

**Supporting Statement for
FERC-549D (Contract Reporting Requirements of Intrastate Natural Gas
Pipelines), As Proposed In Docket No. RM09-2-001
(Order 735-A, Issued 12/16/2010)**

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 an information collection requirement from the Commission's regulations, 18CFR 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.

OMB approved Form 549D (ICR 201005-1902-003 on 7/23/2010) as contained in Order 735. In this Order on Rehearing (Order 735-A¹), the Commission addresses pending requests to reconsider or clarify its earlier Order 735², in which it modified and reduced its reporting requirements and instituted Form No. 549D (Quarterly Transportation and Storage Report for Intrastate Natural Gas and Hinshaw Pipelines). The Commission is seeking OMB approval of the following changes that were made to Form No. 549D in this Order on Rehearing (Order 735-A) which:

- o generally reaffirms Order 735
- o retracts the increased requirements for contract end dates and per-customer revenue
- o extends the filing deadlines from 30 days to 60 days after each reporting quarter, and
- o offers clarification on several matters.

FERC does not change its earlier burden estimate from that provided in Order No. 735.

Background

Order 735 (Docket No. RM09-2-000)

On May 20, 2010, the Commission issued Order No. 735, revising the contract reporting requirements for: (1) intrastate natural gas pipelines, providing

1 Links to Order 735-A, the proposed form, and appendix are posted in FERC's eLibrary at http://elibrary.ferc.gov/idmws/search/intermediate.asp?link_file=yes&doclist=13874148.

2 Links to Order 735 are available at http://elibrary.ferc.gov/idmws/search/intermediate.asp?link_file=yes&doclist=13818728. The information collection requirements included in Commission Order No. 735 for Form No. 549D were approved under OMB Control No. 1902-0253.

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interstate transportation service pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA), and (2) Hinshaw pipelines providing interstate service subject to the Commission's Natural Gas Act (NGA) section 1(c) jurisdiction pursuant to blanket certificates issued under 18CFR 284.224. OMB approved Form 549D (ICR 201005-1902-003 on 7/23/2010) as contained in Order 735.

Subject Order (on Rehearing), Order 735-A

In this Order on Rehearing (Order No. 735-A), FERC addresses pending requests to reconsider or clarify Order No. 735. Order No. 735-A generally reaffirms Order 735. It also retracts the increased requirements for contract end dates and per-customer revenue, extends the filing deadlines from 30 days to 60 days after each reporting quarter, and offers clarification on several matters.

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 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

³ 15 U.S.C. 3371(c).

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).

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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 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

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).

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).

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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).

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, 18CFR284.13(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 Orders 735 and 735-A 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 implementation of these proposed revisions in Order 735-A will minimize burden on industry, and 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. FERC'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.

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).

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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's electronic filing program started in 10/2000¹². Since that time, there has been an ongoing effort to expand the program and adopt user-friendly electronic formats, media, and software. In general, electronically filed forms and applications: (1)improve the efficiency and overall management of the filing process, (2)facilitate public access and the FERC's monitoring of the energy markets, and (3)enhance competition within industries (by providing the customers with an electronic means of comparing the rates, terms and conditions, and other provisions applicable to the regulated entities).

As noted above, the Commission wanted to make the requirements less burdensome to section 311 and Hinshaw pipelines. The FERC-549D must be filed in either a standardized PDF or XML format. In addition, as requested by a commenter, FERC plans to hold a technical workshop (after receipt of an OMB decision on this submittal) to address any technical questions on filing the data.

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

¹² The initial notice, issued 10/6/2000, is available at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=8036619>. Details on the current state of the eFiling program are posted at <http://www.ferc.gov/docs-filing/efiling.asp>.

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In the subject Order on Rehearing (Order 735-A), FERC is responding to comments from the public, in order to reduce the burden and retract or clarify some of the requirements imposed in Order 735.

The Commission is not imposing on intrastate and Hinshaw pipelines the same reporting requirements as it imposes on interstate pipelines. FERC is not requiring the intrastate and Hinshaw pipelines to make daily postings of transactional information on their own websites. The Commission also recognizes that some respondents (with few transactions) may prefer to use PDF rather than XML. However, other respondents with a large number of transactions and experience with XML would probably prefer to use XML. As a result, the Commission will allow respondents to select the method of filing (XML or PDF) 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 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. The public

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has had opportunities to review and comment in this Docket RM09-2 through: (a) Notice of Inquiry (issued 11/2008) and (b) Notice of Proposed Rulemaking (issued 7/2009). Final Rule (Order 735) was issued 5/2010; Order on Rehearing (Order 735-A) was issued 12/2010.

For the reasons discussed in Order 735-A, the Commission generally denies rehearing of Order No. 735. However, the Commission does grant rehearing in several respects. FERC

1. removes the requirement that the new quarterly reports include the contract end-date for interruptible transactions
2. eliminates the increased per-customer revenue reporting requirements by requiring such revenues to be reported only on an annual basis and excluding storage revenues from the report
3. extends the deadline for submitting the quarterly reports from approximately 30 days after the end of the quarter to 60 days.

With these modifications, the Commission reaffirms all other aspects of Order No. 735, including the requirements that the quarterly reports be filed in a uniform electronic format with no information redacted as privileged and be posted on the Commission's web site. Contemporaneously with this order, the Commission is also issuing an NOI in Docket No. RM11-4-000 to consider issues related to the existing semi-annual storage reporting requirement for both interstate pipelines and section 311 and Hinshaw pipelines.

A summary of the comments and responses, and modifications to Order No. 735 follows.

A. *Changes to the Quarterly Reporting Requirement*

1. *Interruptible Contract End-Dates*

Section 284.126(b)(1)(vi) of the Commission's regulations, as adopted by Order No. 735, requires that section 311 and Hinshaw pipelines include in their quarterly transactional reports the duration of each active contract for both firm and interruptible service, including the beginning and ending date. Before Order No. 735, 18 CFR 284.126(b) did not require this information from intrastate pipelines. Currently 18 CFR 284.13(b)(1)(v) requires interstate pipelines to post the duration of firm contracts but 18 CFR 284.13(b)(2) has no similar requirement to post the duration of interruptible contracts. In addition, 18 CFR 284.13(c)(2)(iv) requires interstate pipelines to report the effective and expiration dates for firm transportation and storage contracts quarterly as part of their Index of Customers, but not for interruptible contracts. Neither the interstate nor intrastate semi-annual storage reports require this information.

