

Supporting Statement for  
**FERC-551, Reporting of Flow Volume & Capacity by Interstate and Major Non-Interstate  
Natural Gas Pipelines**

As Proposed In Docket No. RM08-2-000  
(Notice of Proposed Rulemaking Issued December 21, 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 Interstate and Major Non-Interstate Pipelines**. FERC-551 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 December 21, 2007, in Docket No. RM08-2-000. This NOPR is a reissuance of another NOPR RM07-10-000 which was issued on April 19, 2007 (see below).

These proposals exercise expanded Commission authority under section 23 of the Natural Gas Act,<sup>1</sup> which was added by section 316 of the Energy Policy Act of 2005 (EPAAct 2005) to require reporting from entities not under the Commission's traditional jurisdiction.<sup>2</sup>

We estimate that the total one-time annual reporting-burden related to the subject NOPR will be 77,015 hours (in the initial NOPR RM07-10-000, the Commission estimated that the total hours would be 32,757 hours under FERC-551. The additional hours take into account additional postings by major non-interstate natural gas pipelines. An explanation for the additional hours is provided below.)

## **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"<sup>3</sup>.

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

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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).

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).

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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.<sup>4</sup> 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.<sup>5</sup> 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,<sup>6</sup> and for 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.<sup>7</sup> The behavior rules

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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).

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

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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.<sup>8</sup> 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.<sup>9</sup>

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 (EPAAct 2005)<sup>10</sup> authority for the Commission to obtain information on wholesale electric and natural gas prices and availability. Under the Federal Power Act<sup>11</sup> and the Natural Gas Act<sup>12</sup>, the Commission has long borne a responsibility to protect wholesale electric and natural gas consumers. EPAAct 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."<sup>13</sup> In the new transparency

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denied, 107 FERC ¶ 61,174 (2003) (Order No. 644-A).

<sup>8</sup> 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).

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

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

<sup>11</sup> 16 U.S.C. 824 et seq.

<sup>12</sup> 15 U.S.C. 717 et seq.

<sup>13</sup> 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 EPAAct 2005 added section 23 to the Natural Gas Act (natural gas transparency provisions); section 1281 of EPAAct 2005 added section 220 to the Federal Power Act (electric transparency provisions) (together, the transparency provisions).

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provisions of section 23 of the Natural Gas Act and section 220 of the Federal Power Act, 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 EPCA 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.<sup>14</sup>

#### **Initial NOPR (Docket No. RM07-10-000)**

On April 19, 2007 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.

#### **Subject NOPR (Docket No. RM08-2-000)**

On December 21, in Docket No. RM08-2-000 "Pipeline Posting Requirements under Section 23 of the Natural Gas Act" the Commission is proposing to require both interstate and

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<sup>14</sup> 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.

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certain major non-interstate pipelines to post capacity, daily scheduled flow information and daily actual flow information. This proposal incorporates the one contained in RM07-10-000, an earlier Notice of Proposed Rulemaking (as noted above) requiring the posting of capacity and daily actual flow information by some intrastate pipelines. In RM07-10-000 NOPR, the Commission proposed an annual reporting requirement for certain natural gas sellers and buyers and a daily posting requirement for intrastate pipelines.<sup>15</sup> The Commission also asked in RM07-10-000 NOPR whether posting requirements for interstate pipeline should be changed.<sup>16</sup> With respect to the annual reporting requirement, the Commission is issuing a Final Rule concurrent with this NOPR.

The Commission is issuing this NOPR in order to solicit further comment on requiring actual flow information from both interstate and non-interstate pipelines and to consider whether the posting requirements for both interstate and non-interstate pipelines should be similar. In RM07-10-000, the Commission did not propose to require the posting of actual flow information by interstate pipelines, but it did seek comments on such postings.<sup>17</sup> Additional comments in response to this NOPR will allow the Commission to give more consideration to requiring actual flow information on interstate pipelines, in particular the technical issues associated with quick posting of that information. The Commission is also seeking further comment regarding how the posting requirements should apply to storage facilities and regarding its daily pipeline posting proposal for major non-interstate pipelines.

The Commission proposes to require both interstate and certain major non-interstate pipelines to post capacity, daily scheduled flow information and daily actual flow information. This proposal incorporates the one contained in RM07-10-000 to require the posting of capacity and daily actual flow information by some intrastate pipelines, with some changes. Under this proposal, interstate pipelines would be required to post daily actual flow information in addition to their currently required posting of capacity and daily scheduling information. Non-interstate pipelines would be required to post daily scheduled flow information in addition to the earlier Notice of Proposed Rulemaking proposal to require posting capacity and daily actual flow information. The posting proposal would facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce to implement section 23 of the Natural Gas Act. The Commission believes that more information regarding the technical implementation of daily posting of actual flow information by interstate pipelines is required in order to consider the costs and benefits of such a regulatory change.

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15 Initial NOPR at P 1-2.

16 Initial NOPR at P 43.

17 Initial NOPR at P 43.

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**A. Justification****1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY**

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.<sup>18</sup> As part of this commitment to competition, in the transparency 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.<sup>19</sup>

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

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18 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).

19 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 NOPRs address natural gas transparency, the Commission has not analyzed the electric transparency provisions, although the Commission expects that analysis of electric transparency provisions would be substantially similar.

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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.<sup>20</sup>

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 –

(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

(B) rely on entities other than the Commission to receive and make public the information, subject to the disclosure rules in subsection (b).<sup>21</sup>

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<sup>22</sup> or by referring to sections 1, 3, or 7 of the Natural Gas Act<sup>23</sup>. The former approach would have excluded intrastate pipelines from the Commission's transparency authority. The latter

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<sup>20</sup> To be codified at 15 U.S.C. 717t-2(a).

<sup>21</sup> To be codified at 15 U.S.C. 717t-2(a) (3).

<sup>22</sup> Section 2(6) of the Natural Gas Act, 15 U.S.C. 717a (6).

<sup>23</sup> 15 U.S.C. 717, 717b, 717f.

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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.<sup>24</sup> These limitations 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..."<sup>25</sup> 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

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24 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. 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.

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



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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....”<sup>26</sup> Thus, the Commission’s authority is limited to “information about the availability and prices of natural gas sold at wholesale and in interstate commerce.”<sup>27</sup> Again, this language does not limit the type of information the Commission could collect to implement its mandate, provided that 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.”<sup>28</sup> 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.<sup>29</sup>

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

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

27 Id.

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

29 The Commission reiterates in this 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.

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collusion or other anticompetitive behaviors by untimely disclosure of transaction-specific information.”<sup>30</sup>

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

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.<sup>31</sup>

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.<sup>32</sup> 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.<sup>33</sup>

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<sup>30</sup> Section 23(b) (2) of the Natural Gas Act, to be codified at 15 U.S.C. 717t-2(b) (2).

