

Supporting Statement for
FERC-549D, Contract Reporting Requirements of Intrastate Natural Gas Pipelines
As Proposed In Docket No. RM09-2-000
(Final Rule Issued May 20, 2010)

The Federal Energy Regulatory Commission (Commission) requests Office of Management and Budget (OMB) review and approval of **FERC-549D, Contract Reporting Requirements of Intrastate Natural Gas Pipelines. FERC-549D** is a new information collection requirement that amends the Commission's regulations, section 284.126(b). Section 284.126(b) covers annual transportation contract reporting requirements for Natural Gas Policy Act (NGPA) section 311 intrastate pipelines and Hinshaw pipelines. FERC proposes in a Final Rule to make those reporting requirements more comparable to the §284.13(b) daily posting requirements for interstate pipelines.

The subject data collection will be affected because the regulations will require intrastate pipelines to amend their filing requirements by (1) changing the existing annual §284.126(b) transactional reports to be filed on a quarterly basis, (2) require that the reports include certain additional types of information and cover storage transactions as well as transportation transactions, (3) establish a procedure for the §284.126(b) reports to be filed in a uniform electronic format and posted on the Commission's web site, and (4) hold that those reports must be public and may not be filed with information redacted as privileged.

We estimate that the total annual reporting-burden related to the subject Final Rule will be 19,178 hours. This is equal to an average of 153.42 hours per company under FERC-549D as the Commission adopts the changes proposed in the subject Final rule.

All of the proposed changes in the subject Final Rule are provided for under Title III, section 311, of the Natural Gas Policy Act (NGPA) and section 1 of the Natural Gas Act.

Background

The Commission currently has less stringent transactional reporting requirements for NGPA section 311 intrastate pipelines and Hinshaw pipelines¹, than for interstate pipelines. Section 284.126(b) of the Commission's Part 284 regulations requires NGPA section 311 and Hinshaw pipelines to file with the Commission annual reports of their transportation transactions, excluding storage. Those reports include basic information about each transaction, including the identity of each customer, the type of service provided, the volumes of service provided, and the total revenues received for the shipper, with a separate statement of

¹ Section 1(c) of the Natural Gas Act (NGA) exempts from FERC's NGA jurisdiction pipelines which transport gas in interstate commerce if (1) they receive natural gas at or within the boundary of a state, (2) all the gas is consumed within that state and (3) the pipeline is regulated by a state Commission. This exemption is referred to as the Hinshaw exemption after the Congressman who introduced the bill amending the NGA to include § 1(c). See ANR Pipeline Co. v. Federal Energy Regulatory Comm'n, 71 F.3d 897, 898 (1995) (briefly summarizing the history of the Hinshaw exemption).

reservation and usage revenues for firm service. By contrast, section 284.13(b) of the Part 284 regulations requires interstate pipelines to post information for both transportation and storage transactions on their internet websites no later than the first nomination under each transaction. Also, section 284.13(b) requires the posting of certain additional types of information, including the rate charged under each contract, the duration of the contract, the receipt and delivery points and zones or segments covered by each contract, and whether there is an affiliate relationship between the pipeline and the shipper.

Section 284.126(c) requires section 311 intrastate pipelines and Hinshaw pipelines to file a semi-annual report of their storage activity within 30 days of the end of each complete storage and injection season. This requirement is not significantly different than the section 284.13(e) requirement that interstate pipelines file such semi-annual reports of their storage activity.

Subject NOPR (Docket No. RM09-2-000)

On July 16, 2009, the Commission issued a NOPR proposing to revise the contract reporting requirements for those natural gas pipelines that fall under the Commission's jurisdiction in accordance with section 311 of the Natural Gas Policy Act or section 1(c) of the Natural Gas Act.

In the NOPR, the Commission proposed to first, amend § 284.126(b) to require the quarterly reports include certain additional information about each transaction not currently required by § 284.126(b). This information was to include: (1) the rate charged under each contract, including a separate statement of each rate component, (2) the duration of the contract, (3) the primary receipt and delivery points covered by the contract, (4) the quantity of natural gas the shipper is entitled to transport, store, or deliver, and (5) whether there is an affiliate relationship between the pipeline and the shipper. The purpose of these reports is to allow shippers and others, including the Commission, to monitor transactions for undue discrimination and preference.

Second, the Commission proposed to require that the proposed § 284.126(b) quarterly reports include all storage transactions in addition to transportation transactions. Currently, § 284.126(b) only requires section 311 and Hinshaw pipelines to report information with respect to transportation transactions. The only information the Commission currently requires those pipelines to report with respect to storage transactions is the information included in the § 284.126(c) semi-annual storage activity report. Aside from the fact the storage activity report is only filed on a semi-annual, rather than a quarterly basis, it also does not include all of the information that the Commission proposed to require to be included in the quarterly reports under revised § 284.126(b). For example, § 284.126(c) does not require section 311 and Hinshaw pipelines to report the rates provided for in each contract, the duration of each contract, or whether there is an affiliate relationship between the storage provider and its customer. In

order to assure that section 311 and Hinshaw pipelines report the same information about storage transactions as transportation transactions and on the same schedule, the Commission proposed to revise section 284.126(b) to cover both transportation and storage transactions. Clearly, there is just as great a need for transparency of storage transactions as of transportation transactions.

Third, the Commission proposed to establish a procedure for the reports to be filed in a uniform electronic format and posted on the Commission's web site. And fourth, the Commission proposed to require that reports be public and not filed with information redacted as privileged. These proposals were intended to improve market transparency, without making it unduly burdensome for intrastate and Hinshaw pipelines to participate in interstate markets.

Subject Final Rule (Docket No. RM09-2-000)

On May 20, 2010, the Commission issued a Final Rule revising the contract reporting requirements for those natural gas pipelines that fall under the Commission's jurisdiction in accordance with section 311 of the Natural Gas Policy Act or section 1(c) of the Natural Gas Act.

The Commission revised the contract reporting requirements for those natural gas pipelines that fall under the Commission's jurisdiction pursuant to Section 311 of the Natural Gas Policy Act or section 1(c) of the Natural Gas Act. The Final Rule revises § 284.126(b) and replaces Form No. 549² with the new Form No. 549D, so as to (1) increase the reporting frequency from annual to quarterly, (2) include certain additional types of information and cover storage transactions as well as transportation transactions, (3) establish a procedure for the Form No. 549D reports to be filed in a uniform electronic format and posted on the Commission's web site, (4) and hold that those reports must be public and may not be filed with information redacted as privileged. Finally, the Commission is also modifying its policy concerning periodic reviews of the rates charged by section 311 and Hinshaw pipelines to extend the cycle for such reviews from 3 years to 5 years.

A. Justification

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

The Commission's statutory authority to impose reporting requirements on Section 311 pipelines derives from NGPA section 311(c), which states, "any authorization granted under this section shall be under such terms and conditions as the Commission may prescribe."³ NGPA

² FERC-549 (1902-0086) will be retired in 2011 after the Commission receives the 2010 annual filing for storage reports.
³ 15 U.S.C. 3371(c).

section 311 authorizes the Commission to allow intrastate pipelines to transport natural gas “on behalf of” interstate pipelines or local distribution companies served by interstate pipelines “under such terms and conditions as the Commission may prescribe.”⁴ NGPA § 601(a)(2) exempts transportation service authorized under NGPA section 311 from the Commission’s NGA jurisdiction. Congress adopted these provisions in order to eliminate the regulatory barriers between the intrastate and interstate markets and to promote the entry of intrastate pipelines into the interstate market. Such entry eliminates the need for duplication of facilities between interstate and intrastate pipelines. Shortly after the adoption of the NGPA, the Commission authorized Hinshaw pipelines to apply for NGA section 7 certificates authorizing them to transport natural gas in interstate commerce in the same manner as intrastate pipelines may do under NGPA section 311.⁵

Subpart C of the Commission’s Part 284 open access regulations (18 C.F.R. §§ 284.121-126) implements the provisions of NGPA section 311 concerning transportation by intrastate pipelines. Section 284.224 of the regulations provides for the issuance of blanket certificates to Hinshaw pipelines to provide open access transportation service “to the same extent that, and in the same manner” as intrastate pipelines are authorized to perform such service by Subpart C. The Part 284, Subpart C, regulations require that intrastate pipelines performing interstate service under NGPA section 311 must do so on an open access basis.⁶ However, consistent with the NGPA’s goal of encouraging intrastate pipelines to provide interstate service, the Commission has not imposed on intrastate pipelines all of the Part 284 requirements imposed on interstate pipelines.⁷ For example, when the Commission first adopted the Part 284 open access regulations in Order No. 436, the Commission exempted intrastate pipelines from the requirement that they offer open access service on a firm basis.⁸ The Commission found that requiring intrastate pipelines to offer firm service to out-of-state shippers could discourage them from providing any interstate service, because such a requirement could progressively turn the intrastate pipeline into an interstate pipeline against its will and against the will of the responsible state authorities. Similarly, Order No. 636-B exempted intrastate pipelines from the

4 15 U.S.C. 3371(c).

