

Supporting Statement for  
**FERC-588, Emergency Natural Gas Sale,  
Transportation and Exchange Transactions**  
Request for Reinstatement and Three-Year Approval  
(Through July 31, 2011)

The Federal Energy Regulatory Commission (Commission) requests that the Office of Management and Budget (OMB) approve **FERC-588, Emergency Natural Gas Sale, Transportation and Exchange Transactions**, through July 31, 2011. FERC-588 (1902-0144) is an existing Commission data collection, (application and filing requirement), as contained in 18 Code of Federal Regulations, Part 284, Subpart I. There have been no changes in the data collected under FERC-588.

The estimated reporting burden under FERC-588 is expected to average 64 hours per year over the next three years -- unchanged from the current OMB inventory. The estimated burden per filing (8.0 hours) is expected to remain unchanged.

A. Justification

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

Under section 7(c) of the Natural Gas Act (NGA) (Public Law 75-688) (15 U.S.C. 717f) provides that every jurisdictional natural gas company must obtain Commission authorization of a certificate of public convenience and necessity before transporting or selling gas, or constructing or operating facilities for these purposes.

However, Section 7(c)(1)(B) of the NGA provides two exceptions to this certificate requirement: one authorizing the issuance of a temporary certificate during emergencies pending a determination of a regular application, and one exempting from certificate requirements "temporary acts or operations for which the issuance of a certificate will not be required in the public interest." The Natural Gas Policy Act (NGPA) (Public Law 95-621), most significantly, sections 311 and 312 of the NGPA provide an alternative to section 7(c)(1)(B) of the NGA for the following transactions in interstate commerce: sales, assignments, and/or transportation of intrastate natural gas by intrastate pipelines on behalf of interstate pipelines and local distribution companies served by interstate pipelines and transportation by interstate pipelines on behalf of intrastate pipelines and local distribution companies. Therefore, as a result of the NGPA, these transactions have been authorized to proceed, subject to certain limitations, for longer periods than would be appropriate or permissible under NGA section 7(c)(1)(B).

In Order No. 449, (March 18, 1986)(51 F.R. 9179) the Commission revised its regulations by eliminating unnecessary regulations and consolidating them into a new subpart I, Part 284 Code of Federal Regulations. The revised regulations provided for self-implementing

authority for eligible participants including interstate pipelines, intrastate pipelines, and local distribution companies to sell and/or transport natural gas to other eligible participants in emergency situations.

An emergency is defined as any situation in which an actual or expected shortage of gas supply would require an interstate pipeline company, intrastate pipeline, local distribution company, or Hinshaw pipeline to curtail deliveries of gas or provide less than the projected level of service to any customer. A sudden unanticipated loss of natural gas supply or sudden unanticipated increase in demand or any situation in which the participant, in good faith, determines that immediate action is required for the protection of life or health or the maintenance of physical property are also emergencies.

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

The natural gas companies file the necessary information with FERC so the Commission can determine from the data if the transaction qualifies for exemption. A report within forty-eight hours of the commencement of the transportation, sale, or exchange, a request to extend the sixty-day term of the emergency transportation, if needed, and a termination report are required. The data required to be filed for the 48-hour report and the termination report consist of the dates the transaction commenced and terminated, the nature of the emergency, the total amount and average daily amount of emergency natural gas to be or that was purchased, exchanged or transported, the purchase price of the gas, the transportation rate, the identity of all the participants, and other pertinent information. The data required to be filed if an extension of the 60-day term of the emergency is needed is a description of the continued emergency.

The Commission's Office of Energy Market Regulation (OEMR) is responsible for evaluating/processing data related to service emergencies under Section 375.307 (g) (3) of the regulations. The Office of Energy Projects (OEP) is responsible for evaluating/processing data related to facility emergencies under Section 375.308 (w) (3) of the Commission's regulations.

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

The Commission proposed the use of improved information technology such as electronic filing in RM05-11-000 (May 27, 2005, ¶32,583). However, comments received in response to the NOPR cited several administrative obstacles that must be resolved before the Commission could make this transition. Therefore, the Commission has taken its administrative procedures under review before the issuance of a final rule. A case in point, is the termination report must be submitted under oath and therefore does not lend readily to cost effective computerization. The termination report must include a written sworn statement.

Telephonic/facsimile notifications are NOT acceptable. All of the information is readily available to the participant.

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**

Filing requirements are periodically reviewed as OMB review dates arise or as the Commission may deem necessary in carrying out its responsibilities under the NGPA and NGA in order to eliminate duplication and ensure that filing burden is minimized. No other forms collect data similar to that collected/filed under FERC-588.