On rehearing, Enstor objects to the requirement that section 311 and

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Hinshaw pipelines reveal the ending dates of their interruptible storage contracts, including contracts for park and loan service. Enstor states that it enters into separate contracts for each interruptible transaction and that the end date of those transactions is commercially sensitive. Despite the time lag between the execution of a contract and its ultimate disclosure in a quarterly report, the ending date of an interruptible transaction may still be in the future when the quarterly report is filed. Enstor states that knowledge of the forward month when a parking or lending transaction will end will enable other market participants to recreate the storage position of individual Enstor customers. Enstor states that, as a result, a potential storage customer interested in a short-term parking arrangement customer will be able to “lowball” Enstor based on its knowledge of Enstor’s inventory and pricing information. Enstor argues that requiring market-based intrastate pipelines to reveal this information, while not imposing a similar requirement on interstate pipelines, results in unduly disparate treatment of the two types of pipelines. Enstor urges the Commission to remove the requirement to report the end-date of interruptible transactions in order to maintain its policy in Order No. 735 of equalizing NGA and section 311/Hinshaw reporting requirements. Enogex makes a similar argument from a theoretical perspective, arguing that the expansion of the reporting requirements would indirectly impose a greater burden on section 311 companies than on interstate pipelines which, it argues, is contrary to the intent of the NGPA.

The Commission will revise 18 CFR 284.126 (b)(1)(vi) so that section 311 and Hinshaw pipelines are only required to report contract end-dates for firm transportation and firm storage contracts, not for interruptible contracts. Because interstate pipelines are not required to report the end-dates of their interruptible transactions, imposing such a requirement on section 311 and Hinshaw pipelines is contrary to Order No. 735’s purpose of making the reporting requirements for the two sets of pipelines more similar. The absence of such a reporting requirement for interstate pipelines does not appear to have hampered the ability of the Commission and other interested parties to monitor the market for undue discrimination. Moreover, some pipelines, unlike Enstor, do not enter into separate contracts for each interruptible transaction, but rather enter into a single master interruptible contract under which multiple individual transactions may occur. In such circumstances, the end-date of the interruptible contract is of limited significance.

2. *Customer Revenues*

Before Order No. 735, § 284.126(b) of the Commission’s regulations required section 311 and Hinshaw pipelines to report, on an annual basis, the actual revenues collected from each transportation customer, not including storage. The Commission does not currently require interstate pipelines to report revenues

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received from each customer for non-storage services. Both the interstate and intrastate semi-annual storage reports, however, do require reporting of the revenues received from each storage customer during storage injection and withdrawal seasons. Section 284.126(b)(1)(viii) of the Commission's regulations, as adopted by Order No. 735, requires section 311 and Hinshaw pipelines to report the total revenues received from each shipper on a quarterly basis for both transportation and storage.

In its rehearing request, Enstor urges the Commission to exempt storage providers with market-based rates from the requirement to report per-customer revenues publicly. Among other arguments, Enstor points out that interstate storage providers are not required to report this information in their daily web site postings. Enstor therefore asserts that, in this respect, the new quarterly reports required by Order No. 735 actually require more information from intrastate than interstate storage providers, contrary to the Commission's stated intent of bringing the intrastate and interstate reporting requirements more in line with each other. Enstor asserts that the requirement would put intrastate storage providers at a competitive disadvantage to interstate storage providers. Enstor also states that while such customer-by-customer revenue information is included in the semi-annual storage reports of both interstate and intrastate pipelines, Enstor and other pipelines file such reports subject to a request for privileged treatment.

We grant rehearing in part on this issue, and will revise 18 CFR 284.126(b)(1)(viii) and the analogous lines of Form No. 549D so as to (1) collect per-customer revenue information only on an annual basis and (2) exclude storage revenues from the report. This will return the per-customer revenue reporting requirement to the status quo before Order No. 735. As a result, section 311 and Hinshaw storage providers will not be subject to any greater per-customer revenue reporting requirement than interstate pipelines. Both sets of pipelines will continue to be required to report per-customer revenues for storage services in the semi-annual storage reports, required by 18 CFR 284.126(c)(5) for section 311 and Hinshaw pipelines and by 18 CFR 284.13(e)(5) for interstate pipelines. In a contemporaneous NOI, the Commission is requesting comments on whether the existing semi-annual storage reporting requirements for both interstate pipelines and section 311 and Hinshaw pipelines should be modified. The issue of whether any change is warranted in the current per-customer storage revenue reporting requirement, including the confidentiality of that information, will be considered in that proceeding.

The Commission recognizes that the requirement that section 311 and Hinshaw pipelines report annual non-storage revenues imposes a greater reporting requirement on those pipelines, than on interstate pipelines. Interstate pipelines are not required to make any report of per-customer non-storage revenues.

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However, that is a reporting disparity that exists in the Commission's current regulations. The Commission relies on the existing annual reports of per-customer non-storage revenues to verify information submitted by section 311 and Hinshaw pipelines in their rate cases, and therefore finds that such information should continue to be collected. In addition, the rehearing applicants do not appear to have significant concerns about the commercial sensitivity of non-storage revenue information. Rather, they are primarily concerned that making storage revenue public on a quarterly basis could place storage providers with market-based rates at a competitive disadvantage against their shippers who could use the relatively fresh revenue information to seek lower prices than they might otherwise obtain.

3. *Quarterly Reporting Deadlines*

Order No. 735 required that each quarterly report be filed on the first day of the month one month after the end of the relevant quarter, or roughly 30 days from the end of each quarter. Jefferson and TPA both urge the Commission to extend the due dates for filing quarterly reports. Both parties argue that Form No. 549D is much more detailed than previous reports, and thus will require more time to compile. TPA notes that some pipelines' measurement and accounting systems are designed to only send invoices 30 days after the end of the service month, and so they could not file reports so soon. Jefferson seeks a 90-day window between the close of the reporting period and the date when the report is due; TPA seeks a 60-day window.

The Commission will revise 18 CFR 284.126(b)(2) so as to provide a roughly 60-day window. While the Commission has used 30-day windows for other natural gas pipeline reports, Form No. 549D is fairly detailed and may require more time to complete. It may be more comparable in this sense to the Form No. 3-Q quarterly financial report, which uses a 60-day window. Accordingly, 18 CFR 284.126(b)(2) is amended to state that the quarterly Form No. 549D report for the period January 1 through March 31 must be filed on or before June 1; the quarterly report for the period April 1 through June 30 must be filed on or before September 1; the quarterly report for the period July 1 through September 30 must be filed on or before December 1; and the quarterly report for the period October 1 through December 31 must be filed on or before March 1.