5 Certain Transportation, Sales, and Assignments by Pipeline Companies not subject to Commission Jurisdiction under Section 1(c) of the Natural Gas Act, Order No. 63, FERC Stats. & Regs. ¶ 30,118, at 30,824-25 (1980).

6 See 18 C.F.R. §§ 284.7(b), 284.9(b) and 284.122.

7 Associated Gas Distributors v. FERC, 824 F.2d 981, 1002-1003 (D.C. Cir. 1987)(AGD); Mustang Energy Corp. v. Federal Energy Regulatory Comm’n, 859 F.2d 1447, 1457 (10th Cir. 1988), cert. denied, 490 U.S. 1019 (1988); see also EPGT Texas Pipeline, 99 FERC ¶ 61,295 (2002).

8 Regulation of Natural Gas Pipelines after Partial Wellhead Decontrol, Order No. 436, FERC Stats. & Regs. ¶ 30,665, at 31,502 (1985).

requirements of Order No. 636.⁹ Those requirements included capacity release, electronic bulletin boards (now internet websites), and flexible receipt and delivery points.

Requiring section 311 intrastate and Hinshaw pipelines to report this additional information concerning each transaction makes the reporting requirements for those pipelines more comparable to the transactional posting requirements for interstate pipelines. Section 284.13(b)(1) requires interstate pipelines to post similar information concerning contract rates, duration, receipt and delivery points, entitlements to service, and affiliate relationships.¹⁰ Most of the remaining information which § 284.13(b) requires interstate pipelines to post, but the Commission is not proposing to require section 311 and Hinshaw pipelines to report, relates to capacity release, which section 311 and Hinshaw pipelines are not required to allow.

The reporting requirements under FERC-549D are required to carry out the Commission's policies in accordance with the general authority in Sections 1(c) of the Natural Gas Act (NGA) (15 U.S.C. 717-817-w), and Sections 311 of the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301-3432).

⁹ Pipeline Service Obligations, and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations; Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636-B, 61 FERC ¶ 61,272, at 61,992 n.26 (1992), order on reh'g, 62 FERC ¶ 61,007 (1993), aff'd in part and remanded in part sub nom. United Distribution Cos. v. FERC, 88 F.3d 1105 (D.C. Cir. 1996), order on remand, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

¹⁰ See § 284.13(b)(1)(ii), (iv), (v), and (vii) and (2)(iv)(v)(vi)and (ix).

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

The Commission currently has less stringent transactional reporting requirements for NGPA section 311 intrastate pipelines and Hinshaw pipelines, than for interstate pipelines. In Order No. 637,¹¹ the Commission revised the reporting requirements for interstate pipelines in order to provide more transparent pricing information and to permit more effective monitoring for the exercise of market power and undue discrimination. As adopted by Order No. 637, § 284.13(b) requires interstate pipelines to post on their internet websites basic information on each transportation and storage transaction with individual shippers, including revisions to a contract, no later than the first nomination under a transaction.

The primary objective of the Final Rule is to revise the Commission's regulations on transactional reporting requirements for intrastate and Hinshaw pipelines in order to increase market transparency, without imposing unduly burdensome requirements on those pipelines. Transactional information provides price transparency so shippers can make informed purchasing decisions, and also permits both shippers and the Commission to monitor actual transactions for evidence of possible abuse of market power or undue discrimination. The existing reporting requirements in § 284.126 are inadequate for this purpose. For example the annual reports of transportation transactions required by existing § 284.126(b) do not include (1) the rates charged by the pipeline under each contract, (2) the receipt and delivery points and zones or segments covered by each contract, (3) the quantity of natural gas the shipper is entitled to transport, store or deliver, (4) the duration of the contract, or (5) whether there is an affiliate relationship between the pipeline and the shipper.

This additional information is necessary to enable such entities to determine the extent to which particular transactions are comparable to one another. For example, contracts for service on different parts of a pipeline system or with different durations may not be comparable to one another. In addition, the requirement that affiliate relationships between the pipeline and its shippers be reported will allow the Commission and interested parties to monitor whether the pipeline is favoring its affiliates.

¹¹ Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637, FERC Stats. & Regs. ¶ 31,091, 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).

The implementation of these data requirements will help the Commission to carry out its responsibilities under both the Natural Gas Act and Natural Gas Policy Act to monitor the activities and evaluate transactions of the natural gas industry to ensure competitiveness and to assure the improved efficiency of the industry's operations. The Commission's Office of Energy Market Regulation and the Office of the General Counsel will use the data in rate proceedings to review rate and tariff changes by natural gas companies for the transportation of gas, for general industry oversight, and to supplement the documentation used during the Commission's audit process.

Failure by the Commission to collect this information would mean that it is unable to monitor and evaluate transactions and operations of interstate pipelines and perform its regulatory functions.

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

The Commission is continuously working to expand the qualified types of documents that can be filed over the Internet. On November 15, 2007, the Commission issued a Final Rule, RM07-16-000, Order No. 703, "Filing via the Internet" 73 Fed. Reg. 65659 (November 23, 2007) revised its regulations for implementing the next version of its system for filing documents via the Internet, eFiling 7.0. This Final Rule allows for the option of filing all documents in Commission proceedings through the eFiling interface except for specified exceptions, and of utilizing online forms to allow "document less" interventions in all filings. Under these current rules, the Commission encourages parties to file intrastate reports using Form No. 537 for storage and Form No. 549 for transportation. Such standardized forms are conducive to eFiling, which has proven to be an effective way to increase practical access both for industry members and the Commission's own staff.

As noted above, the Commission wanted to make the requirements less burdensome to section 311 and Hindshaw pipelines. In particular and based on comments to both the Notice of Inquiry (NOI) and the NOPR, the Commission was concerned that a daily internet posting requirement could discourage section 311 and Hinshaw pipelines from performing interstate service. The Commission is therefore not imposing a daily posting requirement, as it requires for interstate pipelines. As a result, the transactional reports required by the Final Rule will not require section 311 and Hinshaw pipelines to maintain internet websites.

However, the transactional must be filed in a standardized electronic format, the Commission will develop an electronic form in a PDF format that can

be downloaded from the FERC website and saved to a user's computer desktop. In addition, the Commission will develop an XML Schema that can be used by Respondents who wish to file an XML file. This will provide easier access to the public to view the information.

Since the establishment of the first intrastate pipeline reporting requirements, electronic communications have reduced the cost of reporting transactional information. Given these advances in data management, collecting and compiling information for the proposed quarterly reports should be no more burdensome at present than it was to manage the lesser amount of information required when the Commission first established transactional reporting for intrastate pipelines.

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 has been found. The Commission staff is continuously reviewing its various filings in an effort to alleviate duplication. There are no similar sources of information available that can be used or modified for use for the purpose described in Item A (1.).

