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The Office of Energy Research, as part of its grant regulations, requires at 10 CFR 605.11(b) that a grantee funded by ER and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health ''Guidelines for Research Involving Recombinant DNA Molecules'' (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the Federal Register.

The dissemination of materials and research data in a timely manner is essential for progress towards the goals of the DOE HGP. The OHER requires the timely sharing of resources and data. Applicants should, in their applications, discuss their plans for disseminating research results and materials that may include, where appropriate, publication in the open literature, wide-scale mailings, etc. Once OHER and the applicant have agreed upon a distribution plan, it will become part of the award conditions. Funds to defray the costs of disseminating results and materials are allowable; however, such requests must be sufficiently detailed and adequately justified. Applicants should also provide timelines projecting progress toward achieving proposed goals.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on January 24, 1996.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

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Federal Energy Regulatory Commission

[Docket Nos. RM95–6–000 and RM96–7–000]

Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines; Statement of Policy and Request for Comments

Issued January 31, 1996.

I. Introduction

In this docket, the Commission has been exploring the criteria it should use when evaluating rates established through methods other than the traditional cost-of-service ratemaking method. In response to a number of requests from natural gas pipeline companies to approve rates based on various pricing methods, which may or may not be cost-based, the Commission has decided to establish a framework for analyzing certain of such proposals. The Commission solicited comments on the criteria it should use in evaluating non-cost-of-service based proposals [1] and representatives from all segments of the industry responded. The Commission has reviewed those comments and is now providing the industry with guidance by stating the criteria it will consider when evaluating proposals for market-based rates. Moreover, the Commission will modify its existing policy statement on incentive ratemaking in light of the comments received.

Moreover, the Commission will modify its existing policy statement on incentive ratemaking in light of the comments received.

The Request for Comments also generated responses from the industry on other non-cost-of-service based alternatives to the Commission's traditional ratemaking methodology. In particular, the Commission has received and reviewed comments on negotiated/recourse rates. Under a negotiated/recourse program the Commission would dispense with cost-of-service regulation for an individual shipper when mutually agreed upon by the pipeline and its shipper and permit negotiated terms and/or conditions that could vary from the pipeline's otherwise applicable tariff. A recourse service found in the pipeline's tariff would be available for those shippers preferring traditional cost-of-service rates and services.

Based on the comments received, the Commission is prepared to permit negotiated rates within the guidelines discussed below. The Commission has determined, however, that in order to make an informed decision, additional consideration and comment is needed regarding the legal and policy implications of negotiated terms and conditions of service. Therefore, the Commission is establishing a separate proceeding to solicit further comments concerning negotiated terms and conditions.

II. Background

In 1989, Congress urged the Commission to ''improve [the] competitive structure [of the natural gas industry] in order to maximize the benefits of [wellhead] decontrol.'' [2] The Commission responded to Congress in part in Order No. 636 [3] by taking significant steps to increase competition in the transportation market. By regulating pipelines in a manner that seeks to ensure all shippers have meaningful access to the pipeline transportation grid, the Commission has created a regulatory environment intended to maximize competition.

The result of Order Nos. 436 and 636, combined with the North American Free Trade Agreement (NAFTA) and the certification of new pipelines, is an increased availability of unbundled transportation and greater integration of upstream and downstream natural gas markets, both domestic and Canadian. As a result, there has been a shift in traditional supply sources; many existing pipeline customers no longer want or need the same amount of firm capacity to their traditional pipeline's supply regions. In addition, the overall natural gas demand has been increasing steadily, albeit modestly. Since 1992, national consumption of natural gas has increased at about 3 percent.[4] This increased demand has occurred primarily in the industrial and electric end-use markets for natural gas.[5] Natural gas consumers in these markets often have dual fuel capability,[6] and for this reason pipelines have sought ratemaking flexibility to respond to alternative fuel competition in these markets.

Pipelines contend that greater flexibility is key to attracting new gas markets and retaining existing markets.

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[1] Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, 70 FERC ¶ 61,139 (Feb. 8, 1995) (''Request For Comments'').

[2] H.R. Rep. No. 29, 101st Cong., 1st Sess., at 6 (1989).

[3] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, and Regulation of Natural Gas After Partial Wellhead Decontrol, Order No. 636, 57 Fed. Reg. 13267 (April 16, 1992), FERC Stats. and Regs. ¶ 30,939 (April 8, 1992), *order on reh'g*, Order No. 636–A, FERC Stats. & Regs. ¶ 30,950 (August 2, 1992), *order on reh'g*, Order No. 636–B, 61 FERC ¶ 61,272 (November 27, 1992), *reh'g denied*, Order No. 636–C, 62 FERC ¶ 61,007 (January 8, 1993), *appeal pending sub nom.* United Distribution Companies, *et al.* v. FERC, Nos. 92–1485, *et al.*

[4] In 1992, the overall national consumption of natural gas was 19.5 Tcf; in 1994 it reached 20.7 Tcf, a 6 percent increase. Figures for the first nine months of 1995 suggest an increase of 3 percent over the first 9 months of 1994. Natural Gas Monthly, December 1995.

[5] See, e.g., Energy Information Administration, Natural Gas Annual 1994, at p. 37 (DOE–EIA–0131(94)/1, November 1995) (''Most of the 476 billion cubic feet increase in consumption was due to increased reliance on natural gas in the electric utility sector., . . ., while industrial consumption grew by 196 billion cubic feet or 3 percent.'').

[6] See, e.g., National Petroleum Council, The Potential for Natural Gas in the United States, Volume III, Demand and Distribution, (December 1992) at 72–73 and 96.

For example, new electric generators have argued that they require long-term price certainty for transportation to finance gas-dependent ventures. In addition, it is asserted that ratemaking flexibility would permit pipelines to tailor natural gas transportation rates for electric generators to meet the swings in gas consumption often experienced by such generators. Pipelines have argued that, because many LDCs are unwilling to commit to long-term firm contracts, greater flexibility in rates and services is needed to retain customer load as old long-term contracts expire. LDCs also want flexibility so they can swing between pipelines to take advantage of the opportunity to purchase gas from different supply regions.

The Commission has recognized that additional rate design flexibility may be needed in a post-restructuring environment. In cases concerning the appropriate rate treatment for the costs associated with a pipeline's loss of revenues resulting from the expiration of contracts, for instance, parties have argued that they need additional rate design flexibility in order to market excess capacity and recover costs associated with their turned-back capacity.[7] In Natural Gas Pipeline Company of America,[8] the Commission indicated its willingness to permit pipelines flexibility in negotiating rates with its current and prospective customers for unsubscribed capacity, including rates which depart from SFV rate design. The Commission also stated that it would entertain, as part of a settlement, a proposal that allows rate flexibility for the capacity that customers had already elected.

In recent filings, pipeline companies also have urged the Commission to permit greater flexibility in service options and terms and conditions in order to meet competition. For example, Panhandle Eastern Pipe Line Corporation (Panhandle) proposed a Limited Firm Transportation (LFT) Service, under which its customers would be guaranteed the ability to schedule firm transportation service for only 20 days in any given month.[9] Trunkline Gas Company proposed a Premium Alternative Transportation (PAT) Service, consisting of interruptible transportation with preferential scheduling and curtailment features for an annual contracting fee.[10] Trunkline also proposed a Park and Transfer Service to help shippers manage their supply while reducing the frequency of cash-outs and scheduling penalties.[11]

In an attempt to respond to pipelines' requests for added flexibility, the Commission sought comments on alternative methods for pricing of services by natural gas pipeline companies. In its Request for Comments, the Commission stated its interest in developing a framework for analyzing proposals involving alternative pricing methods. Recognizing that there are a number of cost-based, as well as non-cost based alternatives to the Commission's traditional method, the Commission sought comment on fifteen specific questions related to possible ratemaking alternatives.

In the Request for Comments, the Commission also sought comment on a Commission Staff Paper that proposed criteria for evaluating of proposals for market-based rates. The staff paper applied basic market power analysis, as used in the past by the Commission as well as in other contexts, to develop a proposed analytical framework for evaluating gas pipeline market-based rate proposals.

The Commission also sought comment on whether changes should be made in its existing policy statement on incentive ratemaking.[12] The Commission noted that although it has stated the criteria upon which it will evaluate cost-based incentive rate proposals, to date no natural gas company has submitted such a proposal. The Commission raised several specific questions regarding its policy on incentive rate proposals and solicited comments on all aspects of its existing policy statement.

The Commission received 59 comments from parties representing all segments of the natural gas industry.[13] The majority of the responses focused on the staff paper and suggestions for criteria for evaluating market-based rate proposals. Furthermore, the responses critically analyzed the Commission's existing incentive rate policy statement and offered sound suggestions for altering the existing policy to meet the needs of the public interest in today's natural gas market.

The comments also proposed other alternatives to traditional cost-of-service ratemaking. Specifically, INGAA proposed that the Commission approve negotiated/recourse rate applications. Under such applications, pipelines would be allowed to negotiate a rate and/or terms and conditions of service so long as a Commission approved (recourse) rate remained available. Customers would always retain the right to elect the recourse rate and forego negotiation. Various commenters filed responses to INGAA's proposal.[14] Several of these commenters generally support INGAA's proposal although they object to INGAA's proposal to index the recourse rate.[15] Comments in opposition to INGAA's proposal focused on issues ranging from cost shifting and degradation of service to preventing undue discrimination and complying with the NGA's filing requirement. INGAA further clarified its proposal on September 25 and November 9, 1995 and commenters filed additional responses thereafter. A detailed discussion of INGAA's proposal and the responses thereto is included as part of the Commission's Request for Comments in Section IV below.

III. Policy on Market-Based Rates

The Commission has determined that where a natural gas company can establish that it lacks significant market power,[16] market-based rates are a viable option for achieving the flexibility and added efficiency required by the current marketplace. To date, the Commission has reviewed requests by regulated companies to charge market-based rates on a case-by-case basis. The Commission intends to continue in this vein, but is announcing the criteria it will generally use in the review process to aid companies in preparing their proposals. Below, we discuss the criteria the Commission will consider in evaluating any pending or future proposal for market-based rates. Companies may submit proposals meeting the established criteria for system segments and/or specific services offered on a system.

