

Supporting Statement for
**FERC-551, Reporting of No Notice Service by Interstate Pipelines and
Scheduled Volumes by Major Non-Interstate Natural Gas Pipelines**
As Proposed In Docket No. RM08-2-000
(Supplemental Notice Issued July 16, 2009)

The Federal Energy Regulatory Commission (Commission) is submitting to the Office of Management and Budget (OMB) for informational purposes only, **FERC-551, No Notice Service by Interstate and Scheduled Volumes by Major Non-Interstate Pipelines**. The Commission has issued a supplemental notice seeking additional public comment 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 200812-1902-001).

Background

The Commission's market-oriented policies for the wholesale electric and natural gas industries require that interested persons have broad confidence that reported market prices accurately reflect the interplay of legitimate market forces. Without confidence in the basic processes of price formation, market participants cannot have faith in the value of their transactions, the public cannot believe that the prices they see are fair, and it is more difficult for the Commission to ensure that jurisdictional prices are "just and reasonable"¹.

The performance of Western electric and natural gas markets early in the decade shook confidence in posted market prices for energy. In examining these markets, the Commission's staff found, inter alia, that some companies submitted false information to the publishers of natural gas price indices, so that the resulting reported prices were inaccurate and untrustworthy.² As a result, questions arose about the legitimacy of published price indices, remaining even after the immediate crisis passed. Moreover, market participants feared that the indices might have become even more unreliable, since reporting (which has always been voluntary) declined to historically low levels in late 2002.

The Commission recognized staff concerns about price discovery in electric and natural gas markets as early as January 2003, when, prior to passage of EPAct 2005, the Commission made use of its existing authority under the Natural Gas Act and the Federal Power Act to restore confidence in natural gas and electricity price indices. The Commission expected that,

¹ See sections 4 and 5 of the Natural Gas Act, 15 U.S.C. 717c, 717d (2000); sections 205 and 206 of the Federal Power Act, 16 U.S.C. 824d, 824e (2000).

² See Initial Report on Company-Specific Separate Proceedings and Generic Reevaluations; Published Natural Gas Price Data; and Enron Trading Strategies – Fact Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, Docket No. PA02-2-000 (August 2003).

over time, improved price discovery processes would naturally increase confidence in market performance. On July 24, 2003, the Commission issued a Policy Statement on Electric and Natural Gas Price Indices (Policy Statement) that explained its expectations of natural gas and electricity price index developers and the companies that report transaction data to them.³ On November 17, 2003, the Commission adopted behavior rules for certain electric market participants in its Order Amending Market-Based Rate Tariffs and Authorizations relying on section 206 of the Federal Power Act to condition market-based rate authorizations,⁴ and for certain natural gas market participants in Amendments to Blanket Sales Certificates, relying on section 7 of the Natural Gas Act to condition blanket marketing certificates.⁵ The behavior rules bar false statements and require certain market participants, if they report transaction data, to report such data in accordance with the Policy Statement. These participants must also notify the Commission whether or not they report prices to price index developers in accordance with the Policy Statement.⁶ On November 19, 2004, the Commission issued an order that addressed issues concerning prices indices in natural gas and electricity markets and adopted specific standards for the use of price indices in jurisdictional tariffs.⁷

3 Price Discovery in Natural Gas and Electric Markets, Policy Statement on Natural Gas and Electric Price Indices, 104 FERC ¶ 61,121 (Policy Statement). Subsequently, in the same proceeding, the Commission issued an Order on Clarification of Policy Statement on Natural Gas and Electric Price Indices, 105 FERC ¶ 61,282 (Dec. 12, 2003) (Order on Clarification of Policy Statement) and an Order on Further Clarification of Policy Statement on Natural Gas and Electric Price Indices, 112 FERC ¶ 61,040 (July 6, 2005) (Order on Further Clarification of Policy Statement).

4 Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,218, at P 1, superseded in part by Compliance for Public Utility market-Based Rate Authorization Holders, Order No. 674, 71 FR 9695 (Feb. 27, 2006), FERC Stats. and Regs. ¶31,208 (2006).

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

6 Certain portions of the behavior rules were rescinded in Amendments to Codes of Conduct for Unbundled Sales Service and for Persons Holding Blanket Marketing Certificates, Order No. 673, 71 FR 9709 (Feb. 27, 2006), FERC Stats. and Regs. ¶ 31,207 (2006). The requirement to report transaction data in accordance with the Policy Statement and to notify the Commission of reporting status was retained in renumbered sections. 18 CFR 284.288(a), 284.403(a).

7 Price Discovery in Natural Gas and Electric Markets, 109 FERC ¶ 61,184, at P 73 (2004).

Congress recognized that the Commission might need expanded authority to mandate additional reporting to improve market confidence through greater price transparency and included in the Energy Policy Act of 2005 (EPAAct 2005)⁸ authority for the Commission to obtain information on wholesale electric and natural gas prices and availability. Under the Federal Power Act⁹ and the Natural Gas Act¹⁰, the Commission has long borne a responsibility to protect wholesale electric and natural gas consumers. EPAAct 2005 emphasized the Commission's responsibility for protecting the integrity of the markets themselves as a way of protecting consumers in an active market environment. In particular, Congress directed the Commission to facilitate price transparency "having due regard for the public interest, the integrity of [interstate energy] markets, [and] fair competition."¹¹ In the new transparency provisions of section 23 of the Natural Gas Act and section 220 of the Federal Power Act, Congress provided that the Commission may, but is not obligated to, prescribe rules for the collection and dissemination of information regarding the wholesale, interstate markets for natural gas and electricity, and authorized the Commission to adopt rules to assure the timely dissemination of information about the availability and prices of natural gas and natural gas transportation and electric energy and transmission service in such markets.