<sup>31</sup> Section 23(a) (1) of the Natural Gas Act, to be codified at 15 U.S.C. 717t-2(a) (1).

<sup>32</sup> See, e.g., Comments of Bentek Energy, LLC., Docket No. AD06-11-000 (filed Oct. 10, 2006).

<sup>33</sup> 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).

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Notwithstanding the contribution of posted interstate schedule information to the transparency of price and availability of natural gas, this information cannot provide a complete 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.<sup>34</sup>

With these proposed additions of flow information from major non-interstate pipelines to the information already available from interstate pipelines, market observers, such as the Commission, state commissions and market participants, could develop a better understanding of the supply and demand conditions that directly affect the U.S. wholesale natural gas markets. Market participants would have a better basis for evaluating the prices at which they transact. Consequently, this proposal to increase information from non-interstate pipelines and from interstate pipelines would directly “facilitate price transparency for the sale... of physical natural gas in interstate commerce” as authorized in the natural gas transparency provisions.<sup>35</sup>

The Commission’s proposal would apply to major non-interstate pipelines even though section 1 of the Natural Gas Act<sup>36</sup> excludes them from the Commission’s ratemaking authority under sections 4 and 5 of the Natural Gas Act<sup>37</sup> and the Commission’s certificate authority under section 7 of the Natural Gas Act.<sup>38</sup> Congress placed market participants, which include non-interstate pipelines, within the Commission’s transparency authority under section 23 of the Natural Gas Act to ensure “the dissemination, on a timely basis, of information about the availability and prices of natural gas sold at wholesale and in interstate commerce.”<sup>39</sup> Aware that the pre-EPAAct 2005 limits on the Commission’s authority would have left gaps in the transparency of the wholesale, physical natural gas markets, Congress did not restrict the

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34 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](http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2003/market_hubs/mkthubs03.pdf)

35 Section 23(a) (1) of the Natural Gas Act, 15 U.S.C. 717t-2(a) (1) (2000 & Supp. V 2005).

36 15 U.S.C. 717.

37 15 U.S.C. 717c; 15 U.S.C. 717d.

38 15 U.S.C. 717f.

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Commission's transparency authority to those same limits in enacting section 23 of the Natural Gas Act. As the Commission stated in the RM07-10-000 NOPR: "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."<sup>40</sup> Congress was aware of the legal distinctions between natural gas markets in enacting EPCA 2005 and, in choosing to use the term "any market participant" indicated that these distinctions should not apply to the Commission's transparency authority. At the same time, by not amending section 1 of the Natural Gas Act, Congress retained the legal distinctions between intrastate and interstate pipelines for the purposes of delineating the entities subject to the Commission's authority over ratemaking in sections 4 and 5 and over certification of construction and sales of new facilities and transportation services in section 7 of the act.

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 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.

With these proposed additions of flow information from major non-interstate pipelines to the information already available from interstate pipelines, market observers, such as the Commission, state commissions and market participants, could develop a better understanding of the supply and demand conditions that directly affect the U.S. wholesale natural gas markets. Market participants would have a better basis for evaluating the prices at which they transact. Consequently, this proposal to increase information from non-interstate pipelines and from interstate pipelines would directly "facilitate price transparency for the sale... of physical natural gas in interstate commerce" as authorized in the natural gas transparency provisions.<sup>41</sup>

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39 Section 23(a) (2) of the Natural Gas Act, 15 U.S.C. 717t-2(a) (2) (2000 & Supp. V 2005).

40 Initial NOPR at P 20.

41 Section 23(a) (1) of the Natural Gas Act, 15 U.S.C. 717t-2(a) (1) (2000 & Supp. V 2005).

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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.<sup>42</sup> 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 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.

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.

**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.

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<sup>42</sup> 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).

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**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 posting requirements. The proposal to require daily postings by interstate and non-interstate pipelines will not impact small entities. Natural gas pipelines are classified under NAICS code, 486210, Pipeline Transportation of Natural Gas.<sup>43</sup> 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.<sup>44</sup> The Commission does not believe that any pipeline that would be required to post information under the proposal in this NOPR has receipts less than \$6.5 million.

The Commission has developed a more particular definition of the types of non-interstate pipelines that would be required to post since issuing the initial NOPR in RM07-10-000. The

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<sup>43</sup> 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>.

<sup>44</sup> See U.S. Small Business Administration, [Table of Small Business Size Standards](http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf), [http://www.sba.gov/idc/groups/public/documents/sba\\_homepage/serv\\_sstd\\_tablepdf.pdf](http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf) (effective July 31, 2006).

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Commission is not interested in burdening smaller non-interstate pipelines like gathering systems, or individual consumers to post daily information regarding capacity, scheduled flow volumes, and actual flow volumes at major points and mainline segments. Consequently, the Commission has altered its proposal from the initial NOPR that used the term “intrastate pipeline” to the current proposal which defines “major non-interstate pipeline” to capture directly U.S. wholesale natural gas transportation systems of significant size and contribution to overall wholesale gas flows across the United States. The Commission is seeking comment in this NOPR on the proposal.

The Commission also proposes to limit the daily posting requirement by limiting the definition of “major non-interstate pipeline” based on whether the non-interstate pipeline flows more than 10 million MMBtus of natural gas per year. The intention is to focus on non-interstate pipelines of significant size and that consequently make a significant contribution to wholesale U.S. natural gas flows. Too low a limit would pick up non-interstate pipelines too small to contribute to wholesale market flows of natural gas. Too high a limit would lose information about flows that affect wholesale pricing, either directly by losing information at major hubs, or less directly by missing important components of wholesale demand or supply not attached to interstate pipelines. By way of contrast, Platts reports that total reporting for its next-month indices at all geographical locations across the country over the past 12 months (November 2006 through October 2007) totaled only a little more than 8 billion cubic feet last year.<sup>45</sup> Thus, by rough comparison, movements of that size on a pipeline could easily affect wholesale prices in any particular location. According to EIA statistics from its 2005 Form 176 filings by companies that do business (at least in part) as intrastate pipelines, the 10 million MMBtu threshold would capture 102 pipelines. The number of these non-interstate pipelines qualifying as major non-interstate pipelines required to post information would be further reduced by the other criteria, such as excluding non-interstate pipelines that fall entirely upstream of processing plants and those that deliver more than ninety-five percent (95%) of the natural gas volumes they flow directly to end-users.

The Commission would exempt from the daily posting requirement two types of non-interstate pipelines that meet the volume criterion. First, a major non-interstate pipeline that lies entirely upstream of a processing plant would be exempt.<sup>46</sup> However, the Commission is seeking comment on its proposed exemption of a non-interstate pipeline that lies entirely upstream of processing plants and in particular if these non-interstate pipelines were excluded

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<sup>45</sup> As reported on the natural gas.org informational website, maintained by the Natural Gas Supply Association, <http://www.naturalgas.org/business/marketactivity.asp> (as of November 29, 2007).

