

Supporting Statement

**FERC-549 NGPA Title III Transactions and NGA Blanket Certificate Transactions  
Final Rule (RM12-17) issued 7/18/2013**

The Federal Energy Regulatory Commission (Commission or FERC) requests that the Office of Management and Budget (OMB) review and approve **FERC-549, NGPA Title III Transactions and NGA Blanket Certificate Transactions** as contained in the Final Rule in Docket No. RM12-17-000 (<http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13308636>) for a three year period. FERC-549 is an existing collection and the Commission is approving modifications to it in this final rule.

**1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION  
NECESSARY**

FERC-549 is required to implement the statutory provisions governed by Sections 311 and 312 of the Natural Gas Policy Act (NGPA)<sup>1</sup> and Section 7 of the Natural Gas Act (NGA)<sup>2</sup>.

This final rule only approves changes in the “Rates and Charges for Intrastate Pipelines” requirements and not to any of the other information collection parts of the FERC-549.

Rates and Charges for Intrastate Pipelines

In the final rule the Commission revises the Commission’s periodic rate review requirement policy to allow intrastate pipelines with unchanged state-based rates to meet the rate review requirement by certifying that the state-approved rates continue to satisfy the requirements of the Commission’s regulations for using a state-based rate. This revised policy is included in the new paragraphs under 18 CFR 284.123(g).

In the final rule the Commission also allows entities to withdraw in its entirety a filing pursuant to 18 CFR 284.123 that has not been approved by filing a withdrawal motion with the Commission.

Section 284.123 applies to filings by: (1) intrastate pipelines providing interstate services pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA)<sup>3</sup> and (2) Hinshaw<sup>4</sup> pipelines providing interstate services subject to the Commission’s Natural Gas Act (NGA)

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1 15 USC 3371-3372

2 15 U.S.C. 717f

3 15 USC 3372

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

jurisdiction pursuant to blanket certificates issued under Section 284.224 of the Commission's regulations.<sup>5</sup>

18 CFR 284.123(b) provides that intrastate gas pipeline companies file for Commission approval of rates for services performed in the interstate transportation of gas. An intrastate gas pipeline company may elect to use rates contained in one of its then effective transportation rate schedules on file with an appropriate state regulatory agency for intrastate service comparable to the interstate service or file for approval of rates and supporting information showing the rates are cost based and are fair and equitable. 150 days after the application is filed for approval of the later (e.g. the cost based rates) the rate is deemed to be fair and equitable unless the Commission either extends the time for action, institutes a proceeding or issues an order providing for rates it deems to be fair and equitable.

18 CFR 284.123(e) requires that within 30 days of commencement of new service any intrastate pipeline engaging in the transportation of gas in interstate commerce must file a statement that includes the interstate rates and a description of how the pipeline will engage in the transportation services, including operating conditions. If an intrastate gas pipeline company changes its operations or rates it must amend the statement on file with the Commission. Such amendment is to be filed not later than 30 days after commencement of the change in operations or change in rate election.

18 CFR 284.123(f) requires that all filings must be made electronically consistent with requirements set forth in Order No. 714.

*The following requirements of the FERC-549 are unchanged by the proposed rule.*

#### Transportation by Interstate Pipelines

In 18 CFR 284.102(e) the Commission requires interstate pipelines to obtain proper certification in order to ship natural gas on behalf of intrastate pipelines and local distribution companies (LDC). This certification consists of a letter from the intrastate pipeline or LDC authorizing the interstate pipeline to ship gas on its behalf. In addition, interstate pipelines must obtain from its shippers certifications including sufficient information to verify that their services qualify under this section.

#### Code of Conduct

The Commission's regulations at 18 CFR 284.288 and 284.403 provide that applicable sellers of natural gas adhere to a code of conduct when making gas sales in order to protect the integrity of the market. As part of this code, the Commission imposes a record retention requirement on applicable sellers to "retain, for a period of five years, all data and information upon which it billed the prices it charged for natural gas it sold

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<sup>5</sup> 18 CFR 284.224.

pursuant to its market based sales certificate or the prices it reported for use in price indices.” FERC uses these records to monitor the jurisdictional transportation activities and unbundled sales activities of interstate natural gas pipelines and blanket marketing certificate holders.

The record retention period of five years is necessary due to the importance of records related to any investigation of possible wrongdoing and related to assuring compliance with the codes of conduct and the integrity of the market. The requirement is necessary to ensure consistency with the rule prohibiting market manipulation (regulations adopted in Order No. 670, implementing the EPCA 2005 anti-manipulation provisions<sup>6</sup>) and the generally applicable five-year statute of limitations where the Commission seeks civil penalties for violations of the anti-manipulation rules or other rules, regulations, or orders to which the price data may be relevant.

