

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. RM08-2-001
(Order on Rehearing Issued January 21, 2010)

The Federal Energy Regulatory Commission (Commission, FERC) is submitting to the Office of Management and Budget (OMB) for review and approval, **FERC-551, No Notice Service by Interstate and Scheduled Volumes by Major Non-Interstate Pipelines**. The Commission has issued an Order on rehearing responding to public comments on revisions to the posting requirements contained in **FERC-551**. **FERC-551** amended Part 284 of the Commission's regulations in order to facilitate market transparency in natural gas markets in a Final Rule, Order No. 720. (See ICR 200908-1902-002). FERC-551 is currently approved through 3/31/2012.

Background

Congress authorized FERC/Commission to mandate additional reporting requirements to improve market confidence through greater price transparency and included in the Energy Policy Act of 2005 (EPAAct 2005)¹ authority for the Commission to obtain information on wholesale electric and natural gas prices and availability. Under the Federal Power Act² and the Natural Gas Act³, the Commission has long borne a responsibility to protect wholesale electric and natural gas consumers. EPAAct 2005 emphasized FERC'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."⁴ In the new transparency provisions of section 23 of the Natural Gas Act and section 220 of the Federal Power Act, Congress provided that FERC 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.

1 Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

2 16 U.S.C. 824 et seq.

3 15 U.S.C. 717 et seq.

4 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) (together, the transparency provisions).

Final Rule (Docket No. RM08-2-000), Order No. 720

On November 20, 2008 in Docket No. RM08-2-000 “Pipeline Posting Requirements under Section 23 of the Natural Gas Act” (Order No. 720)⁵, the Commission required 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 required that interstate pipelines post information regarding no-notice service.

The postings required by Order No. 720 increases 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,”⁶ and, at the same time, responded 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.

Final Rule, Supplemental Notice (Docket No. RM08-2-000)

On July 16, 2009 the Commission issued a supplemental notice seeking additional comments on the posting requirements adopted in Order No. 720 and codified in § 284.14(a) of the Commission’s regulations⁷. In response to Order No. 720, FERC received 24 requests for rehearing, clarification, or both of Order No. 720. These rehearing requests questioned how §284.14(a) of the Commission’s regulations applies to major non-interstate pipelines that operate with virtual or pooling points instead of, or in addition to, physical metered points.⁸ Texas Pipeline Association (TPA) also proposed modifications to § 284.14(a) requiring posting only at points where scheduling occurs.⁹

5 Pipeline Posting Requirements under Section 23 of the Natural Gas Act, Order No. 720, FERC Stats. & Regs. ¶ 31,283 (2008). The Commission is not requesting additional comments regarding 18 CFR 284.14(b) which was also added by Order No. 720.

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

7 18 CFR 284.14(a).

8 Requests for rehearing, clarification, or both filed by the following participants raise this question: American Gas Association, Atmos Pipeline, Nicor Gas Company, ONEOK Gas Transportation, L.L.C., and ONEOK WesTex Transmission, L.L.C.

9 See Post-Technical Conference Comments of the Texas Pipeline Association (submitted March 30, 2009).

The Commission also sought supplemental comments to post information for virtual or pooling receipt and delivery points. In addition, the Commission requested comment on whether and how to adopt a proxy for design capacity for physical points for which the design capacity is unknown. To accomplish this, the Commission proposed revisions to § 284.14(a) of the Commission's regulations to address these issues.

The Commission recognized that a number of major non-interstate pipelines use virtual or pooling receipt or delivery points. Major non-interstate pipelines that schedule gas to virtual or pooling receipt or delivery points play a vital role in markets for the sale or transportation of natural gas in interstate commerce. To this end, the Commission contemplates that, on rehearing, the posting obligation may apply to metered, virtual, or pooling receipt and delivery points on major non-interstate pipelines.

Final Rule on Rehearing (Docket No. RM08-2-001)

In the Order on Rehearing, issued January 21, 2010, the Commission is granting and denying requests for rehearing and clarification of Order No. 720. FERC is modifying its regulations to require major non-interstate pipelines post daily scheduled volume information and other data for certain points. These modifications include a requirement that major non-interstate pipelines post information for receipt and delivery points at which design capacity is unknown. The Commission is denying requests to revise its regulations requiring interstate natural gas pipelines to post information regarding the provision of no-notice service. The posting requirements will facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce to implement section 23 of the NGA (15 U.S.C. 717t-2 (2000 & Supp. V 2005)).

A. Justification

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

With the passage of EPAct 2005, Congress affirmed a commitment to competition in wholesale natural gas and electricity markets as national policy, the fifth major federal law in the last 30 years to do so.¹⁰ As part of this commitment to competition, in the transparency provisions, Congress charged the Commission with assuring the integrity of the wholesale

¹⁰ 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).

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.¹¹

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.¹²

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 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;

11 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 did not analyze the electric transparency provisions, although the Commission expected that analysis of electric transparency provisions would be substantially similar.

12 15 U.S.C. 717t-2(a).

and

(B) rely on entities other than the Commission to receive and make public the information, subject to the disclosure rules in subsection (b).¹³

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 Act¹⁴ or by referring to sections 1, 3, or 7 of the Natural Gas Act¹⁵. 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.¹⁶ These limitations

13 15 U.S.C. 717t-2(a) (3).

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

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

16 Section 1(b)-(d) of the Natural Gas Act, 15 U.S.C. 717(b)-(d); section 3 of the Natural Gas Act, 15 U.S.C. 717b; section 7(f) of the Natural Gas Act, 15 U.S.C. 717f(f); see, also, section 601(a) of the Natural Gas Policy Act, 15 U.S.C. 3431(a). The Commission has previously explained that the Natural Gas Policy Act of 1978 (NGPA or Natural Gas Policy Act) and the Natural Gas Wellhead Decontrol Act of 1989 narrowed its jurisdiction under the Natural Gas Act:

Under the NGPA, first sales of natural gas are defined as any sale to an interstate or intrastate pipeline, LDC [Local Distribution Company] or retail customer, or any sale in the chain of transactions *prior* to a sale to an interstate or intrastate pipeline or LDC or retail customer. NGPA Section 2(21)(A) sets forth a general rule stating that all sales in the chain from the producer to the ultimate consumer are first sales until the gas is purchased by an interstate pipeline, intrastate pipeline, or LDC. Once such a sale is executed and the gas is in the possession of a pipeline, LDC, or retail customer, the chain is broken, and no subsequent sale,

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..."¹⁷ 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..."¹⁸ Thus, the Commission's authority is limited to "information about the availability and prices of natural gas sold at wholesale and in interstate commerce."¹⁹ Again, this language does not limit the type of information the Commission could collect to implement its mandate, provided that such information is "about" (i.e., pertains to) the "availability and prices of natural gas sold at wholesale and in interstate commerce." For instance, some transportation or sales of natural gas is not in interstate commerce, but, nonetheless, would affect the availability and prices of natural gas at wholesale and in interstate commerce.

