## PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

1. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252a, 1252b, 1254, 1362; 8 CFR part 2.

2. Section 242.1, paragraph (a) is revised to read as follows:

**§ 242.1 Order to show cause and notice of hearing.**

(a) *Commencement.* Every proceeding to determine the deportability of an alien in the United States is commenced by the filing of an order to show cause with the Office of the Immigration Judge, except for an alien who has been admitted to the United States under the provisions of section 217 of the Act and Part 217 of this chapter other than such an alien who has applied for asylum in the United States. In the proceeding, the alien shall be known as the respondent. Orders to show cause may be issued by:

(1) District directors (except foreign);
(2) Deputy district directors (except foreign);
(3) Assistant district directors for investigations;
(4) Deputy assistant district directors for investigations;
(5) Assistant district directors for deportation;
(6) Deputy assistant district directors for deportation;
(7) Assistant district directors for examinations;
(8) Deputy assistant district directors for examinations;
(9) Officers in charge (except foreign);
(10) Assistant officers in charge (except foreign);
(11) Chief patrol agents;
(12) Deputy chief patrol agents;
(13) Associate chief patrol agents;
(14) Assistant chief patrol agents;
(15) Patrol agents in charge;
(16) The Assistant Commissioner, Investigations;
(17) Service center directors;
(18) Supervisory asylum officers; or
(19) Institutional Hearing Program Directors.

* * * * *

3. In § 242.2, paragraph (c)(1) (i) through (xvii) is revised to read as follows:

**§ 242.2 Apprehension, custody, and detention.**

* * * * *

(c) * * *

(1) * * *

(i) District directors (except foreign);
(ii) Deputy district directors (except foreign);
(iii) Assistant district directors for investigations;
(iv) Deputy assistant district directors for investigations;
(v) Assistant district directors for deportation;
(vi) Deputy assistant district directors for deportation;
(vii) Assistant district directors for examinations;
(viii) Deputy assistant district directors for examinations;
(ix) Officers in charge (except foreign);
(x) Assistant officers in charge (except foreign);
(xi) Chief patrol agents;
(xii) Deputy chief patrol agents;
(xiii) Associate chief patrol agents;
(xiv) Assistant chief patrol agents;
(xv) Patrol agents in charge;
(xvi) The Assistant Commissioner, Investigations; or
(xvii) Institutional Hearing Program Directors.

* * * * *

Dated: February 22, 1996.

Doris Meissner,

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 96–5176 Filed 3–5–96; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 96–ASO–1]**

## Removal of Class D and E2 Airspace; Lawrenceville, GA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule, withdrawal.

**SUMMARY:** This action withdraws the final rule published in the Federal Register on January 23, 1996, with an effective date of April 25, 1996. The rule revoked the Class D and E2 airspace at Lawrenceville, GA. The planned opening of a non-federal control tower at the Lawrenceville/Gwinnett County-Briscoe Field Airport was delayed indefinitely due to construction problems. Therefore, the Class D and E2 airspace was not necessary, and action was undertaken to remove this airspace. However, the Gwinnett County Airport Authority has been able to secure a temporary tower until the permanent tower can be completed. Therefore, the Class D and E2 airspace will be necessary, and action to revoke this airspace is being withdrawn.

**DATES:** The withdrawal is effective March 6, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Benny L. McGlamery, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

**SUPPLEMENTARY INFORMATION:**

History

Class D and E2 airspace at Lawrenceville, GA, was established to support the planned opening of a non-federal control tower at the Lawrenceville/Gwinnett County-Briscoe Field Airport. Due to construction problems, the opening was delayed indefinitely. Therefore, on January 23, 1996, the FAA published a final rule stating that, since the Class D and E2 airspace was not necessary, the Class D and E2 airspace in the vicinity of the Lawrenceville/Gwinnett County-Briscoe Field Airport was being revoked (61 FR 1705). However, the Gwinnett County Airport Authority has been able to secure a temporary control tower until the permanent control tower can be completed. As a result, the Class D and E2 airspace will be necessary. Therefore, the action to revoke the Class D and E2 airspace at Lawrenceville, GA, is being withdrawn.

Conclusion

In consideration of the action taken to provide the Lawrenceville/Gwinnett County-Briscoe Field Airport with a temporary control tower until the permanent tower is completed, action to revoke the airspace is unnecessary.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Withdrawal of Final Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 96–ASO–1, as published in the Federal Register on January 23, 1996 (61 FR 1705), is hereby withdrawn.

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

Issued in College Park, Georgia, on February 21, 1996.

Benny L. McGlamery,

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 96–5125 Filed 3–5–96; 8:45 am]

BILLING CODE 4910–13–M

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Parts 201 and 284**

**[Docket No. RM95–4–001; Order No. 581–A]**

## Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies; Order on Rehearing

Issued February 29, 1996.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final Rule; Order on rehearing.

**SUMMARY:** The Federal Energy Regulatory Commission is issuing an order on the requests for rehearing of Order No. 581, the final rule amending the Commission's Uniform System of Accounts, its forms, and its reports and statements for natural gas companies. In the final rule, the Commission sought to simplify and streamline its requirements to reduce the burden of respondents. The revisions here address issues raised and clarifications requested by parties in this proceeding.

**DATES:** The revised regulations will become effective April 5, 1996.

**FOR FURTHER INFORMATION CONTACT:** Erica J. Yanoff, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0708.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document, excluding Appendices A (Revised Pages of FERC Form No. 2) and B (Revised Pages of FERC Form No. 2–A) in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours at 888 First Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397 if dialing locally or 1–800–856–3720 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS indefinitely in ASCII and WordPerfect 5.1 format. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in the Public Reference Room at 888 First Street, NE., Washington, DC 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

### I. Introduction

On September 28, 1995, the Federal Energy Regulatory Commission (Commission) issued Order No. 581, amending its Uniform System of Accounts, its forms, and its reports and statements for natural gas companies.[1] In Order No. 581, the Commission, with respect to the Uniform System of Accounts, addressed the treatment of gas in underground storage reservoirs and in pipelines, and of revenues and gas supply expenses, eliminated all accounts for Nonmajor respondents, and redesignated accounts used only by Major respondents for use by all respondents. The Commission also modified various forms, reports, and statements in an effort to create documents that reflect the current regulatory environment of unbundled pipeline sales for resale at market-based prices and open-access transportation of natural gas. This included changes to, and deletions from, the FERC Form No. 11 (Form No. 11), ''Natural gas pipeline company monthly statement,'' the FERC Form No. 2 (Form No. 2), ''Annual report of Major natural gas companies,'' and the FERC Form No. 2–A (Form No. 2–A), ''Annual report of Nonmajor natural gas companies.''

The Commission also sought to simplify and streamline its requirements to reduce the burden on respondents. Hence, the Commission eliminated certain reporting requirements (as well as a few non-reporting requirements) that were outdated or nonessential in light of current regulation, or were duplicative of other reporting requirements. This included the deletion of the Form No. 8, ''Underground Gas Storage Report.'' At the same time, the Commission imposed new reporting requirements, too, most notably, the electronic Index of Customers.

All of the revisions, especially of Form No. 2, were designed to provide financial, rate, and statistical information on transactions that is more useful than what is currently available to regulatory agencies and other users of the financial statements and reports of natural gas companies.

ANR Pipeline Company and Colorado Interstate Gas Company (ANR/CIG), jointly, and the National Registry of Capacity Rights, Inc. (Registry) request rehearing of Order No. 581.[2] Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (collectively, Columbia) also request rehearing, but do so alternatively, if the Commission does not clarify Order No. 581 as they request. The Interstate Natural Gas Association of America (INGAA), the Natural Gas Supply Association (NGSA), and the PEC Pipeline Group[3] each filed a request for clarification of Order No. 581.

Generally, the issues raised and clarifications requested by these parties concern Order No. 581's holdings with respect to storage accounting in the Uniform System of Accounts, the lack of receipt and delivery point information in the Index of Customers, and the disclosure of commercially sensitive information in the Index of Customers and the discount rate report. In addition, Louis Dreyfus Energy Corp. (Louis Dreyfus) filed a petition for reconsideration of Order No. 581's elimination of the Form No. 8.

This order grants in part, and denies in part, the rehearing requests, denies Louis Dreyfus' petition for reconsideration, and clarifies Order No. 581.

