

Supporting Statement for  
**FERC-551, Reporting of No Notice Service by Interstate Pipelines and  
Scheduled Volumes by Major Non-Interstate Natural Gas Pipelines**

As Proposed In Docket No. RM08-2-000  
(Final Rule Issued November 20, 2008)

The Federal Energy Regulatory Commission (Commission) requests Office of Management and Budget (OMB) review and approval of **FERC-551, No Notice Service by Interstate and Scheduled Volumes by Major Non-Interstate Pipelines**. FERC-551 is a new data collection that amends Part 284 of the Commission's regulations in order to facilitate market transparency in natural gas markets as proposed in a Final Rule. The Final Rule was issued on November 20, 2008, in Docket No. RM08-2-000. OMB assigned an OMB control number at the NOPR stage, 1902-0243 (see Notice of Action). However, that control number was subsequently dropped from OMB's inventory. The Commission requests reinstatement of that control no.

The Final Rule implements the Commission's authority under section 23 of the Natural Gas Act<sup>1</sup> as added by section 316 of the Energy Policy Act of 2005 to require reporting from entities not under the Commission's traditional jurisdiction.<sup>2</sup> The rule facilitates transparency in markets for the sale and transportation of natural gas in interstate commerce by requiring major non-interstate pipelines to post scheduling data on volume information and design capacity for certain points on publicly-accessible Internet websites. In addition, interstate pipelines will be required to post data regarding no-notice service in addition to the scheduling data that they already post.

We estimate that the total annual reporting-burden related to the subject Final Rule will be 47,633 hours a decrease from our proposed estimate in the subsequent NOPR of 77,015 hours and due in part to the Commission's response to commenters. (See discussion below on the initial and subsequent NOPRs)

## **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>.

---

<sup>1</sup> 15 U.S.C. 717t-2 (2000 & Supp. V 2005).

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

The performance of Western electric and natural gas markets early in the decade shook confidence in posted market prices for energy. In examining these markets, the Commission's staff found, inter alia, that some companies submitted false information to the publishers of natural gas price indices, so that the resulting reported prices were inaccurate and untrustworthy.<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

---

<sup>3</sup> 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).

<sup>4</sup> 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).

<sup>5</sup> 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).

<sup>6</sup> 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).

section 7 of the Natural Gas Act to condition blanket marketing certificates.<sup>7</sup> The behavior rules bar false statements and require certain market participants, if they report transaction data, to report such data in accordance with the Policy Statement. These participants must also notify the Commission whether or not they report prices to price index developers in accordance with the Policy Statement.<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

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

<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, 15 U.S.C. 717t-2(a)(1); see also section 220 of the Federal Power Act, 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)

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 EPAct 2005's expansion of the Commission's authority, Commission staff met with interested entities in the summer of 2006. On September 26, 2006, staff conducted a workshop to review sources of energy market information with interested persons and to lay the groundwork for a technical conference held on October 13, 2006. In that conference, ideas for potential policy actions by the Commission were identified.<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.

#### **Subsequent 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" (*designated as the Posting NOPR in the Final Rule*) the

---

(together, the transparency provisions).

<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.

Commission proposed to require both interstate and certain major non-interstate pipelines to post capacity, daily scheduled flow information and daily actual flow information. This proposal incorporated the one contained in RM07-10-000, (the Initial NOPR) (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 issued a Final Rule concurrent with this NOPR. (See OMB Control No. 1902-0242. The Final Rule on Rehearing made modifications to the annual reporting requirement (FERC-552) which is currently the subject of OMB review (see ICR200809-1902-002).

The Commission issued 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 the subsequent NOPR allowed 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 also sought further comment regarding how the posting requirements should apply to storage facilities and in particular its daily pipeline posting proposal for major non-interstate pipelines.

Information currently provided by interstate pipelines presents an incomplete picture of the daily supply and demand fundamentals that underlie U.S. natural gas markets. There is little public information about transportation availability and volumes scheduled on major systems outside of the grid traditionally regulated by the Commission. Interstate and major non-interstate pipeline infrastructure, however, is functionally interconnected. The lack of scheduling information on non-interstate pipelines means that there is limited transparency on large portions of the U.S. pipeline system.

### **Final Rule (Docket No. RM08-2-000)**

---

15 Initial NOPR at P 1-2.

16 Initial NOPR at P 43.

17 Initial NOPR at P 43.

On November 20, 2008 in Docket No. RM08-2-000 “Pipeline Posting Requirements under Section 23 of the Natural Gas Act”, the Commission proposed to require major non-interstate pipelines, defined as those natural gas pipelines that deliver more than 50 million MMBtu per year, to post scheduled flow information and to post information for each receipt and delivery point with a design capacity greater than 15,000 MMBtu per day. The Final Rule also requires that interstate pipelines post information regarding no-notice service.

The postings required in the Final Rule will increase price transparency in the interstate natural gas markets by providing information about the supply and demand fundamentals that underlie those markets. In this way, the Commission will meet the goal set forth by Congress in section 23 of the NGA “to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce,”<sup>18</sup> and, at the same time, will respond to commenters’ concerns about the potential cost and burden of both interstate and certain major non-interstate pipelines to post capacity, daily scheduled flow information and daily actual flow information.

The posting requirements adopted in the Final Rule are based on the Commission’s authority under section 23 of the NGA (as added by EAct 2005), which directs the Commission, in relevant part, to obtain and disseminate “information about the availability and prices of natural gas at wholesale and in interstate commerce.”<sup>19</sup> This provision enhances the Commission’s authority to ensure confidence in the nation’s natural gas markets. The Commission’s market-oriented policies for the wholesale natural gas industry require that interested persons have broad confidence that reported market prices accurately reflect the interplay of legitimate market forces. Without confidence in the efficiency of price formation, the true value of transactions is very difficult to determine. Further, price transparency facilitates ensuring that jurisdictional prices are “just and reasonable.”<sup>20</sup>

## **A. Justification**

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

With the passage of EAct 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>21</sup> As part of this commitment to competition, in the transparency provisions, Congress charged the Commission with assuring the integrity of the wholesale

---

18 Section 23(a)(1) of the NGA; 15 U.S.C. section 717t-2(a)(1) (2000 & Supp. V 2005).

19 Section 23(a)(2) of the NGA, 15 U.S.C. section 717t-2(a)(2) (2000 & Supp. V 2005).

20 See sections 4 and 5 of the NGA, 15 U.S.C. sections 717c and 717d.

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 section 220 of the Federal Power Act and section 23 of the Natural Gas Act.