B. Justification for Increased Transparency Required by the Rule

Order No. 735 adopted increased transactional reporting requirements for section 311 and Hinshaw pipelines in order to provide greater transparency to the market. The Commission found such transparency to be necessary so shippers can make informed purchasing decisions, and also to permit both shippers and the Commission to monitor actual transactions for evidence of possible abuse of market power or undue discrimination. The Commission found that the existing

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reporting requirements in 18 CFR 284.126 were inadequate for this purpose. For example, the annual reports of transportation transactions required by existing 18 CFR 284.126(b) did 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 18 CFR 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.

Order No. 735 found that 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. 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.

Order No. 735 also held that, as a matter of policy, section 311 and Hinshaw pipelines must file the new quarterly transactional reports as public in order to achieve the Final Rule's purpose of improving transparency, monitoring discrimination, and fostering efficient markets. The Commission recognized the concern of some pipelines that disclosure of commercially sensitive information would enable a shipper to know what the pipeline is charging other shippers and thus prevent the pipeline from being able to negotiate the best price for the services it offers. However, the Commission found that its requirement that the reports be filed quarterly would permit a significant delay between contract execution and disclosure, and that delay should temper any potential adverse effects from disclosure.

Order No. 735 concluded that public disclosure of all information in the quarterly reports is necessary to permit all market participants to monitor the market and detect undue discrimination. The Commission also stated that it expects and hopes that market participants will use the information from these reports in order to educate themselves about market conditions. Regardless of any adverse effect on individual entities, public disclosure will improve the market as a whole by improving efficiency and competition.

On rehearing, Enogex and Enstor contend that the Commission has failed to support the increased transactional reporting and public disclosure requirements which Order No. 735 imposes on section 311 pipelines. In general, they contend that (1) the Commission lacks statutory authority under the NGPA to impose these requirements on section 311 pipelines, (2) these requirements will harm section

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311 storage providers with market based rates, (3) the Commission has failed to show that there is an industry problem which these requirements will ameliorate, and (4) these requirements impose unnecessary burdens on section 311 pipelines. For the reasons set forth below, we find these contentions unpersuasive and reaffirm the Final Rule.

1. Statutory Authority to Require Public Disclosure

In discussing its statutory authority for the increased reporting and public disclosure requirements of Order No. 735, the Commission first addressed its statutory authority with respect to Hinshaw pipelines. The Commission pointed out that it regulates the interstate services of Hinshaw pipelines under the NGA. NGA section 4(c) requires that “under such rules and regulations as the Commission may prescribe, every natural gas company shall . . . keep open for public inspection . . . all rates . . . together with all contracts which in any manner affect or relate to such rates.” While the NGA gives the Commission some discretion with respect to how to provide for the disclosure of rate schedules and contracts, clearly the public disclosure of rate schedules and related contracts, in some manner, is required. Therefore, Order No. 735 concluded that its requirement that the quarterly reports of Hinshaw pipelines be posted without any information redacted was simply carrying out NGA section 4(c)’s requirement for public disclosure of rate and contract information “under such rules and regulations as the Commission may prescribe.” The Commission also pointed out that NGA section 23(a)(1) directs the Commission “to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce.”

Order No. 735 then turned to the Commission’s statutory authority with respect to section 311 pipelines. The Commission recognized that the NGPA does not contain an express public disclosure provision similar to NGA section 4(c). However, the Commission stated that NGPA section 311(c) authorizes the Commission to prescribe the “terms and conditions” under which intrastate pipelines perform interstate service. Order No. 735 concluded that requiring NGPA section 311 pipelines to publicly disclose transactional information for the purpose of allowing shippers and others to monitor NGPA section 311 transactions for undue discrimination is well within the Commission’s broad conditioning authority under section 311(c).

Enogex and Enstor do not contest the Commission’s authority under NGA section 4(c) to require Hinshaw pipelines to report and publicly disclose all the information in the quarterly reports adopted by Order No. 735. However, they contend that imposing these requirements on section 311 pipelines goes beyond the Commission’s conditioning authority under NGPA section 311(c). Enogex points out that the purpose of the NGPA is to allow intrastate pipelines to compete in the interstate transportation market without bearing the burden of full NGA regulation. It asserts that, when coupled with the existing triennial rate review

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requirement for section 311 pipelines and other reporting requirements, the new quarterly reporting and disclosure requirements of Order No. 735 would regulate section 311 pipelines on a level nearly equivalent to the regulatory oversight to which interstate pipelines are subject under the NGA. Enstor contends that, in *Associated Gas Distributors*, the court held that the Commission's exercise of its NGPA section 311(c) conditioning authority should conform to the overall purposes of the NGPA, namely "to assure adequate supplies of natural gas at fair prices." Enstor contends that Order No. 735 failed to explain how the new quarterly reports will accomplish that goal.

The Commission finds that requiring section 311 pipelines to report and disclose the information contained in the quarterly reports required by Order No. 735, as amended in the preceding sections of this order, is well within the Commission's conditioning authority under NGPA section 311(c). The information contained in these quarterly reports is basic information concerning the terms of the section 311 pipelines' contracts with their shippers. In the NGA and the Federal Power Act (FPA), Congress required the Commission to provide for the public disclosure of the rates and contracts of interstate gas and oil pipelines and public utilities. Public disclosure of jurisdictional contracts is thus at the heart of each statute adopted by Congress prior to the NGPA for regulating the rates, terms, and conditions of entities subject to our jurisdiction.

The NGPA does not set forth a comprehensive scheme for Commission regulation of interstate service provided by intrastate pipelines in the manner of the NGA or FPA. Rather, it delegates to the Commission broad authority "by rule or order [to] authorize any intrastate pipeline to transport natural gas on behalf of[] any interstate pipeline[or] local distribution company served by any interstate pipeline." Consistent with that broad authorization, section 311(c) provides that "Any authorization granted under this section shall be under such terms and conditions as the Commission may prescribe." Given that public disclosure of contracts has been a fundamental aspect of the Commission's regulation of all the entities subject its jurisdiction, the Commission finds that requiring section 311 pipelines to report and disclose the terms of their contracts is well within the broad authority Congress delegated to us to determine under what terms intrastate pipelines may perform interstate transportation service.