The natural gas transparency provisions further provide that the Commission shall "rely on existing price publishers and providers of trade processing services to the maximum extent possible."²⁰ 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.

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.

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

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

19 *Id.*

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.”²¹

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 Order No. 720 and reiterated in the Final Rule on Rehearing 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 it 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 the regulations adopted in Order No. 637,²² 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.²³ As the Commission described in the Posting NOPR, market

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

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

22 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).

23 In this regard, the Commission disagreed 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

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.²⁴ This posted scheduled flow information contributes to market transparency by providing information about the supply and demand fundamentals that drive price movements.²⁵ 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).²⁶

Nevertheless, this picture is incomplete. Because the FERC'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.

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.

²⁴ Posting NOPR at P 55. See also Comments of Bentek, Docket No. AD06-11-000 (filed Oct. 11, 2006).

²⁵ 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).

²⁶ 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....").

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.²⁷

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 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 non-interstate 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 we noted in the Order No. 720 submission, 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.

²⁷ Section 23(a) (1) of the Natural Gas Act, 15 U.S.C. 717t-2(a) (1) (2000 & Supp. V 2005).

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.).

Existing data sources on gas supply flows are insufficient for participants to adequately evaluate physical daily market activity. As the Commission discussed in Order No. 720, the Energy Information Administration (EIA) publishes data on monthly production by state based on a survey and with a three month lag.²⁸ Similarly, monthly consumption data is published by state with a four month lag.²⁹

²⁸ Energy Information Administration, Natural Gas Deliveries to All Consumers by State 2007-2009 (Nov. 2009) (available at http://www.eia.doe.gov/oil_gas/natural_gas/data_publications/natural_gas_monthly/ngm/current/pdf/table_16.pdf).

²⁹ Energy Information Administration, Marketed Production of Natural Gas in Selected States and the Federal Gulf of Mexico (Nov. 2009) (available at http://www.eia.doe.gov/oil_gas/natural_gas/data_publications/natural_gas_monthly/current/pdf/table_05.pdf).

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

As the Commission noted in Order No. 720 and discussed in its submission, there are few small businesses that are impacted under the FERC-551 posting requirements. Natural gas pipelines are classified under NAICS code, 486210, Pipeline Transportation of Natural Gas.³⁰ A natural gas pipeline is considered a small entity for the purposes of the Regulatory Flexibility Act if its average annual receipts are less than \$7.0 million.³¹ The Commission does not believe that any pipeline that would be required to post information under the requirements of Order No. 720 or the modifications contained in this Final Rule on Rehearing has annual receipts of less than \$7.0 million.

In response to the comments on rehearing and the supplemental comments, FERC is also exercising an additional regulatory alternative by exempting some major non-interstate pipelines with certain operational characteristics from the posting requirements and otherwise modifying the requirements to lessen the burden on posting pipelines.

The Commission is also exempting: major non-interstate pipelines that have stub lines incidental to a processing plant and that deliver all of their transported gas directly into a single pipeline; major non-interstate pipelines that deliver more than 95 percent of their annual flows to end-users as measured by average deliveries over the preceding three calendar years; major non-interstate pipelines that deliver to on-system storage facilities (including deliveries to on-system LNG storage); and pipelines that transport all of their natural gas directly to an end-user that owns or operates the pipeline. This will reduce the number of non-major interstate pipelines that will have to comply with these regulations.

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

³⁰ 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>.

³¹ 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).

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

These 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 Order No. 720, the Commission required that records be retained for a period of five years, or an additional two years beyond the current retention requirements.

As the Commission explained in the Order No. 720 submission, 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.³² Section 2462 in 28 U.S.C.

³² See, e.g., United States v. Godbout-Bandal, 232 F.3d 637, 639 (8th Cir. 2000).

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.”³³

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 a rulemaking notice be published in the Federal Register, thereby allowing all pipeline companies, state commissions, federal agencies, and other interested parties an opportunity to submit comments, or suggestions concerning the proposal. The rulemaking procedures also allow for public conferences to be held as required.

Twenty-six requests for rehearing or clarification of Order No. 720 were submitted. On January 16, 2009, the Commission issued an order granting rehearing for the purpose of providing additional time to respond to the requests for rehearing.

A staff technical conference was held on March 18, 2009, to gather additional information on three issues raised in the requests for rehearing.³⁴ The technical conference addressed: (1) the definition of major non-interstate pipelines; (2) what constitutes “scheduling” for a receipt or delivery point; and (3) how a 15,000 MMBtu per day design capacity threshold would be applied. Panelists making presentations at the conference and commenters from the audience represented a broad cross-section of the U.S. natural gas industry³⁵ and the conference

³³ 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.

³⁴ Pipeline Posting Requirements under section 23 of the Natural Gas Act, Notice of Technical Conference, Docket No. RM08-2-001 (issued Feb. 24, 2009); Pipeline Posting Requirements under section 23 of the Natural Gas Act, Notice of Agenda for Technical Conference, Docket No. RM08-2-001 (issued March 11, 2009).

³⁵ In the Matter of Pipeline Posting Requirements under section 23 of the Natural Gas Act Docket No. RM08-2-001, at 2-3 (Mar. 18, 2009) (Transcript of Technical Conference).

was widely attended.³⁶ The audience represented a broad cross-section of the U.S. natural gas industry³⁷ and the conference was widely attended.³⁸

On July 16, 2009, the Commission issued an order requesting supplemental comments in response to limited issues raised in requests for rehearing of Order No. 720 and at the technical conference, with comments due within 30 days.³⁹ Eight supplemental comments were filed.⁴⁰

A. Jurisdiction

As noted above, Order No. 720 implemented the Commission's authority under section 23 of the NGA as added by EAct 2005 to facilitate transparency in markets for the sale or transportation of natural gas in interstate commerce by requiring major non-interstate pipelines and interstate pipelines to post certain data on publicly-accessible Internet websites. Congress granted the Commission this statutory authority to ensure transparency of natural gas prices, natural gas availability, and the price formation in the interstate natural gas market.