In 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>22</sup>

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

The Commission may prescribe such rules as the Commission determines necessary and appropriate to carry out the purposes of this section. The rules shall provide for the dissemination, on a timely basis, of information about the availability and prices of natural gas sold at wholesale and in interstate commerce to the Commission, State commissions, buyers and sellers of wholesale natural gas, and the public.<sup>23</sup>

In 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

---

21 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).

22 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, 16 U.S.C. 824t. Because the Commission's proposals in the NOPRs addressed 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.

23 15 U.S.C. 717t-2(a).

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>24</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>25</sup> or by referring to sections 1, 3, or 7 of the Natural Gas Act<sup>26</sup>. The former approach would have excluded intrastate pipelines from the Commission's transparency authority. The latter approach would have entailed the jurisdictional limitations of those sections, which exclude from the Commission's jurisdiction first sales, sales of imported natural gas, sales of imported liquefied natural gas, and sales and transportation by entities engaged in production and gathering, local distribution, “Hinshaw” pipelines, or vehicular natural gas.<sup>27</sup> These limitations

---

24 15 U.S.C. 717t-2(a) (3).

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

26 15 U.S.C. 717, 717b, 717f.

27 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:



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>28</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 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>29</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>30</sup> Again, this language does not limit the type of information the Commission could collect to implement its mandate, provided that

---

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.

28 Section 23(a) (1) of the Natural Gas Act, 15 U.S.C. 717t-2(a) (1).

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

30 Id.

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

The natural gas transparency provisions further provide that the Commission shall “rely on existing price publishers and providers of trade processing services to the maximum extent possible.”<sup>31</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 Final Rule and repackage it, if sufficient demand for such services arises in the information marketplace.<sup>32</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 collusion or other anticompetitive behaviors by untimely disclosure of transaction-specific information.”<sup>33</sup>

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

The Commission believes that the information requirements in the Final Rule are needed because the information currently provided by interstate pipelines presents an incomplete picture of the supply and demand fundamentals that underlie the interstate natural gas market. While, as discussed above, Congress has given authority to the Commission to obtain additional information from market participants to increase transparency, the Commission acknowledges that section 23 of the NGA grants us discretion as to whether and how to utilize this authority. The current picture of the interstate natural gas market derives from information on scheduled natural gas volumes and available capacity posted by interstate pipelines. In compliance with

---

31 Section 23(a) (4) of the Natural Gas Act, 15 U.S.C.717t-2(a) (4).

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

33 Section 23(b) (2) of the Natural Gas Act, 15 U.S.C. 717t-2(b) (2).

the regulations adopted in Order No. 637,<sup>34</sup> interstate pipelines currently post daily information on the Internet about scheduled natural gas volumes for most of the continental United States. Shippers and other market participants rely on information posted by interstate pipelines to price both transportation and commodity transactions.<sup>35</sup> As the Commission described in the Posting NOPR, market participants retrieve the posted information on scheduled volumes from the websites of interstate natural gas pipelines, which they use to estimate in near real-time a variety of supply and demand conditions including geographic and industrial sector consumption, storage injections and withdrawals and regional production.<sup>36</sup> This posted scheduled flow information contributes to market transparency by providing information about the supply and demand fundamentals that drive price movements.<sup>37</sup> Further, the Commission's staff relies on this posted information to perform oversight and enforcement functions. In sum, the existing posting requirements for interstate pipelines provide the Commission, market participants, and other market observers with a picture of the availability of natural gas (both the commodity and transportation needed to move the commodity to market centers).<sup>38</sup>

---

34 Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637, 65 FR 10,156 (Feb. 25, 2000), FERC Stats. & Regs. ¶ 31,091, at 31,332, clarified, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, reh'g denied, Order No. 637-B, 92 FERC ¶ 61,062 (2000), aff'd in part and remanded in part sub nom. 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).

35 In this regard, the Commission disagrees with commenters, such as Atmos, that increased transparency would harm competition. Such has not been the Commission's experience with interstate natural gas pipeline posting requirements. To the contrary, increased transparency has allowed for more informed decision making by market participants. In the scenario posited by Atmos (*i.e.*, two pipelines, one of which is at capacity, that could serve a single customer), the posting of scheduled flow information at a particular point would typically not be sufficient to affect competition. Even if disclosure did have an effect, the effect would be to allow all market participants to make efficient determinations based upon equal access to relevant information.

36 Posting NOPR at P 55. See also Comments of Bentek, Docket No. AD06-11-000 (filed Oct. 11, 2006).

37 See, *e.g.*, Comments of Platt's at 11-13, Docket No. AD06-11-000 (filed Nov. 1, 2006) (information regarding the supply and demand of natural gas explains prices and such information is available from interstate pipelines, but not intrastate pipelines).

38 See, *e.g.*, *id.* at 11 (explaining that, to understand prices, "the marketplace must look to... information on [the] availability of and demand for natural gas....").

Nevertheless, this picture is incomplete. Because the Commission's existing pipeline posting regulations do not apply to non-interstate pipelines, market observers cannot determine the availability of natural gas and transportation on a non-interstate pipeline to the same extent as they could for an interstate pipeline. These gaps in information are significant because major gas flows between producing basins and interstate markets occur on non-interstate pipelines and are thus invisible to the market. Often, the availability and price of natural gas on large non-interstate pipelines affects the availability and price of natural gas nation-wide because these pipelines serve as important pricing points and gateways for flows to much of the United States. Interstate and non-interstate pipeline infrastructure is functionally inter-connected in the United States. The gaps in information about non-interstate flows result from the limitations on the Commission's authority over non-interstate pipelines prior to the enactment of EPCA 2005.

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>39</sup>

The daily posting of additional 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 Commission 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.

Specifically, the daily posting of flow information by major non-interstate 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

---

<sup>39</sup> Section 23(a) (1) of the Natural Gas Act, 15 U.S.C. 717t-2(a) (1) (2000 & Supp. V 2005).

economy as a whole. Finally, these postings would allow the Commission and other market observers to identify and remedy potentially manipulative activity.

Failure by the Commission to collect this information would mean that it is unable to monitor and evaluate transactions and operations of interstate and major noninterstate 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 the FERC-551 data requirements as the information required is to be posted on the pipelines' Internet sites.

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

Commission filings and data requirements are periodically reviewed in conjunction with OMB clearance expiration dates. This includes a review of the Commission's regulations and data requirements to identify any duplication. To date, no duplication of the proposed data requirements have been found. The Commission staff is continuously reviewing its various filings in an effort to alleviate duplication. There are no similar sources of information available that can be used or modified for use for the purpose described in Item A (1.).