<sup>46</sup> Proposed 18 CFR 284.214(b) (1).

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from the pipeline posting requirement, would significant information useful for determining price and availability of natural gas likely be lost?

Second, the Commission proposes to exempt any major non-interstate pipeline that makes greater than ninety-five percent (95%) of its deliveries directly to end-users. The Commission is seeking comment on this exemption.<sup>47</sup> Specifically, if these non-interstate pipelines were excluded from the pipeline posting requirement, would significant information useful for determining price and availability of natural gas likely be lost? Overall, are there any other categories of major non-interstate pipelines that should be exempt from the daily posting requirements?

**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

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<sup>47</sup> Proposed 18 CFR 284.214(b) (2).



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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.

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

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

**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 EPA Act 2005's

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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 response to the RM07-10-000 NOPR, the Commission received comments on its jurisdiction under sections 1(b), 1(c) and 23 of the Natural Gas Act over market participants and concerns on the information to be posted.

**Section 23 of the Natural Gas Act**

The Texas Pipeline Association (TPA)<sup>48</sup> argued that, contrary to the Commission's explanation, the plain language of section 23 of the Natural Gas Act shows that the term "market participant" is limited to those entities that participate in wholesale interstate natural gas markets and does not include intrastate pipelines.<sup>49</sup> TPA concluded that the plain language of section 23 of the Natural Gas Act does not support the Commission's assertion of authority to collect information from intrastate pipelines because they do not participate in markets for the sale or transportation of natural gas in interstate commerce.<sup>50</sup>

Enterprise Products Partners L.P. (Enterprise) also asserted that an entity must be participating in the interstate market to be a "market participant" under section 23 of the Natural Gas Act. Enterprise reasoned that an entity subject to the Commission's authority under section 23 but not to its authority under other sections of the Natural Gas Act is an entity that "participat[es] in the interstate market (whether by buying, selling, shipping or trading physical natural gas) but not already subject to [Natural Gas Act] jurisdiction as natural gas companies."<sup>51</sup> According to Enterprise, the Commission's proposal to impose posting requirements on intrastate pipelines bears no relation to Congress's intention to restrict the Commission's jurisdiction to entities participating in the interstate market.<sup>52</sup>

Similarly, the Railroad Commission of Texas argued that the term "market participant" does not indicate that Congress contemplated the expansion of Commission authority to include intrastate pipelines as asserted by the Commission.<sup>53</sup> The Railroad Commission of Texas explained that there is no reference at all in the relevant statutory provisions or legislative history of EAct 2005 to intrastate pipelines, the intrastate natural gas market or intrastate gas

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48 Eight entities expressed support for the Texas Pipeline Association's comments: Atmos Energy Corporation, Copano Energy, L.L.C., Crosstex Energy Services, LP, DCP Midstream, LLC, Enbridge Energy Co., Inc., Gas Processors Association, Kinder Morgan Texas Intrastate Pipeline Group, Targa Resources, Inc.

49 Comments of TPA at 16-17.

50 Id.

51 Comments of Enterprise at 13.

52 Id.

53 Comments of Railroad Commission of Texas at 6-7; see also Comments of Atmos Pipeline-Texas at 6-7.

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flows and no express indication that the Commission's authority was being extended in any manner over "intrastate" market participants.<sup>54</sup>

One commenter, Enterprise, contended that the Commission does not have the authority to require posting of information by intrastate pipelines because Congress limited the information that may be collected from market participants to "information about natural gas sold at wholesale and in interstate commerce."<sup>55</sup> Enterprise interpreted Congress's use of the word "about" as limiting language and asserted that Congress deliberately chose the word "about" as opposed to "affect" or "at least impacts" in order to stress that the Commission does not have the authority to compel reporting for any activity that might have some impact on the interstate wholesale natural gas markets.<sup>56</sup>

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54 Comments of Railroad Commission of Texas at 7.

55 Comments of Enterprise Products Partners, L.P. at 11 (emphasis in original).

56 *Id.* at 11-12.

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**Section 1(b) of the Natural Gas Act**

TPA argued that section 1(b) of the Natural Gas Act precludes the Commission from prescribing rules under its section 23 authority that apply to intrastate transportation or sale of natural gas.<sup>57</sup> TPA asserted that Congress has consistently respected the distinction between interstate and intrastate pipelines which first appeared in section 1(b) of the Natural Gas Act and was recognized by Congress in amendments to the Natural Gas Act and in the Natural Gas Policy Act of 1978.<sup>58</sup> TPA referred to numerous appellate court decisions that recognized this distinction in reviewing the Commission's jurisdiction.<sup>59</sup>

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<sup>57</sup> Comments of TPA at 7; see also Comments of Louisiana Office of Conservation at 5.

<sup>58</sup> Comments of TPA at 9.

<sup>59</sup> Id. at 11 (citations omitted).

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Several commenters argued that if Congress intended the transparency provisions to cover intrastate pipelines, it would have amended section 1 of the Natural Gas Act.<sup>60</sup> TPA argued that if Congress intended to expand the Commission's authority over intrastate transportation of natural gas, it would have amended section 1(b) to include new posting obligations for intrastate pipelines for all daily flows and capacity at major points.<sup>61</sup> TPA explained that, in EAct 2005, Congress amended section 1(b) of the Natural Gas Act to include application to the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation.<sup>62</sup> TPA contended that without a similar amendment to section 1(b) to provide for the posting of information Congress cannot "cross the jurisdictional line" by imposing a posting requirement on intrastate pipelines.<sup>63</sup>

### **Section 1(c) of the Natural Gas Act**

Several commenters, such as the Railroad Commission of Texas, asserted that the Commission's proposal to require intrastate pipelines to post information impermissibly intrudes on states' regulation of natural gas transportation.<sup>64</sup> Cranberry Pipeline Corporation argued that the Commission cannot have jurisdiction over intrastate transactions when those transactions are already subject to the jurisdiction of the state regulatory commission.<sup>65</sup> Similarly, DCP argued that the Commission ignored section 1(c) of the Natural Gas Act which exempts intrastate transportation because it is viewed as a matter of local concern subject to regulation by the states.<sup>66</sup>

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60 Comments of TPA at 10-11; Comments of Enterprise at 15; Comments of Louisiana Office of Conservation at 5; Comments of Railroad Commission of Texas at 6-7.

61 Comments of TPA at 10-11.

62 *Id.* (citing EAct 2005 section 311 (amending section 1(b) of the Natural Gas Act)).

63 Comments of TPA at 11.

64 Comments of Railroad Commission of Texas at 8-9; see also Reply Comments of the RRC of Texas at 8; Reply Comments of the Texas Pipeline Association at 12.