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

There are very few small businesses that will be impacted under the FERC-549D Reporting/data requirements. Most of the natural gas companies regulated by the Commission do not fall within the Regulatory Flexibility Act's definition of a small entity.¹² Approximately 125 natural gas companies are potential respondents subject to the requirements adopted by this rule. For the year 2008 (the most recent year for which information is available), 4 companies had annual revenues of less than \$7 million. This represents 3.2% of the total universe of potential respondents or only a very few entities that may have a significant burden imposed on them.

¹² See 5 U.S.C. 601(3), citing section 3 of the Small Business Act, 15 U.S.C. 623. Section 3 of the SBA defines a "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. The Small Business Size Standards component of the North American Industry Classification System defines a small natural gas pipeline company as one that transports natural gas and whose annual receipts (total income plus cost of goods sold) did not exceed \$7 million for the previous year.

The Commission is not imposing on intrastate and Hinshaw pipelines the same reporting requirements as it imposes on interstate pipelines. As noted above, the Commission in this Final Rule will not require the intrastate and Hinshaw pipelines to make daily postings of transactional information on their own websites. The Commission also recognizes that some respondents may prefer not to use XML as proposed in the NOPR. However, other respondents who have a large number of transactions also have experience with the format or for efficiency purposes and would probably use XML. As a result, the Commission will allow respondents at the beginning of each quarter to select the method¹³ of filing that is most appropriate to their circumstances.

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

In proposing to require section 311 and Hinshaw pipelines to make quarterly transactional reports containing similar information to that reported by interstate pipelines, the Commission has sought to balance the benefits of increased transparency of intrastate and Hinshaw pipeline transactions with the interest in avoiding unduly burdensome requirements for those pipelines.

Increasing the frequency of the § 284.126(b) transactional reports by intrastate and Hinshaw pipelines from annual to quarterly and requiring additional information in those reports will provide shippers and the Commission with both more timely and more useful information concerning the transactions entered into by section 311 and Hinshaw pipelines.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION

This proposed program meets all of OMB's section 1320.5 requirements.

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

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

¹³ Respondents must choose only one methodology in a given quarter to file their quarterly report. They do not have to notify Commission staff of their selection.

In September 2008, an interstate storage provider with market-based rates, SG Resources Mississippi, L.L.C. (SGRM) filed a request for waiver of the §§ 284.13(b)(1)(iii) and (b)(2)(ii) requirements that interstate pipelines post the rates charged in firm and interruptible transactions no later than first nomination for service. SGRM requested the waiver for both itself and all interstate storage providers with market-based rates. It contended that the mandatory disclosure of commercially sensitive pricing information provides prospective customers and competitors, such as NGPA section 311 intrastate storage providers that are only subject to semi-annual reporting requirements, with an unfair competitive advantage. SGRM also stated that a number of the NGPA section 311 storage providers submit their semi-annual storage reports subject to a request for privileged treatment pursuant to § 388.112 of the Commission's regulations.

In November 2008, the Commission denied SGRM's request, holding that the existing posting requirements for interstate pipelines are necessary to provide shippers with the price transparency they need to make informed decisions, and the ability to monitor transactions for undue discrimination and preference.¹⁴ The Commission also found that the requested exemption would be contrary to NGA section 4(c)'s requirement that "every natural gas company . . . keep open . . . for public inspection . . . all rates."

Contemporaneously with the *SGRM* order, the Commission issued a Notice of Inquiry (NOI), requesting comments on whether the Commission should impose additional reporting requirements on (1) NGPA section 311 intrastate pipelines and (2) Hinshaw pipelines.¹⁵ The NOI stated that the Commission was interested in exploring (1) whether the disparate reporting requirements for interstate and NGPA section 311 and Hinshaw pipelines have an adverse competitive effect on the interstate pipelines and (2) if so, whether the Commission should modify the posting requirements for section 311 intrastate pipelines and Hinshaw pipelines in order to make them more comparable to the § 284.13(b) posting requirements for interstate pipelines. A total of 18 parties filed comments.

Upon review of the comments received in response to the NOI, the Commission held that its primary goal in revising transactional reporting requirements for intrastate and Hinshaw pipelines would be to increase market transparency. Sixteen parties filed comments in response to the NOPR. Most commenters were either Section 311 or Hinshaw pipelines or their associations, but interstate pipelines,

¹⁴ *SG Resources Mississippi, L.L.C.*, 125 FERC ¶ 61,191 (2008).

¹⁵ *Contract Reporting Requirement of Intrastate Natural Gas Companies*, 125 FERC ¶ 61,190 (2008), 73 FR 72395, November 28, 2008.

exploration and production companies also filed comments. The following breaks down comments by issue:

Statutory Authority for the Rule- In the NOPR, the Commission stated that NGPA section 311(c) authorizes the Commission to prescribe the “terms and conditions” under which intrastate pipelines perform interstate service. The NOPR concluded that its proposal to require intrastate pipelines to file and make public the proposed transactional reports so that shippers and others can monitor NGPA section 311 transactions for undue discrimination is well within the Commission’s broad conditioning authority under § 311(c).

TPA claimed that FERC lacks statutory authority to enact the proposed regulations, arguing that “Congressional intent [was] that transactions under NGPA Section 311 are to be subjected to minimal regulation.” Enogex, along with TPA, added that the proposed reporting requirements are “in direct contravention of Section 311 of the NGPA and the legislative intent,” because compliance would be “unduly burdensome,” and because disclosure would harm the pipelines’ business position.

Other commenters, citing the legislative history of the NGPA, argued that the proposed regulations are lawful. Clayton Williams stated that “to the extent the intrastate pipeline is involved in an authorized” interstate transaction, the Commission has jurisdiction to review that transaction. Similarly, Texas Alliance argued that claims of undue burden are too conclusive, and that the NGPA’s jurisdiction is actually based on whether a given activity of a Section 311 pipeline is interstate or intrastate. Clayton Williams argued that it is the purpose of Section 311 to “help integrate gas markets,” and that “reasonable rules have always been part of the 311 world.” Further, Apache argued for even more frequent and detailed reporting, stating, “the Commission has jurisdiction and discretion to require ... [intrastate] pipelines to report the same information during the same time frame about natural gas transactions that the interstate pipelines are required to report.” Apache reasoned “that interstate pipelines and Section 311 and Hinshaw pipelines are held to the same prohibition on undue discrimination,” so the transparency regulations necessary to ensure compliance should be the same as well.

FERC Response- The Commission’s statutory authority to impose reporting requirements on Section 311 pipelines derives from NGPA section 311(c), which states, “any authorization granted under this section shall be under such terms and conditions and the Commission may prescribe.” This blanket authority is well-established as the ground for the previous reporting requirements for Form No. 549. As the Commission reasoned the rulemaking establishing a previous version of this reporting requirement, “section 311 tasks the Commission with the

responsibility to ensure rates and charges are fair and equitable. For the Commission to carry out this responsibility, it is important for rates charged to be reported.” While Congress sought to encourage intrastate pipelines to participate in the interstate transportation market by enabling them to do so without bearing the burden of full Commission regulation under the NGA,¹⁶ this does not mean that Commission regulation under NGPA section 311 was to be minimal. In Associated Gas Distributors v. FERC,¹⁷ the court affirmed the Commission’s use of its NGPA section 311(c) conditioning authority to impose conditions necessary to assure that section 311 intrastate pipelines do not engage in undue discrimination. The court also stated “that the Commission has been correct in its belief that under § 311 it should assert the traditional regulatory approach in areas where it is needed to protect the public from market dominance by natural gas companies.”¹⁸ Requiring intrastate pipelines to file quarterly transactional reports to permit the Commission, shippers, and others to monitor for undue discrimination is fully within the scope of this conditioning authority. None of the commenters in this docket challenge the legality of the previous reporting requirements. The new reporting requirements are not so different in scope or burden as to generate serious questions about the Commission’s long-established statutory authority to require transactional reporting.

