**FERC-592 (OMB 1902-0157)**

# SUPPORTING STATEMENT FOR FERC-592, Standards of Conduct for Transmission Providers; and Marketing Affiliates of Interstate Pipelines

The Federal Energy Regulatory Commission (Commission or FERC) requests that the Office of Management and Budget (OMB) review, and renew for three years, its approval of FERC-592 (Standards of Conduct for Transmission Providers; and Marketing Affiliates of Interstate Pipelines). FERC-592 (OMB Control No. 1902-0157) is currently approved through 12/31/2009. FERC-592 is a Commission data collection that includes:

- 18 CFR 250.16, and the FERC-592 log/format at http://www.ferc.gov/docs-filing/forms.asp#592 [included in ROCIS under 'Supplementary Documents'], and
- 18 CFR Part 358 (Standards of Conduct)[1].

## BACKGROUND

### 18 CFR Part 358 (Standards of Conduct)

FERC first adopted Standards of Conduct in 1987, in Order No. 497. These initial Standards prohibited interstate natural gas pipelines from giving their marketing affiliates or wholesale merchant functions undue preference over non-affiliated customers. Citing demonstrated record abuses, the U.S. Court of Appeals for the D.C. Circuit upheld these Standards in 1992.[2] The Commission adopted similar Standards for the electric industry in 1996, in Order No. 889, prohibiting public utilities from giving undue preference to their marketing affiliates or wholesale merchant functions. Both the electric and gas Standards sought to deter undue preference by: (1) separating a transmission provider's employees engaged in transmission services from those engaged in its marketing services, and (2) requiring that all transmission customers, affiliated and non-affiliated, be treated on a non-discriminatory basis.

Changes in both the electric and gas industries, in particular the unbundling of sales from transportation in the gas industry and the increase in the number of power marketers in the electric industry, led the Commission in 2003 to issue Order No. 2004 (2003 Standards of Conduct), which broadened the Standards to include a new category of affiliate, the Energy Affiliate.[3] The 2003 Standards of Conduct applied to both the

[1] FERC-592 (OMB Control No. 1902-0157) only covers the Standards of Conduct requirements in 18 CFR Part 358 for the natural gas industry. The Standards of Conduct requirements for the electric industry are covered by FERC-717 (OMB Control No. 1902-0173) and are not a subject of this supporting statement.

[2] Tenneco Gas v. FERC, 969 F.2d 1187 (D.C. Cir. 1992) (Tenneco).

[3] The 2003 Standards of Conduct defined an Energy Affiliate as an affiliate of a Transmission Provider that (1) engages in or is involved in transmission transactions in U.S. energy or transmission

electric and gas industries, and provided that the transmission employees of a transmission provider[4] must function independently not only from the company's marketing affiliates but from its Energy Affiliates as well, and that transmission providers may not treat either their Energy Affiliates or their marketing affiliates on a preferential basis. Order No. 2004 also imposed requirements to publicly post information concerning a transmission provider's Energy Affiliates.

On appeal by members of the natural gas industry, the U.S. Court of Appeals for the D.C. Circuit overturned the Standards as applicable to gas transmission providers, on the grounds that the evidence of abuse by Energy Affiliates cited by the Commission was not in the record.[5] The court noted that the dissenting Commissioners in Order No. 2004 had expressed the concern that the Order would diminish industry efficiencies without advancing the FERC policy of preventing unduly discriminatory behavior.[6]

The Commission issued an Interim Rule on January 9, 2007,[7] and set about developing new Standards that would cure the defects identified by the D.C. Circuit in National Fuel. In October 2008, the Commission issued a Final Rule on Standards of Conduct for Transmission Providers, which revised the prior Standards of Conduct to make them clearer and to refocus the rules on the areas where there is the greatest potential for affiliate abuse (2008 Standards of Conduct).[8] In doing so, the Commission also reduced some of the information collection requirements that had been part of the previous 2003 Standards of Conduct. Specifically, the Commission: (1) eliminated the requirement to post information about energy affiliates; (2) modified the requirement to post corporate organizational charts for the transmission provider transmission function

markets; or (2) manages or controls transmission capacity of a Transmission Provider in U.S. energy or transmission markets; or (3) buys, sells, trades or administers natural gas or electric energy in U.S. energy or transmission markets; or (4) engages in financial transactions relating to the sale or transmission of natural gas or electric energy in U.S. energy or transmission markets. Former 18 CFR 358.3(d). Certain categories of entities were excluded from this definition in following subsections of the regulations.