### II. Uniform System of Accounts

#### *A. Storage Accounting*

#### 1. Accounting for Use of System Gas Under Fixed Asset Model

ANR/CIG request rehearing with respect to the Commission's treatment of new Account 117.4, ''Gas Owed to System Gas.'' In the final rule, the Commission permitted pipelines to account for system gas using either the inventory method or the fixed asset method. For pipelines using the fixed asset method, the Commission adopted accounting provisions which require

[1] Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies, 60 FR 53019 (October 11, 1995), II FERC Stats. & Regs. ¶ 20,000 *et seq.* (1995) (regulatory text), III FERC Stats. & Regs. ¶ 31,026 (1995) (preamble). This order on rehearing is a companion to the order on rehearing, issued concurrently in Docket No. RM95–3–001, which concerned amendments to the form and composition of interstate natural gas pipeline tariffs and the filing of rates and charges for the transportation of natural gas. *See* Filing Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs, Order No. 582, 60 FR 52960 (October 11, 1995).

[2] ANR/CIG's request is titled ''Request for Rehearing and Clarification.''

[3] The ''PEC Pipeline Group'' refers, collectively, to Panhandle Eastern Pipe Line Company, Trunkline Gas Company, Texas Eastern Transmission Corporation, and Algonquin Gas Transmission Company.

that future encroachments on system gas, resulting from transportation imbalances, no-notice transportation, and other operational needs, be credited to Account 117.4 at the then-current market price of gas, with a corresponding charge to Account 808.1, ''Gas Withdrawn From Storage-Debit.'' The Commission stated that if the volumes withdrawn are used to meet transportation imbalances, Account 806, ''Exchange Gas,'' will be credited and Account 174, ''Miscellaneous Current and Accrued Assets,'' will be debited simultaneously with the entries to the system gas account.[4]

ANR/CIG argue that this accounting treatment will result in a fluctuating balance for Account 117 (the sum of Accounts 117.1, 117.2, 117.3, and 117.4), which is designated as a fixed asset. In order to treat the balance in Account 117 as a fixed asset, and prevent potential monthly fluctuations, which ANR/CIG assert is inconsistent with the nature of a fixed asset, ANR/CIG urge the Commission to establish an additional contra account within the Account 117 series, instead of using the current asset Account 174.

The Commission will not adopt ANR/CIG's suggestion for the following reason. Although the receivable may have originally been generated by the encroachment of system gas, the settlement of the receivable is not dependent on the replacement of the system gas volumes. For example, a customer may ''cash-out'' his receivable with the pipeline in one month, while the pipeline replaces the volumes into storage in another month. The amount of the receivable may also differ from the amount of the encroachment if, e.g., the pipeline revalues its encroachments. Because of the lack of one-to-one correspondence between the receivable and the replacement of the encroachment volumes, the Account 117 series would become misstated if we were to allow recording of the receivable within them. It would also not be appropriate to mix one type of asset (*i.e.*, a receivable) with a completely different type of asset (*i.e.*, system gas volumes).

2. Losses on Settlement of Imbalances

In explaining how the simplified recordkeeping requirements under the fixed asset method should mitigate CNG Transmission Corporation's concerns over the recordkeeping required to calculate imbalance gains or losses, the Commission stated:

> For imbalances in which the pipeline has delivered more than the shipper injected at the receipt point, gains (or losses) will be the difference between the cash-out price and the pipeline's purchase cost of replacement gas volumes. For cashed-out imbalances in which the pipeline has delivered less than the shipper has tendered into the pipeline, the gain (or loss) will be the difference between the cash-out price paid by the pipeline and the current price of volumes recorded in Account 117.4.[5]

INGAA asserts that this accounting treatment assumes that all pipelines that elect the fixed asset model use a monthly cash-out, and purchase replacement volumes concurrently. However, INGAA states that some pipelines roll imbalances over month-to-month after assigning a dollar value to the imbalance, and that pipelines do not necessarily purchase or track replacement volumes on a transaction-by-transaction basis.

INGAA argues that it appears that the intended accounting treatment, based on other statements in the final rule under ''Use of System Gas, Fixed Asset Method,''[6] and on the Account 174 and 242 definitions, is for the gain or loss to equal the difference between the cash out (or the current value of gas physically received or delivered) and the imbalance receivable or payable balance. Therefore, INGAA requests that the Commission modify the wording under ''Losses on Settlement of Imbalances'' to be consistent with the intended accounting.

The Commission will not clarify Order No. 581 as requested by INGAA. The final rule correctly stated that the difference between the cash-out price and the pipeline's purchase costs of replacement gas volumes is the amount of the gain or loss on imbalances involving cash-out settlements. Such gain or loss consists of two components: (1) Gain or loss on the settlement of receivables/payables (i.e., the difference between the recorded amount of the receivable/payable and the actual cash-out amount); and (2) gain or loss on the difference between the injection price and the actual cost of replacement gas.

Contrary to INGAA's assertion, the accounting requirements for storage imbalances do not assume that all pipelines settle cash-outs concurrently with the replacement of system gas; the prescribed accounting is designed to accommodate different cash-out settlement dates and replacement dates. For example, if a pipeline recorded a $100 imbalance receivable in month one, and rolled it over to month two, in which it had an additional $200 imbalance receivable, it could settle the $300 receivable (or any part of it) by debiting cash and crediting the receivable, and would recognize a gain or loss on the difference between the recorded amount of receivable and the settlement amount. If the pipeline replaced the gas in month six, it would recognize a gain or loss on the difference between its cost of replacement gas and the accounting value of the storage injection. The gain or loss on the settlement of the receivable and the replacement activity would be reflected in the gain or loss accounts in the period in which they occur. There would be no tracking of gains or losses on transactions for individual customers.

3. Pricing of Losses of System Gas

The Commission stated in Order No. 581 that, under the fixed asset model, ''losses of system gas should be priced at the same rate used to price withdrawals in the month in which the gas loss is recognized (*i.e.*, the current market price of gas available to the utility).''[7] According to Columbia, this is appropriate for accounting for losses of working gas, but not for accounting for losses of cushion gas.

In support, Columbia argues that losses of system gas often occur over long periods of time, and are recognized only after extensive periods of analyses of storage fields. A pipeline may choose not to replace cushion gas losses. Additionally, Columbia maintains that in instances where a pipeline accrues a reserve for cushion gas losses, it would be inappropriate to use a value which differs from the actual cost of the gas. Thus, Columbia requests that the Commission clarify that losses of cushion gas must be recorded at book value, not at the present market value, or in the alternative, grant rehearing on this issue.

Columbia also reiterates its recommendation in its initial comments that the Commission add another subaccount or provision to Account 117.1 to allow for recognition of extraordinary gas storage losses as a reduction of the asset which has incurred the loss. Columbia states that the Commission did not address this issue in the final rule, and therefore, requests rehearing.

The Commission will not clarify Order No. 581 to permit losses of cushion gas to be recorded at book value. Under the fixed asset model, losses of both working gas and cushion gas are accounted for in the same manner—Account 117.4 is credited (and Account 823 is charged) with the current market value of the lost gas. The

[4] III FERC Stats. & Regs. at 31,454–55.

[5] III FERC Stats. & Regs. at 31,459.

[6] Id. at 31,455.

[7] III FERC Stats. & Regs. at 31,459–60.

underlying presumption is that all encroachments of system gas (including gas losses) will be replaced in order to maintain authorized system gas levels.

However, the Commission will grant rehearing, in part, and allow pipelines to credit the system gas accounts (*i.e.*, Account 117.1 or 117.2) directly with the historical cost of the decrease in authorized system gas volumes in the unusual situation where a pipeline determines, and the Commission authorizes, a decrease in system gas volumes (due to, for example, extraordinary storage losses, changes in system operational needs, etc.). The Commission does not believe that it is necessary, though, to create a separate subaccount under Account 117, or include another provision in the regulations to accommodate these unusual occurrences. Because Commission approval is required to change authorized system gas levels, a pipeline should not record permanent reductions in authorized system gas volumes prior to receiving Commission approval. Instead, prior to receiving Commission approval, a pipeline should credit Account 117.4 with the market value of the losses.

