

118 FERC ¶ 61, 108
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Chapter I

Assessment of Information Requirements for FERC Financial Forms

Docket No. RM07-9-000

(Issued February 15, 2007)

AGENCY: Federal Energy Regulatory Commission

ACTION: Notice of Inquiry

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing a notice of inquiry into the need for changes or revisions to the Commission's reporting requirements for FERC Forms Nos. 1, 1-F, 2, 2-A, 3-Q, 6 and 6-Q (Financial Forms). This notice of inquiry follows informal meetings held by Office of Enforcement (OE) staff with both filers and users of FERC Forms Nos. 1 and 2 to reexamine the information in the forms and determine whether these forms should be modified to improve their usefulness. The notice of inquiry invites all interested persons to participate in the inquiry and to submit answers to several specific questions.

DATES: Comments on this Notice of Inquiry are due on [Insert date 30 days after publication in the **FEDERAL REGISTER**]. Reply comments are due [Insert date 60 days after publication in the **FEDERAL REGISTER**].

ADDRESSES: You may submit comments identified by Docket No. RM07-9-000 by one of the following methods:

- Agency Web Site: <http://ferc.gov>. Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble.
- Mail: Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, N.E., Washington, D.C. 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATION COMMISSION

Assessment of Information
Requirements for FERC
Financial Forms

Docket No. RM07-9-000

NOTICE OF INQUIRY

(Issued February 15, 2007)

I. Introduction

1. The Federal Energy Regulatory Commission (Commission) is initiating an inquiry into the need for changes or additions to the financial information reported in quarterly and annual report forms, FERC Form Nos. 1, 1-F, 2, 2-A, 3-Q, 6 and 6-Q (Financial Forms). Specifically, the Commission seeks comments on whether the Commission's annual and quarterly financial forms provide sufficient information to the public to permit an evaluation of the filers' jurisdictional rates, and whether these forms should otherwise be modified to improve their usefulness.

II. Background

2. The Federal Power Act (FPA), the Natural Gas Act (NGA) and the Interstate Commerce Act (ICA) authorize the Commission to prescribe annual or other periodic reports to assist the Commission in the administration of its jurisdictional

responsibilities.¹ FERC Form No. 1, "Annual Report of Major Electric Utilities,

¹ See sections 4, 304 and 309 of the Federal Power Act, 16 U.S.C. 797, 825c and

Licenses and Others” (Form 1), and FERC Form No. 1-F, “Annual Report for Nonmajor Public Utilities and Licensees” (Form 1-F), collect annual financial information as prescribed in §§ 141.1 and 141.2 of the Commission’s regulations.² FERC Form No. 2, “Annual Report for Major Natural Gas Companies” (Form 2), and FERC Form No. 2-A, “Annual Report for Nonmajor Natural Gas Companies” (Form 2-A), collect annual financial information from natural gas companies subject to the Commission’s jurisdiction, as prescribed in §§ 260.1 and 260.2 of the regulations.³ FERC Form No. 6, “Annual Report of Oil Pipeline Companies” (Form 6), collects annual financial information from oil pipeline companies subject to the Commission’s jurisdiction, as prescribed in §§ 357.2 and 357.4 of the regulations.⁴ In 2004, the Commission’s regulations were revised to require the filing entities to submit quarterly financial reports to supplement the annual filings: FERC Form No. 3-Q by electric utilities, licensees and natural gas companies; and FERC Form No. 6-Q by oil pipeline companies.⁵

3. The Financial Forms provide information that is essential to the Commission’s oversight authority, namely, financial data covering a company’s past performance. The

825h (2000); and sections 10(a), 16 of the Natural Gas Act, 15 U.S.C. 717i(a) and 717o (2000); and 49 App. U.S.C. 1-85 (2000).

² 18 CFR 141.1, 141.2.

³ 18 CFR. 260.1, 260.2.

⁴ 18 CFR 357.2, 357.4.

