

Supporting Statement
FERC-542, Gas Pipeline Rates: Rate Tracking
Final Rule (in RM12-14) issued March 21, 2013

The Federal Energy Regulatory Commission (Commission or FERC) requests that the Office of Management and Budget (OMB) review and approve **FERC-542, Gas Pipeline Rates: Rate Tracking** as contained in the Final Rule in Docket No. RM12-14-000 (<http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13210778>) for a three year period. FERC-542 is an existing collection and the Commission is approving modifications to it in this final rule.

The existing FERC-542 contains the following information collections: (1) Research, development, and deployment expenditures; (2) annual charge adjustments (ACA) and (3) periodic rate adjustments. The final rule in RM12-14 only makes changes to annual charge adjustments (2). The Commission does not approve any changes to the other information collection requirements and in this package only provides details on the annual charge adjustments.

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

The Commission is required to “assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year.”¹ To accomplish this, the Commission created the annual charges program, which is designed to recover the costs of administering the natural gas, oil, and electric programs by calculating the costs of each program, net of filing fees, and properly allocating them among the three programs.² This proceeding applies only to the recovery of annual charges assessed to entities in the natural gas program.

Pipelines are entitled to recover these annual charges from their customers, and they have two options for doing so. First, upon Commission approval, a Pipeline may adjust its rates annually to recover the annual charges through an ACA clause.³ Second, a Pipeline may seek to recover its annual charges through its general transportation rates.⁴ This proceeding proposes to modify only the first method, i.e., recovery of annual charges through an ACA clause, as it is widely

¹ See *Omnibus Budget Reconciliation Act*, Pub. L. No. 99-509, Title III, Subtitle E, § 3401, 1986 U.S. Code Cong. & Ad. News (100 Stat.) 1874, 1890-91 (*codified at* 42 U.S.C. 7178 (2012)).

² *Annual Charges Under the Omnibus Budget Reconciliation Act of 1986*, Order No. 472, FERC Stats & Regs. ¶ 30,746, *clarified by*, Order No. 472-A, FERC Stats. & Regs. ¶ 30,750, *order on reh’g*, Order No. 472-B, FERC Stats. & Regs. ¶ 30,767 (1987), *order on reh’g*, Order No. 472-C, 42 FERC ¶ 61,013 (1988).

³ 18 C.F.R. 154.402 (2012).

⁴ Order No. 472, FERC Stats. & Regs. ¶ 30,746 at 30,629.

used among Pipelines. In order to take advantage of the ACA clause, a pipeline has to file a revision to their tariff. This is the portion of the annual charges program associated with paperwork in this final rule.

Order No. 472 recognized that although the Commission generally disfavors the use of tracking mechanisms, it is appropriate that Pipelines be permitted to pass through these annual charges directly to customers.⁵ Accordingly, the Commission provided Pipelines an option of passing along the annual charges to customers through a surcharge to their transportation rates reflected in the ACA clause.⁶ The Commission codified the requirements for Pipelines that choose to utilize an ACA clause in 18 CFR 154.402.⁷

The purpose of the final rule is to reduce existing regulatory burden on the natural gas pipeline industry. Under current regulations (as described above), a pipeline must file a tariff record and obtain approval from the Commission approximately once a year to continue to use an ACA clause. This final rule modifies the process so that pipelines will not have to make the yearly filing.

In this final rule, the Commission approves to have each pipeline (145 in total) file a tariff record that contains language allowing the pipeline to not have to file revisions in subsequent years. Hence, this is a one-time collection that reduces the number of filings over time.

The one time collection of information is necessary to reduce existing regulatory burden on the natural gas pipeline industry by not requiring approximately 145 annual filings.

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

Pipelines that seek to recover annual charges through an ACA clause must file a tariff record containing:

- (1) A statement that the company is collecting an ACA per unit charge, as approved by the Commission, applicable to all the pipeline's sales and transportation rate schedules,
- (2) The per unit charge of the ACA,
- (3) The proposed effective date of the tariff change (30 days after the filing of the tariff sheet or section, unless a shorter period is specifically requested in a waiver petition and approved), and

⁵ *Id.*

⁶ *Id.*

⁷ 18 C.F.R. 154.402 (2012).