4. Use of Customer-Owned Storage Quantities for Balancing

In Columbia's comments to the NOPR, Columbia sought confirmation that entries to Account 117.4 to record encroachments by customers resulting from imbalances, no-notice transportation, and other operational needs should be made only after Columbia has exhausted other options for resolving the encroachments, such as using customer-owned storage quantities. Columbia stated that Account 117.4 should be used only after the balance of all customer gas has been withdrawn, and the only remaining gas belongs to the pipeline. In Order No. 581, the Commission responded:

> Columbia is permitted to borrow the gas from storage because of an arrangement between Columbia and its customers that, consistent with Columbia's tariff, allows Columbia to use its customer's gas for balancing purposes. Thus, Columbia and any other similarly situated pipeline would record amounts in Account 117.4 only after customer gas available to the utility for system balancing purposes has been exhausted. This accounting is appropriate because the pipeline is using its customers' gas to meet imbalances on its transportation system.[8]

Columbia now requests clarification that the Commission's holding in Order No. 581 with respect to the use of customer gas for storage withdrawals, above, will not require Columbia to make revisions to its present tariff. It states that the Commission's language could be interpreted to require that Columbia's present accounting methodology for gas imbalances be conditioned upon specific tariff provisions. Columbia further states that the storage accounting it employs is based upon its system operations as reviewed and accepted by the Commission in its restructuring proceeding. Thus, Columbia seeks confirmation that Order No. 581 approved its storage accounting, and was not intended to require Columbia to revise its current tariff.

Order No. 581 allows Columbia, and similarly situated pipelines, to recognize that gas borrowed from storage (to the extent that there is customer gas in storage) to meet imbalances belongs to the storage customers. This recognition is permissible where there are arrangements between the pipeline and its customer(s), consistent with the pipeline's tariff, that permit the pipeline to use its customer's gas for balancing purposes. In Columbia's case, Rate Schedule FSS specifically provides for customers' storage to be used for extinguishing imbalances arising under the customers' various service agreements:

> Buyer's FSS Inventory under this Rate Schedule shall be increased or decreased by any actual imbalances (actual receipts compared to actual deliveries) created under any other Service Agreement(s) Buyer has with Seller and the imbalance shall be removed from such other Service Agreement(s). Such increase or decrease shall be deemed to be a storage injection or withdrawal under Buyer's FSS Service Agreement.[9]

It was this and similar provisions in Columbia's tariff which prompted the Commission's response in Order No. 581.

However, we clarify that where the pipeline's retained system gas is used for balancing, no-notice service, or other uses associated with maintaining efficient transmission operations, entries to Account No. 117.4 are necessary. Columbia's tariff contains two rate schedules, Rate Schedules NTS and SIT, which rely on Columbia's retained storage.[10]

Further, in the restructuring proceeding, Columbia asserted that retained storage would be used for balancing purposes. As described by the Commission:

> Columbia avers the allocation of retained storage costs to FTS service is appropriate to recognize the use of storage for operational balancing agreements (OBAs) with upstream pipelines. Columbia also argues its retained storage handles the hourly swings of customers and imbalances within tolerance levels. Allocation of retained storage costs thus recognizes system balancing for all services.[11]

Therefore, Columbia (and any similarly situated pipeline) must comply with the applicable Uniform System of Accounts instructions for recording system gas injections and withdrawals whenever it uses its own system gas for balancing, no-notice, or other uses associated with maintaining efficient transmission operations.

Columbia additionally asks the Commission, *assuming arguendo,* that the Commission finds that storage encroachments by customers must be recorded in Account No. 117.4 before all customer gas has been physically withdrawn, to expand the instructions in Account 117.4 to address the accounting treatment of gas resulting from a net overtender position (*i.e.*, when shippers put more gas into the system than they take out). Columbia seeks clarification of the accounting entries required when customers are in an overtendered position, which physically requires an injection of gas into storage.

The Commission believes that overtendered gas should be treated the same as customer contract gas physically held by the pipeline. That is, records of stored volumes should be maintained, but no formal accounting recognition of dollar amounts should be given to the overtendered volumes.

5. Conforming Corrections to Regulation Text

Several parties have identified instances in which the findings and rulings of the Commission, as described in Order No. 581, are not reflected in the text of the new regulations. In those instances, discussed below, the parties maintain that the Part 201 regulations need to be amended accordingly. Also identified below are minor typographical errors.

INGAA and the PEC Pipeline Group state that the use of Account 117.2 to credit withdrawals of storage gas under the inventory method, as permitted by Order No. 581, is not specified in the instructions for Account 808. The Commission will conform the instructions for Account 808.1, Gas

[8] III FERC Stats. & Regs. at 31,460.

[9] Substitute Original Sheet No. 165, Second Revised Volume No. 1 of Columbia's FERC Gas Tariff.

[10] *See* orders addressing Columbia's compliance filings, Columbia Gas Transmission Corporation, 65 FERC ¶ 61,344 at 62,726 (1993) and 64 FERC ¶ 61,060 at 61,528 (1993).

[11] 64 FERC ¶ 61,060 at 61,528 (1993).

Withdrawn from storage-Debit, and Account 808.2, Gas Injected into storage-Credit, to reflect withdrawals and injections of gas under the inventory method of accounting.

INGAA states that the changes in the final rule that explicitly require that storage losses be charged to Account 823 are not reflected in the Part 201 instructions. The Commission will modify the instructions to the text of Account 823, Gas Losses, and the Special Instructions to Accounts 117.1, 117.2 and 117.3, to require losses of gas stored in underground reservoirs to be charged to Account 823.

INGAA and the PEC Pipeline Group state that in the Special Instructions to Accounts 117.1, 117.2, and 117.3, (b) Fixed Asset Method, the first sentence of the fourth paragraph is incomplete, and should be revised to: ''When replacement of the gas is made, the amount carried in Account 117.4 for such volumes must be cleared *with an offsetting entry to* Account 808.2.'' The Commission agrees, and will revise the instruction accordingly.

INGAA and the PEC Pipeline Group state that the last sentence of the instructions to Account 117.4, Gas Owed to System Gas, must be corrected by changing the word ''revolve'' to ''revalue''. The Commission agrees and will revise the instruction accordingly.

*B. Shipper-Supplied Gas*

1. Recordkeeping

In Order No. 581, the Commission revised the recordkeeping requirements for shipper-supplied fuel to require records to be maintained and readily available for shipper-supplied gas on a rate schedule and zone basis.[12] INGAA requests that the Commission clarify that for companies that calculate shipper-supplied fuel based on delivered volumes, the accounts of retained fuel and unaccounted-for volumes be maintained on the basis of gas delivered, rather than gas received.

The Commission clarifies that it is permissible to maintain records of shipper-supplied gas on the basis of gas delivered or gas received, as appropriate in the circumstances.

2. Conforming Changes to Regulation Text

According to NGSA, Order No. 581 states that ''the value of gas received from shippers under tariff allowances that is not consumed in operations nor returnable to customers through rate tracking mechanisms shall be credited to Account 495, Other Gas Revenues and charged to Account 805.'' [13] However, NGSA states that this language does not appear in the revised regulations. NGSA requests that the Commission clarify this matter by including a statement in the regulations which explicitly requires such accounting treatment.

The Commission will add a new paragraph to the text of Account 805, Other gas purchases, to address the treatment of retained shipper-supplied gas.

*C. Revenues*

In Order No. 581, the Commission modified the accounting treatment it had proposed for gains and losses on imbalance transactions, in instances where a pipeline's tariff requires such gains and losses to be passed along to customers. Rather than requiring a gain or loss to be initially recorded in Accounts 495 or 813, respectively, the Commission stated that it would require pipelines to record the gain or loss on imbalances directly in Account 254, Other Regulatory Liabilities, or Account 182.3, Other Regulatory Assets, as appropriate.[14]

INGAA and the PEC Pipeline Group argue that the corresponding instructions do not appear in Account 174 of the Balance Sheet Accounts; they state that Account 174 only includes instructions to record all gains and losses from balancing transactions in Accounts 495 and 813, respectively. INGAA and the PEC Pipeline Group request that the Commission clarify the regulations to reflect its decision to record certain gains and losses from imbalance transactions in the deferred accounts, Account 254 and Account 182.3, respectively.

The Commission will not clarify the regulations as requested by the parties. Because the Uniform System of Accounts already provides instructions for accounting for regulatory assets and liabilities,[15] the Commission believes that it is unnecessary to modify the text of Accounts 174, Miscellaneous Current and Accrued Assets, and Account 242, Miscellaneous Current and Accrued Liabilities, to specifically address regulatory assets and liabilities related to imbalances. As with any revenue, expense, gain, or loss that would have been included in net income determinations in one period under the general requirements of the Uniform System of Accounts were it not for the probability that such items would be included in a different period for ratemaking purposes (or, in the case of regulatory liabilities, would be required to be refunded),[16] imbalance gains and losses to be collected from or returned to customers in future rates must be accounted for as regulatory assets and liabilities in accordance with Definition No. 31, and the instructions to Accounts 182.3 and 254 of the Uniform System of Accounts.