⁵ Quarterly Financial Reporting and Revisions to the Annual Reports, Order No. 646, 69 FR 9030 (Feb. 26, 2004), FERC Stats. & Regs. ¶ 31,158 (2004), as amended by, Order No. 646-A, 69 FR 32440 (June 10, 2004), FERC Stats. & Regs. ¶ 31,163 (2004). See 18 CFR 141.400, 260.300, and 357.4.

financial statements are prepared in accordance with the Commission's Uniform Systems of Accounts and related regulations and provide data that enables the Commission to develop and monitor cost-based rates, analyze costs of different services and classes of assets, and compare costs across lines of business. In addition, the Financial Forms are relied upon by electric utility, interstate natural gas pipeline and oil pipeline customers, state commissions, and trade associations to develop and monitor rates. When the Commission revised its rules to require quarterly financial reporting, it concluded, based on comments received, that "the financial information filed with the Commission represents, in most cases, the only source of financial data presented in a format and detail suitable for the Commission to exercise its duties and responsibilities under the Federal Power, Natural Gas, and Interstate Commerce Acts."⁶

4. In the spring of 2006, the Office of Enforcement (OE) assumed responsibility for all financial forms filed with the Commission, which routinely reviews and updates the forms' requirements. Accordingly, in September and October of 2006, OE staff met informally with both filers and users of Forms 1 and 2 to reexamine the breadth of data collected by the forms and to determine the need for clarifications, corrections, deletions or additional information.⁷ In particular with respect to Form 2, the meetings were also prompted because pleadings filed recently by certain market participants had questioned the adequacy of the type and amount of data reported in the forms for purposes of

⁶ Order No. 646 at P 16.

⁷ References to Forms 1 and 2, to the extent applicable, also refer to Forms 1-F, 2-A, 3-Q, 6 and 6-Q.

challenging rates on file for natural gas companies.⁸

5. During this two-month outreach period, OE staff met with representatives of natural gas and electric utility companies, state commissions, trade associations, financial entities, energy data publishers, federal agencies, and other Commission staff. In addition to attending the informal meetings, participants were invited to submit written comments and recommendations. At each session, staff sought the participants' views on several issues, including: how Forms 1 and 2 are used; which information is most helpful; whether and what additional information might be sought; and how burdensome to filers might be changes made or requirements added to either Form 1 or 2.⁹

III. Comments on Form 1

6. Representatives of public utilities who file Form 1 advocated streamlining the form, *i.e.*, limiting the information collected to only what is necessary for the Commission to perform its regulatory function and avoiding the collection of unnecessary additional information. Many Form 1 filers expressed concern that these

⁸ See, e.g., Public Service Commission of New York, Pennsylvania Public Utility Commission and Pennsylvania Office of Consumer Advocate v. National Fuel Gas Supply Corp., 115 FERC ¶ 61,299 (2006) (National Fuel) (setting for hearing a complaint filed by state commissions against National Fuel Gas Supply Corp. alleging that the company's rates are unjust and unreasonable, based on an analysis of Form 2 data). See also Panhandle Complainants v. Southwest Gas Storage Company, 117 FERC ¶ 61,318 (2006) (Panhandle) (setting for hearing a complaint filed by customers of Panhandle Eastern Pipeline Company (PEPL), in which complainants relied on Form 2-A data for support).

⁹ The staff outreach did not extend to Form 6 or 6-Q. The Commission believes, however, that extension of this inquiry to the oil pipeline financial forms makes sense as many of the concerns raised with respect to the other forms could apply to the oil pipeline forms as well.

extensive reporting requirements put them at a competitive disadvantage because they apply only to major public utilities and hydropower licensees, and not to state and municipal public utilities, rural cooperatives, independent power producers, exempt wholesale generators and power marketers.

7. Users of Form 1 data emphasized its importance in monitoring cost-based rates to ensure that rates are just and reasonable, and in determining the potential need for a section 206 complaint. More generally, users complained that the Form 1 filings are often incomplete or inconsistent and there is a need for greater quality control and follow-up by Commission staff. Several users focused on the need for greater clarity in the Form 1 instructions and a need for upgrades to the software to provide for, among other things, more standardization of data queries.

