

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Pipeline Posting Requirements under)
Section 23 of the Natural Gas Act)

Docket No. RM08-2-000

**REQUEST OF THE
INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA
FOR CLARIFICATION**

Pursuant to the Federal Energy Regulatory Commission Rules of Practice and Procedure, particularly but not exclusively Rule 212,¹ the Interstate Natural Gas Association of America (“INGAA”) respectfully requests clarification² of the Final Rule issued by the Federal Energy Regulatory Commission (“Commission”) on December 1, 2008, and published in the December 2, 2008, issue of the Federal Register.³ More specifically, INGAA requests clarification of the newly promulgated addition to 18 C.F.R. § 284.13(d)(1) set forth below:

An interstate pipeline must also provide information about the volumes of no-notice transportation provided pursuant to § 284.7(a)(4). This information must be posted at each receipt and delivery point before 11:30 a.m. central clock time three days after the day of gas flow.
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¹ 18 C.F.R. § 385.212.

² To preserve the rights of INGAA and its members to seek judicial review, this request for clarification should be also be considered a request for rehearing. To satisfy the content requirements for requests for rehearing, 18 C.F.R. § 385.713(c); *see also*, *Entergy Services, Inc.*, 121 FERC ¶ 61,126, at P 10 (2007), *order denying reh’g*, 123 FERC ¶ 61,078, at P 8 (2008) (requiring the Statement of Issues to be placed in a separately headed and numbered section of the pleading), the appendix to this request contains Specifications of Error and a Statement of Issues, each separately numbered, with representative precedent identified for each specified issue.

³ *Pipeline Posting Requirements under Section 23 of the Natural Gas Act*, 73 Fed. Reg. 73493 (Dec. 2, 2008) (“Final Rule” or “Order No. 720”).

REQUESTED CLARIFICATIONS

1. THE COMMISSION SHOULD CLARIFY THAT AN INTERSTATE PIPELINE SATISFIES THE “NO-NOTICE” POSTING REQUIREMENT IF IT PROVIDES VOLUME INFORMATION AT THE LEVEL OF DETAIL AND AGGREGATION CORRESPONDING TO HOW THAT PIPELINE PROVIDES “NO-NOTICE TRANSPORTATION.”

“No-notice transportation” is a generic term, and interstate pipelines’ tariffs and contracts vary widely in how they provide no-notice transportation service to their customers.⁴ In a number of cases, these differences will effect the “volume information” available to a pipeline and available for posting. INGAA seeks clarification to ensure these differences are recognized, so each pipeline can satisfy the “no-notice” posting requirement by providing data corresponding to how it provides no-notice transportation service.

A description of every pipeline’s no-notice service is beyond the scope of this pleading. Nevertheless, an examination of two key elements — the distinction between receipt points and delivery points and the level of aggregation — amply demonstrates the variations among pipelines and the need to recognize these variations in the implementation and enforcement of the “no-notice” posting requirement.

- A. THE COMMISSION SHOULD CLARIFY THAT INTERSTATE PIPELINES SHOULD NOT BE REQUIRED TO POST NO-NOTICE VOLUMES AT RECEIPT POINTS.

Under the new reporting requirement interstate pipelines must post information about the volume of no-notice transportation “at each *receipt* and delivery point.”⁵ However, in the clear

⁴ Such variation is not surprising. In Order No. 636, the Commission deferred consideration of the mechanics of no-notice service to the individual pipeline restructuring proceedings. *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines after Partial Wellhead Decontrol*, FERC Stats. & Regs. ¶ 30,939 at 30,410 (1992).

⁵ Final Rule, 73 Fed. Reg. at 73517 (text of addition to 18 C.F.R. § 284.13(d)(1) (emphasis supplied)).

majority of cases there is no way for the pipeline to determine a receipt point for its no-notice service. The very nature of no-notice service is that it does not have to be nominated by receipt or delivery point. For most pipelines, no-notice service is an accommodation of downstream customers, and these customers are not obligated to identify the receipt points for no-notice service. No-notice service is most often provided when a shipper's deliveries exceed its nominated quantities, with the additional volume provided from storage, line pack or some other source that cannot be linked with a specific point of receipt.⁶ Another factor that contributes to making it difficult, if not impossible, to accurately identify the existence of no-notice gas at pipeline receipt points is the existence of pipeline to pipeline imbalances, which can arise for a variety of operational and other reasons and which are addressed through Commission-mandated operational balancing agreements.