65 Comments of Cranberry Pipeline Corporation at 8.

66 Comments of DCP Midstream, LLC at 7.

### **Commission Response**

The Commission proposes here to require major non-interstate pipelines to post information regarding capacity, scheduled flow volumes, and actual flow volumes.<sup>67</sup> This proposal would impose posting requirements on major non-interstate pipelines in a limited way. The Commission does not intend to regulate the intrastate operations of those non-interstate pipelines; nor does it intend to regulate the rates or terms and conditions of intrastate service for those non-interstate pipelines. The Commission proposes to require those non-interstate pipelines only to post information.

In the RM07-10-000 NOPR, the Commission used the term “intrastate pipeline.” In this NOPR, the Commission uses the term “non-interstate pipeline.” The latter term more accurately describes the scope of the proposed rule, which is issued pursuant to section 23 of the Natural Gas Act.<sup>68</sup> This section applies to both interstate and non-interstate pipelines, and does not use the term “intrastate pipeline.” In this NOPR, the Commission proposes collecting important information about the physical, natural gas market from certain pipelines in the continental United States regardless of whether the pipeline is an intrastate pipeline, a Hinshaw pipeline, or any other type of pipeline that is not an interstate pipeline under the Natural Gas Act. The subjects of the posting requirement proposed in this NOPR are set by their participation in the physical, natural gas market not by their legal status under section 1 of the Natural Gas Act.<sup>69</sup>

The proposed posting requirements for non-interstate pipelines are consistent with Congress’s intent as expressed in section 23 of the Natural Gas Act. There, Congress permitted the Commission to impose on a broad set of market participants requirements for a limited purpose, i.e., to obtain and disseminate “information about the availability and prices of natural gas at wholesale and in interstate commerce.”<sup>70</sup> At the same time, as the Commission explicitly acknowledges, Congress did not expand the Commission’s authority to impose on the same set of market participants requirements related to the Commission’s traditional regulatory activities, e.g., ratemaking under sections 4 and 5 of the Natural Gas Act and certification of construction and sales and transportation services under section 7 of the Natural Gas Act.

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67 Proposed 18 CFR 284.14(a).

68 15 U.S.C. 717t-2 (2000 & Supp. V 2005).

69 15 U.S.C. 717.

70 Section 23(a) (2) of the Natural Gas Act, 15 U.S.C. 717t-2(a) (2) (2000 & Supp. V 2005).

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Congress placed non-interstate pipelines within the Commission's transparency authority under section 23 of the Natural Gas Act in order to ensure – for the entirety of the wholesale, physical natural gas market – transparency of price and availability, including transparency of market price formation. Aware that the pre-EPA 2005 limits on the Commission's authority would have left gaps in the transparency of the wholesale, physical natural gas markets, Congress did not restrict the Commission's transparency authority to those same limits in enacting section 23 of the Natural Gas Act. As the Commission stated in the RM07-10-000 NOPR, "While distinctions between intrastate and interstate markets may be meaningful from a legal perspective, they are not meaningful from the perspective of market price formation."<sup>71</sup> Congress was aware of the legal distinctions between non-interstate and interstate natural gas markets in enacting EPA 2005. In choosing to use the term "any market participant" and focusing section 23 on "information about the availability and prices of natural gas at wholesale and in interstate commerce," Congress indicated that these distinctions should not apply to the Commission's transparency authority. At the same time, by not amending section 1, Congress retained the legal distinctions between intrastate and interstate markets for the purposes of delineating the entities subject to the Commission's authority over ratemaking in sections 4 and 5 and over construction of natural gas facilities in section 7 of the Natural Gas Act.

The language in section 23 of the Natural Gas Act supports the Commission's authority to require non-interstate pipelines to post information about capacity, scheduled flow volumes and actual flow volumes. In section 23(a)(1), Congress directed the Commission to "facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce...."<sup>72</sup> In section 23(a)(2), Congress authorized the Commission to "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...."<sup>73</sup> Congress expressly delegated to the Commission the task of adopting rules to give life to this provision<sup>74</sup> and, in section 23(a)(3), provided that the Commission may "obtain the information" about the availability and prices of natural gas sold at wholesale and in interstate commerce from "any market participant."<sup>75</sup>

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71 Initial NOPR at P 20.

72 15 U.S.C. 717t-2(a)(1) (2000 & Supp. V 2005).

73 15 U.S.C. 717t-2(a)(2) (2000 & Supp. V 2005).

74 Id.

75 15 U.S.C. 717t-2(a)(3) (2000 & Supp. V 2005).



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Congress could have limited the Commission's transparency authority to obtaining information from any "natural gas company" subject to the Commission's traditional regulatory authority. It did not do so. Instead, in using the broad new term "any market participant," Congress deliberately expanded the universe subject to the Commission's transparency authority beyond "natural gas compan[ies]."<sup>76</sup> The term "any market participant" is not defined in the Natural Gas Act; however, it is not on its face limited to entities made subject to the Natural Gas Act under section 1.<sup>77</sup> Indeed, the language of section 23 indicates that entities excluded from the Commission's authority under section 1 of the Natural Gas Act would be included in section 23. First, in section 23, Congress did not reference the limitations of section 1 explicitly (discussed further below). Second, in section 23, Congress did not use the term "natural gas company" from section 2(6), which is defined as "a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale."<sup>78</sup> This limiting term is used in section 1 of the Natural Gas Act to limit the Commission's authority, for instance, under sections 4, 5, and 7 of the Natural Gas Act.<sup>79</sup> These approaches would have been the simplest ways for Congress to have indicated an intent to limit the Commission's transparency authority in the same manner it limited the Commission's comprehensive regulatory authority in other sections of the Natural Gas Act. Thus, commenters' arguments that the Commission has authority to obtain information only from those subject to the Commission's authority under section 1 of the Natural Gas Act are inconsistent with the language of the statute.

In granting the Commission broad authority to obtain information, the Congress not only used the new term "market participant" but it also specifically referred to "any" market participant, instead of limiting the Commission's authority to obtain information from market participants subject to the Commission's traditional Natural Gas Act jurisdiction. The word "any" gives the term it modifies (in this case, "market participant") an expansive meaning.<sup>80</sup>

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<sup>76</sup> Contrary to the assertions of Bridgeline Holdings, L.P. (Bridgeline), Comments of Bridgeline at 6, this grant of transparency authority is not an implied grant.

<sup>77</sup> Initial NOPR at P 12.

<sup>78</sup> 15 U.S.C. 717a (6).

<sup>79</sup> 15 U.S.C. 717c, 717d & 717f.

<sup>80</sup> Norfolk S. Rwy. Co. v. Kirby, 543 U.S. 14, 31-32 (2004) (the word "any" gives the word it modifies an expansive reading); Department of Housing and Urban Dev. v. Rucker, 535 U.S. 125, 130-31 (2002); TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001) (one must give effect to each word in a statute so that none is rendered superfluous); United States v. Gonzales, 520 U.S.