The Commission held in Order No. 720 that NGA section 23 authorizes the Commission to obtain and disseminate information, including information regarding non-interstate natural gas markets that affect the interstate natural gas market. The Commission's decision substantially relied on the language of NGA section 23(a)(3)(A), which allows the Commission to "obtain the information... from any market participant."⁴¹ The Commission identified Congress' use of the term "any market participant" as an intentional expansion of "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."⁴² Order No. 720 took particular note of Congress' use of "any" in section 23 as a

36 A transcript of this conference is available on the Commission's e-Library system.

37 In the Matter of Pipeline Posting Requirements under section 23 of the Natural Gas Act Docket No. RM08-2-001, at 2-3 (Mar. 18, 2009) (Transcript of Technical Conference).

38 A transcript of this conference is available on the Commission's e-Library system.

39 Pipeline Posting Requirements under section 23 of the Natural Gas Act, 128 FERC ¶ 61,030, at P 1 (2009) (Order Requesting Supplemental Comments).

40 A list of persons submitting supplemental comments is provided at Appendix B of the Order on Rehearing.

41 15 U.S.C. 717t-2(a)(3)(A).

42 Order No. 720 at P 17.

descriptor, attaching jurisdiction to market participants independently of the limitations prescribed elsewhere in the NGA.⁴³

The NGA limits the scope of the Commission's traditional regulatory authority to "natural gas companies" as the term is utilized in the NGA.⁴⁴ The Commission held in Order No. 720 that Congress contemplated different jurisdictional parameters for its transparency authority.⁴⁵ Additionally, the Commission found that the scope of section 23 is not limited by section 1(b) of the NGA.

The Commission emphasized that the regulations promulgated by Order No. 720 reflect the limitations that Congress placed on the Commission's authority in section 23. Order No. 720 explained that section 23 extends the Commission's authority only to the collection and dissemination of information for the purposes of promoting price transparency in the natural gas market.⁴⁶ The Commission's traditional regulatory authority remains limited to "natural gas companies" under section 1(b) of the Act.⁴⁷

Some petitioners supported the Commission's assertion of jurisdiction, with at least one petitioner supporting Order No. 720's requirement that certain major non-interstate pipelines post daily scheduled volume information and design capacity for certain receipt and delivery points "pursuant to [the Commission's] authority under section 32 [sic] of the NGA."⁴⁸ Yates and Agave particularly commended the Commission's new regulations and assertion of jurisdiction, stating that "the major non-interstate pipeline posting requirements adopted in Order No. 720 are a good first step towards the Commission's stated goal of facilitating transparency in markets for the sale or transportation of physical natural gas in interstate commerce."⁴⁹

43 Id. P 18.

44 Id. P 19 citing 15 U.S.C. 717.

45 Id.

46 Id. P 22.

47 Natural gas producers, processors, or users who have a de minimis market presence are explicitly exempted from the reporting requirements. Id. at P 23.

48 Yates and Agave Request for Rehearing and Clarification at 1; Williston Basin Request for Rehearing and Clarification at 1 (acknowledging that the Commission has the authority to promulgate Order No. 720's new regulations pursuant to its authority under section 23 of the NGA).

49 Yates and Agave Request for Rehearing and Clarification at 3-4.

Several petitioners requesting rehearing argued that the Commission unlawfully expanded its statutory authority by imposing posting requirements on major non-interstate pipelines, including natural gas gathering lines.⁵⁰ They claim that the Commission does not have jurisdiction to impose posting requirements on intrastate pipelines, and that its transparency jurisdiction does not extend to intrastate activities at receipt and delivery points that are not involved in the Commission's jurisdictional activities.⁵¹

Many petitioners reiterated arguments, made in comments to the NOPR, that the reference in NGA section 23 to "any market participant" is restricted to participants in the interstate market.⁵² Gas Processors suggested that the Commission has derived its expanded jurisdictional powers from an ambiguous term without sufficient support, and that Congressional intent over that term "must not be read in a vacuum."⁵³ It also argued that the term "market participant" was not intended to extend the Commission's jurisdiction to intrastate pipelines because: (1) section 23 was not intended to cover intrastate pipelines; (2) the Commission has never had jurisdiction over intrastate pipelines; and (3) Congress did not "expressly or implicitly" provide such jurisdiction in section 23.⁵⁴ Quoting section 23, Gas Processors pointed out the repeated use of the term "interstate" throughout the section, emphasizing that if Congress intended an expansion into the intrastate pipelines, they would have selected different language.⁵⁵ RRC agreed, stating that "[n]othing in the plain language of Section 23 of the NGA

50 Enogex Request for Rehearing and Clarification at 5-10; Gas Processors Request for Rehearing and Clarification at 3-7; LOC Request for Rehearing and Clarification at 3-10; California LDCs Request for Rehearing and Clarification at 13-15; Railroad Commission of Texas Request for Rehearing and Clarification at 5-10; Southwest Gas Request for Rehearing and Clarification at 3-5, 13-14; Targa Request for Rehearing and Clarification at 8-9; TPA Request for Rehearing and Clarification at 8-24.

51 See, e.g., TPA Request for Rehearing and Clarification at 31-32.

52 California LDCs Request for Rehearing and/or Clarification at 14-15; Gas Processors Request for Rehearing at 3-4; LOC Request for Rehearing at 8-9; Railroad Commission of Texas Request for Rehearing at 5-8; Southwest Gas Request for Clarification and Rehearing at 13-14; Targa Request for Rehearing at 8-9; TPA Request for Rehearing and Clarification at 9-11.

53 Gas Processors Request for Rehearing and Clarification at 3-4.

54 Id. at 4.

55 Id.; see also RRC Request for Rehearing and Clarification at 6-8; TPA Request for Rehearing and Clarification at 8-12; LOC Request for Rehearing and Clarification at 10.

or the legislative history of [EPAct 2005] evinces Congressional intent to expand the FERC's authority over intrastate pipelines."⁵⁶

TPA argued that the plain language of section 23 provides that "market participant" be limited to the interstate natural gas market.⁵⁷ It further argued that Congress had no need to exclude intrastate pipelines from the Commission's transparency jurisdiction because those entities are not subject to the Commission's jurisdiction "in the first place."⁵⁸

TPA repeats arguments made in its NOPR comments, and sought rehearing of the Commission's determination that it has authority to issue the posting regulations. TPA argued that expansion of the jurisdiction of the Commission usually occurs through amendment of NGA section 1(b) by Congress.⁵⁹ TPA asserted that Order No. 720 expands the Commission's jurisdiction using a process that is not supported by the Commission's own precedent.⁶⁰ TPA cited Order No. 670,⁶¹ discussing the procedures used to process market manipulation allegations, in support of its claim that the Commission should wait until Congress explicitly expands its jurisdiction to assert such authority over traditionally non-jurisdictional entities.⁶² TPA further argued that the Natural Gas Policy Act of 1978 (NGPA) section 311 shows a clear distinction between intrastate and interstate jurisdiction, and concludes that, if Congress had intended to expand the Commission's jurisdiction, it would have amended NGA section 1(b) in a similar fashion.⁶³

Several petitioners, echoing comments that the Commission addressed in Order No. 720, argued that the regulations exceed the Commission's jurisdiction under section 1(b) of the

⁵⁶ RRC Request for Rehearing and Clarification at 6; see also LOC Request for Rehearing and Clarification at 9.

