

Turbofan Engine Manual, and the air carrier's continuous airworthiness program. Alternatively, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations (14 CFR 121.380(a)(2)(vi)). All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

**Note 3:** The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the PW JT8D-200 Turbofan Engine Manual.

#### Effective Date

(f) This amendment becomes effective on December 30, 2002.

Issued in Burlington, Massachusetts, on June 18, 2002.

**Jay J. Pardee,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 284

[Docket No. RM96-1-021; Order No. 587-P]

#### Standards for Business Practices of Interstate Natural Gas Pipelines

June 26, 2002.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule; order denying rehearing.

**SUMMARY:** This order denies rehearing of the final rule issued on March 11, 2002 (67 FR 11906, March 18, 2002) requiring that interstate natural gas pipelines permit releasing shippers, as a condition of their capacity release, to recall released capacity and renominate that recalled capacity at each nomination opportunity. In particular, the order denies rehearing of the interim schedule

for recalls implemented by the Commission in the final rule.

**EFFECTIVE DATE:** The regulations became effective April 17, 2002.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

*Before Commissioners:* Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

#### Order Denying Rehearing

1. In Order No. 587-N,<sup>1</sup> the Federal Energy Regulatory Commission (Commission) amended § 284.12(b)(1)(ii) of its open access regulations to require that interstate pipelines permit releasing shippers to recall released capacity and renominate that recalled capacity at each nomination opportunity. The Commission established a two-phase implementation schedule: under the first phase, the Commission established an interim schedule under which recalls would be permitted at two (of the four) nomination cycles and for any unscheduled capacity; in the second phase, the Commission provided the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB) with six months in which to develop standards governing partial day or flowing day recalls.

2. Duke Energy Trading and Marketing LLC and Dynegy Marketing and Trade (DETM) seek rehearing of the interim schedule adopted by the Commission and seek clarification regarding the determination of when capacity is unscheduled for the purposes of allowing recalls of capacity. For the reasons discussed below, the Commission denies the request for rehearing and provides clarification regarding when capacity is deemed unscheduled for the purposes of allowing a recall.

<sup>1</sup> Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587-N, 67 FR 11906 (Mar. 18, 2002), III FERC Stats. & Regs. Regulations Preambles, ¶31,125 (Mar. 11, 2002).

## Background

3. In Order No. 636, the Commission adopted regulations permitting shippers (releasing shippers) to release their capacity to other shippers (replacement shippers).<sup>2</sup> Under these regulations, releasing shippers were permitted to "release their capacity in whole or in part, on a permanent or short-term basis, without restriction on the terms and conditions of the release."<sup>3</sup> The regulation permits releasing shippers to impose terms for a release transaction under which the releasing shipper reserves the right to recall that capacity to use the capacity itself.<sup>4</sup>

4. Beginning with Order No. 587,<sup>5</sup> the Commission has incorporated by reference consensus standards approved by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB) (formerly the Gas Industry Standards Board) designed to standardize business practices and communication protocols of interstate pipelines in order to create a more integrated and efficient pipeline grid. NAESB is a private, consensus standards developer whose wholesale natural gas standards are developed by representatives from all segments of the natural gas industry. Although the Commission places great reliance on NAESB's development of consensus standards,<sup>6</sup> the Commission has found it necessary to resolve disputes between industry segments when NAESB has been unable to reach consensus on issues concerning Commission policy, so that the standards development process can proceed in line with Commission policies.<sup>7</sup>

5. In 1996, in NAESB's first set of standards, it adopted standards providing that releasing shippers could recall capacity only if they provided notification to the pipeline by 8 a.m.

<sup>2</sup> 18 CFR 284.8 (2001).

<sup>3</sup> 18 CFR 284.8(b).

<sup>4</sup> As an example, a shipper might include a recall condition in the event that temperature drops below a pre-determined level. Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636, 57 FR 13267 (Apr. 16, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991-1996] ¶30,939, at 30,418 (Apr. 8, 1992).

<sup>5</sup> Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), FERC Stats. & Regs. Regulations Preambles [July 1996-December 2000] ¶ 31,038 (Jul. 17, 1996).

