

Submission, October 2007

Supporting Statement for
FERC-574, Gas Pipeline Certificates: Hinshaw Exemption
(Three-year Extension requested through December 31, 2010)

The Federal Energy Regulatory Commission (Commission/FERC) requests the Office of Management and Budget (OMB) review and extend its approval of **FERC-574, Gas Pipeline Certificates: Hinshaw Exemption, through December 31, 2010**. FERC-574 (OMB Control No. 1902-0116) is an existing information collection (filing application) whose filing requirements are contained in 18 C.F.R. Part 152. No change in the reporting burden (245 hours annually) is expected during the requested extension period. Current OMB approval of FERC-574 expires December 31, 2007.

A. Justification

1. The Natural Gas Act (NGA) regulates the transportation and sale for resale of natural gas in interstate commerce. Section 7 of the NGA provides that “[n]o natural gas company¹ or person which will be a natural gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of “natural gas” without first obtaining a certificate of public convenience and necessity from the Commission. Section 4 of the NGA requires that “natural gas companies” must maintain their rates for transportation or sale of gas with the Commission. Section 1(c) of the NGA, known as the “Hinshaw Amendment”, exempts from FERC regulation intrastate pipelines that receive natural gas at their state boundary that is consumed within the state and subject to state commission regulation and from the many provisions of the NGA, including §§ 4 and 7. Section 1(c) states:

The provisions of this chapter shall not apply to any person engaged in ... the transportation in interstate commerce or resale, of natural gas received by such person from another person within... a State if all of the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission. The matters exempted from the provisions of this chapter are declared to be matters primarily of local concern and subject to regulation by the several states.²

¹The NGA defines “natural gas company” as any individual or corporation “engaged in the transportation of natural gas in interstate commerce of such gas for resale.” 15 U.S.C. § 717(a)(6)

² 15 U.S.C. § 717(c) (2000).

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Under the NGA, interstate pipelines are subject to FERC regulation while intrastate pipelines operating intrastate generally are not. However, in 1978, Congress enacted the Natural Gas Policy Act (NGPA), in part to eliminate the regulatory barriers between the intrastate and interstate markets and to promote the entry of intrastate pipelines into the interstate market. The NGPA enabled FERC to “develop a national natural gas transportation network without subjecting intrastate pipelines, already regulated by State agencies, to FERC’s regulations over the entirety of their operations.”³

Section 311 of the NGPA authorized FERC to allow intrastate pipelines to transport gas “on behalf of” interstate pipelines or local distribution companies served by interstate pipelines so long as their rates are “fair and equitable” and do not “exceed an amount which is reasonably comparable to the rates and charges interstate pipelines would be permitted to charge for providing similar transportation service.”⁴ Thereafter, in Order No. 63 , FERC authorized Hinshaw pipelines to apply for certificates of authorization to transport natural gas in interstate commerce to the same extent and in the same manner as intrastate pipelines were allowed to do under § 311 of the NGPA.

Under the NGA⁵ the Commission is also authorized to conduct investigations and to collect and record data, to the extent the Commission may consider necessary or useful, for the purpose of carrying out the provisions of the Act.

2. The information collected by FERC is in the format of a written application, declaring the applicant’s intent. The application provides the information which the applicant must furnish the Commission in order to make a determination as to whether the applicant meets exemption provisions of Section 1(c) of the Natural Gas Act. It is used by the Commission’s staff to research the jurisdictional aspects of the applicant’s operations. Commission staff conducts a systematic review of the prepared application with supplemental documentation provided in the filing. The research includes examining maps and land ownership records to establish whether or not there is Federal jurisdiction. In addition, companies that are currently regulated by the Commission and change their status and wish to become non-jurisdictional, must document that they meet the criteria as provided for in Part 152. The submitted requirement documents allow for a full and complete analysis of a company and provide sufficient data to make a jurisdictional decision. A finding of non-jurisdictional by the Commission can result in the elimination of a substantial paperwork burden for an applicant who might otherwise have to file to comply with Sections 4 and 7 of the NGA.

3 *Associated Gas Distributors v. FERC*, 889 F.2d 1250, 1225 (D.C. Cir. 1990)

4 15 U.S.C. § 3371(a)(2)(A)(B)(i)

5 (Public Law 75-688)(15 U.S.C. Sections 717-717w)(1998)

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Failure to issue these requirements would mean the Commission is not meeting its statutory obligations under Sections 1(c), 4 and 7 of the NGA.

3. There is an ongoing effort to determine the potential and value of improved information technology to reduce the burden. Specifically, in order to increase the efficiency with which it carries out its program responsibilities, the Commission has been implementing measures to use information technology to reduce the amount of paperwork required in its proceedings.