⁵⁷ TPA Request for Rehearing and Clarification at 9-11.

⁵⁸ Id. at 11.

⁵⁹ TPA Request for Rehearing and Clarification at 12; Gas Processors Request for Rehearing and Clarification at 4-5; LOC Request for Rehearing and Clarification at 6; RRC Request for Rehearing and Clarification at 7-8.

⁶⁰ TPA Request for Rehearing and Clarification at 12.

⁶¹ Prohibition of Energy Market Manipulation, Order No. 670, 71 FR 4244 (Jan. 26, 2006), FERC Stats. & Regs. ¶ 31,202 (2006).

⁶² TPA Request for Rehearing and Clarification at 12.

⁶³ Id. at 21 (citing 15 U.S.C. 3371(a)(2)).

NGA.⁶⁴ Petitioners argued that NGA section 23 is not “a stand alone provision,” but is subject to the jurisdictional limits established in section 1(b).⁶⁵ Thus, they contend that the fact that Congress did not amend the language in section 1(b) demonstrates that Congress did not intend to modify the Commission’s jurisdiction with section 23.⁶⁶ Petitioners stated that section 1(b) is “unequivocally clear” regarding the entities to which section 23 applies.⁶⁷ The petitioners argued that because section 1(b) expressly bars the Commission from jurisdiction over intrastate pipelines, section 23 does as well.⁶⁸

Several petitioners also stated that section 311 of the NGPA⁶⁹ limits the Commission’s transparency jurisdiction to only interstate activities.⁷⁰ These petitioners claim that, although section 311 “vests the Commission with the power to authorize an intrastate pipeline to transport natural gas on behalf of interstate pipelines,” section 311 did not expand the Commission’s jurisdiction under the NGA.⁷¹ In fact, the NGPA explicitly defines “intrastate pipeline” as one “not subject to the jurisdiction of the Commission under the NGA.”⁷² LOC stated, for example, that the Commission cannot “destroy” this jurisdictional distinction placing intrastate pipelines

64 Enogex Request for Rehearing and Clarification at 6-7; LOC Request for Rehearing and Clarification at 3-4; Railroad Commission of Texas Request for Rehearing and Clarification at 8-9; TPA Request for Rehearing and Clarification at 8, 16-19.

65 LOC Request for Rehearing and Clarification at 3; Enogex Request for Rehearing and Clarification at 7; Railroad Commission of Texas Request for Rehearing and Clarification at 8-9; TPA Request for Rehearing and Clarification at 22-23.

66 LOC Request for Rehearing and Clarification at 9; RRC Request for Rehearing and Clarification at 8.

67 RRC Request for Rehearing and Clarification at 8.

68 RRC Request for Rehearing and Clarification at 8, LOC Request for Rehearing and Clarification at 8-9; Enogex Request for Rehearing and Clarification at 6-7; TPA Request for Rehearing and Clarification at 28-29.

69 15 U.S.C. 3371(a)(2).

70 Enogex Request for Rehearing and Clarification at 9; LOC Request for Rehearing and Clarification at 5-8; Railroad Commission of Texas Request for Rehearing at 9; TPA Request for Rehearing and Clarification at 18-22.

71 LOC Request for Rehearing and Clarification at 5-6; RRC Request for Rehearing and Clarification at 9; TPA Request for Rehearing and Clarification at 18-22.

72 LOC Request for Rehearing and Clarification at 5-6; RRC Supplemental Comments at 9; TPA Request for Rehearing and Clarification at 18-22.

beyond its NGA authority without express amendment from Congress.⁷³ Moreover, TPA cited Associated Gas Distributors v. FERC,⁷⁴ where the court held that it was unreasonable for the Commission to presume that “obscure” language in section 311 authorized an expansion of its jurisdiction without legislative history to support an expansion.⁷⁵ TPA, LOC, and RRC also focused on previous case-law limiting the Commission’s traditional rates, terms, and conditions jurisdiction under section 311.⁷⁶

Other petitioners focused on NGA section 23(d)(2) which provides that the Commission shall not require natural gas producers, processors, or users who have a de minimis market presence to comply with the reporting requirements of section 23.⁷⁷ On rehearing, RRC renewed its arguments made in response to the NOPR regarding the de minimis exception. Contrary to the Commission’s interpretation, RRC believes that, had Congress intended to give the Commission even limited jurisdiction over intrastate pipelines, it would have listed them in section 23(d)(2).⁷⁸ Because section 23(d)(2) makes no such reference, RRC contends that the Commission’s findings are contrary to the plain language of section 23.⁷⁹

Some petitioners assert that the Commission is seeking information on gas flows that are outside of the Commission’s jurisdiction, regardless of the facilities at issue.⁸⁰ TPA argued that the collection of design capacity and gas flow data does not relate to the availability and prices of natural gas, thereby exceeding the Commission’s transparency jurisdiction.⁸¹ Enogex argued that the new regulations make it impossible to discern the Commission’s jurisdiction from state

73 LOC Request for Rehearing and Clarification at 6.

74 Assoc. Gas Distrib. v. FERC, 899 F.2d 1250 (D.C. Cir. 1990).

75 TPA Request for Rehearing and Clarification at 19-20.

76 TPA Request for Rehearing and Clarification at 21-22; LOC Request for Rehearing and Clarification at 6-10; RRC Request for Rehearing and Clarification at 16. TPA and LOC also raise arguments linking section 311 to section 601 of the NGPA. LOC Request for Rehearing and Clarification at 5-8; TPA Request for Rehearing and Clarification at 18-21.

77 15 U.S.C. 717t-2(d)(2).