[7] *See* Southern Natural Gas Co., 73 FERC ¶ 61,322 (1995); Natural Gas Pipeline Co. of America, 73 FERC ¶ 61,050 (1995); Transwestern Pipeline Co., 72 FERC ¶ 61,085, *reh'g denied*, 72 FERC ¶ 61,089 (1995); and El Paso Natural Gas Co., 72 FERC ¶ 61,083 (1995).

[8] 72 FERC ¶ 61,083 (1995).

[9] Panhandle Eastern Pipe Line Co., 72 FERC ¶ 61,185 (1995).

[10] Trunkline Gas Co., 73 FERC ¶ 61,107 (1995).

[11] *Id*.

[12] Policy Statement on Incentive Regulation, 61 FERC ¶ 61,168 (1992).

[13] A list of the commenters is included as an appendix to this policy statement.

[14] To date, the Commission has received comments on INGAA's proposal from Brooklyn Union, GRI, IPAA, NGSA, and a group of eight industrial organizations.

[15] AGD, Brooklyn Union, and UGI.

[16] Transwestern Pipeline Company, 43 FERC ¶ 61,240 (1988); El Paso Natural Gas Company, 49 FERC ¶ 61,262 (1989); Transcontinental Gas Pipe Line Corporation, 55 FERC ¶ 61,446 (1991); Richfield Gas Storage System, 59 FERC ¶ 61,316 (1992); Koch Gateway Pipeline Company, 66 FERC ¶ 61,385 (1994); Buckeye Pipe Line Company, 53 FERC ¶ 61,473 (1990), and Williams Pipe Line Company, 69 FERC ¶ 61,136 (1994).

A. The Comments Received

The majority of the responses to the Request for Comments focused on the staff paper and suggestions for criteria for evaluating proposals for market-based rates.

The majority of those commenters supported market-based rates where a market is fully competitive.[17] Many commenters recognized, however, that it is unlikely that the primary market, i.e., firm transportation by interstate pipeline companies, will meet the proposed criteria for market-based rates.[18]

LDCs, producers, marketers, and state commissions, joined by a few interstate pipeline companies, assert that other markets, for example those for capacity release and interruptible transportation, already are, or can become, competitive enough to permit market-based rates.[19] Several parties believe that the markets for short-term firm transportation,[20] storage,[21] and hub/market center services,[22] as well as new markets [23] may also be competitive enough to permit market-based rates. On the other hand, a number of endusers and LDCs take the position that market-based rates should not be allowed for certain markets, including firm transportation,[24] capacity release,[25] short-term firm,[26] interruptible transportation,[27] and storage.[28]

The staff paper issued with the Request for Comments proposed criteria for evaluating market-based rate proposals. The Commission sought comments regarding whether these criteria were appropriate, too strenuous, or not strenuous enough. The majority of pipeline commenters, along with a few others, indicated that the criteria were too strenuous and ignore competitive factors.[29] A few pipelines suggest the Commission should avoid ''one size fits all'' approaches and instead use evaluation criteria of a more general nature.[30] The majority of end-users and regulatory commissions believe the proposed criteria are either reasonable and strenuous enough or require only minor modifications. Specifically, AGD contends that competing products need not be identical. For example, AGD asserts that in the off-peak season, released FT and IT are virtually identical. Therefore, AGD suggests that the criteria be modified to allow for consideration of such differences in product definition.

AGD also argues that the criteria should be modified so that the difference in price to be considered will be the difference in the cost of obtaining delivered gas through the various alternatives. The Pa OCA contends that the timeliness criterion should be more strenuous. Pa OCA states that if projected alternative capacity is delayed or is less than projected, customers should have the option of continuing to pay a traditional cost-of-service rate until workable competition exists. The Ohio CC and Pa OCA state that ''ease of exit'' as well as ''ease of entry'' should be added to the criteria used to define product markets. Pa OCA also suggests that the financial risk to customers be added to the criteria used to define product markets.

The LDCs, producers, and marketers are evenly divided on the question. Those that oppose the criteria assert that they are too narrow, will lead to overregulation, and that the .18 the summary measure of market concentration known as the Herfindahl-Hirschman Index (HHI) screen is too low.[31] Several commenters suggested that other factors, including market competition, market definition, and product substitution, must be considered in evaluating any proposal for market-based rates.[32]

In response to the Commission's inquiry regarding the use of different standards for different types of service, a number of LDCs and pipelines argue that the Commission should use different standards for different services.[33] Several commenters assert that the standards should be tailored to the services offered and/or the market to be served.[34] In contrast, the few state regulatory commissions who responded on this issue suggest that the same criteria should be used for all services.[35]

B. Response to Legal Arguments Opposing Market-Based Rates

A few commenters raised specific arguments regarding the Commission's legal authority to implement market-based rates on a broad scale. Only the IPAA made a broad-based attack on the Commission's legal authority to permit market-based rates. The Commission believes that IPAA's attack is based largely on mistaken premises.

IPAA asserts that the NGA contemplates ''traditional'' or cost-of-service ratemaking and therefore adoption of market-based rates on a wide scale may be contrary to the statutory intent of the NGA. IPAA argues that the Supreme Court has specifically held that NGA Sections 5(b), 6(a), 9(a), 10(a) and 14(b) suggest that when Congress enacted the NGA, it contemplated ''traditional'' or cost-of-service ratemaking [36] IPAA narrowly construes the Supreme Court decisions in *FPC* v. *Hope*,[37] and the *Permian Basin Area Rate Case* [38] as applying solely in cases where the question to be decided is what methods should be used to establish a rate base, not whether some alternative to cost-of-service ratemaking would be appropriate.

This is an extremely narrow reading of the case law. Moreover, IPAA does not even acknowledge more recent cases

[17] AGA, Edison, Con Edison, ANR/CIG, CNG, Cove Point, INGAA, Koch Gateway, PGT, PEC Pipeline Group, IPAA, Indicated Shippers, Alberta, Florida, Ohio CC, New York, Mark B. Lively, and Transok.

[18] Brooklyn Union, Connecticut Natural, IPAMS, Illinois, Ohio PUC, Tejas, Atlanta Gas, Columbia Distribution, Northern Distributors, NI-Gas, UDC, Amoco, NGSA, Texaco, PA. OCA, and PaPUC.

[19] Edison, AGD, Atlanta Gas, Brooklyn Union, Pacific Northwest Commenters, CINergy Gas Companies, Columbia Distribution, Connecticut Natural, Con Edison, Northern Distributors, NI-Gas, Northern Indiana, PSE&G, UDC, Columbia, INGAA, PGT, WINGS, Illinois, Ohio CC, Pa. OCA, PaPUC, and the Ohio PUC.

[20] Connecticut Natural, Northern Distributors, UDC, Columbia, INGAA, and WINGS.

[21] Edison, APGA, Pacific Northwest Commenters, NI-Gas, INGAA, PGT, WINGS, IPAMS, PaPUC, and Tejas.

[22] Edison, APGA, Pacific Northwest Commenters, NI-Gas, INGAA, PGT, WINGS, IPAMS, PaPUC, and Tejas.

[23] NI-Gas, Northern Indiana, Columbia, Cove Point, and INGAA. New markets include new construction, new services, or new entrants.

[24] AF&PA, Fertilizer Institute, Energy Associates, NWIGU, Petrochemical Energy Group, Pacific Northwest Commenters, Northern Indiana, IOGA, and Ohio CC.

[25] AF&PA and NWIGU.

[26] APGA.

[27] AF&PA, Fertilizer Institute, APGA, and Pacific Northwest Commenters.

[28] Energy Associates.

[29] Cove Point, INGAA, Tejas, ANR/CIG, Brooklyn Union, KN Interstate, AGA, Koch Gateway, WINGS, Transok, KN Interstate, NGSA, PEC Pipeline Group, and Columbia.

[30] Enron, INGAA, and NorAm.

[31] Cove Point Pipeline, INGAA, Tejas, ANR Pipeline/CIG Pipeline, Brooklyn Union, KN Interstate Pipeline, AGA, Koch Gateway Pipeline, WINGS, Transok Pipeline, PEC Pipeline Group, and Columbia Pipeline.

[32] SoCalGas, CNG, Enron, INGAA, and NorAm.

[33] Wisconsin Distributors, AF&PA, Edison, AGA, AGD, Connecticut Natural, Northern Distributors, NI-Gas, Northern Indiana, UDC, Columbia, INGAA, KN Interstate, WINGS, IPAMS, Illinois, Ohio PUC, and Tejas.

[34] SoCalGas, Koch Gateway, and PEC Pipeline Group.

[35] Industrial Gas Consumers, APGA, CNG, NGSA, Alberta, Florida, and Ohio CC.

[36] Citing, *Colorado Interstate Gas Company* v. *FPC*, 324 U.S. 581 at 601–2 (1945) (*CIG*).

[37] In Hope, the Court held that the Commission was not bound to use any single formula or combination of formulae in determining rates, but that the Commission's rate-making function ''involves the making of pragmatic adjustments'' and that under the statutory standard ''it is the end result reached not the method employed which is controlling.'' 320 U.S. 591 at 602 (1944).

[38] 390 U.S. 747 (1968).

such as *Farmers Union Central Exchange* v. *FERC,*[39] which recognized the possibility of moving to light-handed regulation when justified by a showing that the goals and purposes of the statute can be accomplished without traditional regulatory oversight.[40] Thus, IPAA's arguments in this regard are not persuasive.

IPAA also maintains that an essential demand in the pipelines' request for market-based rates is that the Commission ignore the statutory prohibition against ''undue discrimination.'' IPAA claims that the pipelines wish to be able to discriminate in rates, terms, and conditions, which it argues would violate the NGA and possibly of the antitrust laws. Simply put, IPAA maintains pipelines want to charge some customers higher rates in order to subsidize lower rates for affiliates and other favored customers, in violation of the NGA.