Because of the way no-notice service is structured in tariffs and contracts, there often is no receipt point information which a pipeline can report. INGAA therefore requests the Commission delete the receipt point reporting requirement from the regulations.

B. THE COMMISSION SHOULD CLARIFY THAT INTERSTATE PIPELINES MAY POST NO-NOTICE VOLUMES AT AN AGGREGATE LEVEL.

In implementing the new reporting requirement, the Commission needs to recognize the role of aggregation in the administration of “no-notice” service by some pipelines. On some pipelines, transportation service is nominated, confirmed, scheduled, billed and reported not at

⁶ Even here there are subtleties that need to be recognized in the administration and enforcement of the posting requirement. A difference between customer takes and scheduled volumes could have several components — a portion of a difference could represent no-notice service, but some of the difference could also represent imbalances or overruns — and a pipeline may not be able to separate between these services within the three days allowed for posting. As part of recognizing differences in the ways pipelines provide no-notice service, the Commission should clarify that an interstate pipeline satisfies the posting requirement if it reports the amount by which actual deliveries exceed the nominated quantity to the extent known as of the reporting date, even if the posted volume includes some level of imbalance or overrun.

the level of individual points where natural gas is physically received or delivered, but at an aggregate level that serves as a single administrative location⁷ for a customer. For many pipelines, no-notice service allows a customer (usually a local distribution company or utility) to take this un-nominated service on an as-needed, aggregate basis across all of that customer's physical delivery points.

The benefit of this practice to pipelines and their customers is straightforward. On some pipelines, such as those with highly reticulated or complex systems, aggregation simplifies the administration of business for the pipeline and the shipper where multiple physical receipt or delivery points are involved.

Consistent with the way aggregation works for natural gas transportation in general, reconciliation for no-notice transportation occurs after the fact. Once physical receipts and deliveries are determined (per the pipeline's metering and measurement practices) the physical volumes are totaled and reconciled against corresponding figures at the administrative location using procedures that vary by pipeline. Some pipelines will reconcile at a disaggregated level, comparing physical deliveries by point against allocated portions of the corresponding aggregated transactions at the administrative location.⁸ Other pipelines will reconcile at the aggregate level, calculating the total amount of gas delivered and comparing it with the aggregate transportation quantity under the customer's contract or at the administrative point. On these pipelines, the volume of no-notice transportation is calculated as the difference between

⁷ "Administrative location" is not a term of art, and it is intended primarily to distinguish this point from points where gas is physically received or delivered. The pipelines that employ aggregation vary in their terminology for the point of aggregation and the processes involved in its implementation. An administrative location can be an actual, physical location or a contractual abstraction.

⁸ Allocations from the administrative point to individual delivery points are determined by formulas and procedures in pipeline tariffs and contracts. Some pipelines also allocate to individual receipt points.

the customer's scheduled quantity and their actual delivered volume, up to the maximum contract no-notice quantity.

In order to recognize of these differences, INGAA requests the Commission clarify that it is appropriate to report the volume of no-notice transportation at the level at which the pipeline provides no-notice service. If an aggregate volume is what the pipeline reports to its no-notice customers, and an aggregate volume is what the pipeline uses to administer its no-notice service contracts, reporting this aggregate volume should be found to satisfy the pipeline's new posting requirement under Order No. 720.⁹ This is consistent with the service offered, and allows transparency of the volumes going to a particular area or city gate.

2. THE COMMISSION SHOULD CLARIFY THAT AN INTERSTATE PIPELINE SATISFIES THE "NO-NOTICE" POSTING REQUIREMENT BY PROVIDING WHATEVER VOLUME INFORMATION IS AVAILABLE THROUGH THE METERING AND MEASUREMENT EQUIPMENT IN PLACE AT THE TIME THE INFORMATION IS POSTED.