Need of the Rule: Several intrastate pipelines argued that the Commission failed to identify sufficiently compelling reasons for revising the reporting requirements. These commenters argued that further transparency is unnecessary, or that the proposal would have little practical benefit.¹⁹ Enogex, for example, argued that “[i]n view of the minimal amount of concern expressed by interstate pipelines ... the Commission should have terminated this proceeding.”²⁰ AOG suggested that the Commission should, if not abandon the proposal, at least “more narrowly tailor [it] to address a perceived problem [regarding] ... transparency.”²¹ TPA claimed that further transparency in the section 311 and Hinshaw transportation and storage markets is not needed because the United States’ natural gas commodity sales hubs are the most price-transparent in the world.²² TPA further complained that commenters have yet to “cite[] any specific examples of adverse market impacts” from the status quo, and “no entity has asked the Commission to expand the Section 311 reporting requirements to increase transparency,” and is therefore “not reasoned decision making.”²³

16 Mustang Energy Corp. v. Federal Energy Regulatory Comm’n, 859 F.2d 1447, 1457 (10th Cir. 1988), cert. denied, 490 U.S. 1019 (1988); see also EPGT Texas Pipeline, 99 FERC ¶ 61,295 (2002).

17 824 F.2d 981, 1002-1003 (D.C. Cir. 1987) (AGD).

18 Id. at 1018 (citation omitted).

19 E.g., OneOK at 3, TPA at 3.

20 Enogex at 5.

21 AOG at 1.

22 TPA at 11.

23 TPA at 2, 4, 10.

Several pipelines argued that the new regulations place them at a competitive disadvantage compared to pipelines that only operate under the NGA or under state jurisdiction, or compared to shippers. Similarly, several pipelines complained that the current proposal could be too burdensome,²⁴ potentially causing some pipelines to abandon the Section 311 or Hinshaw markets.²⁵

Enogex and Enstor contend that the proposed reporting requirements would harm NGPA section 311 storage providers with market-based rates. Enogex argues that letting competitors see its rate information would limit its own ability to “capture rates”, calling it “tantamount to rescinding market-based rate authority.”²⁶ Enogex asserts the Commission should at least exempt storage services provided at market-based rates. Enogex argued that sufficient public information already exists on storage services, and that the Commission has stated when it authorizes market-based rates that such providers lack market power, thus reducing the need for regulatory scrutiny.²⁷ Enstor is also concerned that the proposed reporting requirements, particularly the requirement to report quarterly revenues received from each storage customer, would allow customers “to recreate the storage positions” that resulted in another customer receiving favorable rates.²⁸ Shippers, Enstor argued, should not have more information about the pipeline than the pipeline has about its shippers. Atmos went further, warning “of potential collusion or other anticompetitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.”²⁹

FERC Response: The Commission finds that these transactional reporting requirements appropriately balance the need for increased transparency of intrastate and Hinshaw pipeline transactions, while avoiding unduly burdensome requirements that might discourage such pipelines from participating in the interstate market.

Transactional information provides price transparency so shippers can make informed purchasing decisions, and also permits both shippers and the Commission to monitor actual transactions for evidence of possible abuse of market power or undue discrimination. The existing reporting requirements in § 284.126 are inadequate for this purpose. For example, the annual reports of

24 *E.g.*, AGA at 7; AOG at 7; Jefferson at 2, 6.

25 *E.g.*, Enogex at 8; TPA at 14.

26 Enogex at 8.

27 Enogex at 11-12.

28 Enstor at 7.

29 Atmos at 5 (citing Transparency Provisions of Section 23 of the Natural Gas Act, Order No. 704, FERC Stats. & Regs. ¶ 31,260 at P 88 (2007); order on rehearing, Transparency Provisions of Section 23 of the Natural Gas Act, Order No. 704-A, FERC Stats. & Regs. ¶ 31,275 (2008); order on rehearing, Transparency Provisions of Section 23 of the Natural Gas Act, Order No. 704-B, 125 FERC ¶ 61,302 (2008)).

transportation transactions required by existing § 284.126(b) do not include (1) the rates charged by the pipeline under each contract, (2) the receipt and delivery points and zones or segments covered by each contract, (3) the quantity of natural gas the shipper is entitled to transport, store, or deliver, (4) the duration of the contract, or (5) whether there is an affiliate relationship between the pipeline and the shipper. Similarly, the semi-annual storage reports required by existing § 284.126(c) do not include the rates charged by the storage provider in each contract, the duration of each contract, or whether there is an affiliate relationship between the storage provider and its customer.

However, all this information is necessary to allow the Commission, shippers, and others to determine the extent to which particular transactions are comparable to one another for purposes of monitoring for undue discrimination. For example, contracts for service on different parts of a pipeline system or with different durations may not be comparable to one another. In addition, the requirement that affiliate relationships between the pipeline and its shippers be reported will allow the Commission and interested parties to monitor whether the pipeline is favoring its affiliates. The additional information required to be reported by the Final Rule is also necessary to allow shippers to make informed decisions about their capacity purchases. Shippers need to know the price paid for capacity over a particular path to enable them to decide, for instance, how much to offer for the specific capacity they seek.

The Commission also finds that the lack of transparency ultimately harms not only shippers, but the pipelines themselves, whose individual actions to protect market advantage work collectively to make intrastate transportation less attractive. Without transparency and trust, efficient free-market allocation of resources is not possible. As the specific example reported by Clayton Williams shows, the current market's lack of transparency fosters, at the very least, an atmosphere of mistrust. While TPA may plausibly assert that natural gas commodity sales hubs are the most price-transparent commodity markets in the world, the same cannot be said of the market for intrastate transportation. It is the Commission's obligation to ensure transparency at all stages of the natural gas market over which it has jurisdiction, because inefficiencies and unfair treatment in one stage of the market can lead to harm elsewhere in the market. Accordingly, we find that there is a need for revised regulations that improve market transparency.

Exempting storage services provided at market-based rates is also unwarranted. A Commission finding that a service provider lacks market power should not be read to mean that its shippers are at no risk of undue discrimination or other unlawful practices. Furthermore, it is still in the public interest to disseminate market information concerning the transactions of market-based

storage services. As the Commission reasoned in a previous rulemaking, “[i]t is even more critical for the Commission to review pricing when the Commission is relying on competition to regulate rates, rather than scrutinizing the underlying cost of service. Thus, we will not exempt intrastate storage companies charging market-based rates from the requirement to file ... reports.”³⁰ Posting rates charged in previous market-based transactions leads to greater transparency and competition. As the Commission found, in Order No. 637-A, with respect to alleged competitive harm to individual firms:

while disclosure of the transactional information may cause some commercial disadvantage to individual entities, it will benefit the market as a whole, by improving efficiency and competition. Buyers of services need good information in [order](#) to make good choices among competing capacity offerings. Without the provision of such information, competition suffers.³¹

The Commission considers the question of undue burden not only in isolation, but in the context of a pipeline’s entire jurisdictional business, and relative to the benefits to the market.³² The new requirements aim to empower shippers “to determine the extent to which particular transactions are comparable to one another.”³³ In this way, the Commission gives shippers increased ability to protect themselves from undue discrimination, and thus be less dependent on Commission investigations to protect their rights. The new reporting requirements

³⁰ [Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies](#), Order No. 581, 60 FR 53019, 53051, FERC Stats. & Regs. ¶ 31,026 (1995), [order on reh’g](#), Order No. 581-A, FERC Stats. & Regs. ¶ 31,032 (1996) (Order No. 581).

³¹ Order No. 637-A, at 31,614-615. Enstor is concerned that the requirement to include the revenues received from each interruptible storage customer during a quarter will cause competitive damage, alleging that such information will allow customers to recreate the storage positions that resulted in another customer receiving favorable rates. However, the existing semi-annual storage reports required by § 284.126(c) already require the reporting of revenues received from each customer. Increasing the frequency of such revenue reports from semi-annually to quarterly would not appear to significantly affect this concern.