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

There are few small businesses that are impacted under the FERC-551 posting requirements. The proposal to require daily postings by interstate and major non-interstate pipelines will not impact small entities. Natural gas pipelines are classified under NAICS code, 486210, Pipeline Transportation of Natural Gas.<sup>40</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

---

<sup>40</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>.

than \$6.5 million.<sup>41</sup> The Commission does not believe that any pipeline that would be required to post information under the proposal in this Final Rule has receipts less than \$6.5 million. Thus, the daily posting proposal will not impact small entities. In the Final Rule, the Commission will reduce the number of major non-interstate pipelines that will be subject to the posting requirements by reducing the delivery threshold from 10 million MMBtu/ year to 50 million MMBtu/ year.

The 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.

The Commission 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 50 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. In consideration of the comments filed to the Posting NOPR, the Commission has defined a major non-interstate pipeline as a pipeline that “(1) is not a ‘natural gas company’ under section 1 of the NGA; and (2) delivers annually more than 50 million MMBtu of natural gas measured in average receipts or in average deliveries for the past three years.”<sup>42</sup> The definition adopted in the Final Rule differs substantially from that proposed in the Posting NOPR and adopts a five-fold increase in the delivery threshold. Further, the definition bases the threshold on deliveries instead of flows. In addition, the definition clarifies that the delivery threshold should be determined on a facility-by-facility basis.

The Commission believes that a delivery threshold of 50 million MMBtu provides sufficient information to meet the Commission’s goal of tracking daily flows of natural gas adequately throughout the United States by providing flow information in areas for which interstate natural gas pipeline posting is not adequate. EIA Form 176 data demonstrates the reach of the 50 million MMBtu threshold. Excluding deliveries by interstate natural gas pipelines, pipelines that deliver greater than 50 million MMBtu annually account for 75 percent of total non-interstate volumes delivered in the United States.<sup>43</sup> While the EIA Form 176 categories are not a precise match to the data required to be posted by the Final Rule, the

---

<sup>41</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) (effective July 31, 2006).

<sup>42</sup> See new section 284.14(a).

categories are sufficiently similar to show that the 50 million MMBtu delivery threshold will provide a significant amount of flow information to the Commission, market participants, and observers and improve the understanding of the supply and demand fundamentals affecting interstate markets. Assuming this data is representative, capturing roughly three-fourths of non-interstate pipelines would be a significant stride in filling in the gaps regarding flows in the United States.<sup>44</sup>

The 50 million MMBtu delivery threshold is likewise consistent with the threshold used in the Commission's FERC Form No. 2 requirements. FERC Form No. 2 is a compilation of financial and operational information filed by interstate natural gas pipelines. An interstate natural gas pipeline must file a FERC Form No. 2 if it transports or stores for a fee volumes of natural gas greater than 50 million Dth.<sup>45</sup> If an interstate natural gas pipeline transports or stores for a fee volumes of natural gas less than 50 million Dth, it is not considered a major pipeline and files FERC Form No. 2A, which entails a lesser accounting burden.

By adopting the significantly higher 50 million MMBtu delivery threshold, the Commission also will eliminate compliance burdens on many smaller pipelines which may have fewer resources to meet the posting requirement. The Commission agrees with various commenters that the 10 million MMBtu delivery threshold in the Posting NOPR would have burdened smaller pipelines without providing a proportionate amount of useful information. A review of EIA Form 176 data for those pipelines that describe themselves to EIA as intrastate pipelines is illustrative. Under a 10 million MMBtu delivery threshold, thirty-seven of such pipelines would be required to post. In contrast, under a 50 million MMBtu delivery threshold, only sixteen of such pipelines will be required to post.<sup>46</sup>

---

<sup>43</sup> Derived from EIA Form 176 data for 2006 based on the ratio of non-interstate pipelines reporting deliveries greater than 50 million MMBtu per year to total deliveries on all non-interstate pipelines. NGSAs estimates that a 50 million MMBtu threshold would capture 90 percent of the relevant intrastate pipeline volumes. NGSAs comments at 5-6. The Commission has been unable to duplicate NGSAs's methodology used to derive this figure, although the Commission notes that NGSAs has included certain interstate volumes and excluded some non-interstate volumes in its calculations.

<sup>44</sup> FERC believes that a 50 million MMBtu annual threshold for "major non-interstate pipelines" is appropriate since this threshold includes almost all non-interstate pipelines that interconnect with major hubs. However, experience with pipeline postings following implementation of the Final Rule could lead the Commission to revisit this determination in the future.

<sup>45</sup> 18 CFR 260.1(b).

<sup>46</sup> Looking at the EIA data another way also supports the 50 million MMBtu delivery threshold. The 50 million MMBtu threshold would capture 85 major non-interstate pipelines that do not qualify under the exemptions. These 85 pipelines flow greater than 75 percent of total non-interstate volumes, according to the EIA Form 176 data. The Commission's

The Commission would also exempt from the daily posting requirement three types of non-interstate pipelines. First, a major non-interstate pipeline that lies entirely upstream of a processing plant would be exempt.

Second, the Commission proposes to exempt any non-interstate pipeline that delivers almost exclusively to retail and end-users; and third for storage providers.

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

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

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

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

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

---

definition of "major non-interstate" does not match exactly the categories used by EIA. Thus, these numbers may differ.



These proposed information collection requirements meet most 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. However, section 1320.5(d) (2) (iv) limits the retention of records other than "health, medical, government contract, grant-in-aid, or tax records" for more than 3 years. In the Final Rule the Commission is requiring that records be retained for a period of five years, or an additional two years beyond the current retention requirements.

There is no explicit statute of limitations set forth in NGA section 4A or in FPA section 222, and no statute of limitations of general applicability appears in the NGA or FPA. The Commission declined in Order No. 670 to designate a statute of limitations or otherwise adopt an arbitrary time limitation on complaints or enforcement actions that may arise under NGA section 4A and FPA section 222. The Commission noted, however, that when a statutory provision under which civil penalties may be imposed lacks its own statute of limitations, the general statute of limitations for collection of civil penalties, 28 U.S.C. 2462, applies.<sup>47</sup> Section 2462 in 28 U.S.C. imposes a five-year limitations period on any "action, suit, or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise."<sup>48</sup>

For these reasons, the Commission will exercise prosecutorial discretion in determining whether to pursue an alleged violation based on all the facts presented, including the time elapsed since the violation is alleged to have occurred, and will adhere to the five-year statute of limitations where it seeks civil penalties.

**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.

The Commission issued the Posting NOPR to develop the record more fully, particularly as to the proposals regarding interstate natural gas pipelines. The Posting NOPR was intended to give interstate natural gas pipelines sufficient notice of the changes that seemed necessary to

---

<sup>47</sup> See, e.g., United States v. Godbout-Bandal, 232 F.3d 637, 639 (8th Cir. 2000).