Under the new reporting requirement, interstate pipelines must post volumes of no-notice transportation "before 11:30 a.m. central clock time three days after the day of gas flow."¹⁰ It would not be economic to install real-time measurement at each delivery point.¹¹ Moreover, where there are individual meters at which a pipeline may actually record no-notice service there

⁹ If reporting on this basis is not allowed, pipelines and their customers will have to re-write the no-notice rate schedules and contracts, or pipelines will have to make fundamental changes to their no-notice services and customers will have to nominate separate transactions by physical delivery point (on some pipelines, by physical receipt and delivery point). Either alternative would be extremely costly with no measurable increase in market transparency.

¹⁰ Final Rule, 73 Fed. Reg. at 73517 (text of addition to 18 C.F.R. § 284.13(d)(1)).

¹¹ For small points there is often no real-time telemetry or SCADA data measurement. An INGAA member reports that of the 227 delivery points that receive allocations of no-notice service, 126 have daily telemetry but 101 do not. The meters without telemetry, representing 44.5% of the total, account for only 25% of summer no-notice load and a mere 4% of winter no-notice load. Another INGAA pipeline makes deliveries at 1,488 scattered account locations, many too small to justify daily telemetry. Putting things more broadly, for some pipelines metering is impractical because no-notice deliveries are made at many very small points, including individual farm taps or other scattered accounts.

may not be telemetry, and the volumes may be reported to the pipeline on a monthly or weekly basis. Finally, in some cases the meters are controlled by third parties, and aggregate volumes are subject to measurement adjustment and third party changes.

Because of these limitations, there are instances where a pipeline will estimate no-notice volumes for necessary, operational purposes. This is the only information available to the pipeline three days after flow, and the Commission should clarify that such information satisfies the posting requirement. Also, in some instances the pipeline does not even have estimates of no-notice volumes. For example, in some cases, customers control the measurement information and the pipeline does not obtain access to such information until the end of the month. In order to recognize of these differences, INGAA requests the Commission clarify that it is appropriate for a pipeline to report the information (if any) that is available to the pipeline within the three days allowed for posting.

3. THE COMMISSION SHOULD CLARIFY THAT AN INTERSTATE PIPELINE SATISFIES THE “NO-NOTICE” POSTING REQUIREMENT WITHOUT HAVING TO POST DELIVERY POINTS WITH AN AVERAGE ANNUAL DELIVERY RATE OF LESS THAN 2,500 MCF PER DAY.

In Order No. 720 the Commission established a *de minimis* exemption that removed the reporting requirements from non-major interstate pipelines that deliver less than 50 million MMBtus per year.¹² In adopting this exemption and others, the Commission generally rested its decision on two grounds: (1) the additional information was not necessary to meet the transparency-related goals of this rulemaking; and (2) the marginal benefit of the potential information did not warrant the corresponding compliance cost.¹³

¹² Final Rule, 73 Fed. Reg. at 73504.

¹³ See generally *Id.*, 73 Fed. Reg. at 73509-12.

The same logic justifies a *de minimis* rule for reporting by interstate pipelines. As noted above, there are a number of delivery points where no-notice is received (or perhaps allocated) in volumes so small that they do not warrant the cost and administrative burden necessary to comply with this rule. Moreover, at some point the volume flowing through a specific delivery point is so small that it has no measurable impact on market fundamentals. Applying posting requirements under these circumstances does not advance market transparency and imposes costs with no known benefit.

INGAA therefore requests the Commission establish a *de minimis* rule to exempt from daily posting every delivery point with an average annual delivery rate of less than 2,500 Mcf per day.