The Commission has recognized throughout this proceeding that Congress intended in the NGPA 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. Contrary to *Enogex*, the reporting requirements adopted in Order No. 735 are substantially less burdensome than the reporting requirements we have imposed on interstate pipelines regulated under the NGA. The Commission requires interstate pipelines to maintain internet websites and post the terms of each contract before the first nomination for service under that contract. By contrast, this rule does not require section 311 pipelines to maintain an internet website. Order No. 735 only requires

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section 311 pipelines to make quarterly reports of the terms of their contracts. Moreover, in this order we have extended the deadline for each report from 30 days after the end of the quarter to 60 days after the end of the quarter. In addition, while the reports must be filed in a standardized electronic format, the Commission has developed the electronic form in a PDF format and an XML Schema that, upon OMB approval, will be available to download from the FERC website and save to a user's computer desktop.

In *Associated Gas Distributors*, 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 "Section 311 itself states no explicit standards for the exercise of the power, but the overall purposes of the NGPA provide a standard – somewhat amorphous to be sure – against which we can and must measure the Commission decision." The court further stated that the Supreme Court had declared that the NGPA's "aim . . . was to assure adequate supplies of natural gas at fair prices." Order No. 735's requirement that section 311 pipelines report and disclose transactional information is consistent with this goal, because it will make the market operate more efficiently. The Commission has consistently held that disclosure of transactional information "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." Similarly, in Order No. 2001, adopting the Electric Quarterly Reports (EQRs) required of public utilities, the Commission held, [W]e believe that disclosure will promote competition and make the market operate more efficiently. . . .[E]asy access to contract and transaction data will give customers a basis on which to compare a variety of suppliers and monitor for market power and anti-competitive behavior. This information will allow customers to reap further benefits from open access transmission by giving them improved tools to use in making buying decisions. In addition, the Commission hopes that making this information more understandable and accessible will promote competition and confidence in the fairness of the market.

Our statutory authority to require section 311 pipelines to report and disclose transactional information is buttressed by section 23(a)(1) of the NGA, adopted by EPLA 2005. That section directs the Commission to "facilitate price transparency in markets for the . . . 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." This provision applies to all natural gas transportation in interstate commerce, and thus applies to section 311 pipelines as well as pipelines subject to our NGA jurisdiction. Thus, requiring the Order No. 735 quarterly reports by section 311 pipelines to be public is specifically in keeping with this directive.

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2. *Harm to Storage Providers with Market-based Rates*

Both Enogex and Enstor argue that the Commission should not require market-based storage companies such as themselves to report information publicly. Enogex argues that “its ability to capture rates that are truly market-based will be severely compromised if non-section 311 competitors have access to the rates Enogex is charging and will charge under specific storage service agreements.” Enogex asserts that it must compete with unregulated intrastate pipelines providing purely intrastate service that are not subject to any disclosure requirements. It asserts that Order No. 735 places it at a competitive disadvantage to such pipelines, because the purely intrastate pipelines will have access to a section 311 pipeline’s rate and customer information, while the section 311 pipeline will not have access to comparable information concerning the intrastate pipeline.

Enogex contends that this is contrary to the directives of NGA section 23. Enogex contends that Order No. 735’s public disclosure requirement violates the requirement of section 23(a)(1) that the Commission have due regard for the integrity of markets and fair competition. It also points out that section 23(b)(1) requires the Commission to exempt from disclosure information that would be detrimental to the operation of an effective market, and section 23(b)(2) requires the Commission to “seek to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anti-competitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.”

Enstor claims that reporting such commercially sensitive information would distort the markets and discourage infrastructure development. Enstor’s primary concern is that Order No. 735 requires section 311 and Hinshaw storage providers with market-based rates to disclose information which interstate storage providers are not required to disclose, specifically the end-date of interruptible transactions and revenue collected from each customer. Enstor asserts that disclosure of this information will place section 311 and Hinshaw storage providers at a competitive disadvantage with interstate pipelines. Enstor asserts that despite the fact there will be a considerable “time lag between the execution of a contract and its ultimate disclosure in a quarterly report,” the obligation to report nevertheless “will undermine the very business model that Enstor and other like storage providers have used.” Shippers would be able to “recreate the storage positions” of their competitors and “gain valuable insight into” others’ market positions, forcing Enstor’s prices downward.

The Commission has consistently applied its requirements to report and disclose transactional information to shippers with market-based rates on the ground that such disclosure benefits the overall market, and those benefits outweigh any commercial disadvantages to individual entities in the market. As the Commission held in Order No. 637-A:

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The disclosure of greater information regarding capacity transactions is necessary to achieve these dual goals of fostering competition and market monitoring. To foster competition, it is not sufficient merely to ensure there are multiple competitors, there also needs to be good information to enable buyers to make informed choices among the competitors. Difficulty in obtaining information can reduce competition because buyers may not be aware of potential alternatives and cannot compare prices between alternatives. The reporting requirements will expand shippers' knowledge of alternative offerings by providing more information about the capacity available from the pipeline....

Thus, Order No. 637-A concluded that "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." The Commission reached the same conclusion in Order No. 2001, requiring public utilities to report and disclose similar transactional information. Thus, the requirement that section 311 and Hinshaw pipelines with market-based rates publicly disclose transactional information is consistent with longstanding Commission policy.

The Commission also rejects Enogex's contention that Order No. 735's public disclosure requirement violates the requirements of NGA sections 23(a)(1) and 23(b) that any transparency requirements avoid detrimental effects on competitive markets. Enogex appears to read these provisions as requiring the Commission to exempt from public disclosure any information that might have some effect on the competitive position of a particular participant in the natural gas market. However, these provisions only provide that, in requiring public disclosure, the Commission should seek to avoid detrimental effects on the operation of the market as a whole and protect against "potential collusion or other anti-competitive behaviors." As the First Circuit stated in *Town of Concord v. Boston Edison Co.*, a practice is not "anticompetitive" simply because it harms competitors. After all, almost all business activity, desirable and undesirable alike, seeks to advance a firm's fortunes at the expense of its competitors. Rather, a practice is "anticompetitive" only if it harms the competitive process. It harms that process when it obstructs the achievement of competition's basic goals – lower prices, better products, and more efficient production methods.