Failure to have this information available would mean the Commission is unable to perform its regulatory functions and to monitor and evaluate transactions and operations of interstate pipelines and blanket marketing certificate holders.

#### Market-Based Rates for Storage

In 2006 the Commission amended its regulations to establish criteria for obtaining market-based rates for storage services offered under 18 CFR 284.501-505. First, the Commission modified its market-power analysis to better reflect the competitive alternatives to storage. Second, pursuant to the Energy Policy Act of 2005, the Commission promulgated rules to implement section 4(f) of the Natural Gas Act, to permit underground natural gas storage service providers that are unable to show that they lack market power to negotiate market-based rates in circumstances where market-based rates are in the public interest and necessary to encourage the construction of the storage capacity in the area needing storage services, and where customers are adequately protected. These provisions are intended to facilitate the development of new natural gas storage capacity while protecting customers.

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

The Commission uses the data in the FERC-549 to examine the costs, rates, and service and tariff provisions for the transportation and/or sale of natural gas in interstate commerce filed in compliance with Commission orders. Specifically, the Commission uses the data to ensure compliance with Sections 311 and 312 of the NGPA, Section 7 of the NGA and Part 284 of the Commission’s regulations. The information collected or maintained is used by the Commission to monitor jurisdictional transportation activities of intrastate and Hinshaw pipelines and the

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<sup>6</sup> 18 CFR 1c.1 and 1c.2, 71 FR 4,244 (2006).

unbundled sales activities of interstate natural gas pipelines and to ensure the integrity of the gas sales market that remains subject to the Commission's jurisdiction.

The new rate approval procedure for state-based rates will allow pipelines whose rates have not changed to simply submit a certification, avoiding a rate review by the Commission.

The new withdrawal procedures rule will enable the pipeline to withdraw its filing in its entirety. NGPA pipelines are permitted to begin charging new rates for service prior to Commission approval, so a withdrawal of the filing may necessitate refunds. The procedures for determining the refunds are integral part of the approved procedure.

Failure to collect this information would prohibit the Commission from monitoring and properly evaluating pipeline transactions and meeting statutory obligations under both the NGPA and the NGA.

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

The Commission has developed the capability for electronic filing of all submissions that occur under FERC-549. In requesting changes to its rates or statement of operating conditions, the pipeline's filings must be made electronically per section 284.123(f), thus paper copies are no longer accepted.

**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**

Filing requirements are periodically reviewed as OMB review dates arise or as the Commission may deem necessary in carrying out its responsibilities under the NGPA and the NGA in order to eliminate duplication and ensure that filing burden is minimized. The Commission recently discontinued the semi-annual storage reporting requirements in the FERC-549 and FERC-537 because it was determined that the report was largely duplicative of other reporting requirements.

In the final rule the Commission is streamlining the business processes for filing for and then receiving rate approval for intrastate pipelines. The new business process do not change the initial filing requirements and thus do not add to nor subtract from the regulatory burden; the new business processes will reduce effort in obtaining Commission approval of uncontested cases. The Commission is not changing the burden with respect to the filing, it is reducing the burden after the filing, or the data collection process, thus there is no change in burden from OMB's perspective.

The additional burden hours reflected in this package are for four additional filings. Three associated with the revised policy for state-based rates, and one associated with requesting a withdrawal of an already submitted package.

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

FERC-549 is a filing requirement pertaining to pipeline transportation transaction filing and retention obligations under the applicable regulations for the transportation, and sale of natural gas as stated herein. This filing collects data from both large and small respondent companies.

The Final Rule should have no significant negative impact on those entities, be they large or small, subject to the Commission's regulatory jurisdiction under the NGA. Most companies to which the Final Rule applies do not fall within the RFA's definition of small entities.

As explained in the Final Rule, the Commission estimates that the proposed § 284.123(g) regulations will serve as a substitute for filings currently done pursuant to §§ 284.123(b) and (e), and § 284.123(h) provides regulatory certainty if a pipeline decides to withdraw its filing. The Commission estimates that intrastate pipelines will experience little if any change in regulatory burden associated with making their filings, and pipelines will be able to avoid certain costs and delays post-filing due to the new streamlined process.

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

Section 311 intrastate pipeline companies or persons holding blanket certificates only provide this information collection through the submission of filings. If the collection were conducted less frequently or discontinued, the Commission would be unable to determine if the rates continue to be fair and equitable.