8. Specific suggestions for additional information items to be collected in Form 1 submitted by the American Public Power Association include the following:

(1) additional cost data needed to complete formula rate calculations, e.g., a summary schedule of information provided on transmission line statistics for lines 132 kV or

greater; (2) the standard rate divisor as specified in Order No. 888¹⁰; (3) expansion of

¹⁰ Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC

existing reporting of individual line and substation facilities to identify which facilities have been placed under operation or control of another entity; and, (4) reporting revenue distributions from regional transmission organizations (RTOs) or independent system operators (ISOs) with a breakdown of costs and revenues.

IV. Comments on Form 2

9. Representatives of the interstate natural gas pipeline companies, filers of Form 2, complained that the filing requirements, including the filing of quarterly information, are burdensome and collect unnecessary data. These filers also expressed their opinion that Form 2 is an accounting document that does not include projections and, therefore, should not be used as a substitute for a cost and revenue study or be used to gauge earnings.

10. The users of Form 2 called for more, not less data, and identified specific areas and accounts they found lacking in detail. According to these Form 2 users, the lack of detail affects the reliability of an accurate assessment of pipeline rates. Users of the data emphasized the significance of the information collected in Form 2 as the primary source for evaluating cost-based rates. They added that since interstate natural gas pipeline companies are no longer required to file a periodic restatement of rates, the importance of the information in Form 2 is particularly significant and constitutes the only resource

¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000) (TAPS v. FERC), aff'd sub nom. New York v. FERC, 535 U.S. 1 (2002).

available to shippers seeking pipeline rate changes by filing a complaint.¹¹

11. Specific changes or additional details sought by the users of Form 2 include:

- (1) a breakdown of operating revenues; (2) unbundling of certain accounts; (3) additional detail on cost of service items, billing determinants, and maximum rate contracts;
- (4) detail on pensions and Post Retirement Benefits Other Than Pension (OPEBs);
- (5) more detail on employee expenses, employee benefits and executive compensation;
- and (6) more affiliate transaction schedules. Other data and changes requested include:

- (1) separation of cost-of-service components from non-cost of service components;
- (2) requiring a filer to identify items that it considers rate-base components for ratemaking purposes; (3) information on construction costs and capitalized costs; and
- (4) additional information on deferred taxes and capital structure.

12. The Industry Coalition¹² (Coalition) submitted written comments suggesting specific changes to Form 2, information they identified as necessary to perform an evaluation of pipeline rates. The Coalition's specific suggestions include the following:

- (1) identify which components of deferred taxes are included in rate base for cost-of-service purposes; (2) provide additional information on the entity whose capital structure is reported on page 218a of the form; (3) provide detail on gas purchases and sales;
- (4) provide detail on miscellaneous gas revenues; (5) provide a calculation of the

¹¹ See supra note 8.

¹² The Industry Coalition is comprised of the following entities: Natural Gas Supply Association, American Public Gas Association, Independent Petroleum Association of America, and The Process Gas Consumers Group.

pipeline's effective overall state income tax rate; (6) provide detail for miscellaneous assets; (7) provide detail concerning the total parent company overhead costs and the amount assigned or allocated to the pipeline; (8) provide aggregate information on volumes and revenues associated with discounted services and negotiated rate services; (9) identify costs and revenues associated with at-risk facilities; and (10) provide a calculation of the pipeline's earned annual return on equity.

13. In addition, many participants commented on the need to limit delays in filing, and the incompleteness of some information that is filed. The Commission shares the concern regarding timely filings. The Commission expects that all Financial Forms will be filed in a timely manner and will provide all of the requested information.¹³

14. The comments and information received as a result of the outreach meetings reinforce the significance of this data to the Commission, and to the public who depend almost solely on the data reported when they elect to file a complaint under section 5 of the NGA or section 206 of the FPA. The forms represent more than simply accounting documents; the information provided is essential to the public's right to examine, monitor, and assess utility and pipeline rates to ensure that they do not pay excessive or unduly discriminatory rates.

