (FERC-551)		CURRENT OMB INVENTORY	PROPOSED IN 010 NOPR	NEW OMB INVENTORY
Estimated number of respondents	:	0	179	179
Estimated number of responses per respondent	:	0	364	364
Estimated number of responses per year	:	0	65,156	65,156
Estimated number of hours per response	:	0	0.52074	0.52074
Total estimated burden (hours per year)	:	0	32,757	32,757
Program change in industry burden hours	:		+ 32,757	

Adjustment change in industry burden hours : -0-

DATA REQUIREMENT (FERC-552)		CURRENT OMB INVENTORY*	PROPOSED IN 010 NOPR	NEW OMB INVENTORY
Estimated number of respondents	:	0	1,500	1,500
Estimated number of responses per respondent	:	0	1	4
Estimated number of responses per year	:	0	1,500	1,500
Estimated number of hours per response	:	0	4	4
Total estimated burden (hours per year)	:	0	6,000	6,000
Program change in industry burden hours	:		+ 6,000	
Adjustment change in industry burden hours	;		-0-	
Total hours in the NOPR (FERC-551 + FERC-552)			+ 38,757	

13. **ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

The estimated annualized start-up and ongoing costs to respondents for the data collection/requirements as proposed in the subject NOPR is as follows:

FERC-551

Each intrastate pipeline would be required to post daily to the Internet the capacities of, and volumes flowing through, their major receipt and delivery points and mainline segments. Postings would be required within 24 hours from the close of the gas day on which gas flowed, i.e., at or before 9:00 a.m. central clock time for flow that occurred on the gas day that ended 24 hours before. The Commission estimates that compliance would require an initial start-up cost for intrastate pipelines to develop an Internet website at a cost of 160 hours @ $100/hr. This will result in a total of $16,000 annualized over 10 years for $1,600 per year. For operations and maintenance, the Commission estimates 30 minutes per day @ $100/hr to post data already collected in-house for $18,300 per year.

FERC-552

For each entity, that is required to comply with the annual reporting requirement, the Commission estimates that the compliance would require a one-time cost of approximately **$4,000** and an annual cost thereafter of **$400 (40 hours @$100/hr, annualized for 10 years $400 per year)**. Although some costs would increase for market participants with a greater number of transactions, the Commission expects that that increase would be likely offset because such entities would have already compiled information regarding their transactions in the aggregate. The Commission bases its one-time cost estimate on an assumption that it would take approximately one person one week to set up the reporting and file the report initially and that their time costs **$100** per hour. The Commission bases its annual estimate on an assumption that it would take **one** person **four** hours to compile the information and that his or her time costs **$100** per hour (**4 hours to fill in the form @$100/hr for $400 per year**). On an annualized basis, costs would amount to approximately **$1,200** per entity.

	Annualized Capital/Startup Costs (10 year amortization)	Annual Costs	Annualized Costs Total
FERC-551			
Intrastate Pipeline Postings	$1,600	$18,300	$19,900
FERC-552			
Transaction Reporting Requirement	$400	$400	$800

14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT

The estimated annualized cost to the Federal government related to the data collections/requirements as proposed in the subject NOPR are shown below:

Data Requirement Number	Analysis of Data (FTEs)[46] x	Estimated Salary[45] Per Year +	FERC Forms Clearance (FY '07 =	Total Cost One Year's Operation[47]
FERC-551	-0-	-0 -	$ 213	$ 213
FERC-552	.5	$122,137	$ 234	61,303
Total	.5	$122,137	447	$61,516

For monitoring of daily flows, because the goal of this rule is transparency, this creates additional sources of information for both the Commission and public to conduct oversight of pipeline transactions and therefore minimizes the burden to Commission staff.

45 ?/ "Salary" represents the allocated cost per gas program employee at the Commission based on its appropriated budget for fiscal year 2007. The $122,137 "salary" consists of $98,876 in salaries and $23,260 in benefits.

46 ?/ An "FTE" is a "Full Time Equivalent" employee that works the equivalent of 2,080 hours per year.

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For annual transaction reporting, the burden to the Commission is for (a) creating the form electronically, (b) making sure it's current, and (c) aggregating the information annually.

15. REASONS FOR CHANGES IN BURDEN INCLUDING THE NEED FOR ANY INCREASE

In order to implement its authority under section 23 of the Natural Gas Act, which was added by section 316 of the Energy Policy Act of 2005 (EPAct 2005), the Commission proposes to revise its regulations to: require that intrastate pipelines post daily the capacities of, and volumes flowing through, their major receipt and delivery points and mainline segments in order to make available the information needed to track daily flows of natural gas throughout the United States; and require that buyers and sellers of more than a de minimis volume of natural gas report annual numbers and volumes of relevant transactions to the Commission in order to make possible an estimate of the size of the physical U.S. natural gas market, assess the importance of the use of index pricing in that market, and determine the size of the fixed-price trading market that produces the information. These revisions would facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce.

16. TIME SCHEDULE FOR THE PUBLICATION OF DATA

The time schedule for FERC-551, is as follows: intrastate pipelines are to post daily to the Internet the capacities of, and volumes flowing through, their major receipt and delivery points and mainline segments. Postings would be required within 24 hours from the close of the gas day on which gas flows, i.e., on or before 9:00 a.m. central clock time for flows occurring on the gas day that ended 24 hours before.

The proposed daily intrastate pipeline capacity and volume postings would allow the Commission and other market observers to identify and remedy potentially manipulative activity more actively by tracking price movement in the context of natural gas flows.[48] In particular, information regarding availability on intrastate pipelines could be used to track manipulative or unduly discriminatory behavior intended to cause harm to consumers by distorting market prices in interstate commerce. For example, Commission staff overseeing markets routinely checks for unused interstate pipeline capacity between geographically distinct markets with substantially

48 *See Prohibition of Energy Market Manipulation*, Order No. 670, 71 FR 4244 (Jan. 26, 2006), FERC Stats. & Regs. ¶ 31,202 (2006) (implementing section 4A of the Natural Gas Act, to be codified at 15 U.S.C. 717c-1, which prohibits natural gas market manipulation), reh'g denied, 114 FERC ¶ 61,300 (2006).

different prices as a sign that flows may be managed to manipulate prices. Given the importance of intrastate pipeline connections to 13 major pricing hubs, the lack of flow information on intrastate pipelines hinders the Commission's market oversight and enforcement efforts.

Time Schedule for FERC-552 is as follows: An annual report/filing to the Commission for buyers and sellers of more than a de minimis volume of natural gas report numbers and volumes of relevant transactions. The report is designed to permit the annual estimate of (a) the size of the physical domestic natural gas market, (b) the use of index pricing in that market, (c) the size of the fixed-price trading market that produces price indices from the subset reported to index publishers, and (d) the relative size of major traders.

17. **DISPLAY OF EXPIRATION DATE**

Not applicable. The data requirements under FERC-551 are based on regulations and not filed on formatted/printed forms but rater to be posted on intrastate pipelines web sites. However, the information to be completed on the annual filing for FERC-552 will be obtainable from the Commission's web site and the Commission will display the OMB control number and expiration date.

18. **EXCEPTIONS TO THE CERTIFICATION STATEMENT**

Not applicable. The Commission does not use statistical methodology for either FERC-551 or FERC-552.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable. As noted in item number 18 above, the Commission does not use statistical methodology for either FERC-551 or FERC-552.