Neither Enogex nor Enstor have shown that Order No. 735's public disclosure requirements harm the competitive process or encourage anti-competitive behaviors. Enogex focuses on the fact that intrastate pipelines engaging in purely intrastate business are not subject to similar disclosure requirements. However, this fact does not justify exempting intrastate pipelines from the Order No. 735 disclosure requirements when they perform interstate service. As Order No. 735 clarified, the revised reporting requirements adopted by this rule apply only to a section 311 pipeline's contracts for interstate service, not its purely intrastate contracts. Therefore, section 311 pipelines need not disclose

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the rates they charge in intrastate transactions. While Enogex asserts that the same customers likely take both intrastate and section 311 services, a contract for section 311 service allows the shipper access to the interstate natural gas markets, while a strictly intrastate contract does not. This fact would generally suggest a contract for section 311 interstate service would have a different value than a contract for purely intrastate service. Thus, a section 311 pipeline's disclosure of pricing information concerning its contracts for interstate service is not necessarily indicative of the pipeline's pricing policies for its purely intrastate services. Moreover, in this order, the Commission is extending the deadline for the filing of quarterly reports to two months after the end of the relevant quarter. Thus, for example, contracts entered into during the period January through March need not be disclosed until June 1. This allows a delay in disclosure of from two to five months after contract execution, depending upon when in the quarter a contract was entered into, thereby minimizing any harm from disclosure of the contract's terms.

In these circumstances, the Commission finds that the benefits to the interstate market of Order No. 735's public disclosure requirements outweigh any harm arising from the fact that there is no similar public disclosure requirement for purely intrastate pipelines. That a state may not have imposed disclosure requirements for services within its jurisdiction should not prevent the Commission from adopting public disclosure requirements for the services within our jurisdiction and thereby providing the interstate market with the benefit of greater transparency.

Enstor's primary concern is that Order No. 735 requires section 311 storage providers to disclose certain information that interstate storage providers are not required to disclose, specifically the end-date for interruptible contracts and per-customer revenues. However, we are eliminating that disparity in this order, by removing both requirements from the quarterly reports that section 311 pipelines are required to submit by this Final Rule. As revised, we are confident that the transactional reporting requirements appropriately balance the need for increased transparency of section 311 and Hinshaw pipeline transactions, while avoiding unduly burdensome market distortions that might discourage such pipelines from participating in the interstate market.

3. Evidence

Citing the standards for reasoned decision-making and abuse of discretion, Enogex argues that the Commission failed to support the Final Rule with any evidence of market abuse requiring an expansion of the scope and frequency of the existing contract reporting requirements. Enogex argues that this is contrary to the D.C. Court's decision in *National Fuel Gas Supply Corp. v. FERC*, where the court reversed a Commission rule on the ground that the Commission was "professing that an order ameliorates a real industry problem but then citing no evidence that there is in fact an industry problem." Enogex claims that the Order

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No. 735 failed to cite any examples of market abuse, only potential abuse. It also argues that while the Commission seeks to increase transparency, “[i]ncreased transparency in of itself is not a sufficient basis to impose a substantial new reporting burden.”

Enstor makes a similar argument, also citing the court’s decision in National Fuel Gas, although it only argues for reconsidering the Final Rule “to the extent that it has imposed reporting requirements on intrastate storage providers that provide service at market-based rates under the NPGA.” Enstor notes that the record material in the Final Rule concerns allegations about intrastate pipeline transportation, but none “on the part of storage companies,” especially those that “do not possess market power.” Enstor argues that the Commission’s exercise of its conditioning authority under section 311 of the NGPA cannot be justified by “the potential for undue discrimination.”

We disagree with both Enogex and Enstor. In arguing that the Commission must present evidence of market abuses by section 311 pipelines in order to support the new disclosure requirements, Enogex and Enstor miss the point that the purpose of this rule is not solely to minimize market abuses and undue discrimination. As explained above, a primary purpose of this rule is to provide shippers better information about relative prices and other terms of different capacity offerings so that they can make more informed choices among competitors. This will make the market operate more efficiently. As the D.C. Circuit held in Alabama Power Co., Perfect information available to all buyers and sellers is, indeed, one of the conditions of the economic model of “perfect competition,” and where the remaining conditions are satisfied, dissemination of information tends to facilitate prompt adjustment to the market clearing price by all parties to transactions.

It is not necessary to present evidence to support the well-accepted principle that better information enables purchasers to make better decisions and improves the overall efficiency of the market. Indeed, in the same National Fuel Gas case that Enogex quotes, the court explains that if the Commission seeks to justify a new regulation based solely on theoretical grounds, it may do so. Therefore, increased transparency of transactions subject to the Commission’s jurisdiction in order to help shippers make informed purchasing decisions is a sufficient basis to impose a substantial new reporting duty, regardless of whether some section 311 of Hinshaw pipelines have engaged in market abuses. Indeed, this was a primary ground on which the Commission justified the Final Rule. The Commission argued, and we continue to hold, that the increased transparency that the Final Rule brings should improve the natural gas transportation market’s efficiency.

The Commission is also requiring the new quarterly transactional reports in order to permit both shippers and the Commission to monitor section 311 and Hinshaw pipelines’ jurisdictional interstate transactions for evidence of possible abuse of market power or undue discrimination. As previously discussed, public

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disclosure of the terms of jurisdictional contracts in order to ensure against undue discrimination among shippers is a standard part of the regulatory regimes established by the NGA and the FPA, in which Congress has directed the Commission to require such public disclosure. Therefore, the Commission does not believe that requiring the same method of enabling shippers and the Commission to monitor the contracts of section 311 pipelines for abuse of market power and undue discrimination requires the establishment of a record showing extensive abuses by section 311 pipelines. This is particularly the case since section 23 of the NGA now directs the Commission to “facilitate price transparency in markets for the . . . transportation of physical natural gas in interstate commerce,” including such transportation by section 311 pipelines. In any event, the comments in this proceeding do indicate that the preexisting reporting regime was not performing as well as it could be. For example, the Final Rule noted that “Clayton Williams provides a detailed narrative suggesting that it could have pursued allegations that a pipeline has been engaging in unlawful business practices, if only it had more publicly available information to support its allegation” as evidence in favor of improved reporting requirements. Given this testimony alleging concerns with the preexisting reporting regime, plus the Commission’s theoretical framework suggesting that increased transparency would improve conditions in the transportation and storage market, we find the Final Rule adequately justified.

With regard to Enstor’s argument that these concerns do not apply to market-based storage, we remind Enstor that 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. “It 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.”