The Commission does not share IPAA's view. First, the scenario IPAA fears is possible only if a pipeline exercises market power. A company cannot make one group of customers subsidize another unless it has market power over the group that would pay the higher rates. If a pipeline has market power over a service then the Commission cannot permit it to charge market-based rates for that service. In addition, the Commission has carefully scrutinized affiliate relationships and generally has taken special precautions, imposing special rules, where affiliates are involved. In those instances the Commission has recognized that the normal market controls will not work with affiliate transactions. Finally, the statute does not prohibit all differences in rates. The prohibition in the NGA is against unduly discriminatory behavior. Thus, under Part 284 of the Commission's regulations, the Commission has allowed differences in rates by permitting pipelines to discount rates for certain types of service and for certain customers.[41] The Commission has maintained that these differences in rates are justified if the discount is necessary to meet competitive circumstances and the customers are not in similar competitive positions.

Hadson asserts that the Commission has failed to explain how Commission rulings that prohibit restrictions on the resale of electric power as *per se* violations of the FPA,[42] and prohibit restrictions on the resale of natural gas as violative of NGA standards,[43] are consistent with its determination that resale restrictions on the sale of pipeline capacity are required under the NGA.[44]

Hadson's concerns are misplaced. The Commission has determined that non-dominant sellers of electric power cannot exercise market power.[45] Likewise, it has determined that markets for the sale of natural gas are sufficiently competitive that the market, subject to Commission oversight and intervention, serves to ensure that rates for the sale of these commodities are just and reasonable. To the extent this is true for primary sales of electric power and natural gas, the proposition is even more true with respect to resales of the commodities. Gulf States, *City of Florence* and their progeny address sales, not transportation, and the distinction is critical. Congress recognized the distinction when it deregulated wellhead prices. The level of competition that exists for the sale of natural gas has not been demonstrated to exist for the transportation of natural gas. If the market does not serve to ensure just and reasonable rates for the primary market one cannot simply assume that it will ensure just and reasonable rates for the secondary market.

Hadson also asserts that lifting cost-based caps and/or moving away from cost-based ratemaking for the transportation of gas by interstate pipelines will interfere with the goals of the NGA. Hadson's comments merely reiterate the reasons for using a market analysis as the starting point for evaluating any market-based rate proposal. Absent a showing that a particular company lacks market power or that sufficient regulatory safeguards, e.g., a cost-of-service fallback rate, can be implemented to eliminate the potential exercise of market power, the Commission would continue some form of cost-based ratemaking.[46] Where a company can show a lack of market power, then competition in the market would ensure that the company's rates will be just and reasonable. In either case, the goals and purposes of the NGA are met in that any rates that would be charged would be just and reasonable, either under a cost-based or a market-based analysis.

Hadson also asserts that *Farmers Union Central Exchange* v. *FERC,*[47] which affirmed the possibility of light-handed regulation of oil pipelines, recognized that the movement to light-handed regulation is justified only by a showing that the goals and purposes of the statute can be accomplished without traditional regulatory oversight. Hadson asserts that the staff paper does not address the potential for serious disruption of the industry in the event that a future Commission (or a reviewing court) decides to apply court rulings applicable for other regulated industries, such as the telecommunications industry, and require strict tariffing.[48] Hadson states that the Commission should either revisit its assertion of NGA jurisdiction over shippers (via blanket certificates) or assure the public that the procedures under which everyday business is conducted will not be confounded by a subsequent finding that the structure does not comport with the filed rate doctrine. Hadson is merely repeating arguments advanced in opposition to the Commission exercising its NGA jurisdiction over marketers. The Commission previously addressed these concerns when it reaffirmed that sales by marketers are resales subject to the Commission's NGA jurisdiction. These

[39] 734 F.2d 1486, 1509 (1991) *Farmers Union II.*

[40] See also, *Elizabethtown Gas Co.* v. *FERC,* 10 F.3d 866, 870 (D.C. Cir. 1993) (*Elizabethtown*) (Court of Appeals affirmed Commission approval of market-based rates, under appropriate circumstances, as meeting the requirements of the NGA.)

[41] 18 CFR 284.7 (1995).

[42] *Citing,* Gulf States Utilities Co., 5 FERC ¶ 61,066 (1978) (*Gulf States*), Central Maine Power Co., 18 FERC ¶ 61,126 (19982); Louisiana Power & Light Co., 14 FERC ¶ 61,075 at 61,130–31 (1981); Central Telephone & Utilities Corp., 10 FERC ¶ 61,213 (1980); and Empire District Electric Co., 5 FERC ¶ 61,083 (1978).

[43] *Citing, City of Florence* v. *Tennessee Gas Pipeline,* 24 FERC ¶ 61,395 (1983) (*City of Florence*) (the Commission voided a restriction in a pipeline LDC contract on the resale of natural gas by the distributor).

[44] Hadson at 19.

[45] See, e.g., Louisville Gas and Electric Company, 62 FERC ¶ 61,016 at 61,143–4 and cases cited at footnote 16. (Non-traditional rates may be acceptable if the seller can demonstrate that it lacks market power over the buyer or has adequately mitigated its market power. The seller can demonstrate that it lacks market power (or has adequately mitigated its market power) by showing, among other things, that neither it nor its affiliates is a dominant firm in the sale of generation in the relevant market.)

[46] See the discussion of Negotiated/Recourse Rates below.

[47] 734 F.2d 1486, 1509 (1991) *Farmers Union II.*

[48] Hadson refers to a line of Federal Communications Commission cases which stand for the proposition that an agency should be mindful of specific statutory procedural requirements when it undertakes reform of substantive regulatory policies and programs. Citing, *MCI Telecommunications Corp.* v. *ATT,* ______ U.S. ______, 114 S.Ct. 2223 (1994) (*MCI II*), *Southwestern Bell Corp.* v. *FCC,* 43 F.3d 1515 (D.C. Cir. 1995) (*Southwestern Bell*), and *Maislin Industries, U.S. Inc.* v. *Primary Steel, Inc.,* 49 U.S. 116 (1990). Neither *MCI II* nor *Southwestern Bell* speak to the substantive validity of alternative, non-cost based, ratemaking methodologies. These cases address the methods of implementing statutory requirements for rate filings that agencies can legitimately employ. The cases do not speak to the methods of deriving the rates that ultimately must be filed. With respect to such methods, the doctrine advanced in *Hope* still applies.

issues need not be addressed again in this context.[49]

IPAA asserts that, assuming for the sake of argument alternative pricing methods could be sustained on appeal, some very specific statutory requirements with respect to filing and approval of rates and the prohibition against undue discrimination must be considered. Citing *Environmental Action* v. *FERC*[50] and *Transwestern Pipeline Co.* v. FERC,[51] IPAA maintains that a formula or rule means that something must be filed from which an actual rate can be calculated; a rate dependent solely upon the market does not qualify as a ''formula'' or ''rule.''

The Commission's implementation of market-based rates for pipelines and storage companies comports with the filed rate doctrine. The Commission has not attempted to eliminate tariffs, as was the case in the telecommunications industry, and does not do so here. Currently, for the few proposals that have been approved, the Commission has required the company to file tariff sheets for the service with market-based rates. The Commission will continue this practice in any future declaratory orders ruling on market-based rate proposals.

C. The Criteria

The Commission's framework for evaluating requests for market-based rates addresses two principal purposes: (1) Whether the applicant can withhold or restrict services and, as a result, increase price by a significant amount for a significant period of time, and (2) whether the applicant can discriminate unduly in price or terms and conditions. Undue discrimination is especially a concern when an applicant for market-based rates can deal with affiliates.

Before the Commission can conclude that a seller will not withhold or restrict services, significantly increase price over an extended period of time, or unduly discriminate, it must either (1) find that there is a lack of market power because customers have sufficient good alternatives or (2) mitigate the market power (i.e., permit market-based pricing only if specified conditions are met that prevent the exercise of market power). Market power is defined as the ability of a pipeline to profitably maintain prices above competitive levels for a significant period of time.[52] To date, in all cases where the Commission has considered market-based rates, the applicant has been required to show that it lacks significant market power in the relevant markets. The staff paper set out a general framework for evaluating requests for market-based rates. The Commission now adopts this general framework, as discussed below, as its criteria for evaluating the competitiveness of transportation services.

The Commission's analysis of whether a pipeline has the ability to exercise market power will include three major steps: (1) Define the relevant markets; (2) measure a firm's market share and market concentration; and (3) evaluate other relevant factors. Each of these steps was articulated in the staff paper. They are discussed, with certain noted changes, again below.

1. Market Definition

The first step is to define the relevant market. Market definition identifies the specific products or services and the suppliers of those products or services that provide good alternatives to the applicant's ability to exercise market power. The term ''good alternatives'' has been defined as ''an alternative that is available soon enough, has a price that is low enough, and has a quality high enough to permit customers to substitute the alternative'' for the applicant's service.[53]

a. The Product Market. The applicant's service together with other services that are good alternatives constitute the relevant product market. The Commission will require the applicant to define the product market fully and specifically. The applicant must also show how each of the substitute services in the product market are adequate substitutes to the applicant's service in terms of quality, price and availability. For example, the relevant product market may consist of off-peak interruptible transportation service only. The Commission will consider any substitutes for the relevant product that can be considered competitive alternatives, e.g., storage delivery services. Pipelines might suggest numerous alternatives to FT in their applications: IT, storage services, residual fuel oil, etc. A narrow definition of the product market, for example, peak period, firm transportation or off-peak, interruptible transportation, will better enable the Commission to critically evaluate the real alternatives that are available to the proposed service.

i. Timeliness. The definition of the product market may vary depending on the time period considered. For example, whether a service is a good alternative to a pipeline's interruptible service will depend on the time periods chosen for review. The staff paper noted that, although antitrust authorities have used one year as the time period in which to test whether a product can become a substitute, a one year time period was probably not appropriate for long-term firm transportation because capacity on competitors would typically need to be available simultaneously to offer a viable alternative to customers. Because long-term firm contracts typically do not offer customers the ability to shift between alternatives, the one year time period may not be appropriate.

A few commenters argue that the Commission should adopt a more strenuous timeliness criterion.[54] They assert that if the projected alternative capacity is delayed or is less than projected, customers should have the option of continuing to pay a traditional cost-of-service rate until workable competition exists.

The Commission will not define a specific time period within which a product must become available in order to be a substitute. The Commission believes that this determination is dependent upon the type of product services at issue. As more product services become available, the duration of service agreements is likely to vary considerably from the traditional 20-year firm transportation agreement. Therefore, the ability to establish whether a product is or can become a good alternative will depend upon the specifics of the product it is replacing. However, if a pipeline applicant relies on the existence of capacity that will not be available immediately, it should also show that its customers will not be committed to long term contracts on its system within the relevant time period.