[4] A Transmission Provider was defined as (1) any public utility that owns, operates or controls facilities used for transmission of electric energy in interstate commerce; or (2) any interstate natural gas pipeline that transports gas for others pursuant to subpart A or part 157 or subparts B or G of part 284 of the same chapter of the regulations. 18 CFR 358.3(a).

[5] National Fuel at 841.

[6] Id. at 838.

[7] Standards of Conduct for Transmission Providers, Order No. 690, 72 FR 2427 (Jan. 19, 2007); FERC Stats. & Regs. ¶ 31,237 (Jan. 9, 2007) (Interim Rule); clarified by, Standards of Conduct for Transmission Providers, Order No. 690-A, 72 FR 14235 (Mar. 27, 2007); FERC Stats. & Regs. ¶ 31,243 (2007) (Order on Clarification and Rehearing).

[8] FERC Order 717 (issued 10/16/08 and posted at http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=11831482). [Order 717-A was issued 10/15/09 (posted at http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12175415).]

employees, and (3) eliminated the requirement to post discount information.

## A. JUSTIFICATION

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

Applicable statutes for FERC-592 are included at Attachment A, and regulations are included at Attachment B.

The Commission has the regulatory responsibility under section 4 of the Natural Gas Act to ensure that pipeline rates and terms and conditions of service are just and reasonable and not unduly discriminatory. Just and reasonable rates and services are needed to achieve two principal objectives. They should promote competitive and efficient markets, while mitigating market power and preventing undue discrimination, especially for the Commission's "prime constituency, captive customers vulnerable to pipelines' market power."[9] In short, the Commission's regulatory policy must seek to reconcile the objectives of fostering an efficient market that provides good alternatives to as many shippers as possible while at the same time creating a regulatory framework that is fair and protects captive customers without good alternatives.

In 1987 when the gas pipeline standards of conduct were issued in Order No. 497, the natural gas industry had witnessed a rapid growth of marketing affiliates and the Commission was concerned that pipelines were giving their marketing affiliates preferential treatment. As a result, the Commission issued certain rules intended to prevent interstate natural gas pipelines from providing preferential treatment to their marketing or brokering affiliates. The Standards of Conduct provided, in general, that pipelines and their marketing affiliates must function independently of each other. The Commission reserved the right to impose structural remedies, such as divorcement or divestiture, in specific cases where the circumstances demonstrate they are required. Transmission Providers continue to have economic incentives to show undue preference toward their marketing affiliates.

**18 CFR Part 358 (Standards of Conduct)**

Such undue preferences toward marketing affiliates can occur through discriminatory behavior in favor of a marketing affiliate or by providing the marketing affiliate with preferential access to non-public transportation information. The Commission believes that transportation customers must have simultaneous access to the same information available to the Transmission Provider if truly nondiscriminatory transmission services are to be a reality. Accordingly, the Standards of Conduct requirements at Part 358 promote transparency.

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[9] United Distribution Companies v. FERC, 88 F.3d 1105, 1123 (D.C. Cir. 1996).

The information collection, retention, and posting requirements of Part 358 include:

(1) Information disclosed to Marketing Affiliate [post with exceptions]
(2) Names & addresses of Marketing Affiliates
(3) List of facilities shared with Marketing Affiliate
(4) Job titles & descriptions of transmission function employees ("TFE")
(5) Transfers of TFE to a position as a marketing function employee, or the reverse
(6) Potential merger partners

**18 CFR 250.16, and the FERC-592 log/format**

This provides the electronic formats for maintaining information on discounted transportation transactions and capacity allocation to support monitoring of activities of interstate pipeline marketing affiliates. 18 CFR 250.16(c)(1) requires natural gas pipelines to maintain a "log showing, for each transportation contract (both for marketing affiliates and non-affiliates) on its system: the shipper's name (including a designation whether the shipper is a local distribution company, an interstate pipeline, an intrastate pipeline, an end-user, a producer, a marketer, or a pipeline sales operating unit); the shipper's affiliation with the pipeline; the contract number; and the applicable dates or other information used to allocate capacity under its tariff. The log data relating to each contract must be maintained as long as the contract is used to allocate capacity and for three years after the contract data is no longer used for capacity allocation."