(4) A statement that the pipeline will not recover any annual charges recorded in FERC Account 928 in a proceeding under subpart D of [part 154 of the Commission's regulations].⁸

Additionally, the Commission requires these Pipelines to file revised tariff records to reflect changes to the ACA unit charge authorized by the Commission each fiscal year.⁹ It is this existing yearly filing that the Commission eliminates in the final rule.

Each year the Commission sets the ACA unit charge for the natural gas program in July.¹⁰ Pipelines that wish to begin collecting the ACA unit charge on the first day of the fiscal year are required to file revised tariff records reflecting changes in the ACA unit charge by September 1 of each year, to be effective October 1 of that year.¹¹ As long as the Pipeline has paid its annual charge to the Commission, the Commission will accept the tariff records, and they will go into effect on October 1. To the extent that the ACA unit charge remains the same from one year to the next, existing Pipelines that already reflect that ACA unit charge in their tariffs need not make a filing for that year. This annual process is designed to ensure that Pipelines collect charges for the entire fiscal year, as defined in Part 382 of the Commission's regulations.

In an effort to reduce the regulatory burden associated with annual tariff filings to reflect the current year's ACA unit charge, the Commission approves the elimination of the annual filing requirement for Pipelines utilizing an ACA clause. In its place, the Commission approves the requirement to have Pipelines utilize an ACA clause to incorporate the Commission-authorized ACA unit rate by reference to that rate as published on the Commission's website. Accordingly, Pipelines that wish to continue utilizing an ACA clause would be required to make a one-time tariff revision that incorporates the ACA unit charge published on the Commission's website into the Pipeline's tariff as the ACA unit charge for the relevant fiscal year.¹²

In establishing this change, the Commission is aware that in addition to the basic statutory requirement that all rates and charges be on file with the Commission,¹³ the filing requirements associated with the annual revisions to the ACA unit charge serve important practical functions. First, the annual tariff filing (and the Commission's acceptance of that filing) establishes an

⁸ *Id.* at 154.402(b).

⁹ *Id.* at 154.402(c).

¹⁰ The Commission publishes this change via a notice entitled, "FY [Year] Gas Annual Charges Correction for Annual Charges Unit Charge," which is available on the Commission's website, located at <http://www.ferc.gov>.

¹¹ *See id.* at 382.102(i) (defining "fiscal year" as the twelve-month period that begins on the first day of October and ends on the last day of September); *see also id.* at 154.402(b)(3) (requiring the proposed effective date of the tariff change revising the ACA unit charge to be 30 days after the date the change is filed, unless a shorter period is specifically requested in a waiver petition and approved).

¹² *See id.* at 382.102(i) (defining "fiscal year" as the twelve-month period that begins on the first day of October and ends on the last day of September).

¹³ 15 U.S.C. 717c (2006).

effective date upon which the Pipeline is entitled to begin collecting that fiscal year's ACA unit charge. Second, the annual filing provides the Commission with an opportunity to ensure that the Pipeline has actually paid the annual charge that it seeks to recover from customers.¹⁴

Because the annual filing requirement will be eliminated under the approved reform and no longer serve these functions, the Commission's approval is designed to replicate them.

Accordingly, the Commission establishes the requirement that Pipelines utilize an ACA clause to incorporate by reference into their tariffs the ACA unit charge specified in the annual notice issued by the Commission entitled "FY [Year] Gas Annual Charges Correction for Annual Charges Unit Charge." This ACA unit charge shall be effective on the first day of October following issuance of this notice and shall extend to the last day of September the following year (i.e., the duration of the fiscal year). However, the ACA unit charge shall only be incorporated by reference into the Pipeline's tariff, and thereby assessed to shippers, if the Pipeline has paid its annual assessment, as reflected on a new notice, entitled "Payment Status of Pipeline Billings – FY [Year]," that the Commission will issue each year. This notice will identify the Pipelines that have been assessed annual charges for a fiscal year and indicate whether they have paid their bills and are, therefore, authorized to recover the ACA unit charge from shippers. The Commission will issue the "Payment Status of Pipeline Billings – FY [Year]" notice on the last business day of the fiscal year, and provide updates as necessary.