[49] See, Removal of Outdated Regulations Pertaining to the Sales of Natural Gas Production, Docket No. RM94–18–001, 69 FERC ¶ 61,055 at 61,217 (1994), *appeal docketed sub nom. Hadson Gas Systems, Inc.* v. *FERC,* No. 95–1111 (D.C. Cir.).

[50] In *Environmental Action* v. *FERC,* 996 F.2d 401 (D.C. Cir. 1993) (*Environmental Action*), the proposed pricing plan was ruled to have been acceptable because there was a filed rate cap, and any discrimination was held to be potential.

[51] In *Transwestern* v. *FERC,* 897 F.2d 570 (D.C. Cir. 1990) (*Transwestern*), the Court determined that filing a ''rate 'formula' or rate 'rule' '' can satisfy the filing requirements of Section 4; however, given the Court's ruling that the issue of market-based rates was moot in that case because there had been no customer nominations under Transwestern's program, the determination with respect to a rate formula or rule appears to be have been dicta.

[52] Enron Storage Company, 73 FERC ¶ 61,206 (1995); Williams Pipeline Company, 68 FERC ¶ 61,136 (1994); Avoca Natural Gas Storage, 68 FERC ¶ 61,045 (1994); Koch Gateway Pipeline Company, 66 FERC ¶ 61,385 (1994); Bay Gas Storage Company, 66 FERC ¶ 61,354 (1994); Transok, Inc., 64 FERC ¶ 61,095 1993); and Richfield Gas Storage System, 59 FERC ¶ 61,316 (1992).

[53] Koch Gateway Pipeline Company, 66 FERC ¶ 61,385 at 62,299 (1994).

[54] Pa OCA and Ohio CC.

In this regard, customers should be given the option of reducing service demand levels once the alternative capacity and/or service becomes available.

ii. Price. Along with showing that alternative capacity will be available in a reasonable time frame, the Commission will also evaluate whether the price for the available capacity is low enough to effectively restrain the applicant from increasing prices. The price increase threshold is important because with a lower threshold it becomes ostensibly more difficult for a potential alternative to the applicant's service to be considered a good alternative. In prior cases, the Commission has defined such a threshold price level as being at or below the applicant's approved maximum cost-based rate plus 15 percent.[55]

Several of the commenters suggest that the 15 percent threshold for price changes is inappropriate.[56] They assert that a threshold at the 5–10 percent level is more consistent with current similar standards in the Department of Justice's merger guidelines. The Commission has studied the arguments made on this issue and we agree. Accordingly, the Commission will adopt a pricing threshold of 10 percent. The Commission believes that if a company can sustain an increase in its rates in the order of 10 percent or more without losing significant market share, the company is in a position to exercise market power to the detriment of the public interest.

Although the Commission is adopting 10 percent as its standard price change threshold, it is not precluding individuals from making an argument for either a higher or lower threshold in any particular case. Applicants are free to argue for a higher threshold where they believe circumstances permit. Similarly, participants in the application proceeding are free to argue for lower thresholds. The Commission will consider the arguments presented and make a determination of the appropriate price change threshold on an individual basis whenever the issue is raised. In cases where the issue is not raised, the Commission will use 10 percent as the applicable price increase threshold. In addition, when applicants propose an appropriate threshold for price increases, they should also propose the time period over which the price increase could be sustained.

iii. Quality. A good alternative must provide service in which the quality is at least as high as that of the service provided by the applicant. After the Commission has a full and complete description of the service(s) proposed for market-based rate treatment, it will evaluate whether any available third party capacity is comparable in service to the transportation service provided by the applicant.

In the aftermath of Order Nos. 436 and 636, the Commission believes that all interstate pipelines currently provide operationally comparable firm transportation service. However, even if a customer can find available capacity on an alternative pipeline, the overall package of services available may not be comparable to that it currently receives from the applicant. For instance, no-notice service may not be available from other pipelines (though a similar service may be available from third parties). Under Order No. 636, interstate pipelines that offered no-notice sales service prior to restructuring were required to offer no-notice transportation service to their existing sales customers at the time of unbundling. Pipelines had the option of making no-notice service available to customers who were not sales customers. Thus, while many interstate pipelines currently provide no-notice service, they do not and are not required to offer such service to new customers. Thus, comparable no-notice service may not be available on other pipelines.

Also, applicants may wish to demonstrate that intrastate pipelines offer comparable firm transportation service. Transportation services offered by intrastate pipelines under Section 311 of the NGPA are also subject to open-access and non-discriminatory access standards as interstate pipelines are under Order Nos. 436 and 636. Therefore, to the extent that intrastate pipelines offer firm transportation service, the Commission believes that such service could be offered under terms and conditions that are substantially comparable to the firm transportation services offered by open-access interstate pipelines. However, intrastate pipelines are not required to offer firm transportation services and currently only a few intrastate pipelines offer such service. Thus, firm transportation may not be available on intrastate pipelines. Where it is available, pipelines are free to argue that firm intrastate transportation service is a comparable alternative to services proposed for market-based rates.

Applicants wishing to make a showing that interruptible transportation services make good alternatives to the applicant's firm services should demonstrate that an adequate amount of capacity is unsubscribed during peak periods so that the quality of the IT service is comparable to that of the applicant's FT service.

2. The Geographic Market

In addition, in defining the market, the Commission will look to identify all the sellers of the product or service. The collection of alternative sellers and the applicant constitutes the relevant geographic market. Specifying the relevant product and geographic market tells the Commission what alternatives the customer has if it attempts to avoid a price increase imposed by an applicant. Geographic market definition is particularly important in transportation markets. Gas pipelines can transport gas out of a producing or origin region. They also deliver gas into a consuming or destination region. The Commission will identify both the origin and destination markets for the relevant service. Only in that way can the Commission evaluate whether there are good alternatives to the pipeline's service.

The Commission expects that typical proposals will adopt a two-step process of defining the geographic market. First, the applicant will identify those alternative sellers who offer service between the same origin and destination markets. Second, the applicant will identify those competitors that provide service either out of the origin market or into the destination market.

a. Transportation Between Markets. The first stage of the analysis identifies sellers offering transportation service over the same route. Examining different sellers serving the same transportation link simplifies the analysis. For instance, there is no need to consider whether different producing areas offer ''good'' alternatives to each other.

To show that another pipeline provides a good direct alternative, the applicant must show that customers could purchase the relevant service from the alternative supplier. Such a demonstration will likely include showing that capacity would be available on the alternative and that the customer can obtain any services

[55] In Buckeye Pipe Line Company, L.P., Opinion No. 360, 53 FERC ¶ 61,473 at 62,61 (1990), order on reh'g, Opinion No. 360–A, 55 FERC ¶ 61,084 (1991), the Commission held that a 15 percent increase was an appropriate level to measure market power. However, in Williams Pipe Line Co., Opinion No. 391, 68 FERC ¶ 61,136 at 61,657, the Commission declined to adopt a specific rate increase as a litmus test for market power. In Koch Gateway Pipeline Company, 66 FERC ¶ 61,385, the Commission suggested that potential alternatives would include services that though presently not used, would be economic if prevailing prices were to rise by a modest amount, e.g., five to fifteen percent.

[56] Industrial Gas Consumers, NI-Gas, UDC, Alberta, and Illinois.

needed to use the competitor's facilities in both origin and destination markets over the term of the service receiving market-based rates.

If a customer has a continuing obligation to take gas at a particular receipt point, or to deliver gas to a specific delivery point, beyond the term of its FT contract, competition from parallel pipelines is particularly important in evaluating market power on a pipeline seeking market-based FT rates. In these circumstances, the applicant may have market power over the shipper even if both the origin and destination markets are otherwise competitive. While the shipper will have good alternatives to the applicant for getting to the city-gate, it may not have good alternatives for getting gas from the shipper's particular receipt point to its city-gate. It could of course, sell its contract gas from that particular point on the spot market in the production area and buy an equal amount of spot gas in an area where it had good transportation alternatives. But the spot price at which it sells might be lower than the spot price at which it buys, causing extra expense and providing some opportunity for the applicant pipeline to raise its price. Additionally, the shipper may value the reliability of the contract gas and be concerned that it might not be able to buy spot gas when it needs it.

b. Transportation at Origin and Destination Markets. Parallel route competition is not the only source of market discipline on gas transporters. A shipper in the production area will typically have alternative destination markets to which it could send gas. Similarly, a downstream shipper will typically have a choice of several producing areas from which to buy gas. Pipelines that provide such alternative service may offer an additional check on the market power of a shipper.

Natural gas transportation typically originates in the production area. In the production area (or the mainline receipt point), the applicant must identify the transportation alternatives available to customers. Customers could include producers with gas supplies attached at a receipt point, LDCs, and endusers with firm long-term supply contracts. To define a particular region as an origin market, the pipeline must identify all pipelines which compete with it to move gas out of that area. As a general matter, to demonstrate that these other pipelines are good alternatives (that is, are in the market) the applicant must show that its producer/shippers are physically connected to these other pipeline transporters. Alternatively, the applicant could include an alternative pipeline in the market if it can connect to the producer/shipper sufficiently cheaply that the producer/shipper receives a netback [57] at least as large as it would receive if it used the applicant's transportation service. The applicant must also show that these transportation alternatives provide a netback to producer/shippers roughly the same as they would receive if they used the applicant's transportation. An alternative is not a good alternative to a producer seeking to move gas out of the origin market if the alternative is associated with a much higher cost than the applicant's cost-based rates, in other words, it must give roughly the same netback.

Koch Gateway argues that a good alternative does not necessarily have to be physically connected to a pipeline. The Commission agrees. Although typically an applicant will have to demonstrate that its customers are physically connected to alternative gas transportation facilities that move gas into the area, the Commission will allow flexibility and permit applicants to argue that even if the customer is not physically connected to the alternative, it can serve as good alternatives to the proposed service.