The court’s decision in *National Fuel Gas* addressed a different type of rule than is at issue here. In that case, the Commission adopted a rule modifying its Standards of Conduct governing natural gas pipelines’ interactions with their marketing affiliates so that the Standards of Conduct would also apply to non-marketing affiliates. These included producers, processors, and local distribution companies who might not hold any capacity on their affiliated pipeline. The purpose of the rule was to guard against pipelines giving non-marketing affiliates undue preference or other market abuses by non-marketing affiliates. The Standards of Conduct required that the affiliates function independently and limit the information that may be shared among them.

In reversing the Commission, the court first emphasized that vertical integration between a pipeline and its affiliates produces benefits for consumers. The court stated that both the sharing of information between pipelines and affiliates and integration of functions have efficiency benefits. Therefore, the court found that the Commission cannot impede vertical integration between a

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pipeline and its affiliates without adequate justification. The court found that the Commission had not provided such justification either by presenting evidence of market abuses by non-marketing affiliates or providing a sufficient explanation of a theoretical danger that pipelines will favor their non-marketing affiliates.

The rule at issue here differs from the rule at issue in *National Fuel Gas* in a number of respects. First, as already discussed, the purpose of this rule is not limited to preventing certain types of market abuses, as was the case with the rule in *National Fuel Gas*; rather a primary purpose of this rule also is to provide all market participants better information in order to make informed purchasing decisions, and thereby improve the efficiency of the market. Second, this rule does not impede activities by pipelines (or their affiliates) which the courts have found to create market efficiencies and thus benefit consumers, such as the vertical integration at issue in *National Fuel Gas*. To the contrary, as discussed above, the courts have found that public disclosure of contract terms generally benefits the overall market and consumers. Third, the public disclosure requirements adopted in Order No. 735 apply only to pipelines and transactions directly subject to our jurisdiction under the NGA and NGPA and do not affect the corporate structure of entities, such as non-marketing affiliates, not directly subject to our jurisdiction. Finally, the instant rule is carrying out Congress's directives in NGA section 4 to require public disclosure of Hinshaw pipelines' jurisdictional contracts and in NGA section 23 to provide for price transparency of all interstate transportation transactions. For these reasons, the Commission finds that our adoption of Order No. 735 is not inconsistent with *National Fuel Gas*.

Accordingly, we find sufficient cause to apply the Final Rule to both cost-based and market-based transactions.

4. Insufficiency of Periodic Rate Review

Enogex further argues that "the Commission erred in concluding that the new Form No. 549D is necessary to meet its statutory obligation to ensure that rates for section 311 service are 'fair and equitable', in view of the fact that it already requires a triennial rate review requirement." Enogex claims the "the adequacy of the triennial rate review requirement is evident," and even more stringent than NGA rate review "because interstate pipelines are no longer subject to a periodic rate review." Therefore, Enogex argues, the reporting requirement is unnecessary.

We reject Enogex's bare assertions about periodic rate review. The triennial rate review requirement does not render Order No. 735's increased reporting requirements unnecessary. The primary purposes of the two requirements are different. The Commission requires section 311 pipelines with cost-based rates to make periodic rate filings so that the Commission can review whether the pipeline's maximum rates applicable to all transactions continue to be fair and equitable. In those rate review proceedings, the Commission determines whether the pipeline's maximum rates allow it to collect revenues in excess of its

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cost-of-service, and, if so, the Commission may require a reduction in the pipeline's maximum rates. Thus, the focus of a rate review filing is on the pipeline's generally applicable maximum rates, not the rates charged in individual transactions.

By contrast, the primary purpose of the Order No. 735 reporting requirements is to enable individual shippers to make more informed decisions as to the prices they agree to pay in their own individual transactions, including with market-based rate pipelines that are not subject to the periodic rate review requirement. The reporting requirements also allow better monitoring by the Commission and shippers for instances of undue discrimination among shippers, a matter not generally addressed in rate review proceedings. While periodic rate review is necessary in order to ensure that a pipeline's generally applicable maximum rates are fair and equitable, it does not accomplish the goals of this rulemaking. For that purpose, it is necessary to require public reports of the terms of the individual contracts a pipeline enters into with each of its shippers, which the Commission and market participants may review in order to detect and mitigate against possible abuse of market power or undue discrimination. Such reporting does not occur in a periodic rate review filing.

5. *Burden*

Enogex also argues that the Commission should not have implemented the Final Rule "after acknowledging that the new quarterly report would be unduly burdensome when coupled with the periodic cost of service rate review requirement," and that the Commission "erred in concluding that the new ... requirement would not be unduly burdensome from a cost and administrative standpoint." Enogex refers to Form No. 549D's "seventy five data elements" as an "extraordinary level of detail," and claims that "because Enogex may provide for both Section 311 and intrastate services in a single contract, existing contract methods ... may have to be ... modified in order to report the required information." Finally, Enogex argues that "the Commission inadvertently demonstrated that the triennial rate review requirement is more than sufficient," and urges that Commission to "reverse course and terminate this rulemaking proceeding, even if this results in the triennial rate review requirement being reinstated."

Enogex misstates the record in claiming that the Commission found "that the new quarterly report would be unduly burdensome when coupled with the periodic cost of service rate review requirement." Rather, the Commission stated that it "is sensitive to concerns that the improved reporting requirements could prove too burdensome, when considered in aggregation with other burdens such as triennial rate review." In other words, the Commission reduced the periodic rate review requirement not because it was obligated to do so by the undue burden standard, but because the Commission was exercising its discretion to lessen pipelines' overall burden of complying with all the Commission's various

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regulatory requirements. We also reject Enogex's implication of burden by the fact that there are seventy-five data elements. Burden is more properly weighed by the content of the data requested. The first eighteen of those data elements, for instance, are little more than the company filling out its name and contact information; using numerous but smaller data elements is useful for making the completed form more amenable to electronic searches.

Furthermore, as the Commission has explained, its regulatory oversight is not merely limited to reviewing rate filings. In order to carry out our "responsibility to ensure rates and charges are fair and equitable... it is important for rates charged to be reported" as well. The Commission seeks to empower shippers "to determine the extent to which particular transactions are comparable to one another" in order to protect themselves from undue discrimination. The previous reporting requirements in 18 CFR 284.126, for both transportation and storage, were inadequate for providing potential shippers with sufficient information to make well informed purchasing decisions. We also note that while other parties on rehearing request changes to specific elements or argue for special attention to certain market sectors, Enogex is alone among all Respondents in arguing that filing the new reports would be unduly burdensome. The benefits to the functioning of the market, by ensuring transportation and storage customers are aware of the actual prices charged just as American customers have long come to expect in the retail sector, far outweigh Enogex's inchoate claims of undue administrative burden.