On September 21, 2000, the Commission issued Order No. 619, which implemented the use of the Internet for submission of documents to the Commission for filing.⁶ Such submissions were limited to categories of documents specified by the Secretary of the Commission, with the intention of gradually expanding the range of eligible documents.⁷

The eFiling system plays an important role in the Commission's efforts to comply with the Government Paperwork Elimination Act, which requires that agencies provide the option to submit information electronically, when practicable, as a substitute for paper.⁸ The Commission also has established a system of electronic registration, or eRegistration, which is required for users of its eFiling system and other specified activities.⁹ Filing via the Internet is optional for eligible documents.¹⁰ The eFiling system now is receiving approximately one third of all documents filed at the Commission. The system is accessible through the Commission's web site at <http://www.ferc.gov/docs-filing/efiling.asp>.

The Commission is proposing to implement, in late 2007, eFiling 7.0, which will significantly expand the capabilities of the system. As part of this implementation, the Commission proposes to expand the range of documents that may be filed via the Internet to include all filings, with specified exceptions. Most notably, it will be possible for regulated entities to make complex filings in their entirety in electronic format.¹¹ The Commission also

6 Electronic Filing of Documents, Order No. 619, 65 Fed. Reg. 57088 (Sept. 21, 2000), FERC Stats. & Regs. ¶ 31,107 (2000).

7 See Rule 2003(c) of the Commission's Rules of Practice and Procedure, 18 CFR 385.2003(c).

8 Pub. L. No. 105-277, Sec. 1702-1704 (1998); see OMB Circular A-130 Para 8.a.1(k).

9 18 CFR 390.1 & 390.2.

10 Rule 2001(a) of the Commission's Rules of Practice and Procedure, 18 CFR 385.2001(a).

11 The process for making tariff filings by the electric, gas, and oil industries is being addressed in Electronic Tariff

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proposes to implement other changes and technical enhancements, and has sought comments on the advisability of these changes and the best methods of implementing them.

Under the Commission's regulations, only "qualified documents" may be filed via the Internet, and the Secretary is authorized to specify which documents are qualified.¹² A list of qualified documents is published on the Commission's web site. Currently, there are over forty categories of qualified documents.¹³ The Secretary also is authorized to issue filing instructions.¹⁴

To implement eFiling 7.0, the Commission has proposed to revise its regulations to permit users to submit via the Internet all documents filed in Commission proceedings pursuant to Chapter I of Title 18 of the Code of Federal Regulations, with specified exceptions. As before, the Secretary will specify the documents that may be submitted to the eFiling system, but now the Secretary would list exceptions rather than eligible documents. The Secretary would continue to issue filing instructions for allowable file formats, electronic document formats and electronic filings having multiple components. However, where specific regulations require that a filing include particular content, those regulations will continue to apply. Similarly, where specific regulations or other instructions contain requirements applicable to electronic documents, such as allowable file formats,¹⁵ those instructions also will continue to apply. The Commission has invited comments on the proposals on which documents should be accepted through the eFiling system.

In some cases, the Commission will require paper copies of filings although it will also be possible to submit the documents through eFiling 7.0. This paper back-up will apply most notably to oversized documents such as maps, diagrams and drawings. Due to the size of standard monitors and other hardware and software limitations, it is impractical at this time for Commission staff to review such documents in electronic form. The Commission therefore anticipates that it will continue to need paper copies of most documents that are larger than 8.5 x

Filings, Docket No. RM01-5-000. See Electronic Tariff Filings, Notice of Proposed Rulemaking, 69 FR 43929 (July 23, 2004), FERC Stats. & Regs. ¶ 32,575 (July 8, 2004); Notice of Additional Proposals and Procedures, 70 FR 40941 (July 15, 2005), FERC Stats. & Regs. ¶ 35,551 (July 6, 2005). The Commission allows Open Access Transmission Tariffs (OATTs) and revisions to be eFiled as described at <http://www.ferc.gov/help/filing-guide/file-OATT.asp>.

¹² Rule 2003(c), 18 CFR 385.2003(c).

¹³ See <http://www.ferc.gov/docs-filing/efiling/docs-efiled.asp>.

¹⁴ Rule 2003(c)(1)(ii), 18 CFR 385.2003(c)(1)(ii); see <http://www.ferc.gov/docs-filing/efiling/user-guide.asp>.

¹⁵ E.g., <http://www.ferc.gov/industries/electric/gen-info/qual-fac/completing.asp> (Form 556 for Qualifying Facilities).

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11 inches. As the Commission upgrades its resources, it expects to be able to reduce or eliminate the requirement for paper copies. The Commission also is considering whether to require paper copies of long documents, such as those exceeding 500 pages. The instructions posted by the Secretary will include directions specifying whether, and how many, paper copies of electronically filed documents are required. With respect to the documents submitted under FERC-574 there is a large variance in the type of material submitted as technical data to the Commission, and the required drawings, and blueprints and for the reasons noted above, paper copies will still be required. Currently, improved information technology cannot be adapted to all facets of the application process.

4. Filing requirements are periodically reviewed as OMB review dates arise or as the Commission may deem necessary in carrying out its regulatory responsibilities under the Act in an effort to alleviate duplication. This includes a review of the Commission's reporting requirements to identify duplication of data requirements. To date, no duplication of application data has been found. The information is specific to each applicant.