Applicants for market-based rates might allege that liquified petroleum gas (LPG) and liquified natural gas (LNG) can be good alternatives to the use of an applicant's transportation service. If so, the applicant must show that there are sufficient quantities of these available, and that LPG and LNG can be transported into the destination market (e.g., by truck) at an overall delivered price that is equal to or less than the overall delivered price the applicant pipeline would charge to deliver natural gas. The prices considered here must be within the pipeline's price increase threshold.

Thus, in order to specify a gas transportation market, the applicant must first identify all products and services available as good alternatives to the applicant's customers. Next, the applicant must identify the origin and destination of that transportation. The relevant geographic market will be defined in two steps: first, those alternative sellers that offer service between the same origin and destination markets and second, all economically substitutable transportation sold by pipelines (or other good alternative products and services) serving either the origin market or the destination market.

Pipelines might be able to exercise market power if customers have few good alternatives to the pipeline's service either, in the first instance over a given route or, in a second analysis, separately in origin and/or destination markets. The applicant might have market power in the origin market if producer/shippers have few good alternatives to transport their product out of the origin area. In the destination market, pipelines might be able to exercise market power if downstream customers have few good transportation alternatives that reach their city-gates. If customers have long term supply contracts, it will be particularly important for the pipeline to demonstrate that it has no market power over customers on a given route.

3. Firm Size and Market Concentration

There are two ways in which a seller can exercise market power. It can attempt to raise its price acting alone or it can attempt to raise its price by acting together with other sellers.

a. Acting Alone. One of the indicators that has been examined to determine whether a seller could exercise market power acting alone is the seller's market share. A large market share is generally a necessary condition for the exercise of market power. If the seller has a small market share it is unlikely that it can exercise market power. But, a company with a large market share may not be able to exert market power if entry into the market is easy [58] or there are other competitive forces at work.

The applicant must submit calculations (and supporting data) of its market share in all relevant path or origin and destination areas.

b. Acting Together with Other Sellers. A second way in which a seller can exercise market power is to act together with other sellers to raise prices. To evaluate whether a seller can act together with others to exercise market power, the Commission typically has examined the market's concentration.

To measure market concentration, one generally considers the summary measure of market concentration known as the Herfindahl-Hirschman Index (HHI). If the HHI is small then one can generally conclude that sellers cannot exercise market power in this market. A small HHI indicates that customers have sufficiently diverse sources of supply in

[57] The netback is the delivered price of gas less the transportation costs paid by the producers. That is, the netback is the net price received by the producer.

[58] Given the nature of the interstate pipeline industry, ease of entry would be difficult to show except in cases involving minor facilities. For major facilities, the cost of construction and the time needed for environmental analysis and certification would suggest that entry may not be easy.

this market that no one firm or group of firms acting together could profitably raise market price. If the HHI is higher then additional analysis may be needed to determine if the seller can exercise market power.

The Commission will analysize the HHI calculation for the relevant markets. The HHI will be evaluated for each relevant path and/or origin market and each destination market utilizing the relevant data for each mainline receipt point (origin market) and each delivery point (destination market). If an applicant wishes to argue for either a broader or narrower market definition, it should also include calculations for its market definitions. Only sales or capacity figures associated with good alternatives should be used in calculating the HHI. In addition, applicants should aggregate the capacity of affiliated companies into one estimate for those affiliates as a single seller.[59]

In the gas inventory charge (GIC) cases, the Commission established a threshold level for the HHI at .18.[60] An HHI at this level indicates that there are four to five good alternatives to the applicant's service in each of the relevant markets. In an oil pipeline case, the Commission used a slightly higher HHI of .25 as an initial screen.[61]

Several commenters suggested that the HHI should be raised. Suggestions ranged from 0.25 to 0.35.[62] Others argued that the Commission should not adopt an arbitrary numerical threshold of concentration but should do a thorough review of actual market conditions on particular pipeline systems instead.[63]

The Commission will not adopt a rigid brightline threshold level for the HHI, below which an applicant would automatically qualify for market-based rates, or above which an applicant would be excluded from market-based rates. Rather, the Commission will use 0.18 HHI as an indicator of the level of scrutiny to be given to the applicant. If the HHI is above 0.18, the Commission will give the applicant closer scrutiny because the index indicates that the market is more concentrated and the applicant may have significant market power. An HHI below 0.18 would result in less scrutiny of the applicant's potential to exercise significant market power because it would indicate that the market is less concentrated.

The Commission is primarily concerned about whether an individual applicant seller (including affiliates) can exercise market power. The HHI will be one of the factors that the Commission will evaluate. However, market shares and HHIs alone do not give a comprehensive view of all important factors. The impact of other competitive factors on the Commission's analysis of market-based rate proposals is discussed below.

4. Entry and Other Competitive Factors

Even if the applicant's market share were large in a concentrated (and properly identified) market, one still might not conclude that the applicant would be able to exercise market power. For example, if the applicant increased its price, entry into the market might be so easy that sellers attracted by the profit opportunity created by the higher price would quickly take customers away from the applicant by offering a lower price. This would make the applicant's price increase unprofitable. Thus, the applicant would not be able to exercise market power, despite its large market share and despite the high market concentration.[64] Ease of entry is one of several competitive factors that might lead to the conclusion that an applicant lacks market power. It is most likely to apply to circumstances that do not require the large sunk costs of major construction—for instance, perhaps in offering short-haul market center services.

Another competitive factor that might be established by an applicant would be the presence of buyer power. An applicant might argue that if a single buyer is a large customer of the pipeline, is knowledgeable and sophisticated in its buying, and has been in business for a lengthy period of time, the buyer may have the knowledge and large-scale purchasing power to negotiate reasonable rates even in a concentrated market. However, just because buyers develop sophisticated purchasing systems and market knowledge as the result of dealing with various suppliers in numerous markets, there still is reason to have some skepticism that a buyer in a single destination area served by one or a few pipelines will have such capabilities.

The Commission will evaluate whether sufficient quantities of good alternatives are available to the applicant's customers to make a price increase unprofitable. In other words, are customers able to replace a significant proportion of their throughput with other transportation alternatives if the applicant were to raise its price?

There may be cases where an applicant has completed its own analysis of its market-based rate proposal using the criteria stated above and concludes that it cannot, under existing circumstances, establish that it lacks market power with respect to its proposed service. Yet, the company may be able to identify certain conditions or changes that it could implement to mitigate the effects of market power and make market-based rates a viable option. In such cases, the Commission would be willing to evaluate proposals for any conditions or changes that the applicant would propose as mitigation for its potential exercise of market power.

For example, a pipeline might suggest that the Commission permit market-based rates for pipeline segments, such as for new laterals for new service. In order to mitigate its market power and thereby make itself eligible for market-based rates for service provided on that lateral, the applicant might propose to refrain voluntarily from allocating costs attributtable to the lateral to its other, cost-of-service based services. The applicant might also voluntarily agree to an open tap policy for services provided on the lateral. Under such a policy the applicant (in return for getting permission from the Commission to charge market-based rates) would agree to allow any entity to interconnect with its facilities. Such an open tap policy would help protect against withholding capacity by undersizing or overpricing the new lateral. The interconnection would be for the purpose of producing potential competitive suppliers to the services for which the applicant seeks market-based rates. Thus, the interconnection could be (depending on what the applicant is proposing) for a lateral, a loop, an extension, or any other facilities that could compete with the applicant's market-based services.

Applicants proposing such conditions or changes should state so specifically in their proposals.

D. Filing Procedures

The Request for Comments asked whether the Commission should continue its current policy of using declaratory orders for ruling on market-

59 The capacity on pipeline systems owned or controlled by the applicant's affiliates should not be considered among the customer's alternatives. Rather, the capacity of an applicant's affiliates offering the same product are to be included in the market share calculated for the applicant. Similarly, alternative pipelines must be aggregated with their respective affiliates in order to identify meaningful alternatives to customers.

60 El Paso Natural Gas Company, 49 FERC ¶ 61,262 (1989). See also Buckeye, 53 FERC at 62,667.

61 See Williams Pipe Line Co., Opinion No. 391, 68 FERC ¶ 61,136 (1994).

62 AGD, Cove Point, INGAA, Tejas, ANR/CIG, and Brooklyn Union.

63 Brooklyn Union and KN Interstate.

64 As stated before, entry would probably only be relevant for gas pipelines in the case of minor facilities such as facilities that could be constructed under a blanket certificate.

based rate proposals, or if some other procedural avenue was more appropriate. Several commenters support continuing the current practice of issuing declaratory orders.[65] Others suggest that full evidentiary hearings are required in at least some, if not all, cases.[66] However, the majority support a case-by-case review of proposals with the Commission issuing an order on the proposal as appropriate.[67]

The Commission will continue its current policy of using declaratory orders to rule on requests for market-based rates on a case-by-case basis. In cases where a certificate of public convenience and necessity is required, the review will occur as part of the certificate process.

Applying the criteria stated in the sections above, applications for market-based rates should contain the following information: (1) A detailed description of the service(s) proposed for market-based rate treatment; (2) a statement defining the relevant product and geographic markets necessary for establishing that the applicant lacks market power with respect to the particular service(s) at issue. Such statement should state the relevant time period for comparing services within the product and geographic markets; an analysis describing how the prices for relevant alternative services compare to the relevant price increase threshold; and a detailed description of good alternatives to the proposed service(s); (3) market share and HHI calculations; and (4) discussion of other relevant competitive factors and their import. In addition, pipelines should include in each application a proposal for accounting for the costs and revenues resulting from the proposed service. An application should be sufficient to establish on its own, without further inquiry or support, that the proposed service or services meet the criteria for market-based rates presented in this policy statement.

Applications for market-based rates will be noticed in the Federal Register. Interested parties will have an opportunity to intervene in the proceeding and to present a response to the proposal. The Commission will consider the information provided in the application, any information provided by intervenors in response thereto, and will take any intermediate steps, including issuing data requests or convening a technical conference, that may be necessary to complete its evaluation of the proposal. The Commission will either conduct a paper hearing, based upon the initial filing and responses thereto, or set the matter for a formal evidentiary hearing before an administrative law judge, as appropriate. Upon completing its evaluation, the Commission will issue a declaratory order ruling whether the service meets the requirements of market-based rates. If the service meets the standards then the applicant can make the appropriate tariff filing necessary to set its market-based rates into effect. Commission approval of market-based rate proposals will be prospective only, thus eliminating concerns regarding refund liability. The Commission's determinations in these circumstances will be based upon the facts presented in the proposal. Accordingly, the Commission may reconsider its ruling should the circumstances on the pipeline change such that market-based rates are no longer appropriate.