<sup>48</sup> 28 U.S.C. 2462 (2000). The five-year limitation runs "from the date the claim first accrued." Id. We intend that any administrative action for violation of the Final Rule be commenced within five years of the date of the fraudulent or deceptive conduct.

implement adequately section 23 of the NGA. Also, in the Posting NOPR, the Commission directed staff to hold a technical conference to address implementation issues associated with the proposal, such as obtaining and posting actual flow information and obtaining and posting information from storage facilities.<sup>49</sup>

As directed by the Commission, staff held a technical conference on April 3, 2008. Comments on the Posting NOPR were due on March 13, 2008; reply comments on April 14, 2008. The Commission received fifty-five comments and nineteen reply comments.<sup>50</sup>

### **Jurisdiction**

In the Posting NOPR, the Commission provided its interpretation of section 23 of the NGA and the Commission's authority to enhance transparency in the interstate natural gas markets. The Commission concluded that Congress granted it broad authority in EPCA 2005, placing non-interstate pipelines within the Commission's transparency authority under section 23 of the NGA 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.

Several commenters agreed that the Commission has broad transparency authority under section 23 of the NGA, including authority over non-interstate pipelines.<sup>51</sup> APGA supports the Commission's contention that the statute authorizes obtaining information from “any market participant” and not just “natural gas companies” as “tacit recognition that in order to collect the necessary information about the wholesale and interstate market, the Commission might well need to collect information from entities not historically subject to FERC jurisdiction.”<sup>52</sup>

A significant number of commenters hold a different view, and contend that the term “any market participant,” contained in section 23(a)(3)(A) of the NGA, does not include non-interstate pipelines. TPA asserted that the term “any market participant” is limited to the participants in wholesale interstate natural gas markets.<sup>53</sup> Thus, according to TPA, the Commission exceeds its authority under the transparency provisions by subjecting “‘non-interstate’ entities that do not participate in interstate sales markets” to its transparency

---

<sup>49</sup> *Id.* at P 8.

<sup>50</sup> A list of commenters and abbreviations for the commenters is contained in Appendix A. of the Final Rule.

<sup>51</sup> APGA Comments at 3-4; TIPRO Comments at 1-2; Yates Comments at 4.

<sup>52</sup> APGA Comments at 4.

<sup>53</sup> TPA Comments at 35.

authority.<sup>54</sup> Further, TPA contends that had “Congress sought to expand the Commission’s jurisdiction to entities that do not participate in the interstate commerce market; it could have used the language ‘affecting interstate commerce,’ which has historically been read as a more expansive grant of authority.”<sup>55</sup> Similarly, Chevron Pipelines contends that because Congress did not expressly include intrastate pipelines in section 23, “one must conclude that the Commission’s jurisdiction was intended by Congress to be no greater following the enactment of section 23 than that which existed prior to the passage of that section.”<sup>56</sup>

Certain commenters asserted that, contrary to the Commission’s conclusions, the de minimis exemption does not aid in the interpretation of the term “any market participant.” TPA interprets the de minimis exemption to mean that “the Commission should not require those with a de minimis presence in the interstate market to be subject to an added reported burden.”<sup>57</sup>

### **Commission’s Response**

Section 23 of the NGA gives the Commission broad authority to facilitate price transparency in the interstate natural gas market. For that purpose, section 23 further authorizes the Commission to obtain and disseminate information. As explained below, the regulations issued in the Final Rule do not exceed that broad authority.

Section 23(a)(1) of the NGA directs the Commission 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>58</sup> Congress left to the Commission’s discretion whether to enact rules to carry out this direction and provided that any rules implementing this section provide for public dissemination of the information gathered:

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

---

<sup>54</sup> Id. at 36.

<sup>55</sup> Id. at 39 (citing City of Centralia v. FERC, 661 F.2d 787 (9th Cir. 1981) and Columbia Gas Transmission Corp., 3 FERC ¶ 61,115, at 61,239 n.1 (1978)).

<sup>56</sup> Chevron Pipelines Comments at 9-10.

<sup>57</sup> TPA Comments at 44.

<sup>58</sup> 15 U.S.C. 717t-2(a)(1) (2000 & Supp. V 2005).

sellers of wholesale natural gas, and the public. [59]

Further, section 23(a)(3)(A) of the NGA allows the Commission “to obtain the information... from any market participant.”<sup>60</sup> By using the term “market participant,” Congress deliberately expanded the universe of entities subject to the Commission’s transparency authority beyond the entities subject to the Commission’s traditional rates, terms, and conditions jurisdiction under other sections of the NGA. The term “market participant” is not defined in the NGA and is not on its face limited to otherwise jurisdictional entities. As we explained in the Posting NOPR, this authorization is expansive. Congress was aware that other sections of the NGA limited the scope of entities subject to the Commission’s traditional regulatory authority to natural gas companies as that term is defined in the statute, but chose not to apply this same limitation in section 23. Congress clearly recognized that the Commission might not obtain sufficient price transparency from those “natural gas companies” subject to our traditional regulatory authority. This is consistent with the Commission’s findings here that a complete picture of the interstate natural gas market and the supply and demand fundamentals underlying that market require information from non-interstate natural gas pipelines.<sup>61</sup>

Moreover, the statutory language emphasizes the broad meaning of the phrase “market participant” by adding “any” as a descriptor. The Commission’s authority attaches not to a subset of market participants (for example, only those market participants traditionally subject to its regulation), but to any such participant.<sup>62</sup> Court precedent confirms that the word “any” gives the term it modifies (in this case, “market participant”) an expansive meaning.<sup>63</sup> The Commission believes that Congress used the expansive term “any market participant” because it intended to provide broad transparency authority to the Commission. By this choice, Congress

---

59 15 U.S.C. 717t-2(a)(2) (2000 & Supp. V 2005).

60 Section 23(a)(3)(A) of the NGA; 15 U.S.C. 717t-2(a)(3)(A) (2000 & Supp. V 2005).

61 The Commission recently stated in Order No. 704-A that the term “market participant” in section 23 of the NGA is not limited only to natural gas pipelines, but to all relevant segments of the natural gas supply and distribution chain. Order No. 704-A at P 37.

62 See Posting NOPR at P 28.

63 Norfolk S. Ry. Co. v. Kirby, 543 U.S. 14, 31-32 (2004) (the word “any” gives the word it modifies an expansive reading); Dep’t. 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. 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).

recognized that the Commission may need to obtain information from a wide variety of entities in order to facilitate transparency.