5. The reporting requirements associated with FERC-574 are the basic filing requirements pertaining to all applications for making a determination for exemption. FERC-574 is filed on a nonrecurring basis. This is a one-time filing by companies to obtain an exemption from the provisions of the Natural Gas Act. See Section 152.3 of the Commission's regulations for application filing requirements. There are no similar sources of information available that can be used or modified for use as the information collected is unique to the applicant.

6. The data required impose the least possible burden on applicants, while collecting the information required for processing the application. As the purpose of the application is to obtain exemption from NGA provisions, the minimization of the impact, particularly on small businesses would not be applicable. As noted above, this is a one-time filing for exemption from the pipeline certificate requirements of the NGA, and as such, the issue of frequency of filing is not applicable.

7. The guidelines of OMB's regulations at 5 C.F.R. are being exceeded in the number of copies forwarded to the Commission. An original and 7 conformed; copies are required by the Commission to conduct the regulatory review. There is no requirement for the company to maintain any copies.

The Offices of the General Counsel and the Office of External Affairs each receive one copy. The remaining multiple copies are distributed to Office of Energy Projects staff and they are essential to staff so that the required technical, engineering, and environmental reviews and analyses proceed simultaneously and efficiently. A project manager must have a copy of any application for review and coordination purposes; additional copies must be available for staff

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members in various parts of the Commission for assessing the adequacy of diverse exhibits. It would not be feasible to conduct these review functions in a timely manner, and within the current processing schedule, if fewer copies of the application were provided for staff use.

8. Prior to adopting regulations that require the collection of data, the Commission’s procedures require the rulemaking notices be published in the Federal Register, thereby allowing all public utilities, natural gas and oil 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. Staff review of the application may require contact with the respondent to increase FERC’s understanding of the data submitted. These contacts provide an opportunity for respondents to discuss any problems with the material submitted. In accordance with OMB requirements in 5 C.F.R. 1320.8(d), the reporting requirements for FERC-574 were noticed in the Federal Register, on May 29, 2007 (72 FR 29489-90). No comments were received in response to this notice.

9. There are no payments or gifts made to the respondents.

10. The information submitted to the Commission is public information and therefore is not considered confidential. A company may request confidential treatment of some or all parts of the FERC-574 filing under FERC regulations at 18 C.F.R. 1(b).9, 1(b).20, 385.903, 385.1003, 385.1112. Each request for confidential treatment will be reviewed by FERC on a case-by-case basis.

11. There are no questions of a sensitive nature or other matters that are commonly considered private that is associated with the collection of information under FERC-574.

12. The annual burden estimate for information collection under FERC-574 is based on the Commission’s recent experience with applications for Gas Pipeline Certificates: Hinshaw Exemption. Under FERC-574, it is estimated that the annual average burden for each application will be 245 hours. The number of respondents is expected to average 1 per year.

Estimated number of respondents	:	1
Estimated number of responses	:	1
Estimated number of responses per year	:	1
Estimated number of hours per response	:	245
Total estimated burden (hours per year)	:	245
Current OMB inventory	:	245
Difference	:	0

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Program change in burden hours	:	0
Adjustment change in industry burden hours	:	0

13. The estimated annualized filing cost to respondents for **FERC-574 Gas Pipeline Certificates: Hinshaw Exemption** averaged over the next three years is as follows:

Total Hours				
Estimated Respondent Burden	Person Hours/Year	x	Average Salary/Year ¹⁶	Total Cost
245	2080		\$122,137	\$14,386

14. The estimated annualized cost to the Federal Government related only to the data collection requirements as proposed in the Notice of Proposed Rulemaking is as follows:

Data Requirement				Analysis FERC Total Cost	
<u>Number</u>	<u>(FTEs)</u>	x	<u>Salary</u>	=	<u>Year's Operation</u>
FERC-574					.2
					\$122,137
					\$24,427

15. The FERC-574 burden estimate reflects no change from what is currently reported on the OMB inventory.

16. There are no tabulations, statistical analysis or publication plans for the information collection. The data are used for regulatory purposes.

17. It is not appropriate to display the expiration date for OMB approval of the information collected. Currently, the information is not collected on a standard, preprinted form which would avail itself to this display. Rather, natural gas pipelines prepare and submit filings that reflect the unique or specific circumstances of the filing. In addition, the information contains a mixture of narrative descriptions and empirical support that varies depending on the nature of the services to be provided.

18. For exceptions to the Certification Statement, see item no. 17 above and item no. B below.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This is not a collection of information employing statistical methods.

¹⁶ The estimated annual cost per staff/employee (\$122,137) based on the number of employees or Full Time Equivalents (FTE) in the Office of Energy Projects (OEP) and the FY 2007 appropriation for that Office as reported in the Commission's FY 2007 OMB Budget Request. The estimated "salary" per employee with industries regulated by the Commission is assumed to be the same as that per Commission staff members.

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Final Rule (Docket No. RM01-8-000)
4/25/02