³² [See, e.g., Transparency Provisions of Section 23 of the Natural Gas Act](#), Order No. 704-A, FERC Stats. & Regs. ¶ 31,275 at P 17 (2008) (“While we acknowledge that removing purchases from volumes that must be reported on Form No. 552 would somewhat reduce the reporting burden on certain market participants, we continue to believe that the substantial benefits of having such data publicly available outweigh this burden.”), [order on reh’g](#), Order No. 704-B, 125 FERC ¶ 61,302 (2008). [See also Pipeline Posting Requirements under Section 23 of the Natural Gas Act](#), Order No. 720, 73 FR 73494, FERC Stats. & Regs. 31,283, at P 56 (2008) (“We also believe that the goals of this Final Rule outweigh the burdens to be placed upon non-interstate and interstate pipelines.”); [order on reh’g](#), Order No. 720-A, FERC Stats. & Regs. ¶ 35,302, at P 116 (2010) (“The Commission understands commenters’ arguments that posting new points on a rolling basis would be burdensome for major non-interstate pipelines, but believes that these burdens are overstated and substantially outweighed by the transparency benefit of timely posting of newly eligible points.”).

³³ NOPR at 19.

also provide information that may assist state and local regulatory bodies, without interfering in their autonomy of action.

Reporting Frequency- In the NOPR, FERC found that increasing the frequency of the § 284.126(b) transactional reports from annual to quarterly would provide market participants and the Commission with more timely and more useful information concerning the transactions entered into by intrastate pipelines. FERC stated that it sought to balance the benefits of increased transactional transparency against the need to avoid creating undue burden for the responding pipelines. The Commission highlighted that “one primary difference will remain between the reporting requirements for interstate pipelines and the Section 311 and Hinshaw pipelines: interstate pipelines will post transactional information daily on their websites, while Section 311 and Hinshaw pipelines will submit this information in a quarterly report to the Commission.”

Most commenters support quarterly reporting. Even some parties who urged the Commission to cancel the rulemaking docket nevertheless stated that they could accept limited quarterly reporting. Some shippers, while generally supportive of the NOPR, stated that they would prefer daily reporting as the best way to ensure transparency and competitive markets. The pipelines, however, considered the possibility of daily reporting to be “very costly, particularly if daily posting on a website was required,” due “to the [sheer] volume of reporting” of each day’s transactions.

FERC Response- The Final Rule adopts the NOPR’s proposal to require quarterly reporting by section 311 and Hinshaw pipelines. The Commission continues to find that a quarterly reporting requirement strikes the appropriate balance of increasing transparency without imposing undue burdens on section 311 and Hinshaw pipelines. One purpose of the NGPA was to induce intrastate pipelines to participate in the interstate market by ensuring that it would not be unduly burdensome to do so. This participation by intrastate pipelines eliminates the need for duplication of facilities between interstate and intrastate pipelines. Thus, as the court has stated, “Congress intended that intrastate pipelines should be able to compete in the transportation market without bearing the burden of full regulation by FERC under the Natural Gas Act.”

Reporting Requirements

Identification of Receipt and Delivery Points- The NOPR proposed requiring intrastate pipelines to report several new elements of information, among them the primary receipt and delivery points covered by the contract. The NOPR proposed that the reports include the “industry common code” for each receipt and delivery point in order to minimize any ambiguity as to what receipt and delivery points are

being reported and to ensure that all reporting pipelines identify such points in a consistent manner. Similarly, the NOPR proposed that, when reporting the identity of a given shipper, respondents should include not only the full legal name, but also an “identification number” for each shipper.

Some commenters argued that using industry common codes to report receipt and delivery points would be highly burdensome, due to the cost of obtaining common code identifiers from a third-party registry. According to Jefferson, the annual charge for licensing common location codes is \$1,670 for 1-20 points, \$3,506 for 21-100 points, and \$5,428 for 100+ points. Enogex protested that it “does not have ‘primary’ and ‘secondary’ points on its system, but rather uses standard receipt and delivery points. As a result, Enogex does not have ... common codes,” and urged that the Commission reject this element as “base[d] ... on the business practices of interstate pipelines.” TPA voiced similar concerns. Jefferson and ONEOK suggested letting respondents use their own meter codes instead. AGA suggested, as a compromise, that pipelines that do not already use common codes should be allowed “to use an interstate pipeline’s Data Reference Number (DRN) for points of interconnection with an interstate pipeline and use [their own] proprietary code where a DRN has not already been assigned.”

AOG and Cranberry, whose pipelines perform gathering functions, stated that they do not keep organized records of who has contract rights to which receipt or delivery points. AOG proposed that, instead of differentiating among receipt points that are gas wells; they “would simply identify all receipt points as ‘AOG system.’” Cranberry proposed that the Commission waive the requirement to report receipt and delivery points where, as with their system, all shippers have access to all or numerous points, and no common industry codes exist.

The proposal to require use of standardized shipper identification numbers also raised some concerns. Jefferson estimated that “it will cost approximately \$24,000 annually to utilize a third-party service to verify a unique shipper identification number such as a D-U-N-S® number,” and suggested removing this requirement. TPA likewise argued that intrastate providers would have no use for D-U-N-S numbers other than filing the proposed reports. TPA proposed having the public reports only “contain coded references to individual shippers and points, with the key to the code available to the Commission” for investigation but otherwise kept confidential; in the alternative TPA suggested that the exact legal name of the shipper should be sufficient. Most pipelines, however, did not object to standardized shipper identification, and “AGA supported the use of the D-U-N-S® Number as a common company identifier.”

FERC Response- FERC acknowledges the concern of some pipelines that requiring all pipelines to use industry common codes for receipt and delivery

points could prove to be expensive, and the Commission has adjusted §284.126(b)(1)(iv) of the final regulations. Where respondents already use Industry Common Codes in their existing business practices (such as wherever an intrastate system interconnects with an NGA interstate system), they must use those codes in their reports. However, where respondents do not use Industry Common Codes, they should report using the same point identification system that they use for scheduling with shippers. In addition, respondents who do not use Industry Common Codes must publish a list of all the jurisdictional receipt and delivery point codes they use for scheduling, along with the county and state of each point, and the name of the jurisdictional pipeline (if any) that interconnects at each point. This list should be filed as a separate narrative alongside the respondent's initial report; if the list should change at any time, the respondent should include a narrative alongside its next quarterly report updating the list.

Data Format and Technical Protocols- The NOPR proposed that Commission Staff develop a mandatory, standardized electronic format for the Form No. 549D reports. The goals are to facilitate data submission, to provide the public timely and easy access to the information, and to avoid the costs of requiring intrastate pipelines to maintain a NAESB-compliant website. The Commission also asked for comments on the technological issue of whether the proposed standardized format should be developed using XML or an ASP.NET web-based form.

The chief concern of pipelines is that they may have to engage in extensive training or outsourcing in order to understand and comply with the Commission's directive. AGA reports that "one company has estimated the cost of developing an in-house solution for XML Schema reporting to be approximately \$30,000." Jefferson reported its own estimate of \$130,000 "to develop a quarterly report similar to the proposed Form No. 549D in the XML Schema format." Jefferson also stated, however, that it could not support ASP.NET unless the Commission could first guarantee that the format would not "require [] a filer to manually enter data," or otherwise make the data submission and correction process laborious.

In order to reduce this compliance burden, AGA along with Duke recommend that the Commission support not only the XML and ASP.NET approaches, but also "a simple spreadsheet with the data in tabular form that the intrastate and Hinshaw pipelines could complete and file with the Commission using the eFiling portal." TPA urged the Commission to not adopt a form at all, but rather allow pipelines to continue to file reports similar in format and content to what they file now. In the alternative, TPA recommends making both XML and ASP.NET available.

AGA also "recommends that the Commission develop a Frequently Asked Questions webpage or other web-based Query System to assist intrastate and

Hinshaw pipelines in complying with the new standardized electronic information filing requirements.”

FERC Response- FERC will use XML to collect and process the data required by the Form No. 549D report and present it in a timely manner on its website. The Commission recognizes that some respondents do not wish to use XML. Other respondents have experience with the format or for efficiency purposes would use XML. Therefore, the Commission will allow respondents at the beginning of each quarter to select their method of filing most appropriate to their circumstances.