<sup>6</sup> Order No. 587, 61 FR at 39057 (Jul. 26, 1996), FERC Stats. & Regs. Regulations Preambles [July 1996-December 2000] ¶ 31,038, at 30,059

<sup>7</sup> Order No. 587-G, 63 FR at 20072 (Apr. 23, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996-December 2000] ¶ 31,062, at 30,668-72 (Apr. 16, 1998) (resolving dispute over bumping of interruptible service by firm service).

CCT<sup>8</sup> and that releasing shippers could not engage in partial or flowing day recalls.<sup>9</sup> At the time NAESB adopted these standards, its standards provided

for one nomination, at 11:30 a.m. CCT for the next gas day and only one intra-day nomination at an indeterminate time. However, since that time, NAESB

expanded its nomination opportunities to permit four nomination opportunities:

	Nomination deadline	Effective Time
Timely Nomination .....	11:30 a.m. ....	9 a.m. next gas day.
Evening Nomination .....	6 p.m. ....	9 a.m. next gas day.
Intra-Day 1 .....	10 a.m. ....	5 p.m. same gas day.
Intra-Day 2 .....	5 p.m. ....	9 p.m. same gas day

NAESB, however, did not amend its capacity release recall standards to take into account this expansion of nomination opportunities, and when the recall issue was raised at NAESB, NAESB was unable to come to consensus on whether to expand releasing shippers' recall opportunities.

6. In Order No. 587-N, the Commission determined that permitting an expansion of recall opportunities to match the enhanced nomination schedule adopted by NAESB was consistent with the original intent of the Commission's capacity release regulations and would foster greater efficiency by providing releasing shippers with the flexibility to structure capacity release transactions that best fit their business needs, providing greater incentives for releasing shippers to release capacity, and fostering greater competition for pipeline capacity by creating parity between scheduling of capacity release transactions and pipeline interruptible service. As a result, the Commission adopted

§ 284.12(b)(1)(ii)(B) of its regulations which requires pipelines to permit releasing shippers, as a condition of a capacity release, to recall released capacity and renominate such recalled capacity at each nomination opportunity according to the notice and bumping provisions applicable to interruptible shippers. Under this regulation, recalls of released capacity will not be permitted to reduce (bump) volumes that are already scheduled for replacement shippers unless the replacement shippers are provided with at least one opportunity to reschedule any bumped volumes.<sup>10</sup> The use of recall rights under this provision is voluntary, and depends on the agreement between the releasing and the replacement shipper as to when recall conditions apply.

7. The Commission adopted a two-phase implementation for this regulation. This two-phase approach was designed to ensure an expeditious implementation of recalls that do not raise operational concerns, while at the

same time providing time for NAESB to further consider standards to address the operational issues raised. Under this schedule, each pipeline is required to make a compliance filing, by May 1, 2002, to be effective July 1, 2002, that will permit shippers to recall scheduled and unscheduled capacity at both the Timely Nomination Cycle and the Evening Nomination Cycle and to recall capacity at any nomination time if the capacity has not been previously scheduled by the replacement shipper. To ease the compliance and review process, the Commission established a standard tariff provision providing a notification schedule for these recalls. Second, the Commission provided NAESB, and the industry, six months in which to develop standards to apply to the operational details involved in allowing partial or flowing day recalls.

8. The interim recall schedule adopted by the Commission is as follows:

Nomination cycle (all times in CCT)	Receipt scheduled volumes (from prior nomination cycle)	Recall notification to pipeline	Pipeline notification to replacement shipper of recall	Nomination to time (same day)
Timely .....	NA .....	8:00 a.m. ....	9:00 a.m. ....	11:30 a.m.
Evening .....	4:30 p.m CCT .....	5:00 p.m. ....	6:00 p.m. ....	6:00 p.m.
Intra-Day 1 .....	same day 10:00 p.m CCT .....	8:00 a.m. ....	9:00 a.m. ....	10 a.m.
Intra-Day 2 .....	prior day 2:00 p.m CCT .....	3:00 p.m. ....	4:00 p.m. ....	5:00 p.m.
	same day			

9. The Commission found that the fundamental precept underlying this schedule is to provide releasing shippers with sufficient time after receipt of scheduled quantities to inform the pipeline of a recall. The

Commission found that releasing shippers, such as LDCs, need to be aware of the scheduled volumes for their systems prior to determining whether they will need to recall capacity. Thus, the advance notification

period is designed to give releasing shippers the time to evaluate the scheduled quantities information before having to submit recall notices.<sup>11</sup>

<sup>8</sup> CCT refers to Central Clock Time, which includes an adjustment for day light savings time. See 18 CFR § 284.12(b)(1)(i), Nominations Related Standards 1.3.1.