*D. Gas Supply Expenses*

In Order No. 581, the Commission found that the amounts recorded in Account 806, Exchange Gas, should be based on the measurement attribute of the gas received or delivered in the exchange.[17] INGAA and the PEC Pipeline Group maintain that the instructions in the final rule for recording the amounts in Account 806 do not appear in the Account 806 regulations. They assert that in the final rule, the Commission properly stated that if a company is using the inventory method, and the gas delivered in an exchange has been priced on a historical cost basis, the costs to be recorded in Account 806 would be based on the historical cost of the gas. The parties state that the text of the Account 806 regulation states that ''costs are to be determined from the current market price of gas at the time gas is tendered for transportation,'' reflecting a pipeline's use of only the fixed asset method. Therefore, INGAA and the PEC Pipeline Group ask that the regulations for Account 806 be clarified to reflect the appropriate accounting for both the fixed asset *and* the inventory method.

The Commission will modify the text of Account 806 to reflect the use of the inventory method, as well as the use of the fixed asset method.

The PEC Pipeline Group states in Order No. 581, the Commission adopted Panhandle Eastern Pipeline Company's suggestion to move the detailed recordkeeping requirements for cash-out transactions to other accounts.[18] The PEC Pipeline Group argues that paragraph B of the Part 201 instructions for Account 806, establishing the recordkeeping requirement, should be deleted, and the detailed recordkeeping requirements for all balancing transactions should be moved to other accounts (*i.e.*, Account 174, Miscellaneous Current and Accrued Assets, and Account 242, Miscellaneous Current and Accrued Liabilities).

[12] III FERC Stats. & Regs. at 31,463.

[13] *Id.* at 31,461.

[14] *Id.* at 31,464–65.

[15] *See* Definition No. 31 of the Uniform System of Accounts, 18 C.F.R. Part 201 (1995).

[16] This defines ''regulatory assets and liabilities.'' *Id.*

[17] III FERC Stats. & Regs. at 31,466.

[18] *Id.*

In response to Panhandle's comments on the NOPR, the Commission reduced the level of recordkeeping requirements, and moved the instructions for accounting for settlement of imbalance receivables and payables from Account 806 to Accounts 174 and 242, respectively. Included in the new Paragraph B of the instructions to Accounts 174 and 242 is a requirement that pipelines maintain for each party entering gas exchange, load balancing, or no-notice transportation transactions, the quantity and cost of gas delivered and received. This is the same requirement as now appears in paragraph B of Account 806. Therefore, to avoid unnecessary duplication, the Commission will delete paragraph B of Account 806, as requested by the PEC Pipeline Group.

III. Form Nos. 2 and 2–A

Only one corrective change to the Form No. 2 was requested by the parties. INGAA and the PEC Pipeline Group note that on page 220, in Column (e) for Account 117.4, lines 2 and 3 should not be blacked out. Similarly, INGAA states that lines 2 and 3 in Column (b) for Account 117.1 also should not be blacked out. INGAA states that if a pipeline is using the fixed asset method, it will show entries in both Account 117.1 and Account 117.4 for contra accounts Gas Delivered to Storage (line 2) and Gas Withdrawn From Storage (line 3). The Commission agrees that those lines should not be blacked out, and will delete the shading from those lines.

The Commission has identified several other editorial, typographical, and conforming changes that must be made to the Form No. 2, and where applicable, to the Form No. 2–A, also. These changes are listed below, and appear in the revised pages of the forms in Appendices A and B[19] to this order:

*General Information—Page i*

In section III, paragraph (b), the second sentence of the parenthetical is revised to read: ''Indicate by checking the appropriate box on page 3, * * * .''

In section III, paragraph (c)(i), the word ''aspects'' is revised to ''respects.''

*General Information—Page ii*

In section III, paragraph (c)(ii), the pages referring to schedule ''Statement of Income'' are revised to ''114–116,'' and the page referring to schedule ''Notes to Financial Statements'' are revised to ''122.''

In section III, paragraph (d), the word ''Branch'' is added to the end of the phrase ''Public Reference and Files Maintenance.''

*General Instructions—Page iii*

In section IV, paragraph (b), the Commission is omitting the reference to page 4.

*List of Schedules (Natural Gas Company)—Page 3*

In Column (a), under Income Account Supporting Schedules, the word ''Other'' in the second and third lines is revised to ''Others.'' In addition in Column (a), under Common Section, the page reference for Distribution of Salaries and Wages is revised to ''354–355.''

*Comparative Balance Sheet (Assets and Other Debits)—Page 110*

The page number reference of 200–201 on line 1 is moved to line 3. The page number reference of 221 on lines 17 and 18 is eliminated. In addition, line 21 is revised to read: ''(For Cost of Account 123.1 See Footnote Page 224, line 40).''

*Statement of Income for the Year—Page 116*

The account titles on lines 29 through 34 are indented.

*Statement of Retained Earnings for the Year—Pages 118–119*

On page 118, Columns (b), (c), and (d) for the account title ''UNAPPROPRIATED RETAINED EARNINGS,'' and on lines 2 and 3, are shaded.

On page 119, Column (b), ''Contra Primary Account Affected,'' is eliminated for all lines.

*Notes to Financial Statements—Page 122*

The Commission is modifying instruction 9 to require explanation for only those *significant* changes in accounting methods made during the year which had an effect on net income.

*Gas Plant in Service (Accounts 101,102, 103, and 106)—Pages 204–209*

On page 204, the Commission is adding instructions to each line showing a total (*i.e.*, lines 5 and 26), instructions to total the applicable lines. The Commission is also shading Columns (b) and (c) on line 27.

On page 205, the Commission is adding shading to all columns of line 27.

On page 206, the Commission is adding to each line showing a total (*i.e.*, lines 36, 37, 39, 54, 65, 75, and 76), instructions to total the applicable lines.

On page 208, the Commission is adding to each line showing a total (*i.e.*, lines 86, 102, 114, 116, and 121), instructions to total the applicable lines.

On page 209, the Commission is removing the shading on line 119, and adding shading to Column (d) on line 118.

*General Description of Construction Overhead Procedure—Page 218*

The Commission is adding the word ''the'' at the beginning of instruction 1(a). The title of Column (c), ''Capital Ratio,'' is revised to read ''Capitalization Ratio.'' In addition, the Commission is repositioning the parentheses and brackets in the formulas listed in items 2 and 3 to correctly present the formulas.

*Gas Stored (Accounts 117.1, 117.2, 117.3, 117.4, 164.1, 164.2, and 164.3)—Page 220*

In addition to deleting the shading on lines 2 and 3 of Columns (b) and (e), the Commission is deleting the parenthetical ''(contra account)'' from lines 2 and 3 of Column (a), and is revising the parenthetical on the last line in instruction 3, to read, ''(*i.e.*, fixed asset method or inventory method).''

*Investments in Subsidiary Companies (Account 123.1)—Page 224*

After the word ''Total'' on line 40, the Commission is adding the phrase ''Cost of Account 123.1 $_____'' to Column (a), and the word ''Total'' to Column (c).

*Other Regulatory Assets (Account 182.3)—Page 232*

The title of Column (d) is revised to ''Account Charged.''

*Miscellaneous Deferred Debits (Account 186)—Page 233*

On line 39, the Commission is adding shading to Columns (c), (d), and (e).

IV. Form No. 8

All natural gas companies operating an underground natural gas storage field have been required to file with the Commission, under section 260.11, a monthly report of its storage activities—the Form No. 8, ''Underground Gas Storage Report.'' In the NOPR, the Commission stated the following, with respect to both section 260.11 and section 260.4 (prescribing the Form No. 14, ''Annual Report for Importers and Exporters of Natural Gas''):

''The Commission is not proposing any substantive changes to these sections in this NOPR. However, the Commission is seeking comments on whether the collection of the information contained in these forms by other governmental or private sources is

[19] These Appendices are not being published in the Federal Register, but are available from the Commission's Public Reference Room.

currently adequate, making the collection of the same information in these Commission forms unnecessary[20]

The Commission received comments indicating that essentially the same storage information is collected by the Department of Energy (DOE) in the more comprehensive Form EIA–191, ''Underground Gas Storage Report.'' In the final rule, the Commission determined that the data from Form EIA–191 could be used to meet the Commission's requirements for storage data in lieu of the Form No. 8 information, and therefore eliminated the requirement to file Form No. 8. The Commission held that elimination of this form was consistent with the overall objective of the rulemaking proceeding to eliminate duplicative reporting requirements.