Seven of the parties representing section 311 and Hinshaw pipelines oppose any change in the existing reporting requirements.³⁴ They argued that imposing additional burdensome reporting requirements on section 311 and Hinshaw pipelines would be inconsistent with Congress’s intent of allowing intrastate pipelines to participate in the interstate pipeline grid without unduly burdensome regulatory requirements. For example, they argued that the intrastate and Hinshaw pipelines would have to invest in additional information technology and personnel in order to comply with the section 284.13 requirement that pipelines post the information on an internet web site in downloadable file formats. They also maintain they already file enough information with other state and federal agencies. Any further filings, they claim, would place them at a competitive disadvantage against intrastate-only pipelines, who are often allowed to keep confidential the identity of their shippers and the agreed-upon prices.³⁵ Moreover, they stated that they generally do not compete for the same customers as interstate pipelines, arguing that they generally feed into interstate pipelines, rather than running parallel and competing with them. Two commenters³⁶ even suggested that the Commission lacks jurisdiction to reform the reporting requirements.

The remaining section 311 and Hinshaw commenters, including AGA, also opposed changing the current reporting requirements, and made many of the same arguments as are noted above.³⁷ However, these commenters suggested that, if the Commission believes increased reporting is necessary, it could consider increasing the frequency of the existing reports to quarterly and to presume such reports to be fully public. This more limited change in the current reporting requirements would address perhaps their primary concern: the cost of having to upgrade their existing information technology systems in order to maintain the necessary internet website. If the Commission were to require reports more frequently than

34 AOG, Atmos, Copano, Cranberry, DCP, Enogex, Gas Processors Association (GPA), Jefferson, and the Texas Pipeline Association (TPA).

35 Atmos, DCP, Jefferson, Niska, and the TPA.

36 Enogex and the GPA

37 AGA, Duke, Niska, NW Natural, PG&E.

quarterly, these commenters support an exemption for smaller intrastate and Hinshaw pipelines. Several commenters propose such an exemption apply to intrastate and Hinshaw pipelines whose average gas deliveries over the previous three years did not exceed 50 million MMBtu, consistent with the exemption from the Order No. 720 requirement that non-NGA pipelines report scheduled gas flows.

The other four commenters³⁸ contend that the Commission should extend the § 284.13 interstate pipeline reporting requirements to intrastate and Hinshaw pipelines. They asserted that applying the same reporting requirements to all pipelines performing interstate service is both a matter of fairness and a practical solution to the discrimination and anti-competitive practices currently afflicting the market. One, Enstor, stated that in order to fully equalize the reporting requirements for interstate pipelines and intrastate and Hinshaw pipelines, the Commission must impose tariff filing requirements on intrastate and Hinshaw pipelines comparable to those currently imposed on interstate pipelines. Enstor pointed out those sections 284.13(b)(1)(viii) and 284.13(b)(2)(vi) require interstate pipelines to post all aspects in which a service agreement deviates from the pipeline's tariff. Enstor stated that, while interstate pipelines are required to file tariffs in a prescribed format, there is no similar requirement for intrastate and Hinshaw pipelines and this would complicate any requirement for those pipelines to post how particular contracts deviate from their tariff.

FERC Response – The Final Rule, in accordance with the NOPR, requires Form No. 549D transactional reports under § 284.126(b) to be filed on a quarterly basis, to include certain additional types of information and cover storage as well as transportation, and to be filed in a uniform electronic format and posted on the Commission's web site without redaction.

In addition, the Final Rule clarifies or amends the NOPR on several points elaborated below. The Commission clarifies that pipelines are to file their Form No. 549D transactional reports on a contract-by-contract basis for each shipper, rather than on a transaction-by-transaction basis. The Commission is adopting a common identification requirement for shippers. For receipt and delivery points, however, pipelines need only use an industry common code where one is already in use, and may report wells and other gathering systems in the aggregate. The Commission also clarifies that pipelines should continue to only report on their jurisdictional activities. Finally, the Commission has provided several clarifications regarding the data format and technical protocols, with the result being a flexible framework similar to the “simple spreadsheet” concept proposed by some commenters.

³⁸ Apache (shippers), APGA (municipal LDCs), Enstor, and Tres Palacios (interstate storage)

The Commission considered the question of undue burden not only in isolation, but in the context of a pipeline's entire jurisdictional business, and relative to the benefits to the market.³⁹ The new requirements aim to empower shippers "to determine the extent to which particular transactions are comparable to one another."⁴⁰ In this way, the Commission gives shippers increased ability to protect themselves from undue discrimination, and thus be less dependent on Commission investigations to protect their rights. The new reporting requirements also provide information that may assist state and local regulatory bodies, without interfering in their autonomy of action.

Data Format and Technical Protocols

The NOPR proposed that Commission Staff develop a mandatory, standardized electronic format for the Form No. 549D reports. The goals are to facilitate data submission, to provide the public timely and easy access to the information, and to avoid the costs of requiring intrastate pipelines to maintain a NAESB-compliant website.

The Commission introduced its proposed format in the Information Notice. The Information Notice provided a table showing proposed Form No. 549D data elements to be collected each quarter from each respondent. It also included an example of data entries reported by a sample pipeline for one shipper, a Proposed Form No. 549D Data Dictionary and Reporting Units, and draft Instructions for Reporting Data. The Commission also asked for comments on the technological issue of whether the proposed standardized format should be developed using XML or an ASP.NET web-based form.

The discussion of information technology in the NOPR and Information Notice garnered widespread concern from pipelines. The chief concern of pipelines is that they may have to engage in extensive training or outsourcing in order to understand and comply with the Commission's directive.⁴¹ AGA reported that "one company has estimated the cost of developing an in-house solution for

³⁹ See, e.g., Transparency Provisions of Section 23 of the Natural Gas Act, Order No. 704-A, FERC Stats. & Regs. ¶ 31,275 at P 17 (2008) ("While we acknowledge that removing purchases from volumes that must be reported on Form No. 552 would somewhat reduce the reporting burden on certain market participants, we continue to believe that the substantial benefits of having such data publicly available outweigh this burden."), order on reh'g, Order No. 704-B, 125 FERC ¶ 61,302 (2008). See also Pipeline Posting Requirements under Section 23 of the Natural Gas Act, Order No. 720, 73 FR 73494, FERC Stats. & Regs. 31,283, at P 56 (2008) ("We also believe that the goals of this Final Rule outweigh the burdens to be placed upon non-interstate and interstate pipelines."); order on reh'g, Order No. 720-A, FERC Stats. & Regs. ¶ 35,302, at P 116 (2010) ("The Commission understands commenters' arguments that posting new points on a rolling basis would be burdensome for major non-interstate pipelines, but believes that these burdens are overstated and substantially outweighed by the transparency benefit of timely posting of newly eligible points.").

⁴⁰ NOPR at 19.

⁴¹ E.g., Jefferson at 9-11.

XML Schema reporting to be approximately \$30,000.”⁴² Jefferson reported its own estimate of \$130,000 “to develop a quarterly report similar to the proposed Form No. 549D in the XML Schema format.”⁴³ Jefferson also stated, however, that it could not support ASP.NET unless the Commission could first guarantee that the format would not “require[] a filer to manually enter data,” or otherwise make the data submission and correction process laborious.⁴⁴

In order to reduce this compliance burden, AGA along with Duke recommended that the Commission support not only the XML and ASP.NET approaches, but also “a simple spreadsheet with the data in tabular form that the intrastate and Hinshaw pipelines could complete and file with the Commission using the eFiling portal.”⁴⁵ TPA urged the Commission to not adopt a form at all, but rather allow pipelines to continue to file reports similar in format and content to what they file now.⁴⁶ In the alternative, TPA recommended making both XML and ASP.NET available.⁴⁷

AGA also “recommended that the Commission develop a Frequently Asked Questions webpage or other web-based Query System to assist intrastate and Hinshaw pipelines in complying with the new standardized electronic information filing requirements.”⁴⁸ AGA, TPA, and Jefferson had several questions in this vein regarding specific elements and definitions from the Information Notice.⁴⁹

Cities, along with Constellation, praised the Commission’s decision “to shoulder the burden of website maintenance and standards compliance.”⁵⁰ Yates, while generally supporting the Commission’s proposal, argued that it would not be unduly burdensome to require pipelines to maintain their own websites on which they regularly publish transactional data.⁵¹

FERC Response -

The Commission will use XML to collect and process the data required by the Form No. 549D report and present it in a timely manner on its website. The Commission recognizes that some respondents may prefer not to use XML. Other respondents have experience with the format or for efficiency purposes would use

42 AGA at 7.

43 Jefferson at 14.

44 Jefferson at 10.

45 AGA at 14; see also Duke at 2-3, 7-9.

46 TPA at 16.

47 TPA at 20; see also ONEOK at 5.

48 AGA at 3; see also AGA at 15.

49 AGA at Appendix A; TPA at 20-25; Jefferson at 11-13.

50 Cities at 4; see also Constellation at 4.

51 Yates at 7.

XML. Therefore, the Commission will allow respondents at the beginning of each quarter to select the method⁵² of filing most appropriate to their circumstances.