15. In light of the comments received, both orally and written, during OE's review of Forms 1 and 2, and in light of the complaints set for hearing in National Fuel and Panhandle and the importance of the questions they raise, the Commission believes it is

¹³ Concurrently with the issuance of this Notice of Inquiry, the Commission is issuing a show cause order to financial forms filers who have been delinquent in making their filings.

appropriate to solicit comments on these matters. Although the informal meetings held as a result of OE's outreach efforts focused on Forms 1 and 2, this Notice of Inquiry (NOI) solicits comments on the need for changes to any and all of the Financial Forms filed with the Commission, i.e., Form 6 and quarterly submissions, Forms 3-Q and 6-Q. The Commission is aware that not all participants in the informal review had an opportunity to submit written comments or to respond to comments submitted by other parties. This NOI gives those entities, and all other interested persons, the opportunity to comment formally with the Commission on any of the issues raised herein. The list is not exhaustive. Those responding to this NOI should feel free to raise any other questions or to make any comments which will aid the Commission in assessing its Financial Forms. After receipt of comments in response to this NOI, the Commission will determine whether it is appropriate to propose changes to the financial forms in the context of a formal rulemaking.

V. Questions

16. The Commission asks that interested persons respond to the following general questions.

(1) Do the annual and quarterly Financial Forms provide sufficient data for the public to permit an evaluation of the filers' jurisdictional rates?

(2) If not, what additional data is needed to conduct such an evaluation? Please specify the form (or forms) to which your suggestions pertain.

(3) Do the financial reports provide sufficient data to the public to determine

revenues attributable to the sale of excess fuel retention? If not, what additional data is needed to conduct such an evaluation?

(4) Is the information included in the financial reports sufficient to audit formulaic rates?

(5) Should the Commission require reporting of information on demand response initiatives (interruptible, load control, etc.), including demand and peak demand impacts, associated costs and savings, and the number of advanced meters installed?

(6) Please explain how this additional data will be useful to users of the Financial Forms.

(7) How burdensome would any requirement for additional information be to filers of Financial Forms?

(8) Are there specific reporting requirements that are no longer necessary or unduly burdensome that should be deleted?

(9) What technical revisions, if any, need to be made to the Financial Forms? For example, identify any suggested changes in instructions, desirable software upgrades, and whether there are errors embedded in the forms which need to be corrected.

(10) Should the Commission require electric utilities, licensees and interstate natural gas and oil pipeline companies to provide notification when their total sales or transactions fall below the minimum thresholds established in the Commission's regulations such that they are no longer subject to these filing requirements?

(11) Should the Commission require a showing of good cause before granting an

extension of time in which to file the required forms?

(12) Are these concerns of sufficient importance to warrant a rulemaking and, if so, what rules should the Commission promulgate? Commenters are encouraged to be as specific as possible.

VI. Comment Procedures

16. The Commission invites interested persons to submit comments on these matters and any related matters or alternative proposals that commenters may wish to discuss. Comments are due [insert date 30 days after publication in the **FEDERAL REGISTER**] and reply comments are due [insert date 60 days after publication in the **FEDERAL REGISTER**]. Comments and reply comments must refer to Docket No. RM07-9-000 and must include the commenter's name, the organization he or she represents, if applicable, and his or her address.

17. Comments may 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 and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing.

18. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: The Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, N.E., Washington, D.C.,

20426.

19. 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 NOPR are not required to serve copies of their comments on other commenters.

VII. Document Availability

20. 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 FERC's Home Page (<http://www.ferc.gov>. and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

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

22. User assistance is available for eLibrary and FERC's website during normal business hours from our Help line at (202) 502-8222 or the Public Reference Room at public.reference@ferc.gov.

By direction of the Commission.

(S E A L)

Magalie R. Salas,
Secretary.