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In addition, in section 23(d) (2), Congress created a de minimis exception to the other provisions in section 23. Specifically, Congress instructed the Commission to create a de minimis exception for gatherers and producers, which section 1(b) of the Natural Gas Act explicitly excludes from Commission's traditional regulation. If, as some commenters asserted, Congress did not intend to give the Commission authority over any entity excluded by section 1(b) of the Natural Gas Act, a de minimis exception would have been unnecessary; in other words, section 23(d)(2) would have been surplusage. Congress is not presumed to enact surplus language.<sup>81</sup> To avoid this improper result, the Commission interprets section 23 of the Natural Gas Act to give effect to the de minimis language by interpreting the term "any market participant" to include those entities otherwise excluded from the Commission's Natural Gas Act jurisdiction by section 1(b) of the act.

The Commission disagrees that the term "about" in section 23 is a limiting term as asserted by Enterprise. In the RM07-10-000 NOPR, the Commission described the information proposed to be collected from intrastate pipelines as information "about" interstate, wholesale natural gas markets because the flows on intrastate pipelines affect interstate, wholesale natural gas markets.<sup>82</sup> The Commission used the term "pertains" as a synonym for "about." Indeed, contrary to Enterprise's reading, the Commission reads the term "about" as broader than the terms "affect" or "impacts." Information may be "about" a subject without "affecting" it; hence, flow information may be "about natural gas sold at wholesale and in interstate commerce" even if it does not "affect" such natural gas (even though it normally does).

More specifically, the information that would be posted by major non-interstate pipelines is "information about the availability and prices of natural gas sold at wholesale and in interstate commerce."<sup>83</sup> There is a relationship between capacity and flow information on non-interstate pipelines and the interstate, natural gas market because non-interstate flows affect the supply and demand fundamentals that underlie the market. Posted flow information from only

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1, 5 (1997) ("any" is an expansive term, meaning "one or some indiscriminately of whatever kind,"); New York v. EPA, 443 F.3d 880, 885-87 (D.C. Cir. 2006) (the word "any" is broadly construed to reflect Congress' intent that all types of physical changes are subject to the Clean Air Act's New Source Review program).

81 City of Roseville v. Norton, 348 F.3d 1020, 1028 (D.C. Cir. 2003) (citing Babbitt v. Sweet Home Chapter of Community for a Great Oregon, 515 U.S. 687, 698 (1995)).

82 Initial NOPR at P 15.

83 Section 23(a) (2) of the Natural Gas Act, 15 U.S.C. 717t-2(a) (2) (2000 & Supp. V 2005).

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interstate pipelines cannot provide a complete picture of natural gas flows in the United States – or even of those flows directly relevant to the pricing of natural gas flowing in interstate commerce.<sup>84</sup> To avoid such incompleteness, the Commission is setting forth the proposal to require major non-interstate pipelines to post flow information. This proposal would provide a complete picture of natural gas supply and demand fundamentals without the gaps that would appear were the non-interstate pipelines excluded by section 1 of the Natural Gas Act also excluded by section 23 of the Natural Gas Act. In enacting section 23 of the Natural Gas Act, Congress sought to avoid any such gaps in the transparency of the physical natural gas markets by avoiding the legal distinctions set forth in section 1 of the Natural Gas Act.

### **Section 1(b) of the Natural Gas Act.**

The Commission disagrees with commenters who argued that section 1(b) of the Natural Gas Act precludes the Commission from imposing the daily posting requirement on intrastate pipelines. Section 1(b) of the Natural Gas Act provides that the “provisions of this chapter . . . shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale . . .” and that such provisions “shall not apply to any other transportation or sale of natural gas.”<sup>85</sup> These arguments ignore the fact that, in section 23, Congress provided the Commission a new and broad grant of authority that goes beyond prior Commission jurisdiction over natural gas companies to facilitate transparency in the wholesale natural gas markets.

In stating that the Commission may obtain information from “any market participant,”<sup>86</sup> Congress contemplated that the transparency provisions would differ from other provisions of the Natural Gas Act as to the entities covered by the Commission’s authority. Commenters’ reliance on section 1 of the Natural Gas Act, therefore, improperly ignores the intent of Congress to subject a different set of entities to the Commission’s transparency authority as evidenced by Congress’s use of the term “any market participant.” In light of this intent, commenters’ reliance on case law setting forth the limits on the Commission’s authority under section 1 of the Natural Gas Act is misplaced.

The Commission does not find persuasive the argument that Congress could have expressed its intent to subject intrastate pipelines to the Commission’s transparency authority

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<sup>84</sup> See below at P 50-59.

<sup>85</sup> Section 1(b) of the Natural Gas Act, 15 U.S.C. 717(b).

<sup>86</sup> Section 23(a) (3) of the Natural Gas Act, 15 U.S.C. 717t-2(a) (3) (2000 & Supp. V 2005).

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only by amending section 1 of the Natural Gas Act. First, altering the exceptions in section 1, as commenters suggested, is not the only way to alter the statute to give the Commission transparency authority. Indeed, it would have been more cumbersome for the Congress to take that approach. Instead of that approach, the Commission interprets the addition of section 23 as providing the Commission transparency authority over non-interstate pipelines. This latter interpretation is the more reasonable interpretation of section 23 and reflects Congress's intent to subject non-interstate pipelines to only the Commission's transparency authority. Second, it could be stated equally that if Congress intended to exclude intrastate (or non-interstate) pipelines from the Commission's authority under section 23 of the Natural Gas Act, it would have used the term "natural gas company" in section 23, instead of the term "any market participant."

Commenters' arguments that section 23 should be interpreted consistent with pre-EPAAct 2005 case law are likewise misplaced. Those cases apply the jurisdictional limits set forth in section 1 of the Natural Gas Act. These arguments run afoul of the principle of statutory construction that "Congress is presumed to be aware of an administrative or judicial interpretation of a statute."<sup>87</sup> Thus, Congress was presumably aware that prior to the enactment of section 23, the Natural Gas Act, as explained by TPA, "limit[ed] the gathering of intrastate data to gathering it from companies falling under the Commission's jurisdiction."<sup>88</sup> In using the term "any market participant," Congress signaled its intent to expand the Commission's transparency authority beyond the universe of natural gas companies to which it would otherwise be limited.<sup>89</sup>

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<sup>87</sup> Lorillard v. Pons, 434 U.S. 575, 580 (1978) (internal citations omitted); accord 2A Norman J. Singer, Sutherland Statutory Construction sec. 45.12 (5th ed. 1992) ("legislative language will be interpreted on the assumption that the legislature was aware of . . . judicial decisions").

<sup>88</sup> Comments of Texas Pipeline Association at 13 (citing Union Oil v. FPC, 542 F.2d 1036, 1039 (9th Cir. 1976)).