- a. Fillable-PDF Form No. 549D - For respondents who prefer not to use XML, the Commission will develop an electronic form in a PDF format that can be downloaded from the FERC website and saved to a user's computer desktop. The form can be viewed and updated using Adobe Acrobat Reader version 9 or higher. The fillable-PDF form will look like a standard document, so that a clerk or any other employee(s) will be able collaborate on filling it out, saving it, and submitting the fillable-PDF electronically to the Commission.⁵³ The data will be verified and validated before it will be officially accepted by the Commission. Each respondent's filing would be publicly available in eLibrary within 1 day after filing. The public would also be able to download the entire Form No. 549D database for the quarter from the FERC website a few days after the filing deadline. Respondents would be able to correct any errors in their initial filings by filing a revised fillable PDF Form No. 549D with the Commission.⁵⁴
- b. File an XML file that validates against an XML Schema for Form No.549D

This method of filing is for those respondents who have some experience with XML, or have a relatively large number of shippers and contracts to report on each quarter. The Commission would develop an XML Schema for Form No. 549D and make it available for download on the FERC website. Respondents would have to test and successfully validate their XML filing against the XML Schema for Form No. 549D prior to submitting it electronically to the Commission. Once the XML file is submitted, the Commission will examine it to ensure that it is formatted properly and validates against FERC's XML Schema for Form No. 549D before it is officially accepted by the Commission. Each respondent's filing would be publicly available in eLibrary within 1 day after filing. The public would also be able to download the entire Form No. 549D database for the quarter from the FERC website a few days after the filing deadline. Respondents would be able to correct any errors in their initial filings by resubmitting another XML file.

At a date closer to the deadline for filing the first Form No. 549D, the Commission will issue a notice for a Workshop in which Commission Staff will

⁵² Respondents must choose only one methodology in a given quarter to file their quarterly report. They do not have to notify Commission staff of their selection.

⁵³ See Appendix for a paper copy of the Form No. 549D and an example of a completed copy.

⁵⁴ The Form No. 549D database accessible on the FERC website would only show the latest filing of each Respondent.

explain the overall filing process, including the fillable-PDF Form No. 549D, data dictionary, XML Schema and will answer any technical questions. Commission Staff are also directed to set up a form549D email box (form549d@ferc.gov) where respondents can send questions. Commission staff will also provide online filing guidance and technical advice to respondents who request it, in line with the Commission's current guidelines for contact between Staff and regulated entities.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no payments or gifts to respondents in the proposed rule.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

The Commission is proposing to make these reports more accessible to the public by requiring that they be filed in a standardized electronic format and be posted on the Commission's website without any redaction of any information. The Commission proposes the data be publicly available, and not filed on a redacted basis. This method will enhance the posting of quarterly reports on the Commission's website and facilitate easy access to the information by the public. At the same time, this procedure will avoid the costs of requiring intrastate pipelines to maintain a NAESB-compliant website, discussed above. Specific requests for confidential treatment to the extent permitted by law will be entertained pursuant to 18 C.F.R. Section 388.110.

Enogex and Enstor contend that the proposed reporting requirements would harm NGPA section 311 storage providers with market-based rates. Enogex argued that letting competitors see its rate information would limit its own ability to "capture rates", calling it "tantamount to rescinding market-based rate authority."⁵⁵ Enogex asserted the Commission should at least exempt storage services provided at market-based rates. Enogex argued that sufficient public information already exists on storage services, and that the Commission has stated when it authorizes market-based rates that such providers lack market power, thus reducing the need for regulatory scrutiny.⁵⁶ Enstor is also concerned that the proposed reporting requirements, particularly the requirement to report quarterly revenues received from each storage customer, would allow customers "to recreate the storage positions" that resulted in another customer receiving favorable rates.⁵⁷ Shippers, Enstor argued, should not have more information about the pipeline than the pipeline has about its shippers.

⁵⁵ Enogex at 8.

⁵⁶ Enogex at 11-12.

⁵⁷ Enstor at 7.

Atmos went further, warning “of potential collusion or other anticompetitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.”⁵⁸

FERC Response: In response to the pipelines that suggest that they have an overriding confidentiality interest, or that even raise the specter that increased transparency may cause unlawful behavior, the Commission disagrees. The Commission’s decades of experience in enforcement have confirmed the wisdom of what jurists have long held in the related realm of financial disclosure: “confidentiality interest is not absolute, however, and can be overcome by a sufficiently weighty government purpose.... ‘Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.’”⁵⁹

11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE THAT ARE CONSIDERED PRIVATE

There are no questions of a sensitive nature associated with the information collection proposed in the subject Final Rule.

12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION

In the NOPR, the Commission estimated the annual burden estimate to be 1,750 hours (an average of 3.5 hours per filing for information requirements/collections under FERC-549D and based on the Commission's recent experience with transactional and storage reports.

Many pipelines strongly disagreed with the Commission’s burden estimate. Most prominently, commenters urge the Commission to consider the initial implementation burden. Atmos states that it spent five months on the first annual report required by Order No. 704.⁶⁰ AGA estimates that the development of an XML Schema alone would cost \$30,000 per respondent, for an initial total burden of \$3.75 million.⁶¹ Enogex estimates the “major information systems upgrades to allow Enogex to track, report, and maintain the level of detailed data necessary ... [at] \$3 to \$4 million.”⁶²

58 Atmos at 5 (citing Transparency Provisions of Section 23 of the Natural Gas Act, Order No. 704, FERC Stats. & Regs. ¶ 31,260 at P 88 (2007); order on reh’g, Transparency Provisions of Section 23 of the Natural Gas Act, Order No. 704-A, FERC Stats. & Regs. ¶ 31,275 (2008); order on reh’g, Transparency Provisions of Section 23 of the Natural Gas Act, Order No. 704-B, 125 FERC ¶ 61,302 (2008)).

59 Statharos v. New York City Taxi & Limousine Comm’n, 198 F.3d 317, 323 (2d Cir. N.Y. 1999) (citing Louis Brandeis, Other People’s Money and How the Bankers Use It 62 (1914)).