All of the documents can be found on the Annual Charges page of the Natural Gas section of the Commission's website, located at <http://www.ferc.gov>.

The consequences of not collecting the information will result in maintaining unnecessary regulatory burden upon the industry.

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

This final rule establishes the incorporation by reference of the annual charge adjustment unit charge, and utilizes information technology to maintain the current level of transparency regarding the collecting of such costs.

4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION AND SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE

¹⁴ Order No. 472, FERC Stats. & Regs. ¶ 30,746 at 30,629-30 (explaining that Pipelines may only collect those annual charges that they have already paid to the Commission).

**CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSE(S)
DESCRIBED IN INSTRUCTION NO. 2**

This rulemaking is designed to reduce duplication and remove unnecessary burden on the industry by incrementally reducing the number of filings that company has to make with the Commission.

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

The final rule imposes a minimal one-time burden on all companies that use ACA clauses. The Commission estimates there are 15 small companies impacted by the rule. Over time, the changes approved in this final rule are designed to reduce the burden on small entities.

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

Because the rule establishes a reduction in the number of filings as well as a one-time collection of information, this item is not applicable.

**7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE
INFORMATION COLLECTION**

There are no special circumstances related to this rulemaking.

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

The Commission solicited public comment on the approved changes to the information collection requirements as part of the NOPR. The NOPR was published in the Federal Register on October 29, 2012 (77 FR 65508). The Commission fielded four comments regarding the NOPR. Out of the four comments, three were explicitly supportive of the Commission's proposal. However, one entity, Interstate Natural Gas Association of America (INGAA), provided recommendations regarding the Commission's proposal.

More specifically, while INGAA's comments stated support of the NOPR, INGAA proposed a minor modification to the NOPR to eliminate unnecessary confusion and to avoid the annual filing. More specifically, INGAA proposes requiring pipelines to submit compliance filings 30 or 60 days prior to the proposed October 1, 2013, effective date of this Final Rule. INGAA's

suggestions were adopted by the Final Rule, and the compliance filings are required 60 days before the required effective date of October 1, 2013. In spite of the aforementioned changes adopted in the Final Rule, there is no change in the estimated burden upon respondents as presented within NOPR.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

The Commission makes no payments or gifts to respondents as part of this collection.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

An entity seeking confidential treatment of the information must ask the Commission to treat this information as confidential and non-public, consistent with the Commission’s regulations at 18 CFR 388.112. Generally, the Commission does not consider this information to be confidential.

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

There are no questions of a sensitive nature that are considered private.

12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION

These estimates highlight reductions to the burden since respondents will no longer have to file ACA charge tariff adjustments. More specifically, the Commission estimates it will require eight hours per response to make the “one-time” (during the 1st year only) compliance tariff changes set forth in this Final Rule to place the new tariff language into effect. However, in each year (including the 1st year), the Commission also estimates that filers will see a two hour reduction in burden per response from no longer filing ACA charge tariff adjustments. The following table displays the estimated annual burden hour impact of the Final Rule.

FERC-542 in the Final Rule in RM12-14	Number of Respondents (A)	Number of Responses Per Respondent Per Year (B)	Total Number of Responses Per Year (A)*(B)=(C)	Addition of Average Burden Hours per Response (D)	Reduction of Average Burden Hours per Response (E)	Net Average Burden Hours per Response (D)+(E)=(F)	Estimated Total Annual Burden (C)*(F)
Year 1	145	1 Compliance Filing	145	+8 (Compliance Filing)	0	+8	+1160
Year 1	145	1 Avoided ACA filing	145	0	-2 (ACA filing)	-2	-290
Year 1 SUBTOTAL						+6	+870