C. *Identification of Receipt Points*

AOG urges the Commission to amend or clarify Order No. 735's requirement, codified at 18 CFR 284.126 (b)(1)(iv), that Respondents must state the primary receipt points covered by each contract that is reported on Form No. 549D. AOG is a small local distribution company for a ten-county rural area along the Arkansas-Oklahoma border. Its system includes roughly 400 production wells, which ordinarily serve AOG's non-jurisdictional distribution customers. When demand is not at peak, AOG delivers excess production gas to the interstate markets under an Order No. 63 blanket certificate. AOG states that the current set-up of its system does not allow it to identify the receipt point of each transaction. AOG argues that even if it could, "the information would be meaningless" because AOG does not deliver to the interstate markets directly; rather, all five of its delivery points interconnect with third-party gathering systems that would not be covered by the reporting requirements.

Because of the high difficulty and limited usefulness of tracking receipt points on such a system, AOG recommends that the Commission clarify the receipt point reporting requirement. AOG requests that: respondents, such as AOG, who perform basically a gathering service, are located in a production area, have hundreds of wells attached to their system, deliver only production gas to other gathering facilities ..., and are physically unable to

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identify a receipt point for each transaction be [allowed] to designate ‘production pool’ as the receipt point in their quarterly reports.

AOG’s request is narrowly tailored to its own circumstances, which appear to be quite rare. Accordingly, we find that this request does not justify a modification of the generally applicable reporting requirements adopted in this rulemaking proceeding. However, AOG may re-file its request in a separate docket, and request a case-specific waiver of the 18 CFR 284.126 (b)(1)(iv) requirement to identify individual receipt points based on its own circumstances. While we do not anticipate many other pipelines to qualify for waivers, the Commission will consider other requests for waiver on a case-by-case basis, as the moving party’s individual circumstances so warrant.

D. Identification of Shippers

TPA argues that, “[t]he Commission erred by requiring Section 311 and Hinshaw pipelines to identify shippers by D-U-N-S number in Form No. 549D.” TPA claims that the Commission has not explained why an identification number is useful, given that pipelines must report publicly the names of its shippers.

We affirm that “standardized shipper identification is not unduly burdensome in comparison to the benefit to the Commission and market participants of being certain of the true identity of a pipeline’s shippers.” For some persons interested in reading Form No. 549D data, TPA may be correct that the shipper’s full legal name will be sufficient. For entities using the data to engage in market research, however, a standardized identification number is necessary for at least two reasons. First, identification numbers facilitate the process of creating reliable, robust databases, which in turn help market participants to gain the most value out of the information in these public reports. Without standard identification numbers, a small typographic change, such as referring to “Shipper A, LLC” as “Shipper A, L.L.C.,” could be misinterpreted by a computer system as two different entities. Second, identification numbers greatly reduce the administrative burden (both to Respondents and to all readers of the reports) in the common situation where a shipper changes its legal name but is otherwise the same entity. Identification numbers allow for data from before and after the shipper’s name change to be considered properly as part of a continuous set, without the need for the Respondent to engage in tedious manual intervention. Accordingly, all Respondents are required to use a standard shipper identification number for Form No. 549D.

TPA also argues that while Respondents “can ask their shippers to obtain D-U-N-S numbers, they have no authority to require them to do so and should not be held accountable for a shipper’s failure to obtain a D-U-N-S number.” We disagree. As a general matter, it would be fair and equitable for a pipeline to include in its Statement of Operating Conditions a requirement that shippers must provide the pipeline with information that is necessary in order to comply with any state or federal reporting requirements. Currently, assignment of a D-U-N-S

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number is free for all entities required to register with the federal government by a regulatory agency. The Commission and the North American Energy Standards Board have been requiring shipper D-U-N-S numbers for years in the Index of Customers without serious complaint.

E. Prior Period Adjustment and Inactive Contracts

TPA asks the Commission to clarify how prior period adjustments should be reported. Since “volumetric measurement is an inexact science,” TPA argues, inevitably pipelines will discover measurement errors in prior records of volumes shipped, injected, or withdrawn. TPA states that it is not clear how to report these adjustments on Form No. 549D. TPA recommends that Respondents should report a prior period adjustment as part of the data for the quarter when it is discovered rather than revising previously reported data, which TPA claims is how pipelines book such adjustments for accounting purposes.

The Commission clarifies that Form No. 549D reports should reflect the data on the billing statements to customers. If a pipeline’s billing policy for prior period adjustments is to revise the prior bill, then that pipeline should resubmit its Form No. 549D for that prior quarterly time period. If, however, a pipeline’s billing policy for prior period adjustments is to bill for the quarter when the discrepancy is discovered, as TPA suggests, then that pipeline should submit the adjusted data as part of its upcoming report rather than revising prior reports. Either way, the Form No. 549D data should match the data in the pipeline’s own billing systems, so as to reduce the pipeline’s recordkeeping burden and also to avoid systemic discrepancies in the event of an audit. Furthermore, in order to aid Respondents who may need to correct a previous Form No. 549D report for any reason, the Commission will insert a Field 3A in the report, in which Respondents may provide a short explanation of why they are resubmitting a prior report.

TPA also requests that the Commission clarify how Respondents should handle contracts that were not active during a given quarter. TPA cites the appendix to the Final Rule as explaining that “pipelines that did not provide any interstate services to any shipper” at all need only fill out the initial fields in Form No. 549D, and not the remainder of the form. TPA states that it is unclear, however, how to respond if “gas flows under some contracts but not others,” and recommends that pipelines only “report the contracts where [jurisdictional] gas flowed.”

The Commission grants the requested clarification. Respondents need not include in their quarterly reports any contracts for which no Commission-jurisdictional gas has flowed in that quarter.

F. Semi-Annual Storage Report

Enogex, Jefferson, and TPA all argue that the semi-annual storage report (Form No. 537, required by 18 CFR 284.126(c)) will be duplicative and burdensome as soon as section 311 and Hinshaw pipelines begin reporting on

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Form No. 549D. They argue that since the Commission “will be able to distill all of the relevant information presently reported on the existing Form No. 537 from the new Form No. 549D,” there is “no justification for” collecting “this duplicative storage activity information in dissimilar formats.” Accordingly, they urge the Commission to eliminate the semi-annual storage report.