60 Atmos at 3.

61 AGA at 7.

62 Enogex at 7.

Commenters also disagreed with the estimated ongoing annual burden. AGA estimated annual reporting would take over 12 hours per respondent to complete, which for 125 respondents would be an annual burden of \$900,000.⁶³ TPA also believes that annual burdens will be significantly higher, especially if the Commission chooses a format that requires manual data entry.⁶⁴ “[D]ue to the large number of small-volume, interruptible 311 transactions ... the burden of additional reporting might outweigh the benefits of participating,” TPA warns.⁶⁵ Jefferson estimates 24 hours per quarter per respondent, with thousands of dollars in fees to third party information technology vendors.⁶⁶ In addition, Jefferson and others provide separate estimates of the cost of using industry common codes for shippers and receipt and delivery points, as detailed above in this order.⁶⁷

FERC Response: The requirement for intrastate pipelines to post additional information regarding their transactions would impose an initial burden on pipelines as they organize their corporate data to be compatible with the data elements selected by the Commission for Form No. 549D. Certain pipelines have asserted that the costs could include the reconfiguring of information collection systems. However, given that this information is used in their business, the Commission still believes that the burden that would be imposed by this proposed requirement is largely for the collection of this information. Intrastate pipelines can choose to submit their quarterly Form No. 549D using a Commission-provided Fillable PDF form.⁶⁸ In this instance, intrastate pipelines would not be required to incur costs to learn XML or develop an XML Schema. Even if an intrastate pipeline chose to file an XML file, it would not incur costs to develop an XML Schema. The Schema would be developed by the Commission and provided to pipelines in order to validate their submission before eFiling it to the Commission. While the Commission erred in not including this burden in its original estimate, the Commission nevertheless finds that the burden estimates provided by commenters are far too high. These estimates were based on assumptions that the Commission would require a far more intensive volume of reports – transaction-by-transaction reports instead of contract-by-contract reports – and that the Commission would require the more technologically challenging XML data format without developing a “simple spreadsheet” form to guide respondents.

63 AGA at 7.

64 TPA at 15.

65 TPA at 24.

66 Jefferson at 14.

67 E.g., Jefferson at 9.

68 Respondents would have to download the free version of Acrobat Reader version 9 to use the fillable PDF.

Initial Public Reporting Burden:

Data Collection Filing Method	Number of Respondents	Average Start-Up Burden per Respondent	Total Industry Hours	Total Industry Costs⁶⁹
Using PDF Form	87	\$4,354	5,916	\$378,798
Using XML Schema	38	\$11,287	7,448	\$428,906
Total	125		13,364	\$807,704

Ongoing Public Reporting Burden:

Data Collection Filing Method	Number of Respondents	Average Annual Ongoing Burden per Respondent	Total Industry Hours per Year	Total Industry Costs per Year
Using PDF Form	87	\$2,650	4,294	\$230,550
Using XML Schema	38	\$2,171	1,520	\$ 82,498
Total	125		5,814	\$313,048

13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS

In the NOPR, the Commission using an hourly rate of \$150 to estimate the costs for filing and other administrative processes estimated the total cost for all respondents to be \$262,500.

Certain pipelines strongly disagreed in their comments (as noted above) with the Commission's estimates for initial and ongoing costs and stated that to meet the Commission's requirements they would have to reconfigure their information collection systems

FERC Response: The Commission has revised its initial cost estimates. The revision includes the initial implementation burden and an estimate of the ongoing

⁶⁹ See discussion of costs in item no. 14 below.

annual burden concomitant with the decision allows multiple versions of the report.

The analysis began with an examination of a representative sample of over one-third of the companies currently filing a Form No. 537, the semi-annual storage report, or Form No. 549, the annual transportation report. Studying the level and type of services performed for their shippers made it possible to split the industry between those that would logically file using the PDF form because of the relatively small number of shippers and services, and those that would incur the addition up-front effort associated with developing tools for filing the report using the Commission's XML schema. This analysis estimates that the 70 percent of Respondents that average less than five shippers transacting in a given quarter would file using the PDF form. The other 30 percent would incur addition development costs associated with the XML-based report to offset the larger on-going burden cost associated with reporting more shippers, services, and contracts. Cost estimates were developed for the initial burden and the on-going burden for each of the permissible file methods, using prevailing Houston labor costs and the most efficient hourly split of manpower by legal, accounting, regulatory and IT departments.

The initial burden was split between effort involved in the initial review and planning procedures to ensure compliance with the rulemaking and the effort required to develop and implement the new procedures. The PDF startup effort would require an average 68 person-hours or \$4,354 per Respondent. The XML startup effort would require an additional 128 person-hours, primarily associated with the increased IT development and testing requirements, for an estimated initial burden of \$11,287 per Respondent.

To estimate ongoing burden, the Commission analyzed two sets of costs: the per-report cost for the effort by the legal accounting, IT and regulatory departments related to changes in the mix of shippers and services, and the per-contract costs related to the effort populate the report with the information associated with each shipper by service type and by contract. For the first set of costs, this analysis estimates the PDF form to require 11 person-hours at an estimated cost of \$596 per report, and the XML Schema 10 man-hours at an estimated cost of \$556 per report. For the per-contract set of costs, this analysis estimates the PDF form to require \$663 per report and the XML Schema \$543 per report, for the average Respondent. The PDF ongoing effort would be \$2,650 per Respondent. The XML ongoing effort would be \$2,171 per Respondent.

14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT

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

1) Data Requirement of Data Number	Analysis (FTEs) ⁷⁰	Estimated Salary Per Year	FERC Clearance (FY '10)	Forms One Year's Operation	Total Cost
FERC-549D	0.12112 ⁻⁷¹	\$131,874	\$ 1,528		\$17,378

In item no. 3 above, the Commission indicated that to improve the transparency of the data to be filed with the Commission, a standardized format would be created so the reports could be filed electronically. The Commission estimates the costs for development of that format to be as follows: a total development cost projected to be \$46,097. (This includes 4 weeks of systems development (3 FTE for 4 weeks or 480 hours) + reports development (1 FTE generating 5 reports and 2 days per report or 80 hours). In addition, this data collection will be housed on a new server and the costs are approximately \$6,004 for hardware costs.

Total Costs = \$69,479 (\$17,378 + \$46,097+\$6004).

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

The Commission stated in the NOPR that it “believes that the revised reporting requirements ... avoid [] unduly burdensome requirements that might discourage ... participating in the interstate market.”⁷² In proposing the frequency, content, and format of the reports, the Commission sought the best balance of minimizing the reporting burden and maximizing the competitive effects on the markets.

By issuing this Final Rule, the Commission is adopting the proposed quarterly transactional reporting requirements for section 311 and Hinshaw pipelines, with several clarifications discussed in subsequent sections of the Final Rule. The Commission finds that these transactional reporting requirements appropriately balance the need for increased transparency of intrastate and Hinshaw pipeline transactions, while avoiding unduly burdensome requirements that might discourage such pipelines from participating in the interstate market.

An additional benefit will occur by making the reports easily accessible on the Commission’s website would avoid the costs of requiring intrastate pipelines

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

71 This estimate is based on 25 cases per year with two analysts assigned to cases. In total they would devote 5 hours total for analyzing the data. 25 cases x 2 analysts x 5 hours @\$63.40 hourly rate = \$15,850 per year.

72 NOPR at 17.

to maintain a NAESB-compliant website while also offering a single, convenient, and standardized source for intrastate pipeline information.

In summary, the quarterly filing of additional information by intrastate pipelines is necessary to provide information regarding the price and availability of natural gas transportation services to market participants, state commissions, the Commission, and the public. The filing would contribute to market transparency by empowering market participants to determine the extent to which particular transactions are comparable to one another; and it would allow the monitoring of potentially manipulative or unduly discriminatory activity.

16. TIME SCHEDULE FOR THE PUBLICATION OF DATA

The time schedule for FERC-549D, **Contract Reporting Requirements of Intrastate Natural Gas Pipelines** is shown in the following table.

Schedule for Data Collection and Analysis

<u>Activity</u>	<u>Estimated Completion Time</u>
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The Final Rule will become effective on April 1, 2011. Pursuant to the regulations, the Form No. 549D quarterly report for the period January 1, 2011 through March 31, 2011 must be eFiled on or before May 1, 2011.

These reports are to be filed in accordance with the following schedule:

The quarterly report for first quarter before May 1. (January 1 through March 31)	must be filed on or
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The quarterly report for the second quarter before August 1. (April 1 through June 30)	must be filed on or
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The quarterly report for the third quarter before November 1. (July 1 through September 30)	must be filed on or
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The quarterly report for the fourth quarter before February 1. (October 1 through December 31)	must be filed on or
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17. DISPLAY OF EXPIRATION DATE

The FERC-549D format will display an OMB control no. and expiration date.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

Not applicable. The Commission does not use statistical methodology for FERC-549D.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.