<sup>89</sup> TPA observed that courts have held that the Commission cannot exceed its statutory authority. Reply Comments of TPA at 16-17 (citing Transmission Agency of Northern California v. FERC, 495 F.3d 663 (D.C. Cir. 2007) and United Distribution Cos. v. FERC, 88 F.3d 1105 (D.C. Cir. 1996)). This is an unremarkable and unassailable conclusion, but one that provides no guidance where the issue is not whether the Commission may exceed its statutory authority but what is the extent of the Commission's transparency authority.

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### **Section 1(c) of the Natural Gas Act**

Several commenters, including a state commission, contended that the pipeline posting proposal as applied to intrastate pipelines would improperly interfere with states' regulation of intrastate pipelines as set forth in section 1(c) of the Natural Gas Act, commonly known as the Hinshaw amendment. Section 1(c) of the Natural Gas Act reads:

The provisions of this chapter shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all 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.<sup>90</sup>

The Commission's proposal does not impermissibly interfere with states' regulation of Hinshaw pipelines. Under the Commission's proposal, states will continue to regulate the rates and services of those companies. As stated, section 23 of the Natural Gas Act does not authorize the Commission to undertake such comprehensive regulation and the Commission does not propose to do so. The Commission would require only that non-interstate pipelines, including Hinshaw pipelines, post information regarding their flows. Section 1(c) of the Natural Gas Act, in light of the later enacted EAct 2005, does not preclude such a posting requirement.

### **Interstate Pipeline Posting Requirements**

In RM07-10-000 NOPR, the Commission sought comment on whether it should revise its posting requirements applicable to interstate pipelines to require posting actual flow information.<sup>91</sup> The Commission raised the question because it proposed to require intrastate pipelines to post actual flow information, a requirement beyond that applied to interstate pipelines under § 284.13(d)(1) of the Commission's regulations, and because posting of actual flow information could provide useful information regarding actual capacity use, for instance, by giving insight into the use of no-notice service.<sup>92</sup> In this regard, Commission Staff observed that its ability to monitor flows in the interstate pipeline system is limited in certain locations, by

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<sup>90</sup> 15 U.S.C. 717(c).

<sup>91</sup> Initial NOPR at P 43.

<sup>92</sup> Initial NOPR at P 43.

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the lack of actual flow information. In the case of “no-notice” service,<sup>93</sup> specifically, interstate pipeline schedules do not reflect actual flows. Consequently, information about interstate flows in areas using no-notice service is less useful. In its comments on the Initial NOPR, the Natural Gas Supply Association (NGSA) observed that, “[o]n heating season peak days or days with wide intra-day weather swings, no-notice volumes can be significant; therefore, scheduled flow volumes are not a proxy for physical flow and, thus, do not necessarily provide an accurate picture of underlying market fundamentals.”<sup>94</sup> Similarly, Commission Staff observed that the gap between scheduled and actual flows occurs most commonly in the northern tier of the country, particularly, where a pipeline serves a local distribution company with significant space heating demand. In such circumstances, market observers find it more difficult to ascribe price behavior to physical changes in flows.

Public posting of information reflecting no-notice service could also prevent other forms of misconduct with direct effects on natural gas in interstate commerce. Commission investigations of interstate and intrastate pipeline activity resulted in two settlements in which the settling party admitted it sought to obtain and exploit non-public storage inventory information to gain a competitive advantage in wholesale gas markets.<sup>95</sup> Though this proposal would make public flow information, not storage information, the importance of the non-public information is analogous. These admissions indicate that the lack of public flow information provides the opportunity for parties to engage in manipulative or unduly discriminatory behavior. By making major non-interstate pipeline flow information public, such transparency could discourage market participants from engaging in such manipulative or unduly discriminatory activity.

In this NOPR, the Commission proposes to require interstate pipelines to post actual flow information in addition to the capacity and scheduled flow information that interstate pipelines are currently required to post. Accordingly, the Commission proposes adding to § 284.13(d) this requirement: “An interstate pipeline must also provide in the same manner [as other information is provided] access to information on actual flowing volumes at receipt points, on the mainline, at delivery points, and in storage fields.”<sup>96</sup>

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<sup>93</sup> See 18 CFR 284.7(a) (4).

<sup>94</sup> NGSA Comments at 10.

<sup>95</sup> Dominion Resources, Inc., 108 FERC ¶ 61,110 (2004) (Dominion Resources, DTI and DEC admit that DTI violated section 161.3(f) of the Commission’s regulations, former 18 CFR 161.3(f) (2003)); The Williams Companies, Inc., 111 FERC ¶ 61,392 (2005) (Transco admits that it violated section 161.3(f) of the Commission’s regulations, former 18 CFR 161.3(f) (2002)).

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In response to RM07-10-000 NOPR, several commenters supported requiring interstate pipelines to post actual flow volumes.<sup>97</sup> The NGSA asserted that posting of actual flow data “could lead to even more accurate and near real-time indication of underlying market supply and demand fundamentals”<sup>98</sup> The National Association of Royalty Owners (NARO) contended that requiring interstate pipelines to post actual flow volumes would allow an “apples to apples” comparison with the postings of intrastate pipelines.<sup>99</sup>

The Interstate Natural Gas Association of America (INGAA) opposed any proposal for interstate pipelines to post actual flows. INGAA contended that: (1) scheduled flows are adequate for market participants to estimate demand and supply conditions in order to price market transactions; (2) actual flows include operational data that is not relevant and may be counterproductive, such as flows reflecting maintenance activities, storage injection and withdrawal schedules, line pack management, balancing at interconnects, and blending to meet quality specifications not related to commercial flows and (3) the no-notice activity that would be captured by posting actual flows does not reflect trading activity, but rather reflects storage withdrawals.<sup>100</sup> Williston Basin Interstate Pipeline Company (Williston) indicated that scheduled flow volumes were adequate and actual volumes not necessary.<sup>101</sup>

In order to effectively balance the benefits of the additional flow information with the costs of such a requirement, the Commission seeks further information regarding both the benefits of the additional information available if actual flow volumes were posted by interstate pipelines, and the costs imposed on interstate pipelines to develop and post that information. In providing comments on this proposal, the Commission is encouraging commenters to support their comments by providing specific examples.

### **Postings by Non-Interstate Pipelines**

In the Initial NOPR, the Commission proposed to require certain intrastate pipelines to post daily information regarding the capacity and actual flows at major receipt and delivery

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96 Proposed 18 CFR 284.13(d).