The Commission disagrees with commenters who argue that section 1(b) of the NGA precludes the Commission from imposing the daily posting requirement on non-interstate pipelines. Section 1(b) of the NGA 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>64</sup> Likewise, the Commission disagrees that section 23 has limited application only to “natural gas companies.” Section 1 is not referenced in section 23 and the term “natural gas company” is nowhere found in the section. Including such a reference would have been the simplest way for Congress to demonstrate an intent to limit the Commission’s transparency authority only to entities which the Commission already regulates.

The Commission likewise disagrees with certain commenters’ arguments regarding application of pre-EPAAct 2005 case law in this circumstance. The cases cited by commenters apply the jurisdictional limits set forth in section 1 of the NGA prior to the enactment of EPAAct 2005.<sup>65</sup> 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>66</sup> Thus, Congress was presumably aware that prior to the enactment of section 23, the NGA could be construed as limiting the Commission’s authority to obtain data on intrastate natural gas flows to obtaining it from companies falling under the Commission’s jurisdiction.<sup>67</sup> In using the term “any market participant” instead of “natural gas company,” 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. TPA observed that courts have held that the Commission cannot exceed its statutory authority.<sup>68</sup> This is an unremarkable and unassailable conclusion, but one that provides no guidance where the issue is not whether the Commission

---

64 Section 1(b) of the NGA, 15 U.S.C. 717(b).

65 See, e.g., Union Oil Co., 542 F.2d at 1039. In a post-EPAAct 2005 case as noted by commenters, Transmission Agency of N. Cal. v. FERC, the U.S. Court of Appeals for the D.C. Circuit discussed the limits of the Commission’s jurisdiction, but that court was not reviewing the NGA, let alone section 23. 495 F.3d 663 (D.C. Cir. 2007).

66 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”).

67 Union Oil Co., 542 F.2d at 1039 (Observing that the NGA limits the Commission’s “gathering of intrastate data to gathering it from companies falling under the Commission’s jurisdiction”).

may exceed its statutory authority but what is the extent of the Commission's transparency authority.

### **Pipeline Posting Requirements**

Based on the comments received and the discussion at the technical conference held on April 3, 2008, the Commission is modifying the proposal in the Posting NOPR in the Final Rule in a number of significant ways. The Commission has increased the minimum delivery threshold defining major non-interstate pipelines from 10 to 50 million MMBtu per year. Also, the Commission has determined that neither major non-interstate pipelines nor interstate pipelines will be required to post actual flow information at this time. Instead, the regulations promulgated in the Final Rule require major non-interstate pipelines to post scheduled flow information at each receipt and delivery point with a design capacity greater than 15,000 MMBtu per day, and interstate pipelines to post certain information on no-notice service.<sup>69</sup> Further, the Commission provides for a number of exemptions and clarifications of the new posting requirements that it believes will further limit the burden on entities subject to the Final Rule. (*See item no. 5*)

### **Scheduled Flow Information on Major Non-Interstate Pipelines**

In the Posting NOPR, the Commission proposed to require major non-interstate pipelines to post information regarding capacity, scheduled flow volumes, and actual flow volumes.<sup>70</sup> Several commenters asserted that scheduled volume information would provide sufficient insight on supply and demand fundamentals to meet the Commission's transparency goals. TPA, for example, claimed that "[t]he use of scheduled volumes is widespread within the natural gas industry and is the current standard used by interstate natural gas pipelines" and would provide the transparency that the Commission wants at minimal costs.<sup>71</sup> Similarly, Kinder Morgan Intrastate maintained that actual flows do not reflect the actual supply and demand picture due to, for instance, back-hauls, operational balancing agreements, equipment outages, and other operating conditions.<sup>72</sup>

---

68 Reply Comments of TPA at 16-17 (citing Transmission Agency of N. Cal., 495 F.3d 663 and United Distrib. Cos. v. FERC, 88 F.3d 1105 (D.C. Cir. 1996)).

69 Under 18 CFR 284.7(a)(4), an interstate natural gas pipeline must provide no-notice service, which is defined as "a firm transportation service under which firm shippers may receive delivery up to their firm entitlements on a daily basis without penalty."

70 Posting NOPR at P 22 and 49.

71 TPA Comments at 8.

72 Kinder Morgan Intrastate at 13-14.

Commenters objected to the requirement that non-interstate pipelines post actual flows as overly burdensome. For example, Kinder Morgan Intrastate objected to the cost of posting scheduled volumes; it estimated that the proposal would cost \$250,000 for information technology modifications to obtain and post scheduled volumes and another \$250,000 for information technology modifications to obtain and post actual flow volumes.<sup>73</sup> TPA recommended posting of only scheduled volumes rather than actual volumes as a way to significantly reduce the costs of compliance with the Final Rule.<sup>74</sup>

TIPRO supported the posting of actual flows as a way to verify scheduled activity as compared to actual activity, but acknowledged that posting of actual flows may not be feasible on a daily basis and that should be taken into account in the final rulemaking.<sup>75</sup>

### **Commission's Response**

The Commission will not require major non-interstate pipelines to post actual flow information. As noted by Kinder Morgan Intrastate, the information gained from requiring non-interstate pipelines to post actual flows would not be that much greater than that gained from the posting of scheduled volumes, particularly given that non-interstate pipelines are not required to provide no-notice service (although some do).

The Commission recognizes that some non-interstate pipelines will incur costs to comply with the Final Rule, including the posting of scheduled volumes. However, the Commission believes that the benefits of posting and the need for the Final Rule outweigh those costs. In any event, the Commission does not believe that the costs are as great as those estimated by commenters. Commenters' estimated costs included the cost of metering at segments, but posting at segments is not a requirement of the Final Rule. Similarly, commenters' estimated costs include the cost of new metering and the posting of actual flow information, but posting actual flow is, likewise, not a requirement of the Final Rule. The Commission also disagrees with Kinder Morgan Intrastate's estimated \$250,000 in costs to obtain and post volumetric information.<sup>76</sup> The Commission believes that this figure is too great because, as discussed by TPA, "most of the information already collected by intrastate pipelines relates to scheduled volumes at receipt and delivery points...."<sup>77</sup>

---

<sup>73</sup> Kinder Morgan Intrastate at 12. Kinder Morgan estimated additional costs for obtaining flow information at segments, which is not required in the Final Rule.

<sup>74</sup> TPA Comments at 6-7.

<sup>75</sup> TIPRO Comments at 4.

<sup>76</sup> Kinder Morgan Intrastate at 12.