18 CFR 250.16(c)(2) states "[t]he current log of allocation data for marketing affiliates must be posted on the pipeline's Internet Web site...."

18 CFR 250.16(d)(1) states: "A pipeline that provides transportation service at a discounted rate must maintain, for each billing period, the following information: the name of the shipper being provided the discount; the affiliate's role in the transportation transaction (i.e., shipper, marketer, supplier, seller); the duration of the discount; the maximum rate or fee; the rate or fee actually charged during the billing period; and the quantity of gas scheduled at the discounted rate during the billing period for each delivery point. The discount information with respect to each transaction must be maintained for three years from the date the transaction commences."

The information required by 18 CFR 250.16 must be provided to the Commission upon request and must be made available to the public.[10]

The FERC-592 data on transactions involving interstate pipelines and their affiliates are required to carry out the Commission's policies in accordance with the

[10] 18CFR 250.16 (c)(3) and (d)(2)

general authority in Sections 4, 5, 7, 8, 10, 14, 16, and 20 of the Natural Gas Act (NGA) (15 U.S.C. 717-717w). Blanket certificates for transportation, natural gas sales, and storage service issued under Section 7(c) of the NGA also prohibit undue discrimination. Continuing this data collection will assist FERC in ensuring compliance with the nondiscriminatory requirement of Order No. 636.

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

The information maintained and posted by the respondents is used by the Commission to monitor the pipeline's transportation, sales, and storage activities for its marketing affiliate to deter undue discrimination by pipeline companies in favor of their marketing affiliates. The information is also used by non-affiliated shippers or others (such as state commissions) to determine whether they have been harmed by affiliate preference and, in some cases, to prepare evidence for proceedings following the filing of a complaint.

**18 CFR Part 358 (Standards of Conduct)**

The information required by Part 358 is maintained and provided by the respondents on their internet websites. When a pipeline is required to post information on its internet website following a disclosure of non-public information to its marketing affiliate, non-affiliated shippers obtain comparable access to the non-public transportation information, which allows them to compete with marketing affiliates on a more equal basis.

**18 CFR 250.16, and the FERC-592 log/format**

Discounts given to shippers are also considered by Commission staff in litigated rate cases.

Without this information collection:

- the Commission would be unable to effectively monitor whether pipelines are giving discriminatory preference to their marketing affiliates, and
- non-affiliated shippers and state commissions and others would be unable to determine if they have been harmed by affiliate preference or prepare evidence for proceedings following the filing of a complaint.

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

**18 CFR Part 358 (Standards of Conduct)**

With a single Internet connection, transmission customers are able to access standards of conduct information from interstate natural gas pipelines. The Commission has been and continues to be committed to reducing the burden on the interstate natural gas pipelines and their shippers through the use of improved information technology. In 1987, when the Standards of Conduct were initially adopted, they included both filing and posting requirements. As the Commission has modified the obligations (to eliminate the filing requirements and to enhance the posting requirements), the technology has also improved, allowing transmission customers to have contemporaneous access to information.

**18 CFR 250.16, and the FERC-592 log/format**

In FERC-592, the Commission has shown a commitment to the use of information technology. Per 18 CFR 250.16, the Commission requires generally that Interstate natural gas pipeline companies that conduct transportation transactions with its marketing or brokering affiliate must:

- post, "the current log of allocation data for marketing affiliates on their web sites…"
- maintain both the log of allocation of pipeline capacity and transportation discount information and make these logs available to the Commission or other parties to a Commission hearing
- upon request by the Commission provide the information consistent with instructions
- maintain tariff provisions containing procedures used to resolve complaints by shippers and potential shippers, including a provision that the pipeline will respond within 48 hours and in writing within 30 days to such complaints.