97 See, e.g., NGSA at 10; and Apache Corp. at 8-9.

98 NGSA Comments at 10.

99 NARO Comments at 4.

100 INGAA Comments at 3-4.

101 Williston Reply Comments at 4.

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points and mainline segments. In this NOPR, the Commission proposes to require non-interstate pipelines to post scheduled flow information in addition to capacity and actual flow information.<sup>102</sup> Only a “major non-interstate pipeline” would be required to post information. For the purposes of this NOPR, a “major non-interstate pipeline” is defined as one that is not a “natural gas company” under section 1 of the Natural Gas Act and that flows greater than 10 billion cubic feet of natural gas per year, with two exceptions.<sup>103</sup> The first exception is non-interstate pipelines that fall entirely upstream of a processing plant.<sup>104</sup> The second exception is non-interstate pipelines that deliver more than ninety-five percent (95%) of the natural gas volumes they flow directly to end-users.<sup>105</sup>

### **Commission Response**

Through the information that would be obtained from the daily posting requirement on major non-interstate pipelines, the Commission, market participants, and the public could obtain a picture of daily supply and demand conditions that directly affect U.S. wholesale natural gas markets – a picture that is currently incomplete without information from major non-interstate pipelines.<sup>106</sup> Consequently, this proposal to increase information from certain major non-interstate pipelines would directly “facilitate price transparency for the sale... of physical natural gas in interstate commerce” as authorized in the natural gas transparency provisions.<sup>107</sup>

The posted information from major non-interstate pipelines would qualify as, in the words of the transparency provisions, “information about the availability and prices of natural gas sold at wholesale and in interstate commerce.”<sup>108</sup> Notwithstanding their status under section 1 of the Natural Gas Act, most major non-interstate pipelines today transport or buy and sell wholesale natural gas that eventually enters or at least impacts the interstate natural gas market.

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102 Proposed 18 CFR 284.14(a).

103 Proposed 18 CFR 284.1.

104 Proposed 18 CFR 284.14(b) (1).

105 Proposed 18 CFR 284.14(b) (2).

106 In this section, the Commission reiterates its discussion from the Initial NOPR.

107 Section 23(a) (1) of the Natural Gas Act, 15 U.S.C. 717t-2(a) (1) (2000 & Supp. V 2005).

108 Section 23(a) (2) of the Natural Gas Act, 15 U.S.C.A. 717t-2(a) (2) (2000 & Supp. V 2005).



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Further, supply and demand in non-interstate markets have a direct effect on prices of gas destined for interstate markets because both intrastate and interstate consumers draw on the same sources of supply. This is the case because of the statutory, regulatory and market changes that have taken place in the last three decades.

In the Natural Gas Policy Act of 1978, Congress allowed an intrastate pipeline to transport natural gas in interstate commerce on behalf of any interstate pipeline or local distribution company served by an interstate pipeline, without losing its intrastate status.<sup>109</sup> Congress likewise permitted an intrastate pipeline to sell natural gas to any interstate pipeline or any local distribution company served by any interstate pipeline, without losing its intrastate status.<sup>110</sup> In addition, at the same time that the Commission issued Order No. 636 in 1992, it promulgated a new subpart of Part 284 (revised several times in the past 15 years) that provides blanket authority to any person who is not an interstate pipeline (including intrastate pipelines) to make sales for resale of natural gas in interstate commerce.<sup>111</sup> This authorization is a limited jurisdiction sales certificate, which means that the holder does not become subject to the panoply of Natural Gas Act regulation by exercising its rights under the certificate.<sup>112</sup>

The market understandably reacted to these statutory and regulatory changes since 1978. As relevant here, natural gas sold at or destined to be sold at wholesale in the interstate market is

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109 See section 311(a) (2) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3371(a) (2); see also 18 CFR part 284, subpart C (Certain Transportation by Intrastate Pipelines).

110 See section 311(b) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3371(b); see also 18 CFR part 284, subpart D (Certain Sales by Intrastate Pipelines).

111 Order No. 636 FERC Stats. & Regs. ¶ 30,939, at 30,391.

112 See 18 CFR part 284, subpart L (Certain Sales for Resale by Non-interstate Pipelines).

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frequently exchanged or the transactions consummated at market hubs where interstate and non-interstate pipelines interconnect (e.g., Waha, Katy, Houston Ship Channel, and Carthage in Texas and at Henry Hub in Louisiana). Prices formed at these hubs are, in effect, prices for wholesale transactions in interstate commerce, even if a portion of the gas priced at each market hub is consumed intrastate. In addition, transfer of natural gas can take place directly between parties who ship gas on both interstate and non-interstate pipelines at any pipeline interconnection.

Currently, through the availability of information regarding daily scheduled flows of natural gas through interstate pipelines, market participants have an increased, daily understanding of natural gas markets, including regional conditions and the pipeline capacity available to resolve different geographic supply/demand balances. This is due in part to Order No. 637, where the Commission required posting of capacity and scheduled volume information on interstate pipelines with the direct intention of allowing shippers to monitor capacity availability.<sup>113</sup> Accordingly, interstate pipelines must post available capacity information, specifically:

the availability of capacity at receipt points, on the mainline, at delivery points, and in storage fields, whether the capacity is available directly from the pipeline or through capacity release, the total design capacity of each point or segment on the system; the amount scheduled at each point or segment whenever capacity is scheduled, and all planned and actual service outages or reductions in service capacity.<sup>114</sup>

In Order No. 637, the Commission anticipated that such postings would provide useful information regarding supply and demand fundamentals: The changes to the Commission's reporting requirements will enhance the reliability of information about capacity availability and price that shippers need to make informed decisions in a competitive market as well as improve shippers' and the Commission's ability to monitor marketplace behavior to detect, and remedy

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<sup>113</sup> Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services, Order No. 637, 65 FR 10156, at 10204-10205, (Feb. 25, 2000), FERC Stats. & Regs. ¶ 31,091, at 31,320-31,321 (2000); order on reh'g, Order No. 637-A, 65 FR 35706 (June 5, 2000), FERC Stats. & Regs. ¶ 31,099 (2000); order on reh'g, Order No. 637-B, 65 FR 47284 (Aug. 2, 2000), affirmed in relevant part, Interstate Natural Gas Ass'n of America v. FERC, 285 F.3d 18 (D.C. Cir. 2002), order on remand, 101 FERC ¶ 61,127 (2002), order on reh'g, 106 FERC ¶ 61,088 (2004), aff'd sub nom., American Gas Ass'n v. FERC, 428 F.3d 255 (D.C. Cir. 2005) (Order No. 637).

<sup>114</sup> 18 CFR 284.13(d).

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anticompetitive behavior.<sup>115</sup>

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.<sup>116</sup> 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, market observers believe that posting of this information contributes to market transparency by revealing the underlying volumetric (or availability) drivers behind price movements.<sup>117</sup>

Notwithstanding the contribution of posted interstate schedule information to the transparency of price and availability of natural gas, this information cannot provide a complete 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 non-interstate pipelines. A recent study by the U.S. Department of Energy’s Energy Information Administration (EIA) identified twenty-eight national market centers or pricing hubs, of which thirteen are served by a combination of interstate and non-interstate pipelines.<sup>118</sup>

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115 Order No. 637, 65 FR at 10169.

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

117 See, e.g., Comments of Platt’s, at 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).

118 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](http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2003/market_hubs/mkthubs03.pdf)

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

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.