**Receipt and Delivery Point Posting for Major Non-Interstate Pipelines**

The Posting NOPR sought comments regarding whether the Commission's transparency goals could be sufficiently advanced through the posting of flows in and out of major market hubs and, if so, which hub-related data should be reported.<sup>78</sup> The Commission suggested two possible approaches to postings by non-interstate pipelines. First, under a delivery threshold approach, whether a non-interstate pipeline posts flow information depends on the amount of flows or deliveries the non-interstate pipeline flows or delivers annually at the hub. Second, under a market hub approach, or market hub alternative, whether a non-interstate pipeline posts flow information depends on whether it interconnects to a major market hub. The Commission sought comment on adopting a market hub approach, but did not propose a market hub approach.

The Posting NOPR also proposed that non-interstate pipelines post flow information for "major points or segments." The Commission did not delineate for which "major points or segments" a major, non-interstate pipeline should post but requested comment on the subject. The Posting NOPR proposed that non-interstate pipelines post "on a daily basis on an Internet web site and in downloadable file formats, in conformity with section 284.12 of this chapter, equal and timely access to" flow information.<sup>79</sup>

Several commenters supported a market hub approach (as opposed to a points or segment-based approach) for determining which non-interstate pipelines should post flow information.<sup>80</sup> Chevron Pipelines argued that a market hub approach would "ensure and facilitate more accurate pricing with little loss of meaningful information."<sup>81</sup> EOG Resources supports posting at the thirteen market hubs referred to in the Initial and Posting NOPRs because it would more likely provide meaningful information on flows affecting wholesale natural gas

---

<sup>77</sup> The Commission's staff's research indicated that such costs could be less than \$30,000 for major non-interstate pipelines. The estimate includes both the software and labor costs associated with implementing the rule. Software costs include a one-time capital cost (amortized over ten years) to create a standard informational posting website for reporting scheduled volumes and the monthly fees associated with maintaining this site. In addition, the cost factors daily labor costs to upload this information on the Internet and to have an attorney or compliance office review these postings on a routine basis.

<sup>78</sup> Posting NOPR at P 75.

<sup>79</sup> See new section 284.14(a).

<sup>80</sup> See, e.g., National Fuel Distribution Comments at 2.

<sup>81</sup> Chevron Pipelines Comments at 27.



markets and would cost less than the proposed posting requirement.<sup>82</sup> Atmos also advocated posting at the thirteen hubs because the hubs represent market points where index prices are regularly published and the market hubs “come closer than any other points to satisfying the statutory requirement that the information be about physical pricing at wholesale and interstate commerce.”<sup>83</sup>

Several commenters object to posting information on segments. Atmos opposes posting information at segments because it does not measure flows at segments.<sup>84</sup> Atmos also stated that it has 1,200 receipt and delivery points on its system and thousands of minor ones resulting in a multitude of possible postings for segments.<sup>85</sup> PG&E urged the Commission to focus on receipt and delivery points on non-interstate pipelines, rather than on mainline segments because posting at segments would not provide any information that is not already apparent from posting capacity, scheduled volume and actual flows at receipt and delivery points.<sup>86</sup> In this regard, other commenters maintain that the requirement to post flows at segments would create a significant burden.<sup>87</sup> TPA explained that the estimates of costs from the proposed requirement to post flow information arises from the assumption that the proposal entails reporting at segments:

the burdens and costs associated with the proposed rule would be substantially greater than the Commission estimated. A large reason for this is that intrastate pipelines do not typically collect information related to segment flow – most of the information already collected by intrastate pipelines relates to scheduled volumes at receipt and delivery points, rather than segments.<sup>[88]</sup>

For instance, Atmos estimated that determining actual gas flows at major pipeline segments would require a capital investment of at least \$13 million.<sup>89</sup> Kinder Morgan Intrastate estimated

---

82 EOG Resources Comments at 11; see also Oklahoma Corporation Commission Comments at 4; Shell Comments at 11-17.

83 Atmos Comments at 7.

84 Atmos Comments at 5.

85 *Id.* at 6.

86 PG&E Comments at 5.

87 See, *e.g.*, TPA Comments at 25-26; Atmos Comments at 5.

88 TPA Comments at 25.

89 Atmos Comments at 5.

that installing meters to measure flow at segments would cost approximately \$62.7 million.<sup>90</sup> The ONEOK Gathering Companies observed that narrowly defining the term “major point or mainline segment” in proposed section 284.14(a) would reduce the number of new meters that would need to be installed, operated and maintained and would thus keep the burden to a minimum.<sup>91</sup> TPA contends that adding segment meters to a pipeline would cause a drop in pressure.<sup>92</sup>

### **Commission’s Response**

The Commission is determining that a major non-interstate pipeline must post scheduling information for each receipt and delivery point with a design capacity of equal to or greater than 15,000 MMBtu/day (a point-based delivery threshold). In addition, a non-interstate pipeline must post the design capacity for each such point.<sup>93</sup> Postings at market hubs or for segments will not be required.

The delivery threshold approach adopted in the Final Rule will provide broader, more useful information about the supply and demand fundamentals that underlie the interstate natural gas market than a hub-based approach and at a cost less than a segment-based approach. The delivery threshold approach is not limited to a few market hubs or published pricing points. It will provide information about flows that either eventually feed into market hubs or that affect pricing at those market hubs. Such market hubs or published pricing points are generally already relatively liquid -- the delivery threshold approach will promote transparency at less liquid and currently less transparent points.

Posting points’ design capacity will allow the Commission and market participants to better determine availability, a key component of supply and demand fundamentals. Market observers may estimate availability by subtracting scheduled volumes from design capacity. Requiring the posting of design capacity will allow shippers and other market observers to understand the availability of transportation that affects interstate wholesale markets. Further, this approach is consistent with the Commission’s policies for interstate natural gas pipelines. In Order No. 637, the Commission stated that interstate natural gas pipelines had the option of posting at either (i) receipt and delivery points or (ii) segments. It has been our experience that

---

90 Kinder Morgan Intrastate at 11.

91 ONEOK Gathering Companies Comments at 12-13.

92 TPA Comments at 41.

93 In order to assist pipelines who must comply with this Final Rule, the Commission has established a help desk to facilitate responses to questions regarding compliance with its regulations. See Obtaining Guidance on Regulatory Requirements, 123 FERC ¶ 61,157 (2008).

most, but by no means all, interstate pipelines elect to post by receipt and delivery point and not by segment.

The Commission believes that a delivery threshold will be less burdensome for major non-interstate pipelines than either a hub-based or segment-based approach as many such pipelines already collect such information. These pipelines may incur some additional costs to comply with the Final Rule's posting requirements; however, the Commission believes the substantial transparency benefits, discussed above, outweigh those costs. In any event, the Commission expects that compliance costs will not be nearly as great as those estimated by some commenters. As discussed above, most commenters' cost estimates include the cost of metering at segments, but posting at segments is not a requirement. Other cost estimates include the cost of metering and posting actual flow information, but posting actual flow information is, likewise, not a requirement.