While there is substantial overlap between Form No. 537 and Form No. 549D, it remains unclear whether the new quarterly report renders the semi-annual storage report obsolete. The semi-annual storage report collects certain information that the quarterly reports do not. This includes the volumes actually injected and withdrawn during the injection and withdrawal seasons. In addition, as discussed above, the quarterly reports required by this rule will not require per-customer revenue data to be reported. Moreover, since the semi-annual reporting periods are tied to the injection and withdrawal season, the time periods covered also do not correspond precisely to two Form No. 549D quarterly reports. Thus, we will not eliminate Form No. 537 at this time.

However, we find that the Commission should reconsider the utility of the semi-annual storage reports for interstate and intrastate storage companies. As Enogex, Jefferson, and TPA argue, the Commission should seek to eliminate truly duplicative reporting requirements. Throughout this rulemaking proceeding, the Commission has also sought to standardize and equalize reporting requirements for interstate and intrastate providers wherever it is warranted. Thus, any consideration of abolishing or reforming the intrastate semi-annual storage report should be accompanied by a similar review of the interstate semi-annual storage report. Finally, the semi-annual storage reports are now anomalous among Commission reports in their respondents’ liberal use of requests for privileged treatment, which has recently led to calls that these reports be made public. Accordingly, simultaneously with this order, the Commission is issuing a Notice of Inquiry under a separate docket, Docket No. RM11-4-000¹³, to explore reforms to the semi-annual storage reporting requirements for interstate and intrastate storage companies.

G. Effective Date and Technical Workshop

Jefferson argues on rehearing that the Commission should delay the effective date of Order No. 735 from April 1, 2011 until October 1, 2011. Jefferson also requests that the Commission hold a technical workshop at least 6 months before the effective date, and post the XML Schema as soon as possible. Jefferson argues that since the Commission has not yet posted a version of the XML Schema that is compatible for electronic submission, it cannot yet determine

¹³ That Notice of Inquiry (NOI) is a separate activity under Docket No. RM11-4-000, is available for public comment, and has been submitted to OMB for information only. The NOI is available at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12512760> and is not a subject of this clearance package.

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the procedures that it will use to collect data and compile its first report.

The draft revisions to Form No. 549D are being submitted to OMB for review and approval. Above in this order, we have pushed back the due date of the first quarterly report under the new regulations from May 1, 2011 to June 1, 2011. A print only version of the PDF form is provided in the Appendix to Order 735-A, and Commission Staff will post the XML Schema and fillable PDF to the FERC website as soon as available and permitted by OMB. We consider this to be sufficient advance notice, considering that Jefferson is the only pipeline to have expressed concern on rehearing that the effective date is too soon. We also direct Commission Staff to hold a technical workshop on issues of implementation, the time and date of which will be announced in a separate notice in this docket after we receive OMB approval of the revised Form No. 549D.

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 issue of confidentiality of the data was included in some of the public comments. A summary of the comments and FERC's responses on that issue are included in this supporting statement, in the response to Question 8 (section titled 'B. Justification for Increased Transparency Required by the Rule,' and sections titled '1. Statutory Authority to Require Public Disclosure', and '2. Harm to Storage Providers with Market-based Rates').

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 Order 735-A.

12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION

The information collection requirements included in Commission Order No. 735 for Form No. 549D were approved under OMB Control No. 1902-0253. This order (Order 735-A) makes further changes: (a)to retract the increased requirements for contract end dates and per-customer revenue, (b)to more clearly state the obligations imposed in Order No. 735, and (c)to extend the reporting deadlines. *Based on the public comments on burden and our retractions, clarifications, and modifications, FERC does not change its burden estimate from*

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that provided in Order No. 735. [In the response above to Question 8 (section titled ‘Burden’), FERC summarizes and responds to the public comments on burden.]

The burden estimates (that were approved with Order 735 and continue unchanged for Order 735-A) follow.

Initial Public Reporting Burden:

Data Collection Filing Method	Number of Respondents	Average Start-Up Burden per Respondent	Total Industry Hours	Total Industry Costs¹⁴
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:

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.

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

¹⁴ See discussion of costs in item no. 13 below.

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Data Collection Filing Method	Number of Respondents	Average Annual Ongoing Burden per Respondent	Total Industry Hours per Year	Total Industry Costs per Year
Total	125		5,814	\$313,048

13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS

FERC's current estimates include the initial implementation burden and the ongoing annual burden reflecting the decision to allow filers to use either PDF or XML. [These estimates were approved with Order 735 and remain unchanged for Order 735-A.]

To obtain the estimates, FERC began by examining a representative sample of more than 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 additional 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 additional 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-

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contract costs related to the effort to 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 Docket RM09-2-001 are shown below:

Data Collection (A)	Analysis of Data (in FTE)¹⁵ (B)	Estimated Salary Per Year (C)	Forms Clearance (D)	Total Annual FERC Costs ((B*C)+D) \$18,100Err or: Reference source not found
FERC-549D	0.12019 ¹⁶	\$137,874	\$1,528	

The federal cost, associated with creating a standardized format to improve the quality and transparency of the data, was included in the supporting statement for Order 735. The Commission estimated the cost for development of that format to be \$46,097. (This included 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 were approximately \$6,004 for hardware costs.

Therefore the total federal cost would be \$70,201 (\$18,100 + \$46,097 + \$6004).

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

¹⁵ An "FTE" is a "Full Time Equivalent" employee that works the equivalent of 2,080 hours per year.

¹⁶ 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 @\$66.29 hourly rate = \$16,572 per year. The figures are rounded off.

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FERC does not change its earlier burden estimate from that provided in Order No. 735.

16. TIME SCHEDULE FOR THE PUBLICATION OF DATA

The FERC-549D data are collected for regulatory purposes and made available to the public through FERC's website. The data are not collected for the purposes of publication.

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.

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Attachment

Links to Order 735-A, draft form, and appendix (with data dictionary) in FERC's eLibrary follow.

Issuance 20101216- 4007	12/16/20 10 12/16/20 10	RM09-2- 001	Order on Rehearing re Contract Reporting Requireme nts of Intrastate Natural Gas Companies, Order No. 735-A under RM09-2. Availability: Public	Order/ Opinion / Commissi on Order/Opi nion	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Word PDF Word FERC Generated PDF Viewer	245K 55K 529K 273K	INF O FIL E
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