Consistent with the directive to facilitate price transparency in natural gas and electric markets as well as to explore options for action under EPAAct 2005's expansion of the Commission's authority, Commission staff met with interested entities in the summer of 2006. On September 26, 2006, staff conducted a workshop to review sources of energy market information with interested persons and to lay the groundwork for a technical conference held on October 13, 2006. In that conference, ideas for potential policy actions by the Commission were identified.¹²

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

9 16 U.S.C. 824 et seq.

10 15 U.S.C. 717 et seq.

11 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).

12 At the conference, the Commission convened two panels: (a) a panel of seven market participants to discuss price transparency in markets for the sale or transportation of physical natural gas in interstate commerce; and, (b) a panel of four market participants regarding price transparency in markets for the sale and transmission of electric energy in interstate commerce. See Transparency Provisions of the Energy Policy Act of 2005, Program for the Technical Conference, Docket No. AD06-11-000 (Oct. 6, 2006). In addition, for each panel, about ten

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)¹³, 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,”¹⁴ and, at the same time, responds 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 regulations¹⁵. In response to Order No. 720, the Commission 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.¹⁶ Texas Pipeline Association (TPA) also proposed modifications to § 284.14(a)

representatives of information providers, such as price index publishers, attended to provide comment and answer questions.

¹³ 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.

¹⁴ Section 23(a)(1) of the NGA; 15 U.S.C. section 717t-2(a)(1) (2000 & Supp. V 2005).

¹⁵ 18 CFR 284.14(a).

¹⁶ 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.

requiring posting only at points where scheduling occurs.¹⁷

The Commission is seeking supplemental comments to better inform its decision making in this docket proceeding. In particular, the Commission seeks comment regarding various proposals to post information for virtual or pooling receipt and delivery points. In addition, the Commission requests 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 has attached to this notice, proposed revisions to § 284.14(a) of the Commission's regulations to address these issues.

The Commission recognizes 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. While the Commission understands that major non-interstate pipelines operate in a variety of ways, the Commission is developing regulations of general applicability that pertain to all such pipelines. 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.

The proposed regulatory text provides that design capacity is the method to determine whether a receipt or delivery point should be posted. However, where design capacity is unknown (for example, where the pipeline does not have access to design specifications or where the applicable point is not a physical meter, but rather a virtual or pooling receipt or delivery point), the regulation would allow major non-interstate pipelines to utilize the maximum flow experienced during any day within the previous three years as a proxy for design capacity. In addition, the attachment makes clear that major non-interstate pipelines would be required to post information for receipt or delivery points within 45 days of the point becoming eligible for posting. The Commission seeks comment on these matters.

Justification for the Collection of Information

The posting requirements adopted in Order No. 720 are based on the Commission's authority under section 23 of the NGA (as added by Energy Policy Act of 2005, EAct 2005), which directs the Commission, in relevant part, to obtain and disseminate "information about the availability and prices of natural gas at wholesale and in interstate commerce."¹⁸ This provision enhances the Commission's authority to ensure confidence in the nation's natural gas markets. The Commission's market-oriented policies for the wholesale natural gas industry require that

¹⁷ See Post-Technical Conference Comments of the Texas Pipeline Association (submitted March 30, 2009).

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

interested persons have broad confidence that reported market prices accurately reflect the interplay of legitimate market forces. Without confidence in the efficiency of price formation, the true value of transactions is very difficult to determine. Further, price transparency facilitates ensuring that jurisdictional prices are "just and reasonable."¹⁹

Order No. 720 implemented the Commission's authority under section 23 of the Natural Gas Act²⁰ as added by section 316 of the Energy Policy Act of 2005 to require reporting from entities not under the Commission's traditional jurisdiction.²¹ The rule facilitates transparency in markets for the sale and transportation of natural gas in interstate commerce by requiring major non-interstate pipelines to post scheduling data on volume information and design capacity for certain points on publicly-accessible Internet websites. In addition, interstate pipelines are required to post data regarding no-notice service in addition to the scheduling data that they already post.

With the passage of EAct 2005, Congress affirmed a commitment to competition in wholesale natural gas and electricity markets as national policy, the fifth major federal law in the last 30 years to do so.²² As part of this commitment to competition, in the transparency provisions, Congress charged the Commission with assuring the integrity of the wholesale 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.²³

In section 23(a) (2) of the Natural Gas Act, Congress left to the Commission's discretion

¹⁹ See sections 4 and 5 of the NGA, 15 U.S.C. sections 717c and 717d.

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

²¹ Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

²² 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).

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.²⁴

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.

The Commission believes that the information requirements in the Order No. 720 are needed because the information currently provided by interstate pipelines presents an incomplete picture of the supply and demand fundamentals that underlie the interstate natural gas market. While, as discussed above, Congress has given authority to the Commission to obtain additional information from market participants to increase transparency, the Commission acknowledges that section 23 of the NGA grants us discretion as to whether and how to utilize this authority. The current picture of the interstate natural gas market derives from information on scheduled natural gas volumes and available capacity posted by interstate pipelines. In compliance with the regulations adopted in Order No. 637,²⁵ interstate pipelines

23 15 U.S.C. 717(v) (a) (1). The electric transparency provisions of the Federal Power Act are nearly identical as to the electric wholesale markets. Section 220 of the Federal Power Act, 16 U.S.C. 824t. Because the Commission's proposals in the NOPRs addressed natural gas transparency, the Commission has not analyzed the electric transparency provisions, although the Commission expects that analysis of electric transparency provisions would be substantially similar.

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

25 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).

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.

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 provides 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 allow the Commission and other market observers to identify and remedy potentially manipulative activity.