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

There are no special circumstances or exceptions related to this collection.

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

The approved rule was published in the Federal Register on 7/30/2013 (78 FR 45850). The Commission solicited public comment on the collection of information. FERC Staff performed outreach to various industry stakeholder groups and individual entities during the January – May of 2012 timeframe. FERC made presentations at the largest section 311 and Hinshaw pipeline trade associations that together represent over 75 percent of the entire industry.

13 parties filed comments in response to the NOPR. In general, most commenters support the Commission's efforts to increase regulatory certainty and reduce regulatory burdens beyond the information filing process. Several of the supporting parties requested that the Commission modify or clarify the proposal. Generally, the requested modifications and clarifications were minor in nature and were accepted in the final rule. Three parties were opposed to the NOPR changes arguing that the Commission may use the changed procedures as a basis for not fulfilling its obligations to properly review the intrastate pipeline filings and this may shift the burden of proof to the shippers.

The Commission found that the changes will provide an expedited and less burdensome method of processing the significant percentage of filings by section 311 and Hinshaw pipelines which present few, if any, contested issues. The Commission asserts in the Final Rule that none of the changes reduce the necessary review by the Commission. With regard to discovery procedures, the existing rules do not permit parties to conduct discovery, unless a case is set for hearing before an Administrative Law Judge.

None of the parties commented on the burden estimates.

For full treatment of the comments please see the Final Rule document, pages 6-42, submitted to OMB as part of this Information Collection Request.

## **9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS**

The Commission will not make any payments or gifts to respondents as part of this collection.

## **10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS**

The Commission generally does not consider the data filed to be confidential. However, the Commission considers specific requests for confidential treatment to the extent permitted by law pursuant to 18 CFR 388.110 of FERC's regulations.

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

There are no questions of a sensitive nature that are considered private included in this information collection.

## **12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION**

The total burden under the FERC-549 is currently 2,283 hours and 548 responses. This includes the paperwork requirements associated with 1) transportation by interstate pipelines in 18 CFR

284.102(e); 2) Company identification (CID) & rates and charges for intrastate pipelines in 18 CFR 284.123(b) and 18 CFR 284.123(e); and 3) code of conduct in 18 CFR 284.288 and 284.403; and 4) market-based rates for storage in 18 CFR 284.501-505.

<b>FERC-549 Requirements &amp; 18 CFR Cite</b>	<b>Number of Respondents Annually (1)</b>	<b>Number of Responses per Respondent (2)</b>	<b>Number of Responses Annually (1)x(2)=(3)</b>	<b>Average Burden Hours per Response (4)</b>	<b>Total Annual Burden Hours (3)x(4)</b>
<b>Existing Inventory:</b>					
Transportation by Interstate Pipelines 284.102(e)	75	2	150	3 <sup>7</sup>	450
Company Identification (CID) & Rates and Charges for Intrastate Pipelines 284.123(b),(e)	67 <sup>8</sup>	2.597 <sup>9</sup>	174	5.24 <sup>10</sup>	911
Code of Conduct <sup>11</sup> (recordkeeping) 284.288, 403	222	1	222	1	222
Market-Based Rates <sup>12</sup> 284.501-505	2	1	2	350	700
<b>Total</b>			<b>548</b>		<b>2,283</b>

7 This is an estimate for the amount of time it requires to complete a one page document, which is what is essentially required by this part (one page from the shippers and one page from the intrastate or LDC, equaling an estimated 2 times a year).

8 This figure is based on the number of filings under 18 CFR Part 284.123 in past years (67 filings).

9 This is an average figure including 67 rates and charges filings and 107 Company Identification responses.

10 This figure includes two parts: first, 12 hours for 67 companies (804 hours total) for rates and charges based on the assumption that the effort required to make this revision to a tariff is approximately half of the effort required to make a baseline tariff filing (as computed in the Final Rule in Docket No. RM01-5); and second, 1 hour per 107 companies (107 hours total) to modify and upkeep their CID. This leads to a total of 911 hours at 5.24 hours per response.

11 The estimates for this category come from the Commission's most recent renewal pertaining to this requirement.

12 The estimates for this category are the same as were submitted to OMB when these requirements were last modified (in the Final Rule in Docket No. RM05-23).

The total estimated annual cost burden for FERC-549 to respondents is \$2,520 [2,224<sup>13</sup> \* \$70/hour<sup>14</sup> = \$155,680].

### 13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There are no non-labor costs associated with the approved rule or with the existing information collection requirements.