5. **METHODS USED TO MINIMIZE BURDEN IN COLLECTION OF INFORMATION INVOLVING SMALL ENTITIES**

The collection of information under FERC-588 is made from interstate pipelines, intrastate pipelines or natural gas distributors (including Hinshaw pipelines) some of which may be small businesses. The amount of data to be reported is the same for large and small businesses but is the minimum that the Commission requires to determine that the transaction is authorized.

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

The information collection cannot be discontinued nor collected less frequently because of statutory requirements to monitor emergency transactions. Without such information, the Commission would be unable to fulfill its statutory responsibilities under both the NGA and NGPA to exempt natural gas companies transporting, selling, or exchanging emergency natural gas.

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

The 48-hour report required by § 284.270(a), (b) and (c) must be a written report. The termination report required by § 284.270(d) consists of a sworn statement and two conformed copies. This is consistent with 5 C.F.R. 1320.5d (2) (iii).

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

Prior to adopting regulations that provide for the collection of data, the Commission procedures require that a 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 data, views, comments or suggestions concerning the proposed collection of data. The notice procedures also allow for public conferences to be held as required.

In accordance with OMB requirements in 5 C.F.R. 1320.8(d), the data collection under FERC-588 was noticed in the Federal Register on February 28, 2008 (73 FR 10747). The Commission received a single comment from Coral Energy Resources L.P. in response to the 60-day notice period which ended April 28, 2008. Coral is a marketer of natural gas and an affiliate of Shell Oil Company<sup>1</sup>.

Coral's Comments:

*Coral believes that certain reporting requirements for emergency natural gas transactions are "outdated, unnecessary, duplicative and unduly burdensome"<sup>2</sup> as applied to gas purchasers like Coral.*

**Commission's Response:** As Coral points out "sales of natural gas for resale in interstate commerce are authorized automatically under the blanket certificates"<sup>3</sup> as issued in the Commission's regulations. The Commission issued blanket certificates to allow pipelines and other persons selling natural gas to make sales for resale of natural gas at market based or negotiated rates.

To put the requirements into context, in Order No. 636<sup>4</sup>, the Commission required all pipelines that provide open access transportation to offer their sales services on an unbundled basis. To accomplish this, the Commission issued to pipelines holding a blanket transportation certificate under Subpart G of Part 284 of its regulations, or performing transportation under Subpart B, a blanket certificate authorizing firm and interruptible sales for resale.<sup>5</sup>

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1 Coral (P. 1)

2 Coral (P. 3)

3 Id.

4 Order No. 636, Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, and Regulation of Natural Gas Pipelines After Partial Well head Decontrol, *FERC Statutes and Regulations Preambles January 1991-June 1996* ¶30,939 (1992), *order on reh'g*, Order No. 636-A, *FERC Statutes and Regulations Preambles January 1991-June 1996*, ¶30,950 (1992), *order on reh'g*, Order No. 636-B, 61 FERC ¶61,272 (1992), *aff'd in part, rev' in part, United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *cert. denied*, 137 L. Ed. 2d 845, 117 S. Ct. 1723, 117 S. Ct. 1724 (1997), *on remand*, Order No. 636-C, 78 FERC ¶ 61, 186 (1997), *order on reh'g*, Order No. 636-D, 83 FERC ¶61,210 (1998).

5 18 C.F.R. ¶284.281-287 (2003).

In Order No. 547<sup>6</sup>, as part of the industry restructuring begun by Order No. 636, the Commission issued blanket certificates to all persons who are not interstate pipelines authorizing them to make jurisdictional gas sales for resale at negotiated rates with pregranted abandonment authority.<sup>7</sup> The blanket certificates were issued by operation of the rule itself and there was no requirement for persons to file applications seeking such authorization. The Commission determined that the competitive gas commodity market would lead all gas suppliers to charge rates that are sensitive to the gas sale market and cognizant of the variety of options available to gas purchasers.

As to Coral's contention that the information and therefore the requirement in 284.270(a) is no longer needed, the Commission disagrees. The Commission's regulations in Subpart I of Part 284, 18 C.F.R. §284.261 *et seq.* (2008) are intended for emergency situations only. If an emergency sale is reported under 284.270(a) then the information can serve as a basis for conducting an investigation of whether the emergency regulations are being used for purposes other than they were intended for. As Coral acknowledges, gas sold in emergency transactions generally will be transported under emergency transportation authority. If emergency transportation authority is being invoked in non-emergency situations because the sales participants have sought emergency transportation service when an emergency did not exist as defined in section 284.262 of the Commission's regulations, 18 C.F.R. §284.262 (2008), the transporter may have acted in good faith but it was still a misuse of the emergency authority. The fact that the Subpart I, Part 284 regulations provide authority for the construction of facilities necessary to implement emergency transactions heightens the need to ensure that the emergency regulations are invoked only in appropriate situations.