CONCLUSION

When it issued Order No. 720, requiring interstate pipelines to report no-notice service on a point basis, the Commission stated that the requirement would not be unduly burdensome because “[a]n interstate natural gas pipeline should already have information on the no-notice service it provides.” However, for each pipeline, the information it has is a function of how it provides no-notice service as well as its metering and measurement equipment.¹⁴ In a related context, the Commission also recognized that some volumes are simply too inconsequential to warrant the cost and administrative burden necessary to comply with this rule.¹⁵ Consistent with these provisions of Order No. 720, and in light of the facts, authorities and arguments presented above, INGAA requests the Commission issue an order (1) clarifying the Final Rule to address

¹⁴ *Id.*, 73 Fed. Reg. at 73515.

¹⁵ See generally *Id.*, 73 Fed. Reg. at 73509-12.

the issues identified above; and, as necessary and appropriate, (2) granting rehearing to amend to the regulatory text promulgated through Order No. 720, consistent with the comments above.

Respectfully submitted,

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December 22, 2008

APPENDIX

SPECIFICATIONS OF ERROR

1. The Commission erred, to the detriment of INGAA's members, by requiring interstate pipelines to post information on their Internet web sites concerning their no-notice transportation without recognizing that differences in the pipelines' no-notice services affect their ability to report this information and the level of detail of what can be reported.
2. The Commission erred, to the detriment of INGAA's members, by requiring interstate pipelines to post information on their Internet web sites concerning their no-notice transportation without recognizing that differences in the metering and measurement equipment in place on the various pipelines affect their ability to report this information and the level of detail of what can be reported.
3. The Commission erred, to the detriment of INGAA's members, by requiring interstate pipelines to post information on their Internet web sites concerning their no-notice transportation without establishing a *de minimis* exception to exclude delivery points where obtaining and reporting the volume of no-notice service does not warrant the associated cost and administrative burden and does not advance market transparency.

STATEMENT OF ISSUES

1. Order No. 720 established a new reporting regulation, requiring interstate pipelines to post information about the volume of no-notice transportation at each receipt and delivery point before 11:30 a.m. central clock time three days after the day of gas flow. *Pipeline Posting Requirements under Section 23 of the Natural Gas Act*, 73 Fed. Reg. 73493 (Dec. 2, 2008).
 - A. The Commission concluded that this requirement would not be unduly burdensome because “[a]n interstate natural gas pipeline should already have information on the no-notice service it provides.” *Id.*, 73 Fed. Reg. at 73515. This conclusion was reached and this requirement was promulgated without developing a record on the various ways interstate pipelines provide no-notice service, and the effect of these variations on the pipelines' ability to provide the requested information and the level of detail of any information provided. To this extent, the reporting requirement is not supported by substantial record evidence, and is therefore arbitrary and capricious. *See, e.g., Shell Oil Co. v. FERC*, 707 F.2d 230, 235 (5th Cir. 1983) (citing *N.L.R.B. v. Metropolitan Life Ins. Co.*, 380 U.S. 438, 442-43 (1965)).

- B. The Commission concluded that this requirement would not be unduly burdensome because “[a]n interstate natural gas pipeline should already have information on the no-notice service it provides.” *Id.*, 73 Fed. Reg. at 73515. This conclusion was reached and this requirement was promulgated without developing a record on the variations among pipelines in the type and deployment of metering and measurement equipment, and the effect of these variations on the pipelines’ ability to provide the requested information and the level of detail of any information provided. To this extent, the reporting requirement is not supported by substantial record evidence, and is therefore arbitrary and capricious. *See, e.g., Shell Oil Co. v. FERC*, 707 F.2d 230, 235 (5th Cir. 1983) (citing *N.L.R.B. v. Metropolitan Life Ins. Co.*, 380 U.S. 438, 442-43 (1965)).
2. Order No. 720 contains a number of *de minimis* exemptions recognizing circumstances where the volume of gas moved was so small or its effect on market fundamentals was so attenuated that reporting this information was not warranted by the associated cost and administrative burden. The arguments supporting these reporting exemptions equally justify a *de minimis* exemption from the no-notice reporting requirement for interstate pipeline delivery points having an average annual delivery rate of less than 2,500 Mcf per day. To not treat like situations in a like manner is arbitrary and capricious. *See, e.g., Motor Vehicles Mfg. Ass’n, Inc. v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 57 (1983).