IV. Policy on Incentive Rates

In circumstances where market-based rates are not appropriate, the Commission will continue cost-based rate regulation. In October 1992, the Commission issued a Policy Statement on Incentive Regulation to allow companies that have market power nevertheless to receive some of the benefits of greater flexibility and efficiency that are associated with market-based rates.[68] Incentive rate proposals, while cost-based, are intended to result in better service options at lower rates for consumers while providing regulated companies with the opportunity to earn higher returns. Incentive regulation is not intended for competitive markets. It is intended for markets where the continued existence of market power prevents the Commission from implementing light-handed regulation without harm to consumers. The Commission continues to believe that incentive rate mechanisms have potential to benefit both natural gas companies and consumers by fostering an environment where regulated companies that retain market power can achieve greater efficiency and cost-effectiveness.

In the Policy Statement, the Commission explained that incentive regulation differs from traditional regulation in that it fosters long-term efficiency. It accomplishes this by: (1) divorcing rates from the underlying cost-of-service, (2) lengthening the period between rate cases; and (3) sharing the benefits of cost savings between consumers and stockholders on a current basis. The Commission set out five criteria that incentive rate proposals must meet to gain Commission approval. Under the policy adopted in 1992, proposals for incentive rate programs must: (1) Be prospective; (2) be voluntary; (3) contain incentive mechanisms that are understandable to all parties; (4) result in quantified benefits to consumers; and (5) demonstrate how they maintain or enhance incentives to improve the quality of service. Each of these criteria were discussed at length in the Policy Statement. After articulating the criteria to be utilized in evaluating proposals for incentive rate proposals, the Commission invited companies to submit such proposals for consideration.

Since the issuance of the Policy Statement, the Commission has not received any requests for approval of incentive rate proposals. For this reason, and in light of the changes in the natural gas market that have occurred as a result of the implementation of Order No. 636, the Commission decided to revisit the issue of incentive rates for pipeline services. Therefore, in the Request for Comments, the Commission sought responses to specific questions regarding its incentive rate Policy Statement. These questions included: (a) why there have not been any incentive proposals under the policy established in Docket No. PL92–1–000; (b) whether the Commission should change its existing standards for incentive rate proposals; (c) if so, what specific criteria the Commission should employ when evaluating incentive rates; (d) whether there are models for incentive regulation that the Commission should consider, such as the California performance-based program; (e) what the benefits and drawbacks of incentive rates are, and what policy objectives the Commission should pursue with an incentive rate method; and (f) whether incentive ratemaking is appropriate for the natural gas companies regulated by the Commission.

Many of those responding to questions regarding the Commission's current standards for evaluating incentive rate proposals favor changing the current standards. Specifically, the majority of those pipelines that

[65] NI-Gas, SoCalGas, Columbia, KN Interstate, Koch Gateway, PEC Pipeline Group, Florida, and Transok.

[66] Petrochemical Energy Group, APGA, Northern Distributors, Wisconsin Distributors, Indicated Shippers, NGSA, Illinois, and Ohio CC.

[67] Fuel Managers, Industrial Gas Consumers, CINergy Gas Companies, Columbia Distribution, Northern Distributors, Northern Indiana, SoCalGas, UDC, ANR/CIG, CNG, Koch Gateway, NorAm, PEC Pipeline Group, Williston Basin, Texaco, and Ohio CC.

[68] Policy Statement on Incentive Regulation, 61 FERC ¶ 61,168 (1992).

responded encourage a change in the standards away from ''quantifying'' benefits to customers and eliminating the cost-of-service cap on incentive rates.[69] Commenters also encourage elimination of the requirement that rates under incentive programs could be no higher than they would have been under traditional cost-of-service regulation.[70]

The Commission has reviewed the comments and re-evaluated its existing policy in light of current conditions in the natural gas industry. Based on these comments, the Commission recognizes that it is problematic to compare incentive-based rates with existing cost-of-service rates or with what rates would have been under cost-of-service pricing after incentive-based regulation is implemented. Comparisons of incentive-based rates with previous cost-based rates compare service and rates in different time periods.

Moreover, the ability of pipelines to profit from cost reductions remains a key ingredient of most incentive-based options. Imbedded in the typical incentive-based proposal is the expectation that, over time, this ability to profit will drive industry costs down and therefore lead to rates that are lower than they would have been under traditional cost-based regulation. In consideration of all of these points, the Commission believes it is appropriate to modify its existing policy.

In reply to the Request for Comments, INGAA, six pipelines, and the Alberta Regulatory Commission suggested elimination of the requirement to quantify benefits. Also, five pipelines specifically recommended that the Commission eliminate the requirement that rates under incentive regulation be no higher than they would have been under traditional cost-of-service regulation. The Commission agrees with these recommendations. Although both quantifiable benefits and comparisons shall remain two of the goals of any incentive rate program, these requirements are eliminated from the Commission's stated criteria for evaluating incentive rate proposals. Instead of requiring firms to quantify the benefits of any performance-based proposal, the Commission will require pipelines proposing such programs to share with their ratepayers the efficiency gains of the program. Any pipeline proposal must explicitly specify the performance standards it defines, the mechanism for sharing benefits with customers, and a method for evaluating the proposal. Pipeline companies are invited to submit proposals that fulfill these requirements as well as the three other criteria articulated in our prior Policy Statement.

Commenters also encouraged the Commission to require participation in any proposed incentive rate program continue for a prescribed period of time, such as four or five years. Commenters argue that this will prevent individual pipelines from moving in and out of incentive rate programs in an attempt to game the system.

The current policy states that the fact that incentive regulation is voluntary,

> does not mean that utilities should be completely free to abandon their programs should their profits decline. Such a policy could encourage inefficient investments in risky cost-cutting innovations, and it would be unfair to consumers. Instead, programs may include conditions under which utilities could opt out after an initial commitment.[71]

The Commission later stated that the exact period of time between rate reviews under incentive rate programs would be decided on a case-by-case basis.[72]

The Commission is not inclined to prescribe in this policy statement a length of time during which performance-based rate proposals must be operative. The particulars of any one program are likely to be so company specific as to make such a requirement impractical. Nevertheless, the Commission is no less committed to the requirement that pipelines agree to operate under such programs for a specified period than it was at the time of the original policy statement. Therefore, the Commission clarifies that approval of an incentive rate program proposal will require a commitment by the pipeline that it will continue in the program for a specified length of time as appropriate for the particular pipeline system at issue. Proponents of such proposals should suggest a desired duration for operation under any proposed incentive plan along with arguments supporting the proposal.

The Commission will consider on a timely basis incentive rate proposals filed under the revised criteria. Such proposals may take a variety of forms.[73] The considerable state regulatory activity in developing performance and incentive-based ratemaking mechanisms attests to the vitality of such approaches. Incentive rates may be usefully developed by pipelines and their customers as a means of reaching long-term accord on some of the difficult issues now confronting the industry. Alternative dispute resolution may also play an important role in achieving agreement on system-wide incentive rates, and the Commission supports such efforts.

The Commission is setting forth a policy for market-based rates today. The incentive rates policy is still emerging. The Commission encourages pipelines to file new incentive or performance-based rate proposals and concepts for Commission consideration.

V. Negotiated/Recourse Rates and Terms of Service

A. The Proposals

Where pipelines do not attempt to establish a lack of market power and do not want to undertake an incentive rate program, there are yet other alternatives to traditional cost-of-service regulation that could be used. In the Request for Comments, the Commission sought comment on other ratemaking methods that would better serve the goal of flexible, efficient pricing in today's environment. Included in the Commission's request were ''backstop proposals, where pipelines would be free to negotiate rates and terms of service, so long as customers could always choose service under traditional cost-of-service rates and terms of service.'' [74]

In its initial comments INGAA proposes negotiated rates and terms for service as an option. Under INGAA's plan, the Commission would dispense with cost-of-service regulation for an individual shipper when mutually agreed upon by the pipeline and a shipper and permit negotiated rates and terms and conditions of service that could vary from the pipeline's otherwise applicable tariff. A recourse service that is on file in the pipeline's tariff would always be available for those shippers preferring traditional cost-of-service rates and services.

As originally proposed by INGAA, the recourse rate would escalate the recourse rate based on a pipeline industry index, less a one percent productivity factor. INGAA proposed that the Commission modify its current incentive policy statement to eliminate the cost-of-service cap and the quantifiable benefits test. Subsequently, INGAA changed its proposal to make the index component voluntary and optional. INGAA claims the recourse rate, which would be established

[69] WINGS, NorAm, Williston Basin, Alberta, ANR/CIG, Columbia, Enron and INGAA.

[70] INGAA, WINGS, Enron, and NorAm.

[71] Policy Statement, 61 FERC at 61,589.

[72] *Id.*, at 61,603.

[73] Incentive Regulation for Natural Gas Pipelines: A Specific Proposal with Options, OEP Technical Report 89–1, September 1989; Incentive Regulation: A Research Report, OEP Technical Report 89–3, November 1989.

[74] 70 FERC at 61,394.

initially through a Section 4 rate case, would be lower than a cost-based rate, over time, through the workings of the productivity adjustment. While INGAA provided a detailed discussion of its indexing proposal, initially few details were provided on the scope of negotiated rates and terms and conditions.

Brooklyn Union and PSE&G also endorsed negotiated rates backstopped by a recourse rate in their initial comments. Both parties emphasized the recourse rate would be for traditional tariff service priced on a cost-of-service basis and protected from adverse rate or operational impact from the individually customized services.

B. Comments on INGAA's Proposal

In response to INGAA's proposal, AGD, Brooklyn Union, and UGI, while generally supporting negotiated/recourse rates, object to INGAA's proposal to index the recourse rate. These parties ask the Commission to allow negotiated/recourse rates as soon as possible without complicating matters by tying the negotiated/recourse rate concept to incentive rates. AGD and UGI also express concerns that recourse rate payers should be protected from cost shifting or degradation of their service resulting from negotiated rates.