In the aftermath of Hurricane Katrina when the emergency authority was invoked on several occasions, the information was particularly beneficial to the Commission because it was not just interstate pipelines or marketers that were holding interstate capacity but also non-regulated entities and so the reports validated how the emergency authority was used.

As we have noted in this submission, we do not receive many filings reporting emergency sales transactions. If Coral believes that it should not have to file the information relating to an emergency sale in a particular instance, Coral may seek a waiver of the requirement showing good cause. The Commission will review such requests on a case-by-case basis.

## 9. EXPLAIN ANY PAYMENT OF GIFTS TO RESPONDENTS

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<sup>6</sup> Regulations Governing Blanket Marketer Sales Certificates, *FERC Statutes and Regulations, Regulation Preambles January 1991-June 1996* ¶30,957 (1992), *order on reh'g and clarification*, 62 FERC ¶61,239 (1993).

<sup>7</sup> 18 C.F.R. §§ 284.401-402 (2003).

No payments or gifts have been made to respondents.

10. and 11. **DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS**

The Commission generally does not consider the data filed confidential. However, a company may request confidential treatment of some or all parts of the FERC-588 under the Freedom of Information Act and FERC Regulations of 18 C.F.R. 388.112. Each request for confidential treatment shall be reviewed by FERC on a case-by-case basis.

12. **ESTIMATED BURDEN OF COLLECTION**

The estimated burden of the collection of information is based on the Commission's previous experience with emergency natural gas transactions and is as follows:

Estimated number of respondents	8
Estimated number of responses per respondent per year	1
Estimated total responses per year	8
Estimated hours per response	8.0
Total estimated annual burden hours	64.0
 Total FERC-588 burden hours currently in OMB inventory	 64

Change in industry burden hours  
Increase or (Decrease)

The burden estimates shown below are the expected burden for the 48-hour report, the termination report, and the 60-day waiver. Each filing has a potential waiver which extends the term of the transaction to 120 days.

Data Requirement	<u>Filing</u>	Hours per X Per Year	= Filings Burden	Total
48-hour report	4		8	32
Termination report	3	8	24	
60-day waiver	<u>1</u>	<u>8</u>	<u>8</u>	
 Total		8	8	64

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

The estimated annual cost to respondents of FERC-588 is \$3,889 (rounded off) (total estimated reporting burden (64 hours) ÷ 2080 (employee-hours per year) x \$126,384 (the estimated average annual employee/staff cost for FY 2008) = \$126,384). Because FERC-588 is an existing information collection with a short duration between its expiration and reinstatement, there are no start-up costs.

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

The estimated cost to the Federal Government for FERC-588, Emergency Natural Gas Sale, Transportation and Exchange Transactions is as follows:

<u>Operation</u>	
(a) Forms Clearance (FERC FY 2008)	\$ 729
(b) Analysis of data (0.33FTE X \$126,384) <sup>8</sup>	<u>41,707</u>
 Total for one year of operation	 \$42,436

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

There are no changes to the annual reporting burden for FERC-588.

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

Not applicable, as the data from the FERC-588 are not published.

**17. DISPLAY OF THE EXPIRATION DATE**

It is not appropriate to display the expiration date for OMB approval of the information collected. The information is not collected on a standard, preprinted form which would avail itself to that display. Rather natural gas pipeline companies prepare and submit filings that reflect unique or specific circumstances related to the transaction in the filing. In addition, the information contains a mixture of narrative descriptions and empirical support that varies depending on the nature of the transaction.

**18. EXCEPTIONS TO THE CERTIFICATION STATEMENT**

Item No. 19(g) (VI) see Instruction No. 17 above for further elaboration.

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8 ?/ The estimated annual cost per staff/employee (\$126,384) is based on the number of employees in the Office of Energy Projects, and the FY 2007 appropriation for that office as reported in the Commission's FY 2008 Budget.

**B. Collection of Information Employing Statistical Methods**

Not applicable, as statistical methods are not employed for the data collection. The information is collected so that the Commission can carry out its regulatory responsibilities.