These requirements allow flexibility as to how interstate natural gas pipeline companies store and represent the data on their web sites and on their data storage systems.

## 4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATON 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.

**18 CFR Part 358 (Standards of Conduct)**

In this regard, one of the changes adopted by the 2008 Standards of Conduct was to eliminate the Standards of Conduct requirement to post discount information as comparable information is required by § 284.13(b) of the Commission's regulations. (Order Nos. 637 and 720).

Since its inception, FERC has modified the Standards of Conduct to make them clearer, to refocus the rules on the areas where there is the greatest potential for affiliate abuse, and to facilitate Commission enforcement.

**18 CFR 250.16, and the FERC-592 log/format**

The data maintenance and reporting requirements in 18 CFR 250.16 continue to help ensure that pipeline rates are just and reasonable and not unduly discriminatory in providing preferential treatment to their marketing affiliates. Discount information is also used in rate cases.

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

No small businesses are impacted under FERC-592 reporting data requirements. The FERC-592 requirements affect the day-to-day operations of natural gas pipeline companies whose operational status would exceed the SIC standards for a "small business concern" as implemented under the Regulatory Fairness Act (RFA).

**18 CFR Part 358 (Standards of Conduct)**

Section 358.1(d) of the Commission's regulations allows a transmission provider to seek a waiver from the Standards of Conduct. Several interstate natural gas pipelines have sought and received partial waivers of the Standards of Conduct based on their small size.

**18 CFR 250.16, and the FERC-592 log/format**

Only transmission providers owning, operating, and/or controlling facilities used for the transportation of natural gas in interstate commerce are required to comply with the requirements. In addition, the information will be available to others (including small distribution utilities, independent power producers, marketers, local distribution companies, shippers and state commissions).

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

As stated in FERC's recently issued "Strategic Plan for FY 2009-2014" (posted at http://www.ferc.gov/about/strat-docs/FY-09-14-strat-plan-print.pdf), FERC's Mission is

RELIABLE, EFFICIENT AND SUSTAINABLE ENERGY FOR CONSUMERS

Assist consumers in obtaining reliable, efficient and sustainable energy services at a reasonable cost through appropriate regulatory and market means.

To fulfill this mission, the requirements of FERC-592 help to meet one of the two primary goals of the Strategic Plan:

> "ensure that rates, terms and conditions are just, reasonable and not unduly discriminatory or preferential."

If the data were not updated regularly, the Commission and Industry would be placed at a disadvantage by not having the most current data available for competitive and regulatory purposes. The Commission needs access to up-to-date information to monitor self-implementing activities of the transmission providers to ensure that transmission services are being provided in a nondiscriminatory manner.

**18 CFR Part 358 (Standards of Conduct)**

It is not possible to collect the data less frequently. Only natural gas pipelines that transport natural gas in interstate commerce and engage in transportation transactions with their marketing affiliates are required to comply with the Standards of Conduct requirements. The required information will impose the least possible burden for companies while collecting the information used in monitoring transmission service. In addition, the information will be available to others (including small distribution utilities, independent power producers, marketers, local distribution companies, shippers and state commissions).

## 7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION

**18 CFR Part 358 (Standards of Conduct)**

All of the standards of conduct related data are to be displayed on Internet web sites and to be available for downloading.

**18 CFR 250.16, and the FERC-592 log/format**

Data related to the pipelines' allocation of capacity and the details (including discounts) of their negotiated contracts for natural gas transportation with both affiliates and non-affiliates, must be:

- maintained as long as the contract is used to allocate capacity and for three years after the contract data is no longer used for capacity allocation, and provided at the request of the FERC

- provided in a format consistent with guidance provided on the Commission's website (at http://www.ferc.gov/docs-filing/forms/form-592/form-592.pdf).

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

On 9/23/2009, the Commission issued a 60-day notice (posted at http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=12154252; 74FR50176, 9/30/2009) requesting public comment. On 11/3/2009, FERC also issued a "Request For Comment On And Emergency Short-Term Clearance Extension Of OMB Approval For FERC-592" (posted at http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=12189960; 74FR58010, 11/10/2009). No comments were received by FERC on either Notice.