Louis Dreyfus has filed a petition for reconsideration of the Commission's elimination of the Form No. 8. Louis Dreyfus maintains that the ready availability of the storage-related information reported on Form No. 8 is essential to the continual maturation of the primary and secondary gas transmission and storage markets and to improved natural gas commodity price discovery. Louis Dreyfus argues that the Commission erred in eliminating the Form No. 8 both on substantive grounds, asserting that there is no adequate alternative source from which to obtain the storage capacity and inventory data in the Form No. 8, and on procedural grounds, asserting that the Commission failed to provide notice that it might eliminate the form.

*A. Necessity of Form No. 8*

Louis Dreyfus argues that the Form EIA–191 is not an exact duplicate of, or adequate substitute for, the FERC Form No. 8, and that the two forms differ radically in their usefulness to the public and as sources of information. Louis Dreyfus states that the information filed in Form EIA–191 is confidential and is never made available to the public on a company-by-company basis, while the company-by-company information contained in Form No. 8 is made public within a few weeks of its submission. It claims that only after a delay is aggregated Form EIA–191 data made available to the public, and that such aggregated data is insufficient to meet its needs as a natural gas marketer.[21]

Louis Dreyfus maintains that without timely access to the information reported in Form No. 8, market participants will be hampered in their efforts to compete fairly in natural gas markets. It argues that marketers, particularly those not affiliated with storage-owning pipelines, must be able to evaluate the state of storage capacity and storage balances in pricing their products. It claims that marketers lacking the data formerly collected and made publicly available through Form 8 will be at a disadvantage to marketers that can gain access to storage-related information.Louis Dreyfus also argues that any efforts by DOE to have the confidentiality requirements of Form EIA–191 removed, which the Commission endorsed in Order No. 581, are unlikely to succeed. In its comments to the NOPR, DOE stated that the opposition to having the confidentiality requirements lifted that was voiced when DOE attempted to do so in 1993, may have decreased with the implementation of Order No. 636. However, Louis Dreyfus argues that that opposition was based on the position that Order No. 636 and increased competition were the precise reasons why data on storage field performance by reservoir must not be made public.

Most of the reporting requirements under review in this rule exist in large part to enable the Commission to carry out its regulatory mission. They are intended to provide the Commission with the information it needs to conduct its regulatory review activities. Accordingly, one of the Commission's main goals in this rulemaking proceeding has been to eliminate filing requirements that may be unnecessary to meet the Commission's regulatory responsibilities, either because they are duplicative, or outdated, or because of other reasons. In keeping with this goal, the Commission determined in Order No. 581 that Form No. 8 and Form EIA–191 are similar enough that it is unnecessary for both DOE and the Commission to require the reporting of the information contained in those forms. The Commission further found that it could eliminate Form No. 8 and use the data collected in Form EIA–191 to meet its regulatory needs.

Moreover, the Energy Information Administration (EIA), within DOE, is subject to a statutory obligation to collect and publish energy information and statistics.[22] The information that is collected by the EIA must be ''promptly provide[d]'' to other offices within DOE when requested.[23] Thus, the Commission is confident that it will be able to readily obtain the storage data in Form EIA–191 when needed, and therefore, that replacing the Form No. 8 data collection with access to storage data through the Form EIA–191 will be adequate to meet the Commission's needs.

With respect to Louis Dreyfus' needs, Louis Dreyfus complains that the Form EIA–191 data is insufficient for its purposes because the EIA only makes publicly available aggregated storage data from the Form EIA–191 due to the confidentiality restrictions, and because such data is not company-specific. However, the EIA is under an obligation, upon request to ''promptly [make] available to the public in a form and manner easily adaptable for public use'' the information that it collects.[24] Louis Dreyfus is free to pursue any changes to the EIA's publication of the EIA–191 data with the EIA.

*B. Adequacy of Notice Provided*

Louis Dreyfus asks that the Commission exercise its discretion to reconsider the elimination of Form No. 8 in light of the alleged lack of notice

[20] IV FERC Stats. & Regs. ¶ 32,512 at 33,017.

[21] The Form No. 8 collects monthly pipeline storage data such as injections, withdrawals, and balances. This data in the Form No. 8 is reported on a company-by-company basis, aggregating all storage fields operated by a company. Reservoir capacity and ownership is reported separately by storage field. The Form EIA–191 collects monthly data on the location and operations of all active underground natural gas storage fields, such as injections, withdrawals, base gas, working gas, and peak day withdrawals. It also collects annual data on the capacity, type of facility, maximum deliverability, and pipelines to which the field is connected. Thus, the Form EIA–191 is more comprehensive, and collects the data by reservoir. However, the Form EIA–191 is subject to certain confidentiality requirements, and therefore is not public information. DOE does, though, aggregate the Form EIA–191 data by geographical jurisdiction, and makes that aggregated data available publicly.

[22] Section 205(a)(2) of the Department of Energy Organization Act provides that the Administrator of EIA shall be responsible for carrying out a central comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information which is relevant to energy resource reserves, energy production, demand, and technology, and related economic and statistical information, or which is relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

42 U.S.C.A. § 7135(a)(2) (1995).

[23] Section 205(f) states: The Administrator shall, upon request, promptly provide any information or analysis in his possession pursuant to this section to any other administration, commission, or office within the Department which such administration, commission or office determines relates to the functions of such administration, commission, or office.

42 U.S.C.A. § 7135(f) (1995).

[24] Section 205(g) of the Department of Energy Organization Act provides, in pertinent part:

''Information collected by the Energy Information Administration shall be cataloged and, upon request, any such information shall be promptly made available to the public in a form and manner easily adaptable for public use, except that this subsection shall not require disclosure of matters exempted from mandatory disclosure by section 552(b) of Title 5, United States Code.

42 U.S.C.A. § 7135(g) (1995).

afforded to it. Louis Dreyfus states that the Commission never suggested in the NOPR that it might eliminate the Form No. 8 filing requirement, but rather ''reassured potentially interested parties that the Form No. 8 reporting requirements were 'not on the table' for elimination.'' [25] Louis Dreyfus argues that the Commission's failure to provide any notice of the possibility that it could wholly eliminate the Form No. 8 reporting requirement, or to provide an adequate comment period for all interested parties to express their concerns about such proposal, violates the provisions of Section 553 of the Administrative Procedure Act (APA),[26] and applicable case law. As a remedy for Order No. 581's alleged legal error in eliminating the Form No. 8 without adequate notice, Louis Dreyfus argues that the Commission must reinstate the Form No. 8 reporting requirements, or in the alternative, reopen the matter by issuing a supplemental notice of proposed rulemaking that proposes the elimination of Form No. 8 and invites comments thereon.

The Commission denies Louis Dreyfus' request for reconsideration. The primary purpose of the notice requirement under Section 553(b) of the APA is to provide an opportunity for the public to participate in the rulemaking process through a commenting procedure. The purpose of section 553 of the APA has been met by the notice given in the NOPR with respect to the Form No. 8. While the Commission did not explicitly propose to eliminate the Form No. 8, the notice provided was adequate under the APA to justify elimination because the Commission expressly invited parties to comment on whether the collection of the Form No. 8 information is unnecessary. In so doing, the notice raised the issue of the necessity and continuing existence of the Form No. 8, and gave interested parties an opportunity to comment on that issue. Given the goal of the rulemaking proceeding to simplify and streamline its regulations to reduce the reporting burden, the reasonable implication from the Commission's invitation for comments was that if commenters advised the Commission that the collection of storage information in the Form No. 8 was unnecessary because the collection of the same information by other entities was adequate, the Commission would eliminate the Form No. 8. Thus, the notice did indeed raise the prospect of a potential elimination of the Form No. 8.