However in its comments to the RM07-10-000 NOPR, Enstor Operating Company (Enstor), an independent gas storage service provider with market-based rates, said it should not be required to post information regarding scheduled flows because gas storage information is readily available.<sup>119</sup> If required to post information, the Commission should provide for non-public reporting and analysis of flow data and disseminate such information to the public only in aggregated form.<sup>120</sup> Enstor stated that if its flow information were public, it would lose negotiating strength in the marketplace because its customers with multiple service options would know storage capacity available at its facility, even though it would have no knowledge of such customers' needs and limited knowledge about capacity levels at competing, regulated storage facilities.<sup>121</sup> Enstor cautioned that release of flow data from individual storage facilities would lead to the practice of reading other market participants' movements and buying or selling in front of anticipated future movements to take advantage of resulting price swings, which would raise prices.<sup>122</sup> Without non-public treatment of its flow data, Enstor contended that its margins would be squeezed and it would make less money.<sup>123</sup> Enstor added that aggregated information disseminated by the Commission would be more useful to end-users than disaggregated data.<sup>124</sup>

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119 Comments of Enstor at 4.

120 Comments of Enstor at 9.

121 Comments of Enstor at 8; Reply Comments of Enstor at 5.

122 Reply Comments of Enstor at 6.

123 Reply Comments of Enstor at 8.

124 Reply Comments of Enstor at 10.

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**Commission Response**

In order to assess the concerns expressed by Enstor, the Commission is seeking in this NOPR comments on the following questions.

- Regarding flows of gas in the United States, does existing gas storage information provide the same value of the information that would be collected in the Commission’s proposal? Interested commenters are asked to compare the benefits of requiring storage providers to post flow information publicly with the benefits and costs of providing information to the public only in aggregated form. When commenters address this issue, they are asked to indicate whether non-public reporting to the Commission would support the goals of the natural gas transparency provisions to “facilitate price transparency for the sale... of physical natural gas in interstate commerce”?<sup>125</sup>

Further, commenters addressing the application of the pipeline posting proposal to storage facility are asked to answer the following questions:

- Can individual storage facilities lose negotiating strength when its customers know the supply of available storage capacity?
- Would release of flow data from individual storage facilities lead to increased prices?
- How many storage facilities would likely face this situation if required to post flow information?
- Would fewer storage facilities face this situation if the pipeline posting proposal were modified to reduce the number of points to be posted, for example, by limiting posting to lines running into or out of major pipeline hubs?

**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 77,015 hours (an average of 1 hour per entity) for information requirement 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

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<sup>125</sup> Section 23(a) (1) of the Natural Gas Act, 15 U.S.C. 717t-2(a) (1) (2000 & Supp. V 2005).

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the posting of this information in the required format. A detailed summary of FERC-551burden estimates is shown below:

<b>DATA REQUIREMENT (FERC-551)</b>	<b>CURRENT OMB INVENTORY</b>	<b>PROPOSED IN 010 NOPR</b>	<b>PROPOSED IN 002 NOPR</b>
Estimated number of respondents :	0	179	211
Estimated number of responses per respondent:	0	364	365
Estimated number of responses per year :	0	65,156	77,015
Estimated number of hours per response :	0	0.52074	1.0
Total estimated burden (hours per year) :	0	32,757	77,015
Program change in industry burden hours :		+ 32,757	+77,015
Adjustment change in industry burden hours :		-0-	-0-
<u>Total hours in the NOPR (FERC-551)</u>		+ 32,757	+77,015

One proposal, to require interstate pipelines to post actual flow information, would impose an additional information collection burden on interstate pipelines. The other proposal, to require major non-interstate pipelines to post actual flow information, would impose an additional information collection burden on major non-interstate pipelines. Interstate and major non-interstate pipelines already collect flow information for major receipt and delivery points.

Data Collection	No. Of Respondents	No. of Daily Postings per Respondent	Estimated Annual Burden Hours per Respondent	Total Annual Hours For All Respondents	Estimated Start-Up Burden Per Respondent
Part 284 FERC-551					
Major Non-Interstate Pipeline Postings	102	365	365	37,230	2,080 hours
Additional Interstate Pipeline Postings	109	365	365	39,785	520 hours
<b>Total</b>	<b>211</b>	<b>-</b>	<b>-</b>	<b>77,015</b>	<b>-</b>

The total annual hours for collection (including recordkeeping) for all respondents are estimated to be 77,015 hours.

**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 :

Each interstate and non-major interstate 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 2,080 hours @ \$100/hr. This will result in a total of \$208,000 annualized over 10 years for \$20,800 per year for Major Non-Interstate Pipelines. For interstate pipelines to make the additional filings, the Commission estimates that compliance would require an initial start-up cost of 520 hours @ \$100/hr. This will result in a total of \$52,000 annualized over ten years for \$5,200 per year. For operations and maintenance, the Commission estimates 60 minutes per day @ \$100/hr to post data already collected in-house for \$36,500 per year per pipeline postings.

	Annualized Capital/Startup Costs (10 year amortization)	Annual Costs	Annualized Costs Total
FERC-551			
Major Non-Interstate Pipeline Postings	\$20,800	\$36,500	\$57,300
Additional Interstate Pipeline Postings	\$5,200	\$36,500	\$41,700

Certain non-interstate pipelines have asserted in RM07-10-000 NOPR that costs would be quite high if additional equipment was needed to meet quick posting deadlines. However, given that this information is used in their business within fairly quick periods, the Commission still believes that the burden to be imposed by this proposed requirement is largely for the collection and posting of this information in the required format.<sup>126</sup>

**14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT**

<sup>126</sup> See 5 CFR 1320.3(b) (2) (“The time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records) will be excluded from the “burden” if the agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.”)

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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 of Data Number	Analysis (FTEs) <sup>128</sup>	Estimated Salary <sup>127</sup> Per Year	FERC Forms Clearance (FY '07)	Total Cost One Year's Operation <sup>129</sup>
FERC-551	-0-	-0-	\$ 213	\$ 213
	.5	\$122,137	\$ 234	61,303
<b>Total</b>	<b>.5</b>	<b>\$122,137</b>	<b>447</b>	<b>\$61,516</b>

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.

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

The daily posting of additional flow information by interstate and major non-interstate 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 posting would contribute to market transparency by aiding the understanding of the volumetric/availability drivers behind price movements; it would provide a better picture of disruptions in natural gas flows in the case of disturbances to the pipeline system; and it would allow the monitoring of potentially manipulative or unduly discriminatory activity.

**16. TIME SCHEDULE FOR THE PUBLICATION OF DATA**

The time schedule for FERC-551 is as follows: interstate and major non-interstate 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

127 ?/ "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.

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

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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.

**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 rather to be posted on intrastate pipelines web sites.

**18. EXCEPTIONS TO THE CERTIFICATION STATEMENT**

The Commission does not use statistical methodology for FERC-551.

**B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

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