NGSA and IPAA oppose INGAA's negotiated rate proposal contending it would allow the pipeline to use its market power to discriminate among its customers by providing additional service benefits to some customers and denying them to others. Further, they argue that, if the negotiated service agreements were not filed with the Commission, it would be difficult to obtain the necessary facts to support a discrimination complaint.

AGD, Brooklyn Union, and NGSA/IPAA object that INGAA's incentive rate proposal does not provide for a sharing of efficiency gains. NGSA and IPAA support the Commission's current incentive rate policy statement requiring quantification of consumer benefits.

In a September 25, 1995 filing, INGAA clarified its proposal to emphasize that it would be voluntary, there would be no cost shifting, and it would be up to individual pipelines whether to propose indexing of the recourse rate. INGAA also suggested that pipelines would file a form of notice for negotiated rates, similar to transportation discount reports, identifying the customer, the negotiated rate or formula, the recourse rate, and contract quantity and duration. According to INGAA, the Commission would resolve complaints about discrimination, undue affiliate preference, or deleterious effects on other services. In a November 7, 1995 filing, INGAA further clarified its proposal stating that SFV is not affected because its proposal leaves any existing SFV rate design in place.[75] INGAA adds that the Commission's scrutiny of costs and allocation plans during the rate cases that will establish recourse rates will assure that these rates do not contain unapproved cross subsidies. INGAA asserts that competition will provide the necessary quality assurance and that the recourse rate will be on file with the Commission and will thereby meet the NGA's filing requirement. INGAA contends that its proposal calls for filing information on the negotiated transactions, similar to the data required by Order No. 581 for discount rates and that required for the index of customers, after the negotiations are concluded. In this way INGAA asserts that the negotiated/recourse rates can comply with the requirements of the NGA while meeting the need of certain customers to keep key data in the negotiated rate proprietary to protect their competitive positions.

In response to INGAA's November 7 filing, NGSA argues that it would be inappropriate for any action to be taken on ''recourse rates'' by the Commission in this docket without providing other parties an opportunity to examine and comment fully on INGAA's new proposal. NGSA states that INGAA's proposals raise serious questions as to whether they would achieve the essential goals of bringing greater efficiency and competition to the interstate natural gas transportation industry while protecting all customers from the exercise of market power, undue discrimination, and cross subsidization. NGSA states that INGAA's proposal is lacking in critical details and therefore requires additional study and comment.[76]

A group of industrial end-user trade associations [77] also responded to INGAA's November 7 filing. The Industrials urge the Commission to reject INGAA's negotiated/recourse rate proposal. The Industrials criticize INGAA's proposal suggesting it would lead to market-based rates in a market lacking workable competition, and would result in ''severe damage to the objectives of Order No. 636 and the overall policy of developing an integrated transportation grid''. The Industrials strongly support SFV rates as key to a robust secondary market and fear that negotiation of non-SFV rates will lead to a hodge-podge of individual rates and services, encourage LDC's to hoard capacity, and ultimately impede producers and end-users from accessing interstate capacity.

C. Discussion of Negotiated/Recourse Rates and Services

The Commission believes that negotiated/recourse service programs could be a viable way of achieving flexible, efficient pricing when market-based rates are not appropriate. Negotiating different rates and service terms for individual shippers could result in wide flexibility in service offerings including individually tailored seasonal service and rates, short-term services, or special rates for more flexible terms and conditions. Greater rate flexibility has previously been tied to a showing that a pipeline lacks market power. Under this method, however, the availability of a recourse service would prevent pipelines from exercising market power by assuring that the customer can fall back to cost-based, traditional service if the pipeline unilaterally demands excessive prices or withholds service. Thus, the recourse rate mitigates market power. At a minimum, negotiated/recourse services offer the potential for increased market responsiveness in pipeline services without protracted disputes regarding market power.

Although the proposal as presented by INGAA and others has many attractive features, it raised a number of concerns as well. The first issue of concern involves associating negotiated/recourse proposals with incentive/performance-based programs. As stated previously, INGAA's original proposal called for recourse rates to be indexed. The Commission is concerned that choosing an appropriate index will be extremely problematic. Questions regarding whether it is appropriate to index recourse rates and what, if anything, would be an appropriate index to use must be addressed prior to a pipeline implementing such a proposal.

Another concern involves situations where the availability of the recourse service alone is not sufficient to mitigate a pipeline's exercise of market power. In its response to INGAA's initial proposal, NGSA expressed its concern that the

[75] A just and reasonable recourse rate would be derived using traditional cost-of-service rate methodologies including SFV.

[76] On January 23, 1996, NGSA further supplemented its response and clarified the goals it believes alternative rate proposals must meet to be successful.

[77] The Petrochemical Energy Group, Process Gas Consumers and the Georgia Industrial Group, Chemical Manufacturers Association, American Iron and Steel Institute, American Forest & Paper Association, Council of Industrial Boiler Owners, Praxair Inc., and the California Manufacturers Association (''The Industrials'').

availability of customized terms and conditions would be at the sole discretion of the pipeline. The pipeline would thus be in a position to discriminate among its customers in providing enhanced service flexibility, argues NGSA, favoring affiliates or customers who, for whatever reason, were able to obtain a negotiated deal with the pipeline. NGSA's concerns will be further considered in the separate proceeding discussed below. The Commission is also concerned about the extent to which the concept of negotiated terms and conditions of service is compatible with the requirements, goals and objectives of Order No. 636. Specifically, what effect, if any, negotiated terms of service are likely to have on: capacity release; flexible receipt and delivery points; the use of secondary receipt and delivery points; and no-notice transportation service. For example, if a pipeline agrees to provide a shipper priority of service at certain points, or additional flexibility in exchange for a higher rate, what effect would this have on other shippers served under the recourse service?

The Commission is particularly concerned about maintaining the integrity of the recourse service. In order to be successful, the recourse service must remain a viable alternative to negotiated service. Otherwise, if the recourse service remains stagnant, in time, the recourse service will become outmoded and will cease to be a viable alternative to negotiated service. Since the purpose of the recourse service is to act as a check against pipeline market power, such a result is impermissible. Therefore, some means may be needed to ensure the continued viability of the recourse service. The Commission is concerned about how this would be accomplished and whether any specific conditions concerning recourse services are needed.

Since open access transportation began, the Commission has required flexibility in terms and conditions to be offered on a non-discriminatory basis uniformly to all shippers under a given rate schedule. When competitive pressure forces a pipeline to liberalize its tariff to satisfy a few shippers, the tariff is amended and all shippers enjoy the benefits. To date the Commission has not permitted narrow classification of customer groups. If the Commission permitted the negotiation of terms of service pipelines would be able to offer special flexibility to selected customers. In that case, what standards, if any, would the Commission use to determine what constitutes undue discrimination? Likewise, are explicit new restrictions needed to prevent pipelines from tying access to a negotiated premium service to the use of the pipeline's other services as well as new restrictions from granting affiliate preferences necessary?

Finally, the Commission is concerned that negotiated/recourse proposals meet the requirements of Section 4 of the NGA. To satisfy the requirement in the NGA that rates, terms and conditions of service must be on file with the Commission, some form of filing the negotiated rate and terms of service will be necessary.

D. Proposals for Negotiated/Recourse Services

As stated previously, negotiated/recourse programs may serve to add flexibility and efficiency to pipeline services in cases where a company does not apply for market-based rates for its services and does not wish to pursue incentive rate programs. For this reason, the Commission is willing to entertain, on a shipper-by-shipper basis, requests to implement negotiated rates where customers retain the ability to choose a cost-of-service based tariff rate. The Commission already permits individualized rates under its rate discount policies. In allowing the further negotiation of rates, the Commission is confident that there are a number of mechanisms available to permit this added flexibility while ensuring that inappropriate cost shifting does not take place.

Requests to implement negotiated rates may be made for new or existing contracts. Companies making such requests must use their existing Commission approved tariff rates applicable to the service as their recourse rate unless they are filing a new rate case simultaneously. The recourse rate will be available for existing capacity holders that do not negotiate a rate with the pipeline, thereby ensuring that existing customers will always have a cost-of-service based rate available for capacity they have under contract. Specifically, this policy statement does not change the right of first refusal requirements in section 284.221(d)(2)(ii) that the highest rate that an existing shipper must match if it wishes to continue its transportation arrangement is the maximum recourse rate established in the pipeline's tariff.

A question arises when capacity is constrained. The predicate for permitting a pipeline to charge a negotiated rate is that capacity is available at the recourse rate. For purposes of allocating capacity, shippers willing to pay more than the maximum recourse rate would be considered to have paid the maximum recourse rate. Therefore, a shipper willing to pay only the recourse rate cannot lose access to capacity merely because someone else is willing to pay a negotiated rate. When there are more requests for capacity than there is capacity available, then the pipeline must allocate capacity among those shippers willing to pay either the negotiated rate or the maximum recourse rate, for example on a *pro rata* basis if required by its tariff.[78] This *pro rata* allocation would also apply to situations where the pipeline must allocate limited capacity for such services as interruptible transportation.

Because pipeline tariffs state that the pipeline will charge a rate between the maximums and minimums stated on the rate sheets, pipelines will need to file conforming tariff sheets indicating that the rate for the service will be either the rates stated on its existing rate schedule or a rate mutually agreed upon by the pipeline and its customer. When a rate is negotiated, the pipeline will need to file a numbered tariff rate sheet stating the exact legal name of the customer and the negotiated rate for the service. A pipeline may make the conforming change to its tariff to indicate that the rate may be a negotiated rate, either at the time it requests to put a particular negotiated rate into effect or at some earlier time. In addition, pipelines should also include along with the conforming tariff change, a proposal for accounting for the costs and revenues resulting from the proposed service.

A pipeline may file the numbered tariff sheet implementing the negotiated rate at the time it intends the rate to go into effect. The Commission does not intend to suspend the effectiveness of negotiated rate filings or impose a refund obligation for those rates. For these reasons, the Commission will readily grant requests to waive the 30 day notice requirement. Issues regarding the appropriate allocation of costs between recourse rate shippers and negotiated rate shippers will be addressed fully in the pipeline's Section 4 rate cases.[79] At that time, the Commission will consider issues

[78] If a pipeline has 100 dth of available capacity and there are two shippers who request that capacity, one is willing to pay no more than the recourse rate of $5.00/dth and another a negotiated rate of $6.00/dth, then each would be allocated 50 dth on a *pro rata* basis.