The notice with respect to the Form 8 was also adequate under applicable case law. Louis Dreyfus argues that courts have found notice of an adopted change to be inadequate in cases such as this one, where ''there were major substantive differences between the proposed rule and the rule adopted.'' [27] However, substantive differences between a proposed and final rule do not always invalidate the final rule for lack of notice. The standard generally invoked by the courts with respect to the sufficiency of notice, where the final rule differs from the proposed rule, is that if the rule finally adopted is a ''logical outgrowth'' of, or is ''in character with,'' the proposed rule, the rulemaking proceeding, or the comments received, a second notice and comment period is unnecessary, and the final rule will not be invalidated. [28] However, ''if the final rule deviates too sharply from the proposal, affected parties will be deprived of notice and an opportunity to respond to the proposal.'' [29]

In this case, the elimination of Form No. 8 as an unnecessary reporting requirement is a ''logical outgrowth'' of, and ''in character with'' the nature of the proposed rule, which was designed to simplify and streamline the Commission's reporting requirements in an effort to reduce the reporting burden, as well as with the comments received. In the NOPR, the Commission proposed to eliminate numerous unnecessary reporting requirements because they were ''outdated or nonessential in light of current regulation, or [were] duplicative of other reporting requirements.'' [30] Thus, the Commission's action taken in eliminating the Form No. 8 fell within the general rubric, or ''original scheme'' of the NOPR, and Louis Dreyfus should have anticipated that elimination of the Form No. 8 was possible.

Moreover, in determining whether a final rule is a ''logical outgrowth'' of a proposed rule, ''the key focus is on whether the purposes of notice and comment have been adequately served.'' [31] In this case, parties were given an adequate opportunity to comment on the Form No. 8, specifically on its relationship to other sources of storage information, and its necessity. Five parties did, in fact, comment in favor of the elimination of the Form No. 8 reporting requirement, indicating that they understood what was being proposed. Louis Dreyfus had the same opportunity to comment on the retention of the Form No. 8, but chose to ignore the Commission's request.

Louis Dreyfus claims that it relied on the Commission's statement that it was ''not proposing any substantive changes to [the Form No. 8] in this NOPR.'' It claims that such reliance is the reason it failed to comment prior to the final rule, and the reason that it was unaware of the Commission's ''surprise repeal'' of the Form No. 8 in time to file a timely rehearing request. [32]

That statement in the NOPR, taken alone, would have indicated to the public that no substantive changes would appear in the final rule. However, read together with the NOPR's invitation for comments on whether the Form No. 8 might be unnecessary, the statement put the public on notice that the Commission was contemplating eliminating the form; the solicitation for comments following the statement conveyed to the public that the Commission did not yet have enough information upon which to propose the elimination of the form, but that it

[25] Petition for Reconsideration at 5.

[26] Section 553(b) of the APA requires that an agency's notice of proposed rulemaking provide ''either the terms or substance of the proposed rule or a description of the subjects and issues involved.'' 5 U.S.C. § 553(b)(3) (1994).

[27] Chrysler Corporation v. Dept. of Transportation, 515 F.2d 1053, 1061 (6th Cir. 1975). Louis Dreyfus cites other cases, as well, stressing the importance of specificity in agency notice. *See* Petition for Reconsideration at 4–5.

[28] Shell Oil Company v. EPA, 950 F.2d 741, 750–51 (D.C. Cir. 1991) (citations omitted) (''An agency, of course, may promulgate final rules that differ from the proposed regulations. To avoid 'the absurdity that * * * the agency can learn from the comments on its proposals only at the peril of starting a new procedural round of commentary,'' we have held that final rules need only be a ''logical outgrowth'' of the proposed regulations.''); Rybachek v. U.S. EPA, 904 F.2d 1276, 1287–88 (9th Cir. 1990) (''[T]he fact that a final rule varies from a proposal, even substantially, does not automatically void the regulations. Rather, we must determine whether the * * * final rule was in character with the original proposal and a logical outgrowth of the notice and comments received.''); City of Stoughton, Wisconsin v. U.S. EPA, 858 F.2d 747, 753 (D.C. Cir. 1988) (''[A]n agency may promulgate a final rule that differs from its proposed rule without allowing further comment if the relevant changes are a 'logical outgrowth'' of the proposed rule and the notice and comments upon it.''); Natural Resources Defense Council, Inc. v. U.S. EPA, 824 F.2d 1258, 1283 (1st Cir. 1987) (citations omitted) (''An agency can make even substantial changes from the proposed version, as long as the final changes are 'in character with the original scheme' and a 'logical outgrowth' of the notice and comment.'').

[29] Small Refiner Lead Phase-Down Task Force v. U.S. EPA, 705 F.2d 506, 547 (D.C. Cir. 1983).

[30] IV Stats. & Regs. ¶ 32,512 at 32,996.

[31] Fertilizer Institute v. U.S. EPA, 935 F.2d 1303, 1311 (D.C. Cir. 1991) (citations omitted) (''This means that a final rule will be deemed to be the logical outgrowth of a proposed rule if a new round of notice and comment would not provide commenters with 'their first occasion to offer new and difference criticisms which the agency might find convincing.' ''); *see* Small Refiner Lead Phase-Down Task Force v. U.S. EPA, 705 F.2d at 547.

[32] Petition for Reconsideration at 8. Louis Dreyfus states that it learned of the elimination of the Form No. 8 from reading the trade press.

simply needed comments to fully and carefully consider the issue.

The Commission finds that reinstatement of the Form No. 8 on procedural grounds is unwarranted. Similarly, Louis Dreyfus' request in the alternative for reconsideration of the Form No. 8 issue through additional notice and comment procedures is denied. The Commission has already reconsidered the issue on the merits, *supra*, based on Louis Dreyfus' petition for reconsideration, and has determined that the Form No. 8 will not be reinstated.

V. Discount Rate Report

*A. Disclosure of Commercially Sensitive Information*

In their comments to the NOPR, ANR/CIG objected to the public disclosure of the customer-specific data that was included in the proposed discount report. The discount report that was proposed in section 284.7(c)(6) represented a combination of the requirements contained in the existing discount reporting and maintenance provisions in section 284.7(d)(5)(iv) and 250.16(d), and thus, required expanded public reporting of discount information. The proposed discount report included: (1) The shipper's contract number (for all discounts on firm transportation); (2) any affiliate role in the transaction; (3) the quantity of gas delivered during the billing period at the discounted rate; and (4) the zone of delivery (for interruptible). ANR/CIG argued that the disclosure of much of the information in the discount report would cause competitive harm to both pipelines and their customers. Therefore, ANR/CIG sought the elimination of the discount report, or at a minimum, the deletion of the contract number, affiliate's role, quantities delivered, and delivery zone.

The Commission heard the concerns of ANR/CIG and other commenters regarding the release of sensitive commercial information, and consequently, abandoned its proposal for an expanded discount reporting requirement under section 284.7. Thus, the Commission eliminated many of the proposed data elements from the discount report, and limited the information required to be filed to the discount data that was currently required to be filed under existing section 284.7(d)(5)(iv). [33] However, on rehearing, ANR/CIG request that the Commission reconsider its decision to require disclosure of the information that was retained; essentially, ANR/CIG continue to seek elimination of the requirement that pipelines file discount rate reports.

By retaining the existing discount rate report requirement, the Commission has already met ANR/CIG's original, alternative request that the contract number, affiliate's role, quantities delivered, and delivery zone be eliminated from the discount report. The Commission, however, will not go one step further and eliminate entirely the discount rate report.

The purpose of the discount rate report is to ensure that discounts are offered on a nondiscriminatory basis. The public disclosure of the discount rate information is a critical element of the requirement to produce the data; it enables the discount report to achieve the purposes for which it was designed. Public reporting permits the Commission, as well as other interested parties, to maintain a vigil against discriminatory pricing. Making it more difficult to access this information will diminish the ability of the Commission and the public to discover problem deals. This concept was supported by the United States Court of Appeals for the D.C. Circuit when it condoned rate discounting:

> The reporting system will enable the Commission to monitor behavior and to act promptly when it or another party detects behavior arguably falling under the bans of [sections] 4 and 5. [34]

*B. Customer Codes*

At a minimum, if the Commission continues to require the filing of a discount rate report, ANR/CIG request that in all instances where customer-specific information is sought, the Commission permit pipelines, at their option, to use a customer code to identify customers. ANR/CIG state that each customer would be apprised of its customer code, and the code would be used consistently in all filings where customer information is required. ANR/CIG argue that if the need arises to identify any customer in any proceeding, that information could be sought in discovery, and such need evaluated on a case-by-case basis. Thus, ANR/CIG support the use of customer codes, rather than shipper names. For example, ANR/CIG assert that the provision of customer-specific information in the discount report, identified by customer code, with an identification of which codes represent affiliates of the pipeline, would be equally useful as a discount report containing the full name of the shipper.

The Commission will not permit the use of customer codes in place of the full legal name of the shipper in the discount rate report. As noted above, the key purpose of the discount rate report is to enable shippers to determine whether a pipeline has offered a discount to a similarly situated shipper. Since under ANG/CIG's proposal, only the shipper receiving the discount would know its code, other shippers would be unable to determine whether the discount given was to a ''similarly situated'' shipper. In other words, shippers need to know the name of the shipper being given a discount to evaluate if they are similarly situated. Therefore, the substitution of a secret code for the name of the shipper will thwart the purpose of the discount rate report, and the collection of the discount rate data will become useless.