78 RRC Request for Rehearing and Clarification at 7; see also TPA Request for Rehearing and Clarification at 23-24.

79 RRC Request for Rehearing and Clarification at 7-8.

80 Enogex Request for Rehearing at 9-10; TPA Request for Rehearing and Clarification at 13-15.

81 TPA Request for Rehearing and Clarification at 13-15.

jurisdiction because the intrastate and interstate volumes of gas that move on the Enogex system are so commingled that they cannot be distinguished for capacity posting purposes.⁸²

Targa, California LDCs, RRC, and TPA all contend that Order No. 720 is an improper regulation of intrastate operations and rates.⁸³ These petitioners argued that the Final Rule may adversely interfere with state regulation of non-interstate pipelines.⁸⁴ California LDCs challenged the Commission's claim that it is not regulating intrastate operations of non-interstate pipelines. The petitioner alleged that compliance with Order No. 720 entails daily postings of customer-specific and facility-specific information, effectively regulating intrastate operations.⁸⁵

Commission's Response

After consideration, the Commission is rejecting the requests for rehearing and reaffirms its position that it has jurisdiction over the matters addressed in Order No. 720. NGA section 23 provides the Commission limited jurisdiction over major non-interstate pipelines for the purpose of requiring public disclosure of information to enhance market transparency.

Most of the petitions for rehearing reiterate arguments the Commission considered and addressed at length in Order No. 720. For example, petitioners take issue with the Commission's interpretation of the expansive language used in NGA section 23. In Order No. 720, the Commission held that Congress deliberately chose the term "any market participant" in section 23 to expand the Commission's jurisdiction beyond the universe of natural gas companies to which it would otherwise be limited, recognizing that the public needs information from a wide variety of entities in order to facilitate transparency.⁸⁶ Section 1 is not referenced in section 23 and the term "natural gas company" is not used in section 23. Petitioners have not raised any new arguments regarding the meaning of "any market participant" in section 23. The Commission continues to believe that Congress did not intend to limit the Commission's transparency jurisdiction to entities it traditionally regulates.⁸⁷

82 Enogex Request for Rehearing and Clarification at 9-10.

83 Targa Request for Rehearing and Clarification at 9; California LDCs Request for Rehearing and Clarification at 14-15; RRC Request for Rehearing and Clarification at 9-11; TPA Request for Rehearing and Clarification at 25-28.

84 California LDCs Request for Rehearing and Clarification at 14-15; RRC Request for Rehearing and Clarification at 9-11; TPA Request for Rehearing and Clarification at 3, 25-28.

85 California LDCs Request for Rehearing and Clarification at 14-15.

86 Order No. 720 at P 18.

87 Id. P 19.

As stated in Order No. 720, section 23(d)(2) would be unnecessary surplusage if Congress did not intend to give the Commission authority over entities otherwise excluded by section 1(b) of the NGA.⁸⁸ Petitioners raise no new arguments regarding this issue. Likewise, no new arguments were presented regarding the Commission's authority to enact rules under sections 23(a)(1) and 23(a)(2). These subsections grant discretion to the Commission to achieve interstate price transparency and to provide for public dissemination of information.⁸⁹

The Commission also finds no merit in arguments raised by petitioners related to section 311 of the NGPA. While section 311 limits the Commission's jurisdiction regarding some intrastate natural gas pipeline activities, section 23 of the NGA provides a different jurisdictional basis promoting different Congressional goals. Section 23 grants the Commission authority to ensure that the information necessary for interstate market transparency is available to the public. The term any market participant includes non-interstate pipelines, thus the Commission has the authority to require those participants to post certain information to facilitate market transparency.

Petitioners also reiterated arguments, addressed in Order No. 720, that previous case law limits the Commission's transparency jurisdiction.⁹⁰ The Commission is affirming its conclusion that the cases cited by commenters apply only to the jurisdictional limits set forth in section 1 of the NGA prior to the enactment of EAct 2005.⁹¹ Such case law is not applicable to regulations adopted by the Commission pursuant to section 23 of the NGA.

In response to Enogex, it is immaterial for purposes of the Commission's transparency jurisdiction whether non-interstate and interstate volumes of gas are commingled. Under section 23, if natural gas volumes have a greater than de minimis effect on the interstate natural gas market, and the other requirements of section 23 are met, the Commission has the authority to require posting of such volumes regardless of whether flowing natural gas is characterized as "interstate" or "non-interstate."

The Commission emphasizes that its transparency jurisdiction is limited to the dissemination of information that will aid in market transparency. Section 23 gives the FERC no jurisdiction related to, and the Commission's regulations do not govern the rates, terms, and

⁸⁸ Id. P 23.

⁸⁹ Id. P 16.

⁹⁰ Railroad Commission of Texas Request for Rehearing and Clarification at 15-16; LOC Request for Rehearing and Clarification at 6-7; Enogex Request for Rehearing and Clarification at 6-7.

⁹¹ Order No. 720 at P 20.

conditions of service of major non-interstate pipeline operations. The Commission is requiring only the posting of essential information to ensure market transparency and is not engaging in traditional regulation of rates, terms, and conditions of service.

The Commission finds that Order No. 720 accurately implemented its authority under the limited jurisdiction Congress conferred in NGA section 23.⁹² For these reasons, the Commission is denying rehearing.

B. Transparency and Need for the Rule

On rehearing, a limited number of petitioners objected to Order No. 720's findings that transparency needs to be increased in the interstate natural gas market, and questioned whether the regulations adopted in Order No. 720 actually increase transparency.

For example, LOC stated that Order No. 720 "failed to support its finding that there exists any necessity for the enactment of the proposed rules."⁹³ RRC argued that the Commission's pipeline posting regulation is "a solution in search of a problem," adding that recent Commission initiatives have improved market transparency and that there has been no showing that additional transparency is required.⁹⁴

TPA requested rehearing on the grounds that the Commission has not demonstrated that interstate market transparency is enhanced by major non-interstate pipeline information. It alleged that the Commission has "consistently disregarded the consensus among market participants" on this point.⁹⁵

TPA takes Order No. 720 to task for focusing on comments "of a handful of intervenors expressing general support for the [NOPR]" rather than acknowledging the substantial number of intrastate pipelines and other participants that see no need for increased transparency.⁹⁶ TPA

92 The Commission's conclusion here is consistent with its findings in Order No. 704 regarding the annual reporting requirement for market participants adopted pursuant to our NGA section 23 authority. See Transparency Provisions of section 23 of the Natural Gas Act, Order No. 704, 73 FR 1014 (Jan. 4, 2008), FERC Stats. and Regs. ¶ 31,260 (2007), order on reh'g, Order No. 704-A, 73 FR 55726 (Sept. 26, 2008), FERC Stats. & Regs. ¶ 31,275 (2008), order on reh'g, Order No. 704-B, 125 FERC ¶ 61,302 (2008).