Only a few commenters provided cost estimates that did not assume obtaining and posting flow information for pipeline segments and that did not assume obtaining and posting actual flow information. Kinder Morgan Intrastate, for example, estimated a cost of \$250,000 for obtaining and posting scheduled volume information.<sup>94</sup> The Commission believes that this figure is likely exaggerated because, as noted by TPA, "most of the information already collected by intrastate pipelines relates to scheduled volumes at receipt and delivery points."<sup>95</sup> The Commission believes that the costs of collecting existing scheduled volume information and posting it on a website is likely to be far less.<sup>96</sup>

In the Final Rule the Commission has determined that each major non-interstate pipeline must post information for each receipt or delivery point with a design capacity equal to or greater than 15,000 MMBtu/day. The Commission believes that this threshold represents significant load at delivery points (major pipeline interconnections, substantial industrial use, etc.) and major receipt points. However, the 15,000 MMBtu/day threshold should be sufficiently large so as to exclude insignificant or minor points on a pipeline system. To put this threshold in context, 15,000 MMBtu/day corresponds roughly to the gas used by an 85 MW baseload gas fired power plant at a relatively efficient heat rate of 7,500 Btu/kWh – a facility that could serve over 40,000 households each with a 2 kW load.

The Commission will require posting based on each receipt and delivery point's design capacity rather than average flows at a point because posting at points based on design capacity

---

94 Kinder Morgan Intrastate at 12.

95 TPA Comments at 25.

96 As noted above, the Commission's staff's research indicates that such costs could be less than \$30,000 per year.

should be less burdensome for pipelines. The average flows over a receipt or delivery point may change from year-to-year and designation of posting points based upon fluctuating averages would require pipelines to add and subtract points from posting on a rolling basis. By comparison, points' design capacities are relatively fixed and lend themselves to stable posting requirements.

Similarly, based upon comments the Commission received in response to the Posting NOPR, it will not require posting of data by segment. As noted by TPA, "most of the information already collected by intrastate pipelines relates to scheduled volumes at receipt and delivery points, rather than segments."<sup>97</sup> Therefore, the requirement in the Final Rule focuses on obtaining and posting information already collected by intrastate pipelines: the Commission will require posting of scheduled volumes and posting by receipt and delivery points, rather than segments.<sup>98</sup>

The Commission also appreciates the burden that would be placed upon major non-interstate pipelines if it were to adopt a segment-based posting approach. Nearly every commenter that discussed segment-based posting acknowledged that the costs of such a methodology would be substantial.<sup>99</sup> The Commission adopts a receipt and delivery point-based approach that will capture much of the same data as a segment-based approach, but that is less burdensome to implement.

#### **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.

---

<sup>97</sup> TPA Comments at 25.

<sup>98</sup> The Commission notes that some non-interstate pipelines currently post data regarding pipeline use and availability by segment. The Commission wishes to make clear that the Final Rule does not preclude pipelines from posting such data. The Final Rule requires the posting of specific data by major non-interstate pipelines at certain points of receipt and delivery. A pipeline is free to post any additional data (e.g., additional points, postings by segment, etc.) that it believes would be useful to its customers or as required by other regulatory bodies.

<sup>99</sup> See, e.g., TPA Comments at 25-26.

Several commenters expressed concern that the public posting of flow information at receipt and delivery points could result in a competitive disadvantage for individual customers.<sup>100</sup> TPA objected to the posting of design capacity for a point as it would allow a determination of a non-interstate pipeline's available capacity.<sup>101</sup> Kinder Morgan Intrastate contends that the posting proposal would harm its end-use customers by causing the release of confidential information.<sup>102</sup> To avoid this result, Kinder Morgan Intrastate suggested that the Commission exempt the reporting of information regarding deliveries made to power generators, LDCs and industrial customers.<sup>103</sup> Calpine sought to keep confidential an individual customer's transportation volumes and consumption patterns by excluding individual customer laterals and focusing the posting requirement on high-volume segments with multiple shippers.<sup>104</sup> But, as to confidentiality, Bentek observed that data for power plants and nearly 800 industrial facilities that are directly connected to interstate natural gas pipelines is posted daily with "no apparent adverse impact."<sup>105</sup> Bentek concluded that the Commission should not "protect something in the non-interstate context that is not protected in the interstate context."<sup>106</sup>

### **Commission's Response**

The Commission has carefully considered the arguments by some commenters that additional pipeline postings could affect the competitive position of customers who have a dedicated delivery point with a design capacity equal to or greater than 15,000 MMBtu/day on a major, non-interstate pipeline. In this respect, the regulations that the Commission adopts here may affect "fair competition, and the protection of consumers" -- considerations that the Commission must take into account pursuant to section 23(a)(1) of the NGA. Nonetheless, information about the scheduled volumes to a customer with a delivery point with a capacity greater than 15,000 MMBtu/day will provide useful information to the Commission, market participants, and other market observers and will greatly increase market transparency. The Commission believes that this benefit outweighs the concerns about publicly posting information about scheduled volumes to such a customer. Further, the Commission understands

---

100 See, e.g., Atmos Comments at 8.

101 TPA Comments at 16.

102 Kinder Morgan Intrastate Comments at 19.

103 Id. at 22.

104 Calpine Comments at 5.

105 Bentek Comments at 9.

106 Id.

that such customers would be placed in the same situation as customers on interstate natural gas pipelines with whom they often compete.<sup>107</sup> Currently, interstate natural gas pipelines post daily scheduled volumes for delivery points dedicated to a single customer regardless of the size of the meter. There have been no indications that competitive balance has been harmed since the interstate requirement to post was instituted.

The Commission will require all postings to be public; the Commission will not provide for posting information to be kept confidential as requested by some commenters. In section 23(a)(2) of the NGA, Congress called for any transparency rule to provide for the “dissemination, on a timely basis, of information about the availability and prices of natural gas sold at wholesale and interstate commerce to the Commission, State commissions, buyers and sellers of wholesale natural gas, and the public.”<sup>108</sup>

#### 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 Final Rule.

#### 12. **ESTIMATED BURDEN OF COLLECTION OF INFORMATION**

The burden estimate of 47,683 hours (an average of 1.0 hour per entity) for the Information requirement collections under FERC-551, as proposed in the subject Final Rule is based on the presumption that major non-interstate pipelines already collect flow information for receipt and delivery points and, therefore, the burden that would be imposed by this proposed requirement is only for the posting of this information in the required format.