VI. Index of Customers

*A. Receipt Point Data*

In Order No. 581, the Commission required interstate pipelines transporting gas under subparts B and G to establish an Index of Customers through a downloadable electronic file. Under new section 284.106(c), on the first day of each calendar quarter, the electronic Index of Customers must be posted on the pipeline's electronic bulletin board (EBB), and filed with the Commission in electronic form. A paper copy of the Index is not required to be filed.

The Index of Customers, as finally adopted by Order No. 581, contains for all firm customers under contract as of the first day of the calendar quarter, the full legal name of the shipper, the rate schedule number for which service is contracted, the contract effective and expiration dates, and the maximum daily contract quantities. This is a more limited Index of Customers than the Index of Customers that was proposed in the NOPR. The proposed Index had included a number of additional data elements, including the receipt and delivery points associated with the shippers' maximum daily quantities (MDQs).[35]

However, in light of the primary goal of the rulemaking proceeding to eliminate unnecessary regulations, and in response to comments that much of the proposed information was commercially sensitive, and that its disclosure would be harmful and

[33] The discount rate report adopted in new section 284.7(c)(6) contains the name of the shipper, the corporate affiliation between the shipper and the transporting pipeline, the maximum rate or fee, and the rate or fee actually charge during the billing period.

[34] Associated Gas Distributors v. FERC, 824 F.2d 981, 1009. (D.C. Cir. 1987).

[35] IV Stats. & Regs. ¶ 32,512 at 33,039.

burdensome, the Commission reconsidered the regulatory need for the information in the proposed Index. The Commission found that many items, such as the receipt and delivery points, extended beyond that which the Commission needs to receive from all pipelines on a regular basis to regulate the natural gas industry today. Thus, in the final rule, the Commission eliminated such items, reducing the information contained in the proposed Index of Customers to only that information absolutely necessary for the Commission's regulatory purposes.

On rehearing, the Registry argues that capacity information at receipt and delivery points must be included in the Index of Customers because it is crucial to the development and functioning of the capacity market. The Registry states that point rights define the location, nature, and extent of capacity rights, and are the only way to determine segment rights. It argues that knowing the quantity of rights in a contract alone is useful neither to shippers, nor to regulators. The Registry argues that the Commission's deletion of point rights information from the Index of Customers will ensure that the capacity release market will function improperly, and that in taking such action, the Commission has abdicated its responsibility to protect the public interest.

The Registry analogizes the operation of the capacity release market without disclosure of point rights to the operation of the securities market without disclosure of the quantity of stocks or bonds available in each class, or disclosure of their maturity, rate, and redemption/conversion terms. The Registry uses this analogy to argue that absent access to point information, the capacity release market will fail, since the securities market failed due to a lack of confidence, prior to securities registration.

In a nutshell, the Registry explains that if users cannot identify the quantity of rights that they own to move gas into and out of a point relative to the quantity of rights others own to move gas into and out of the pipeline at the same and other locations, shippers will not know the value of their capacity and will discount the value they ascribe to owning the pipeline's capacity. In other words, without the availability of point quantity information, there is no method for market participants to monitor the quantity of rights sold or available for sale, or to measure the relative amount of rights held in relation to the total of rights. The Registry asserts that this lack of knowledge of the true value of capacity in the capacity release market will lead to a lack of confidence in the market and in the real value of capacity rights.

According to the Registry, a lack of confidence in the capacity market will lead to an avoidance of long-term commitments, which in turn, will result in an unhealthy gas market and market failure. The Registry argues that a healthy gas business is in the public interest, and that it is the Commission's fundamental role and responsibility to provide confidence in, and contribute to, a healthy, functioning natural gas market, and to thereby protect consumers.

Finally, the Registry argues that receipt and delivery point information is not overly burdensome or needless; it argues point data is essential, otherwise the market will fail, and heavy-handed regulation will return. The Registry believes that this information is most likely currently contained in one or more computerized databases and/or control systems operating at the pipelines, since pipelines need this information to determine releases and valid nominations for the flow of gas. According to the Registry, the only tool necessary to ''publish'' this information would be an electronic application to extract the information from the computerized system it is contained in, and to place it into the defined format for download. Since this application has to be developed anyway to supply the rest of the information contained in the Index of Customers, argues the Registry, the marginal cost to extract and include point level information in the application is far less than the benefits to the natural gas market of having the information available.

In the final rule, the Commission found that it was unpersuaded that it should require pipelines to maintain a comprehensive list of capacity rights by receipt and delivery points to aid the secondary capacity market, or to assist third-party-run exchanges and market center developers. The Commission stated that it was not clear what practical effect providing the proposed receipt and delivery point information would have on the secondary market. The Commission remains unpersuaded that inclusion of capacity information by receipt and delivery points in the Index of Customers is essential to the continued viability of the capacity market.

One of the goals of this rulemaking proceeding is to simplify and streamline the Commission's reporting requirements, and to reduce the reporting burden on pipelines. For the Commission to add to the reporting burden by including receipt and delivery point data in the Index of Customers, a conclusive showing would need to be made that a problem in the secondary market exists, and that the inclusion of the point information would solve the problem. The Registry has not made such a showing in its request for rehearing. Instead, the Registry has presented a general claim that the market will fail to function properly, or will collapse completely, without the availability of the information.

Receipt and delivery point information has never before been available in an electronic index. At best, the information was embedded in the initial and subsequent reports that pipelines were required to file, and thus, not easily accessible. Without the ready availability of receipt and delivery point information, the secondary capacity market was created, and has grown to a healthy market. Since the market has expanded to what it is today, without market participants' access to capacity information at receipt and delivery points throughout its infancy and development, it is logical to assume that a continued lack of access to this information will not cause it to fail or collapse.

The Registry rests its belief that the market is destined to fail on the lack of confidence in the market and of knowledge of the true value of capacity that will be caused by a lack of access to receipt and delivery point information. It states that without capacity information by point, there is no method for market participants to monitor the quantity of rights sold or available for sale.

However, market participants may determine the quantity of rights sold, at particular receipt and delivery points, through the capacity release data sets that pipelines are required to make publicly available through EDI transmission and information posted on each pipeline's EBB. Second, even if the contract quantity by receipt and delivery point were posted in the Index of Customers, there is no way of knowing what proportion of the posted capacity is available for release. In any given time frame, some capacity is available for release, some is used by the owner, and some is idle.

Finally, the Commission is not abdicating its responsibility to the natural gas market and to the public by failing to require that this information be included in the Index of Customers for the purpose of aiding the secondary market. The Commission has all indications that the market can function adequately without the electronic posting of this information in an Index

of Customers. Moreover, we have determined that requiring this information to be included in a quarterly Index of Customers is unnecessary for the Commission to fulfill its regulatory oversight responsibilities. We find that there is enough information included in the capacity release data sets for the Commission to monitor the secondary market. Accordingly, the Commission will not require that receipt and delivery point information be included in the Index of Customers. Rehearing is denied.

*B. Customer Codes*

As with the discount reports, ANR/CIG are concerned that the dissemination of the information in the Index of Customers could cause competitive harm. Therefore, ANR/CIG also seek the use of customer codes instead of customer names for the customer-specific information required in the Index of Customers.

The Commission will not permit the use of customer codes in the Index of Customers. ANR/CIG has proposed the use of customer codes to ensure that the information required by the Index of Customers is kept confidential. However, this information, including the shipper's name, is information that appears in the contract between the pipeline and the shipper, and is the type of information that section 4(c) of the Natural Gas Act (NGA) requires the pipeline to make publicly available. [36]

Furthermore, it has not been demonstrated that the release of a shipper's name, and the other information included in the Index of Customers, would cause competitive harm. First, the data is basic contract information of an identifying nature, and does not include commercially sensitive rate information. Second, the Commission does not presume the existence of competition in the natural gas transportation market, since there is a presumption that a pipeline still retains a substantial degree of market power in the transportation of natural gas, unless proven otherwise. When the claim of confidentiality has been asserted in Commission proceedings, the Commission has required the claim to be supported with specificity, rather than with vague and speculative allegations of competitive harm, [37] since the Commission must ''balance the need for public disclosure against the harm caused by release of the information.'' [38] ANR/CIG's request for rehearing on this issue is denied.