93 LOC Request for Rehearing and Clarification at 11. See also TRC Request for Rehearing and Clarification at 14-15.

94 RRC Request for Rehearing and Clarification at 11-15.

95 TPA Request for Rehearing and Clarification at 33.

argued, citing National Fuel Gas Supply Corporation v. FERC,⁹⁷ that the Commission must cite evidence of an industry problem prior to rulemaking action.⁹⁸ TPA particularly objects to Order No. 720's finding that the transparency rule assists market participants to understand the impact of hurricanes and other natural disasters on natural gas supply. Further, TPA argued that "nowhere in this proceeding has the Commission or any market participant provided an adequate explanation of how the proposed rule would detect market manipulation."⁹⁹

Southwest Gas argued that the transparency rule did not specifically demonstrate a need for information from LDCs related to daily capacity and scheduled retail transportation.¹⁰⁰ Southwest Gas complained that Order No. 720 did not adequately explain the nexus between data provided by state-regulated LDCs and price formation for natural gas sold at wholesale and in interstate commerce.¹⁰¹

Additionally, some petitioners requested rehearing on the grounds that Order No. 720 failed to fully consider the existing sources of data regarding non-interstate natural gas flows as required by section 23.¹⁰²

In its supplemental comments, AGA made arguments similar to Southwest Gas.¹⁰³ AGA stated that LDCs are fundamentally distributors of natural gas and that LDC scheduled flow

96 Id. at 35-37.

97 468 F.3d 831, 843 (D.C. Cir. 2006).

98 TPA Request for Rehearing and Clarification at 37.

99 Id. at 39.

100 Southwest Gas Request for Rehearing and Clarification at 12.

101 Id. at 13-14.

102 LOC Request for Rehearing and Clarification at 11; RRC Request for Rehearing and Clarification at 11-15; TPA Request for Rehearing and Clarification at 30-31.

103 The Order Requesting Supplemental Comments requested additional comments on discrete issues raised by commenters in requests for rehearing and clarification. Order Requesting Supplemental Comments at P 7-10. Some commenters submitted supplemental comments on subjects outside the requested scope. While the Commission did not request such extraneous supplemental comments, such as AGA's supplemental comments regarding the need for the rule, nevertheless the Commission is addressing these comments in this order to ensure that the record is complete.

postings would not further the Commission's transparency goals.¹⁰⁴ AGA noted that no wholesale natural gas price formation occurs on an LDC's system¹⁰⁵ and argued that available capacity calculations for LDCs may be misleading.¹⁰⁶

Commission's Response

The Commission continues to believe that the major non-interstate pipeline posting requirements are needed and is denying the requests for rehearing.

The Commission notes, as an initial matter, that some of the requests for rehearing appear to argue that the Commission has substantially increased transparency in interstate markets in recent years, and that such transparency is sufficient and more need not be done. However, these petitioners misconstrue section 23 of the NGA and Congress' transparency objectives. As discussed in Order No. 720, the Commission has been directed by Congress to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce¹⁰⁷ and given the authority to prescribe such rules as may be necessary to effectuate the Congressional goal.¹⁰⁸ As the Congressional mandate implicitly acknowledges, lack of transparency is not a "problem" readily susceptible to a single regulatory solution. Transparency enhances the ability of market participants to make informed, efficient decisions based upon public information. In other words, enhanced transparency is typically beneficial to markets, even markets, such as the U.S. wholesale natural gas market, that are already competitive. It is not a necessary prerequisite to adoption of FERC's regulations to find, as some petitioners appear to demand, that the interstate natural gas market cannot function without the rule. As petitioners acknowledge, the Commission has improved market transparency in several different ways in recent years and the interstate natural gas market is competitive and robust. These successes, however, do not preclude other means of further enhancing transparency. This is particularly true where the Commission has identified a "gap" in relevant market information available to market participants.

Many of the petitions for rehearing repeat arguments made in response to the NOPR and addressed in Order No. 720. As the Commission found in Order No. 720, there presently exist a gap in information available to interstate market participants necessary to more fully understand

104 AGA Supplemental Comments at 10.

105 Id. at 13.

106 Id. at 16-17. See also California LDCs Supplemental Comments at 8.

107 15 U.S.C. 717f-2(a)(1).

108 15 U.S.C. 717f-2(a)(2).

supply and demand fundamentals and therefore price formation.¹⁰⁹ A significant amount of natural gas flows from producing basins to interstate markets on non-interstate pipelines. These scheduled flows impact supply considerations in interstate markets. Similarly, flows on non-interstate pipelines at the end of the delivery chain impact demand considerations in the interstate market.¹¹⁰ These considerations are fundamental to Order No. 720's determination that information about scheduled non-interstate pipeline natural gas flows would enhance transparency in the interstate natural gas market. Without access to information about supply and demand, interstate natural gas market participants are left with incomplete information to understand interstate wholesale prices. Incomplete information leads to market inefficiencies because wholesale buyers and sellers of natural gas have inconsistent levels of market knowledge and are less able to understand price outcomes.¹¹¹

Existing interstate pipeline posting data is used extensively by the public to understand daily market conditions and price formation. The public can access an interstate pipeline's Internet website to ascertain capacity availability and operational conditions. Also, data aggregators scour these websites and sell analysis and services based on this data, with many market participants, including producers, pipelines, end users, marketers, traders, and financial firms paying subscription fees to these data aggregators to evaluate the interstate natural gas market. The demand for such data by market participants is a persuasive factor regarding its transparency value. Based upon the comments in this rulemaking and the Commission's natural gas market experience, the Commission believes that there is robust interest by the public regarding similar scheduled flow data from non-interstate pipelines to form a more complete picture of the U.S. wholesale natural gas market. The Commission therefore disagrees with commenters arguing that such data is not valued by the public.

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

¹⁰⁹ Order No. 720 at P 39.

¹¹⁰ Of course, non-interstate pipelines that deliver natural gas to end-users may also deliver gas to other pipelines for subsequent transportation similar to transportation provided by interstate pipelines.

¹¹¹ Transparency plays a fundamental role in the fairness, efficiency, and functioning of orderly markets. Greater transparency results in greater market efficiency because price signals to market participants more accurately reflect underlying supply and demand fundamentals.

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.