The requirement for interstate natural gas pipelines to post information about no-notice service, would impose an additional information collection burden on interstate natural gas pipelines. The other requirement for major non-interstate pipelines to post scheduled volume information would impose an additional information collection burden on major non-interstate pipelines. Interstate and major non-interstate pipelines already collect this information, but do not necessarily post it.

Certain non-interstate pipelines have asserted in comments on the Posting NOPR that costs would be quite high if additional equipment were needed to meet quick posting deadlines.

---

<sup>107</sup> Those customers whose delivery point has a design capacity of less than 15,000 MMBtu/day would not be affected. Those customers of non-interstate pipelines that did not flow greater than 50 million MMBtu per year also would not be affected.

<sup>108</sup> Section 23(a)(2) of the NGA; 15 U.S.C. 717t-2(a)(2) (2000 & Supp. V 2005) (emphasis added).

However, given that this information is used in their business, the Commission still believes that the burden that would be imposed by this proposed requirement is largely for the collection and posting of this information in the required format. Further, certain non-interstate pipelines provide burden estimates based on posting for all receipt and delivery point and by mainline segment and based on measuring and posting actual flow information. These estimates are too high because, as explained in item number 8 of this submission, the Commission will not require posting at mainline segments and does not require posting at all receipt and delivery points, rather it will require posting at each receipt and delivery point that has a design capacity greater than 15,000 MMBtu/day. Finally, the Commission will reduce the number of non-interstate pipelines that will be required to post by raising the delivery threshold used to define a major non-interstate pipeline from 10 million MMBtu per year to 50 million MMBtu per year in deliveries. For interstate natural gas pipelines, the Commission reduced the burden by not requiring the posting of actual flow information; instead, the Commission will require that interstate natural gas pipelines post information on no-notice transportation.

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

<b>DATA REQUIREMENT (FERC-551)</b>	<b>CURRENT OMB INVENTORY</b>	<b>PROPOSED IN 002</b>	<b>PROPOSED NOPR</b>
Estimated number of respondents :	0	211	181
Estimated number of responses per respondent:	0	365	274
Estimated number of responses per year :	0	77,015	47,633
Estimated number of hours per response :	0	1.0	1.0
Total estimated burden (hours per year) :	0	77,015	47,633
Program change in industry burden hours :		+ 77,015	+47,633
Adjustment change in industry burden hours :		-0-	-0-
<u>Total hours FERC-551</u>		+ 77,015	+47,633

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
FERC-551					
Major Non-Interstate Pipeline Postings	80	2	365	29,200	40
Additional Interstate Natural Gas Pipeline Postings	101	1	183	18,483	8
Total	181			47,683	

**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 Final Rule 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. 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 17.3 hours @ \$82/hr. This will result in a total startup cost of \$1,420 annualized over 10 years for \$142 per year for Major Non-Interstate Pipelines. For interstate pipelines to make the additional filings, the Commission estimates that compliance would require no initial start-up costs. For operations and maintenance, the Commission estimates 60 minutes per day @ \$3.42/hr to post data already collected in-house for \$30,000 per year for Major Non-Interstate Pipelines and \$5,000 per year for pipeline postings. This will result in a total cost of \$35,142 per year.

Information Posting Costs: The average annualized cost for each respondent is projected to be:

	Annualized Capital/Startup Costs (10 year amortization)	Annual Costs	Annualized Costs Total
FERC-551			
Major Non-Interstate Pipeline Postings	\$142	\$30,000	\$30,142
Additional Interstate Natural Gas Pipeline Postings	\$0	\$ 5,000	\$ 5,000

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

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

Data Requirement of Data	Analysis	Estimated Salary 09 <sup>109</sup>	FERC Forms Clearance	Total Cost One Year's
--------------------------	----------	------------------------------------	----------------------	-----------------------

109 ?/ "Salary" represents the allocated cost per gas program employee at the Commission based on its appropriated budget for fiscal year 2008. The \$126,384 "salary" consists of \$102,028 in salaries and \$24,355 in benefits.



<u>Number</u>	<u>(FTEs)</u>	<u>10<sup>110</sup> x</u>	<u>Per Year</u>	<u>+ (FY '08</u>	<u>= Operation</u>
FERC-551	-0-		-0 -	\$ 213	\$ 213
	<u>.5</u>	\$126,384		<u>\$ 234</u>	<u>63,426</u>
Total	.5	\$126,384		447	\$63,639

**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 undue discriminatory activity.

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

The time schedule for FERC-551 is as follows:

Regarding the timing of postings, the Commission considers that scheduled flow information that is not provided on a daily basis is simply untimely and of vastly diminished use to market participants. The Commission believes that, in this regard, its interstate natural gas pipeline postings set an appropriate standard: postings should occur at least on a daily basis. Further, this standard conforms to Congress’ direction in section 23 of the NGA, which requires that the Commission’s transparency rules “provide for the dissemination, on a timely basis, of information about the availability and prices of natural gas....”<sup>111</sup>

These postings will provide information comparable to the daily postings made by interstate natural gas pipelines. Major non-interstate pipelines must post scheduled volumes according to a daily posting deadline. Currently, interstate natural gas pipelines must provide at least four nomination cycles to their shippers with the following nomination: timely, evening, intra-day 1, and intra-day 2.<sup>112</sup> Once these volumes are scheduled, they must be posted on the public Internet under Operationally Available Capacity section of an interstate natural gas pipeline’s Informational Postings according to the following cycle deadlines: timely (no later

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

111 Section 23(a)(2) of the NGA; 15 U.S.C. 717t-2(a)(2) (2000 & Supp. V 2005).

112 Standard 1.3.2, Nominations Related Standards, North American Energy Standards Board, Wholesale Gas Quadrant, July 31, 2002.

than 4:30 p.m. central clock time for the day prior to gas flow); evening (no later than, 9:00 p.m. central clock for the day prior to gas flow); intra-day 1 (no later than 5:00 p.m. on flow day); and intra-day 2 (no later than 9:00 p.m. on flow day). Currently, major non-interstate pipelines employ a variety of nomination deadlines on their systems. Some use the standard North American Energy Standards Board (NAESB) guidelines followed by interstate natural gas pipelines; others do not have specific nomination deadlines.

The Commission will require that major non-interstate pipelines post scheduled volumes no later than 10:00 p.m. central clock time the day prior to gas flow. This deadline occurs after interstate natural gas pipelines are required to post their evening cycle schedule confirmations by receipt and delivery point. The deadline enables non-interstate pipelines ample time to review their gas control set-up for the next day and limits the burden of posting to a single, daily reporting cycle.

#### **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.