3. Clarification of Quarterly Posting Requirement

Section 284.106(c) provides that each calendar quarter, a pipeline must post on the pipeline's electronic bulletin board (EBB), and file with the Commission in electronic form, an electronic index of firm customers under contract as of the first day of the calendar quarter. The Commission clarifies this provision to require pipelines to post and file its index of customers that are under contract as of the first day of the calendar quarter, on the first *business* day of the calendar quarter. This will conserve the pipelines' personnel resources in the event the first day of the calendar quarter falls on a weekend or a holiday.

VII. Effective Date

The amendments to the Commission's regulations adopted in this order on rehearing will become effective April 5, 1996, except for the changes to the Form Nos. 2 and 2–A, which will be effective January 1, 1996. In the final rule, the Commission adopted an effective date of January 1, 1996 for the changes to Form Nos. 2, 2–A, and 11 to afford the pipelines adequate opportunity to adapt to the requirements of the final rule, and to make the necessary modifications to their recordkeeping systems. Adopting the January 1, 1996 effective date means that data for the report year 1995 will be submitted in the format for Form Nos. 2 and 2–A in effect prior to January 1, 1996. Similarly, for report months November 1995 and December 1995, pipelines will report Form No. 11 data in the format in effect prior to January 1, 1996. This is true even though the filing dates for the forms fall subsequent to January 1, 1996.

List of Subjects

*18 CFR Part 201*

Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

*18 CFR Part 284*

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,
*Secretary.*

In consideration of the foregoing, the Commission denies rehearing in part, grants rehearing in part, clarifies Order No. 581 as described above, and amends Parts 201 and 284, Chapter I, Title 18, *Code of Federal Regulations,* as set forth below.

## PART 201–UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT

1. The authority citation for Part 201 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352, 7651–7651o.

2. In Part 201, Balance Sheet Accounts, Special Instructions to Accounts 117.1, 117.2, and 117.3, a new subparagraph is added after the last subparagraph in paragraph (a), and paragraph (b) is revised to read as follows:

Balance Sheet Accounts

* * * * *

Special Instructions to Accounts 117.1, 117.2 and 117.3

* * * * *

(a) *Inventory Method*— * * *

Adjustments for inventory losses related to gas held in underground reservoirs due to cumulative inaccuracies of gas measurements, or from other causes, must be charged to Account 823, Gas Losses. Losses of system gas not associated with underground reservoirs must be charged to Account 813, Other Gas Supply Expenses.

(b) *Fixed Asset Method*— * * *

When replacement of the gas is made, the amount carried in Account 117.4 for such volumes must be cleared with a contra entry to Account 808.2, Gas Delivered to Storage—Credit. Any difference between the utility's cost of replacement gas volumes and the amount cleared from Account 117.4 must be recognized as a gain in Account 495, Other gas revenues, or as a loss in Account 813, Other gas supply expenses, with contra entries to Account 808.2.

Adjustments for inventory losses related to gas held in underground reservoirs due to cumulative inaccuracies of gas measurements, or from other causes, must be charged to Account 823, Gas Losses. Losses of system gas not associated with underground reservoirs must be charged to Account 813, Other Gas Supply Expenses. Gas losses must be priced at the market price of gas available to the utility in the month the loss is recognized.

[36] 15 U.S.C. § 717c(c) (1994).

[37] See Trunkline Gas Company, 49 FERC ¶ 61,227 (1989).

[38] ANR Pipeline Company, 65 FERC ¶ 61,280 at 62,305 (1993).

Gas owned by the utility and injected into its system will be deemed to satisfy any encroachment on system gas first before any other use.

3. In part 201, Balance Sheet Accounts, Account 117.4, the word ''revolve'' is removed, and the word ''revalue'' is added in its place.

4. In Part 201, Operation and Maintenance Expense Accounts, Account 805, a new paragraph D is added to read as follows:

Operation and Maintenance Expense Accounts

* * * * *

805 Other gas purchases.

* * * * *

D. The value of gas received from shippers under tariff allowances that is not consumed in operations nor returnable to customers through rate tracking mechanisms must be credited to Account 495, Other Gas Revenues and charged to this account. Utilities must simultaneously charge Accounts 117.3 or 117.4 as appropriate, with contra credits to Account 808.2, Gas Delivered to Storage—Credit. Records are to be maintained and readily available that include the name of shipper, quantity of gas, and the publication and price used to value shipper-supplied gas.

* * * * *

5. In Part 201, Operation and Maintenance Expense Accounts, Account 806 is revised to read as follows:

Operation and Maintenance Expense Accounts

* * * * *

806 Exchange gas.

This account includes debits or credits for the cost of gas in unbalanced transactions where gas is received from or delivered to another party in exchange, load balancing, or no-notice transportation transactions. The costs are to be determined consistent with the accounting method adopted by the utility for its system gas. If the utility has adopted the inventory method of accounting, the amounts to be recorded in Account 806 must be based on the historical cost of the gas. If the utility has adopted the fixed asset method of accounting, the amounts to be recorded in Account 806 must be based on the current market price of gas at the time gas is tendered for transportation. (See the Special Instructions to Accounts 117.1, 117.2, and 117.3 for a description of the inventory and fixed asset methods and the definition of the current market price of gas.) Contra entries to those in this account are to be made to account 174, Miscellaneous Current and Accrued Assets, for gas receivable and to account 242, Miscellaneous Current and Accrued Liabilities, for gas deliverable under such transactions. Such entries must be reversed and appropriate contra entries made to this account when gas is received or delivered in satisfaction of the amounts receivable or deliverable.

* * * * *

6. In part 201, Operation and Maintenance Expense Accounts, paragraph A of Accounts 808.1 and 808.2 are revised to read as follows:

Operation and Maintenance Expense Accounts

* * * * *

808.1 Gas withdrawn from storage-Debit.

A. This account shall include debits for the cost of gas withdrawn from storage during the year. Contra credits for entries to this account shall be made to accounts 117.1 through 117.4, or account 164.2, Liquefied Natural Gas Stored, as appropriate. (See the Special Instructions to accounts 117.1, 117.2, and 117.3).

* * * * *

808.2 Gas delivered to storage-Credit.

A. This account shall include credits for the cost of gas delivered to storage during the year. Contra debits for entries to this account shall be made to accounts 117.1 through 117.4, or account 164.2, Liquefied Natural Gas Stored, as appropriate. (See the Special Instructions to accounts 117.1, 117.2, and 117.3).

* * * * *

7. In Part 201, Operation and Maintenance Expense Accounts, Account 823 is revised to read as follows:

823 Gas losses.

This account shall include the amounts of inventory adjustments representing the cost of gas lost or unaccounted for in underground storage operations due to cumulative inaccuracies of gas measurements or other causes. (See the Special Instructions to Accounts 117.1, 117.2 and 117.3). If however, any adjustment is substantial, the utility may, with approval of the Commission, amortize the amount of the adjustment to this account over future operating periods.

## PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

8. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7201–7352; 43 U.S.C. 1331–1356.

* * * * *

### Subpart B—Certain Transportation by Interstate Pipelines

9. In § 284.106, the first sentence of paragraph (c)(1) is revised to read as follows:

**§ 284.106 Reporting requirements.**

* * * * *

(c) *Index of customers.* (1) On the first business day of each calendar quarter, subsequent to the initial implementation of this provision, an interstate pipeline must provide for electronic dissemination of an index of all its firm transportation and storage customers under contract as of the first day of the calendar quarter.* * *

* * * * *

[FR Doc. 96–5164 Filed 3–5–96; 8:45 am]

BILLING CODE 6717–01–P

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## 18 CFR Part 284

**[Docket No. RM95–4–000]**

## Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies

February 29, 1996.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule; Notice Adopting Electronic Filing Specifications for the Index of Customers and Discount Transportation Rate Report.

**SUMMARY:** On September 28, 1995, the Commission issued a final rule in this proceeding requiring pipelines to file electronically, a quarterly Index of Customers through a downloadable file, and the discount transportation rate reports previously filed only on paper. The Commission is adopting specifications and instructions for the electronic filing of these reports. These filing specifications are entitled ''Instruction Manual for Electronic Filing of the Index of Customers,'' and ''Instruction Manual for Electronic Filing of the Discount Transportation Rate Report,'' respectively.

**DATES:** Pipelines must implement the data sets for the Index of Customers starting on April 1, 1996, and for the discount transportation rate reports, starting with the first filing after April 1, 1996.

**ADDRESSES:** Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426.