Year 2	145	1 Avoided ACA filing	145	0	-2 (ACA filing)	-2	-290
Year 3	145	1 Avoided ACA Filing	145	0	-2 (ACA filing)	-2	-290
NET TOTAL							+290

To understand the burden estimates above, reference the following equation:

$$\text{Year 1} + \text{Year 2} + \text{Year 3} \rightarrow +870 \text{ hours} - 290 \text{ hours} - 290 \text{ hours} = +290 \text{ hours}$$

The net total additional annual burden associated with this Final Rule over Years 1-3 period is +290 hours. Thus, the average additional annual burden for Years 1-3 is 97 hours (290 hours ÷ 3 years = 97 hours per year). Further, the Commission estimates that each respondent (on average) should experience a decrease to the annual burden (-2 hours per year) due to the avoidance of the ACA filing.

In the ROCIS submission requesting approval of this Collection, we are averaging the one-time burden (8 hours per company) over three years for a total of 2.67 hours per company for each year (145 companies X 2.67 = 387 hours).

Proposed Rule Information Collection Costs: It has projected the average burden hour cost for all respondents to be:¹⁵

- One-time total cost of \$51,330 (870 hours * \$59/hour)
- Avoided cost per year of \$17,110 (290 hours * \$59/hour)

13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS

Commission staff conducted analyses of past filings and has concluded that there are no capital costs associated with this rulemaking. Additionally, there is no operation, maintenance, or purchase of services cost associated with either collection.

Total Capital and Start-up cost: \$0

Total Operation, Maintenance, and Purchase of Services: \$0

14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT

¹⁵ The cost figures are derived by multiplying the total hours to prepare a response (hours) by an hourly wage estimate of \$59 (a composite estimate that includes legal, technical and support staff wages and benefits obtained from the Bureau of Labor Statistic data at http://bls.gov/oes/current/naics3_221000.htm and <http://www.bls.gov/news.release/ecec.nr0.htm> rates).

The Commission does not foresee any increased cost to the Federal Government as a result of this rule. In the future, the reduced number of filings is expected to decrease the overall Federal cost.

The existing Federal Cost for the FERC-542 is \$575,748 and is based on 4 full time equivalent employees and \$1,588 for Paperwork Reduction Act administration¹⁶ (\$574,160+\$1,588 = \$575,748)

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

The following table shows the burden changes due to the adjustment and the proposed rule:

FERC-542	Total Request	Previously Approved	Change due to Adjustment in Estimate	Change Due to Agency Discretion
Annual Number of Responses	653	333	320	0
Annual Time Burden (Hr)	20,397	13,300	7,000	97
Annual Cost Burden (\$)	0	0	0	0

We are adjusting the existing burden inventory to account for estimating 145 filers instead of the previous number of 95. The difference of 50 filers is due to Commission error in previous estimates and is the reason for the additional 7,000 hours shown in the table above.

We also reduce the annual hours by 2 hours per filer to account for the reduced number of filings.

We are averaging the one-time filing burden contained in the proposed rule over three years, leading to 97 hours per company.

The one-time increase in burden (averaged over three years) is necessary to implement the burden reduction measures (reduced number of required filings in future years) adopted in the final rule.

16. TIME SCHEDULE FOR PUBLICATION OF DATA

¹⁶ PRA Administration is the cost required of FERC staff to prepare estimates, draft documents and otherwise comply with the PRA for this collection. The cost is based on 24 hours of staff time.

There are no tabulating, statistical or tabulating analyses or publication plans for the collection of information.

17. DISPLAY OF EXPIRATION DATE

It is not appropriate to display the expiration date for OMB approval of the information collection. The information is not collected upon a standard form which would facilitate the display of the expiration date for OMB approval.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

The Commission does not use the data collected for this reporting requirement for statistical purposes. Therefore, the Commission does not use as stated in item (i) of the certification to OMB "effective and efficient statistical survey methodology." The information collected is case specific to each information collection.