Several commenters in the NOPR expressed concern that the public posting of flow information at receipt and delivery points could result in a competitive disadvantage for individual customers.¹¹² 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.¹¹³ Kinder Morgan Intrastate contends that the posting proposal would harm its end-use customers by causing the release of confidential information.¹¹⁴ 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.¹¹⁵ 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.¹¹⁶ 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."¹¹⁷ Bentek concluded that the Commission should not "protect something in the non-interstate context that is not protected in the interstate context."¹¹⁸

Commission's Response

In Order No. 720, the Commission acknowledged that the regulations adopted in the order may affect "fair competition and the protection of consumers" -- considerations that the Commission had to take into account pursuant to section 23(a)(1) of the NGA. However, the Commission believes that information about the scheduled volumes to a customer with a delivery point with a capacity greater than 15,000 MMBtu/day provides useful information to the Commission, market participants, and other market observers and will greatly increase market transparency. Therefore, the Commission believes that this benefit outweighs the concerns about publicly posting information about scheduled volumes to such a customer. The

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

113 TPA Comments at 16.

114 Kinder Morgan Intrastate Comments at 19.

115 Id. at 22.

116 Calpine Comments at 5.

117 Bentek Comments at 9.

118 Id.

Commission also understands that these customers may be placed in the same situation as customers on interstate natural gas pipelines with whom they often compete.¹¹⁹ 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 declared in Order No. 720 that all postings are to be public. The Commission will not provide for posting information to be kept confidential as some commenters requested. 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.”¹²⁰

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

In Order No. 720, the Commission estimated the burden to be 47,683 hours (an average of 1.0 hour per entity) for the information requirement collections under FERC-551. This was 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.

¹¹⁹ 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.

¹²⁰ Section 23(a)(2) of the NGA; 15 U.S.C. 717t-2(a)(2) (2000 & Supp. V 2005) (emphasis added).

However, in Order No. 720, the Commission declared that as this information is used in their business, the Commission contends that the burden that would be imposed by the proposed requirements is largely for the collection and posting of this information in the required format. Further, certain non-interstate pipelines provided 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 were too high because 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. In addition, the Commission is reducing 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 in Order No. 720 is shown below:

DATA REQUIREMENT (FERC-551)	CURRENT OMB INVENTORY	PROPOSED IN NOPR	PROPOSED IN Final
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	47,683
Estimated number of hours per response :	0	1.0	1.0
Total estimated burden (hours per year) :	0	77,015	47,683
Program change in industry burden hours :		+ 77,015	+47,683
Adjustment change in industry burden hours :		-0-	-0-
<u>Total hours FERC-551</u>		+ 77,015	+47,683

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	

Order on Rehearing

In the Order on Rehearing, the Commission has made modifications that will reduce the number of major non-interstate pipelines who will have to comply with the requirements.

A detailed summary of FERC-551burden estimates in Order No. 720-A is shown below:

Data Collection	No. of Respondents	No. of Daily Postings per Respondent	Estimated Annual Burden Hours per Respondent	Total Annual Hours For All Respondents	Estimated Start-Up Burden Per Respondent
Part 284 FERC-551					
Major Non-Interstate Pipeline Postings	70	2	365	25,550	40

The total annual hours for collection (including recordkeeping) for all major non-interstate respondents in this order on rehearing is estimated to be 25,550 hours (no. of respondents reduced from 80 to 70 due to exemptions, see comments below). The estimates for interstate pipelines have not changed.

DATA REQUIREMENT (FERC-551) IN Final	CURRENT OMB INVENTORY	Order NO. 720	PROPOSED Rehearing
Estimated number of respondents :	0	181	171
Estimated number of responses per respondent: (rounded off)	0	274	259
Estimated number of responses per year :	0	47,683	44,033
Estimated number of hours per response :	0	1.0	1.0
Total estimated burden (hours per year) :	0	47,683	44,033
Program change in industry burden hours :		+ 47,683	-3,650
Adjustment change in industry burden hours :		-0-	-0-
<u>Total hours</u> FERC-551		+ 47,683	44,033

Order on Rehearing Comments

In response to comments, the Commission on rehearing is granting additional exemptions which will reduce the number of major non-interstate pipelines who will have to comply with the posting requirements.

In Order No. 720, the Commission stated that local distribution companies with service area determinations under section 7(f) of the NGA were not categorically excluded from the posting requirements as such companies that exceed the 50 million MMBtu annual threshold may have a substantial impact on regional interstate natural gas markets.¹²¹ Washington Gas Light (WGL) requested clarification and, in the alternative, rehearing regarding the definition of “major non-interstate pipeline” as applied to natural gas companies that have obtained service area determinations under section 7(f) of the NGA.¹²²

FERC’s pipeline posting requirements apply to “major non-interstate pipelines.” As provided in 18 CFR 284.1(d), major non-interstate pipelines are comprised only of those pipelines not subject to FERC’s NGA jurisdiction as “natural gas companies.”¹²³ WGL contends that a strict reading of the regulation would exclude local distribution companies with service area determinations under section 7(f) as such companies are “natural gas companies” under the NGA.

The Commission is granting WGL’s request for rehearing and modifies 18 CFR 284.1(d) to provide that pipelines with a Commission-approved service area determination may be major non-interstate pipelines if they exceed the delivery threshold and otherwise do not qualify for an exemption. The Commission agrees with WGL that there is no practical difference between an LDC operating entirely within a single state and LDCs operating in multiple states under a section 7(f) service area determination. Consistent with WGL’s requests, the Commission also clarifies those LDCs with service area determinations may be major non-interstate pipelines for purposes of this rule.

In addition, where a pipeline delivers all of its transported natural gas directly to an end-user that owns or operates the pipeline, the pipeline is an extension of the end-user’s plant or other natural gas consumption facilities. To require posting in such circumstances would be the functional equivalent of requiring each large consumer of natural gas to post consumption information on a daily basis.

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 :

121 Order No. 720 at P 149.

122 WGL Request for Rehearing and Clarification at 3.

123 18 CFR 284.1(d).

Order No. 720: The Commission declared that 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 estimated 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 estimated 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 would result in a total cost of \$35,142 per year. The Commission does not believe that installation of additional equipment will be necessary to meet major non-interstate pipelines’ obligations. The burden that is imposed by these regulations is largely for the collection and posting of this information in the required format.

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

In Order No. 720, Major Non-Interstate pipelines commented on the requirement that they post scheduled volume information and how it would impose an information collection burden on them. Specifically, they asserted on rehearing that costs would be high if additional equipment were needed to meet quick posting deadlines. Additionally, they believe the Commission underestimated both the impact and costs for compliance.