### 14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT

We expect that the changes approved in the rule will reduce the cost on FERC by approximately 0.75 Full-Time Equivalents (FTE) per year.<sup>15</sup> The existing FERC burden for the collection (9.82 FTE) is adjusted accordingly.

The estimated annualized cost to the Federal government for FERC-549 is as follows:

	<b>Number of Employees (FTEs)</b>	<b>Estimated Annual Federal Cost</b>
Analysis and Processing of filings <sup>16</sup>	9.07	\$1,322,269
Paperwork Reduction Act administration <sup>17</sup>		\$2,250
<b>FERC Total</b>		<b>\$1,324,819</b>

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

In the NOPR the Commission estimated that the average annual public reporting burden imposed on the section 311 and Hinshaw intrastate pipelines of making filings for rate approval under § 284.123 would not change. The preparation effort or the substance of a filing made pursuant to § 284.123(g) would be the same as for a filing made pursuant to existing §§ 284.123(b) and/or 284.123(e). A requirement of a pipeline using the new optional filing procedures is that the pipeline make a new rate approval filing under § 284.123 within five years of the date of the initial filing. Since the Commission has, as a matter of policy, routinely imposed that

13 This figure includes all other information collection burdens included in FERC-549, not just the collections affected by this Final Rule.

14 Average salary (per hour) plus benefits per full-time equivalent employee

15 We base this reduction on a reduction of 25 filings per year with a savings of 60 hours for each filing (25 filings X 60 hours = 1,500 hours).

16 Based upon 2013 FTE average salary plus benefits (\$145,818)

17 The Commission bases the cost of Paperwork Reduction Act administration on staff time, and other costs related to compliance with the Paperwork Reduction Act of 1995.



requirement on the section 311 industry in the context of individual rate cases, the Commission does not consider this a change in the burden being imposed.

The Commission as a part of this Final Rule is changing its policy with respect to five-year periodic rate review requirement for pipelines whose rates are based upon a state rate election under § 284.123(b)(1). The Commission will only require a pipeline with state-approved rates which have not changed since the previous five-year filing to certify that those rates continue to meet the requirements of § 284.123(b)(1) on the same basis on which they were approved.

Concomitant with this policy change, the Commission will now require a pipeline with rates that are based upon a state rate election under § 284.123(b)(1) to file within thirty days of a change in its underlying state rates for approval of new rates under § 284.123. The pipeline may not wait to do this in conjunction with a filing under its five-year periodic rate review requirement. The Commission has observed that generally most pipelines file to revise rates based upon a state rate election whenever there is a change. The Commission estimates that this change in policy may result in three additional filings per year at 12 hours per filing.

As noted in the NOPR and unchanged in the Final Rule, the Commission estimates that a single pipeline may, on an annual basis, use the new withdrawal filing requirements under § 284.123(h). This may result in an increase in burden of one filing and 12 hours per year for the new withdrawal filing requirements.

The Final Rule should reduce the number filings associated with settlements. These settlement filings are case by case and do not fall under the purview of the Paperwork Reduction Act.

The changes in the Final Rule should reduce FERC’s burden by reducing or virtually eliminating the number of filings that were in the past resolved through the formal settlement process. The new procedures will enable the filings to be approved automatically if the filing is not protested. Additionally, most of the settlements necessitated a compliance filing that required review and order approving the filing.

In terms of the burden counted under the Paperwork Reduction Act (PRA), Commission staff anticipates, as discussed above, four additional filings, each at 12 hours per response for a total of 48 additional hours. Other changes approved in the rule should lead to a reduction in non-PRA regulatory compliance burden.

Please see the table below. It reflects actual changes to the ROCIS metadata within this clearance package.

<b>FERC-549</b>	<b>Total Request</b>	<b>Previously Approved</b>	<b>Change due to Adjustment in Estimate</b>	<b>Change Due to Agency Discretion</b>
Annual Number of Responses	552	548	0	4

Annual Time Burden (Hr)	2,331	2,283	0	48
Annual Cost Burden (\$)	\$0	\$0	\$0	\$0

**16. TIME SCHEDULE FOR PUBLICATION OF DATA**

There are no other publications or tabulations of the data.

**17. DISPLAY OF EXPIRATION DATE**

It is not appropriate to display the expiration date for OMB approval of the information collected. The information is not collected on a standard, preprinted form which would avail itself to that display. Rather natural gas pipeline companies prepare and submit filings that reflect unique or specific circumstances related to the transaction in the filing. In addition, the information contains a mixture of narrative descriptions and empirical support that varies depending on the nature of the transaction.

**18. EXCEPTIONS TO THE CERTIFICATION STATEMENT**

This is not a collection that uses statistical methods.