[79] The Commission recognizes that not all pipelines currently have a requirement to file a Section 4 rate case. For those pipelines that elect to charge negotiated rates and are not required to file a Section 4 rate case, the Commission may consider, on its own motion or on complaint by a recourse shipper, using its Section 5 authority to investigate whether the pipeline's recourse rates remain a viable cost-based alternative to negotiated rates.

relating to cross-subsidization and interested parties will be able to raise any concerns they may have regarding the proper allocation of costs. Therefore, the Commission does not intend to review a pipeline's negotiated rates at the time filed. However, customers that wish to argue that they are similarly situated with a customer receiving a negotiated rate and that a pipeline has been unduly discriminatory may file a complaint with the Commission at any time. The Commission will use its authority under Section 5 to investigate the complaint and, if a remedy is appropriate, will order a prospective rate change.

Pipelines are reminded that, pursuant to Sections 284.8(b) and 284.9(b), they are expected to negotiate rates with their customers in a manner that is not unduly discriminatory and that treats similarly situated shippers similarly. In addition, customers electing the recourse rate should be no worse off as a result of the use of negotiated rates than they would be absent the use of negotiated rates. Pipelines offering negotiated rates will have the burden of justifying revenue projections from negotiated services if the pipeline's method of achieving such projections deviate from traditional methods. In other words, recourse rate shippers should not bear the responsibility of unsubscribed capacity alone and pipelines should continue to market all unsubscribed capacity.

The Commission believes that a pipeline's negotiation of individual rates with shippers should not affect the way a pipeline accounts for the recovery of transition costs. For example, the Commission specified in *Natural Gas Pipeline Company of America*[80] that pipelines treat transition costs as the last item discounted. One of the main purposes of this policy was to ensure that transition costs are spread as evenly as possible among all the pipeline's customers and to reduce the shifting of costs to the pipeline's captive customers. Consistent with this policy, if a pipeline negotiates a rate with a customer that does not include transition costs, the pipeline will be at risk for the collection of those costs and cannot reallocate them to its recourse rate shippers.

Currently, pipelines' maximum tariff rates are subject to a variety of surcharges, in addition to those that relate to transition costs, e.g., ACA, operational Account No. 858, and GRI.[81] The Commission expects that pipelines' recovery and treatment of these costs will not change for shippers under negotiated rate contracts. As is currently the case, pipelines who negotiate to provide services at less than the maximum tariff rate will be subject to the same Commission policies, such as the *Natural* policy on the attribution of discounting. The Commission expects that, to the extent pipelines wish to deviate from these existing policies, they will be willing to accept the risk of underrecovery of these costs.

Because of the number of issues remaining concerning whether negotiation of terms and conditions of service is appropriate, the Commission is not willing to permit the negotiation of individual shipper customized terms of service at this time. Commission willingness to entertain requests for negotiated rates expands on the flexibility in rates already permitted by the Commission with discounting. In allowing further negotiation of rates, the Commission is confident that there are a number of mechanisms to ensure that inappropriate cost shifting does not take place. However, further discussion with the industry of all the ramifications of negotiated terms of service is needed.

Therefore, the Commission is establishing a separate proceeding in which it will consider this issue and is inviting interested participants to file comments on the issues raised above, as well as any other issue that should be considered before permitting pipelines to negotiate terms of service with individual shippers. Participants interested in commenting on these issues should submit their written comments in Docket No. RM96–7–000 within 60 days of the date of this order.

By the Commission.

Lois D. Cashell,

Secretary.

Appendix

Commenters

Alberta Department of Energy (Alberta)
American Gas Association (AGA)
American Forest and Paper Association (AF&PA)
American Public Gas Association (APGA)
Amoco Energy Trading Corporation and Amoco Production Company (Amoco)
ANR Pipeline Company and Colorado Interstate Gas Company (ANR/CIG)
Associated Gas Distributors (AGD)
Atlanta Gas Light Company and Chattanooga Gas Company (Atlanta Gas Light)
Brooklyn Union Gas Company (Brooklyn Union)
Cascade Natural Gas Corporation, Northwest Natural Gas Company, Washington Natural Gas Company and Washington Water Power Company (Pacific Northwest Commenters)
Cincinnati Gas & Electric Company, Union Light, Heat and Power Company and Lawrenceburg Gas Company (CINergy Gas Companies)
Cities of Lenox, *et al.* (Lenox)
Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia)
Columbia Gas Distribution Companies (Columbia Distribution)
Connecticut Natural Gas Corporation (Connecticut Natural)
Consolidated Edison Company of New York, Inc. (Con Edison)
Consolidated Natural Gas Company (CNG)
Cove Point LNG Limited Partnership (Cove Point)
Enron Interstate Pipelines (Enron)
Fertilizer Institute
Florida Public Service Commission (Florida)
Fuel Managers Association (Fuel Managers)
Gas Research Institute (GRI)
Hadson Gas Systems, Inc. (Hadson)
Illinois Commerce Commission (Illinois)
Independent Oil & Gas Association of West Virginia (IOGA)
Independent Petroleum Association of Mountain States (IPAMS)
Indicated Shippers
Industrial Gas Consumers (IGC)
Interstate Natural Gas Association of America (INGAA)
KN Interstate Natural Gas Transmission Company (KN Interstate)
Koch Gateway Pipeline Company (Koch Gateway)
Natural Gas Supply Association (NGSA)
NorAm Gas Transmission Company (NorAm)
Northeast Energy Associates and North Jersey Energy Associates (Energy Associates)
Northern Distributor Group (Northern Distributors)
Northern Illinois Gas Company (NI-Gas)
Northern Indiana Public Service Company (Northern Indiana)
Northwest Industrial Gas Users (NWIGU)
Office of the Ohio Consumers' Counsel (Ohio CC)
Pacific Gas and Electric Company[1]

[80] 69 FERC ¶ 61,029 (1994), *order on reh'g*, 70 FERC ¶ 61,317 (1995).

[81] GRI's funding mechanism for 1996 and 1997 is designed to collect 50 percent of GRI's Commission-approved budget through reservation surcharges and 50 percent through the volumetric surcharge. 71 FERC ¶ 61,130 (1995). Negotiated rates could change the mix of reservation/usage billing units. GRI has expressed concerns that pipelines may not recover full GRI revenue levels or pipelines may leave GRI if market-based or negotiated rates are implemented.

[1] Filed but had no comments.

Pacific Gas Transmission Company (PGT)
Pennsylvania Office of Consumer Advocate (Pa OCA)
Pennsylvania Public Utility Commission (PaPUC)
Petrochemical Energy Group (PEG)
Public Service Commission of the State of New York (New York)
Public Service Electric and Gas Company (PSE&G)
Public Utilities Commission of Ohio (Ohio PUC)
Public Utilities Commission of the State of California [1]
Southern California Edison Company (SoCal Edison)
Southern California Gas Company (SoCalGas)
Tejas Power Corporation (Tejas)
Texaco Natural Gas Inc. (Texaco)
Texas Eastern Transmission Corporation, Panhandle Eastern Pipe Line Company, Trunkline Gas Company and Algonquin Gas Transmission Company (PEC Pipeline Group)
Transok, Inc. (Transok)
UGI Utilities, Inc.
United Distribution Companies (UDC)
Williams Interstate Natural Gas System (WINGS)
Williston Basin Interstate Pipeline Company (Williston Basin)
Wisconsin Distributor Group (Wisconsin Distributors)

[FR Doc. 96–2547 Filed 2–6–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. TM96–4–32–000]

Colorado Interstate Gas Company; Notice of Out-of-Time Tariff Filing

February 1, 1996.

Take notice that on January 30, 1996, Colorado Interstate Gas Company (CIG) filed Fifteenth Revised Sheet No. 11 of its FERC Gas Tariff, First Revised Volume No. 1, reflecting an increase in the fuel reimbursement percentage for Transportation Fuel Gas from 2.17% to 2.32% effective March 1, 1996.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.214 and 385.211). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2560 Filed 2–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ96–4–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 1, 1996.

Take notice that on January 30, 1996 Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets in the above captioned docket, with a proposed effective date of February 1, 1996.

ESNG states that the revised tariff sheets included herein are being filed pursuant to Section 21 of the General Terms and Conditions of ESNG's Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth herein reflect an increase of $0.1249 per dt in the Commodity Charge, as measured against ESNG's regularly scheduled Quarterly Purchased Gas Adjustment filing, Docket No. TQ96–3–23–000, et al., filed on January 3, 1996 to be effective February 1, 1996.

The commodity current purchased gas cost adjustment reflects ESNG's projected cost of gas for the period of February 1, 1996 through April 30, 1996, and has been calculated using its best estimate on available gas supplies to meet ESNG's anticipated purchase requirements. The increased gas costs in this filing are a result of higher prices being paid to producers/suppliers under ESNG's market-responsive gas supply contracts.

ESNG respectfully requests waiver of the Commission's thirty (30) day notice requirement so as to permit it to place the subject rates into effect on February 1, 1996, as proposed. ESNG is unable to meet the thirty (30) day notice requirements because normal purchasing of gas supplies from producers/suppliers are always negotiated five working days prior to the end of each month (for the next month's supply). The normal time frame to order gas supply for the next month does not give ESNG any flexibility in order to make a filing in time for the ''notice requirement'' when gas prices spike upward (from projected) as they have for the month of February, 1996. The Commission's waiver of the thirty (30) day notice requirement in the case of this instant filing would allow for a more accurate recovery of ESNG's costs and mitigate the deferred commodity costs which would occur in the absence of such waiver.

ESNG states that copies of the file have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211 and Section 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2561 Filed 2–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–3–16–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

February 1, 1996

Take notice that on January 29, 1996, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with a proposed effective date of March 1, 1996:

Third Revised Sheet No. 213
Third Revised Sheet No. 214
Third Revised Sheet No. 216
Second Revised Sheet No. 216A
Second Revised Sheet No. 216B
First Revised Sheet No. 216C

National states that the proposed tariff sheets were submitted to flow through upstream pipeline take-or-pay (TOP) charges in accordance with Section 20 of the General Terms and Conditions of National's FERC Gas Tariff and the