Cost of Compliance

No petitioner objected to the Commission’s estimate of compliance costs for interstate pipelines. However, two petitioners questioned the compliance costs for major non-interstate companies. California LDCs claimed that initial compliance costs for each LDC may exceed \$500,000 to calculate and record the design capacity of delivery points as well as establishing procedures to capture new delivery points for which posting is required. Based upon these

costs, the California LDCs concluded that the cost of compliance far outweighs the benefits of the rule.¹²⁴

TPA argued that some TPA members will encounter increased compliance costs to design and implement scheduling processes at points where they currently do not schedule natural gas.¹²⁵ Further, TPA noted that non-interstate pipelines may schedule delivery of natural gas to LDCs at sets of delivery points rather than individual delivery points. TPA claims that the rule would require such pipelines to establish mechanisms to account for scheduled flows to each point.¹²⁶ Further, TPA claimed that “[s]ome TPA members . . . estimate implementation and start-up costs in the hundreds of thousands of dollars.”¹²⁷ While TPA acknowledged that Order No. 720 did not adopt posting requirements for segments or actual flow, and thus, reduced the potential cost of compliance, it argued that Order No. 720 ignores other costs estimated by TPA members.¹²⁸

Commission’s Response

The Commission disagrees with the California LDCs and TPA and finds, as it did in Order No. 720, that the benefits of its transparency regulations substantially outweigh the cost of compliance. Enhanced transparency will result in a more efficient wholesale natural gas market, more informed and better market choices made by market participants, and, ultimately, lower natural gas prices for consumers.

The Commission notes that Order No. 720’s cost of compliance estimates were based upon comments received in response to the NOPR and the substantial reduction in compliance costs attendant in the Commission’s decision not to require posting of actual natural gas flows or on pipeline segments. Further, Order No. 720 acknowledged that both start-up and annual compliance costs would vary among pipelines.¹²⁹

The Commission emphasizes that only scheduled natural gas volumes are to be posted. The comments by TPA do not dissuade the Commission from the determination that “most if not all of the gas control divisions of the affected companies currently have ready access to the

124 California LDCs Request for Rehearing and Clarification at 12-13.

125 TPA Request for Rehearing and Clarification at 41.

126 Id.

127 Id. at 42.

128 Id. at 43.

129 Order No. 720 at P 171.

information captured” by the rule.¹³⁰ In large part, it appears that TPA’s concerns stem from fundamental misunderstandings of the Final Rule. For example, TPA notes that some of its member pipelines do not schedule flows at certain points, but that the rule requires such pipelines to restructure their operations to adopt a scheduling process.¹³¹ The regulations do not require pipelines to modify their operations so as to schedule natural gas flows at point where such flows have not heretofore been scheduled. Section 284.14(a) of the Commission’s regulations makes clear that major non-interstate pipelines must post the amount of natural gas scheduled at each relevant point “whenever capacity is scheduled.”¹³² Likewise, TPA assumes that volumes scheduled to an aggregated receipt point for an LDC customer must be broken out by physical receipt point. As clarified in this order, the Commission’s regulations will allow for posting of aggregated scheduled flows to virtual or pooling points. The Commission does not believe that major non-interstate pipelines will incur significant expenses adopting new scheduling procedures as our regulations do not require such changes.

TPA and the California LDCs claim that the major non-interstate pipelines that they represent may incur start-up costs of hundreds of thousands of dollars to comply with Order No. 720. Such costs seem disproportionately high given that other major non-interstate pipelines have not expressed similar concerns on rehearing. The Commission also finds such claims doubtful given the sophistication of these pipelines, their experience with electronic data capture, and their familiarity with the receipt and delivery points on their systems, and, for at least some of these pipelines, their substantial experience with posting flow data on electronic databases. For these reasons and given the generality of the compliance cost claims by TPA and the California LDCs, the Commission will not modify the conclusion that compliance costs for the rule exceed the substantial value of enhanced market transparency.

14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT

On Order No. 720, the Commission estimated the annualized cost to the Federal government related to the data collections/requirements in the Final Rule as shown below:

Data Requirement Number	Analysis of Data (FTEs) 10 ¹³⁴	Estimated Salary 09 ¹³³ x Per Year	FERC Forms Clearance (FY '08)	Total Cost One Year's Operation
FERC-551	-0-	-0 -	\$ 213	\$ 213

¹³⁰ Id. P 56.

¹³¹ TPA Request for Rehearing and Clarification at p. 41.

¹³² 18 CFR 284.14(a).

¹³³ ?/ "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>.5</u>	\$126,384	\$ <u>234</u>	<u>63,426</u>
Total	.5	\$126,384	447	\$63,639

We are adjusting these costs to reflect fiscal year 2009. They are as follows:

Data	Analysis	Estimated	FERC Forms	Total Cost
Requirement of Data	Salary 09 ¹³⁵	Clearance	One Year's	
<u>Number</u>	<u>(FTEs) 10¹³⁶</u>	<u>x Per Year</u>	<u>+ (FY '09)</u>	<u>= Operation</u>
FERC-551	-0-	-0 -	\$ 213	\$ 213
	<u>.5</u>	\$133,561	\$ <u>234</u>	<u>66,781</u>
Total	.5	\$133,561	447	\$66,994

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

The daily posting of additional flow information by interstate and major non-interstate pipelines is necessary to provide information regarding the price and availability of natural gas to market participants, state commissions, the FERC and the public. The posting would contribute to market transparency by aiding the understanding of the volumetric/availability drivers behind price movements; it would provide a better picture of disruptions in natural gas flows in the case of disturbances to the pipeline system; and it would allow the monitoring of potentially manipulative or unduly discriminatory activity. As noted above, the Commission exempted some major non-interstate pipelines with certain operational characteristics from the posting requirements and otherwise modifying the requirements to lessen the burden on posting pipelines. For example, the Commission is directing major non-interstate pipelines to review points with no known design capacity annually, rather on a rolling basis, to determine whether information for the point must be posted. Further, major non-interstate pipelines are exempt from posting scheduled natural gas volumes at points that have scheduled flows less than 5,000 MMBtu per day on each day within the prior three calendar years.

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

135 ?/ "Salary" represents the allocated cost per gas program employee at the Commission based actual costs on its appropriated budget for fiscal year 2009. The \$133,561 "salary" consists of \$105,832.03 in salaries and \$27,729.44 in benefits.

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

On November 18, 2008, the Commission received concurrence from OMB that Order No. 720 was not a major rule under the Congressional Review Act. A copy of the rule was submitted to the U.S. House of Representatives, the U.S. Senate and the Government Accountability Office. The Commission did not receive comments from any of these respective offices.

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...."¹³⁷

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 2.¹³⁸ 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 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

¹³⁷ Section 23(a)(2) of the NGA; 15 U.S.C. 717t-2(a)(2) (2000 & Supp. V 2005).

¹³⁸ Standard 1.3.2, Nominations Related Standards, North American Energy Standards Board, Wholesale Gas Quadrant, July 31, 2002.

review their gas control set-up for the next day and limits the burden of posting to a single, daily reporting cycle.

Major non-interstate pipelines must comply with the revised regulations within 150 days following publication in the Federal Register. Interstate pipelines must continue their current compliance with our transparency regulations.

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.