**18 CFR Part 358 (Standards of Conduct)**

Commission procedures require that rulemaking notices be published in the Federal Register, thereby allowing all electric utilities, natural gas pipeline companies, state commissions, Federal agencies, and other interested parties an opportunity to submit views, comments or suggestions concerning the proposal. These rulemaking procedures allow for public conferences to be held as required. With respect to the requirements in the 2008 Standards of Conduct, during the rulemaking proceeding, 62 companies and organizations submitted comments (as listed in Appendix A of the Final Rule). The vast majority of the comments were supportive both of the Commission's efforts to simplify and clarify the Standards, and of the general approaches taken by the Commission to achieve that goal.

## 9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no payments or gifts to respondents under any circumstance.

## 10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

All data (for 18 CFR Part 358, Standards of Conduct) are posted on the interstate natural gas pipelines' internet websites, and therefore, are not confidential. All filed data (for 18 CFR 250.16, and the FERC-592 log/format) are public information, and therefore, are not confidential.

A company may request confidential treatment of some or all parts of the information requirements under the FOIA and FERC regulations at 18 CFR. Each request for confidential treatment will be reviewed by the Commission on a case-by-case basis.

## 11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE

There are no questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs and other matters that are commonly considered private in the reporting and recordkeeping requirements.

## 12. ESTIMATED BURDEN COLLECTION OF INFORMATION

The Commission estimates there are 85 natural gas pipelines that are subject to the requirements of FERC-592. The burden estimate includes the time required to review the standards; search existing data sources; gather and maintain the data needed; complete, review, and retain the information; post on the web; and file, as appropriate, with the Commission.

Public reporting burden[11] for this collection is estimated as follows.

| Information Collection "FERC-592" (OMB No. 1902-0157) | Number of Respondents Annually (1) | Number of Responses Per Respondent (2) | Average Burden Hours Per Response (3) | Total Annual Burden Hours (1)x(2)x(3) |
|---|---|---|---|---|
| 18 CFR Part 358<br>18 CFR 250.16<br>FERC Form No. 592 log/format | 85 | 1 | 116.62 | 9,913 |

[Note: These figures may not be exact, due to rounding.]
The requirements are not being revised; there is no change to the burden.

## 13. ESTIMATE OF TOTAL ANNUAL COST OF BURDEN TO RESPONDENTS

The estimated annual cost is $611,446.22 {[(9,913 hrs./year)/(2,080 hrs./year)]X$128,297}, or an average of $7,193.49 per respondent.

## 14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT:

The estimated annualized cost to the Federal GovernmentError: Reference source not found follows:

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[11] The average number of hours an employee works per year is 2,080. The average employee costs $128,297 per year.

| | |
|---|---|
| Staff Analysis (1 FTE @$128,297) | $128,297. |
| Forms Clearance Process | 1,480. |
| Total | $129,777. |

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

There are no changes in burden.

## 16. TIME SCHEDULE FOR PUBLICATION OF DATA

This is not a collection of information for which results are planned to be published.

## 17. DISPLAY OF EXPIRATION DATE

**18 CFR Part 358 (Standards of Conduct)**

It is not appropriate to display the expiration date for OMB approval of the information posted pursuant to Part 358 in the Code of Federal Regulations. The reporting requirements of the Standards of Conduct do not require the collection or filing of information. Rather, the Standards of Conduct contain posting requirements for Internet websites, which makes it difficult for the Commission to post the OMB control number on the Internet websites of the interstate natural gas pipelines.

**18 CFR 250.16, and the FERC-592 log/format**

The date will be displayed on the instructions for Form 592 on the Commission’s web site.

## 18.EXCEPTIONS TO THE CERTIFICATION STATEMENT

The data collected for this reporting requirement are not used for statistical purposes. Therefore, the Commission does not use, as stated in item no. 19(i), "effective and efficient statistical survey methodology." The information collected is case specific.

## B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This is not a collection of information employing statistical methods.