<sup>9</sup> A partial or flowing day recall refers to a recall condition that applies only to part of a gas day, rather than the full gas day. Under the NAESB standards, a gas day runs from 9 a.m. central clock time (CCT) on Day 1 to 9 a.m. CCT the next day

(Day 2). 18 CFR 284.12(b)(1)(i). Nominations Related Standards 1.3.1.

<sup>10</sup> Under the regulation, the releasing shipper can recall scheduled capacity at the Evening Nomination Cycle because the replacement shipper has two opportunities to reschedule capacity (the Intra-Day 1 and Intra-Day 2 cycles). Similarly, a replacement shipper whose scheduled capacity is bumped at the Intra-Day 1 cycle has the opportunity to reschedule the bumped capacity at the Intra-Day

2 cycle. Whether a partial day recall of scheduled volumes can be permitted at the Intra-Day 2 cycle depends on whether the notification schedule permits a replacement shipper sufficient time to reschedule its capacity. Order No. 587-N, at P. 37.

<sup>11</sup> For example, under the Timely Nomination cycle, scheduled volumes are provided at 4:30 p.m. Releasing shippers need sufficient time to evaluate this information before determining whether to

10. On April 10, 2002, DETM filed a request for rehearing and clarification. It argues that the Commission's interim schedule for recalls makes it impossible for replacement shippers to acquire and nominate substitute release capacity for the upcoming nomination cycle. It requests that the Commission defer implementation of the interim timeline until NAESB adopts comprehensive guidelines governing partial day recalls. It also requests clarification as to the determination of the amount of a replacement shipper's unscheduled capacity that is subject to recall by the releasing shipper at all nomination cycles.<sup>12</sup>

## Discussion

11. The Commission denies rehearing with respect to the interim schedule and provides clarification as to the determination of the amount of a replacement shipper's unscheduled capacity, subject to recall.

### A. Interim Schedule

12. DETM maintains that the interim schedule developed by the Commission makes it impossible for replacement shippers whose capacity is recalled to renominate that capacity. It asserts, for example, that under Version 1.5 of NAESB's standards, a shipper must post a non-biddable release at 5 p.m. for the Evening Cycle, but that under the Commission's interim schedule for recalls, the replacement shipper is not notified of a recall until 6 p.m. DETM argues that a replacement shipper is unable to arrange for a substitute capacity release transaction in time to submit a nomination for the 6 p.m. Evening Nomination Cycle. DETM maintains that the Commission should

therefore defer implementation of the interim cycle until NAESB crafts comprehensive guidelines governing recalls and the acquisition of released capacity.

13. The Commission denies the request for rehearing. The Commission adopted the interim schedule to provide releasing shippers with enhanced recall rights so that they will be able to use their capacity as flexibly as possible while the longer process of establishing procedures for flowing day recalls is underway. As the Commission found in Order No. 587-N, enhanced recall rights provide a greater incentive for releasing shippers to release capacity (which they otherwise might not release at all) and will create a more vibrant and competitive capacity market, with more released capacity available to compete with pipeline services.<sup>13</sup> The interim schedule is a way to achieve these benefits immediately, while the industry considers standards to provide for flowing day recalls, and the Commission finds no basis to defer implementation of the interim recall schedule until NAESB's deliberations are complete.

14. As DETM notes, the Commission's policy is that a recall cannot reduce (bump) volumes already scheduled for replacement shippers unless the replacement shippers are provided with at least one opportunity to reschedule any bumped volumes.<sup>14</sup> The Commission adopted this policy so that replacement shippers receive protection against loss of scheduled service similar to that interruptible shippers currently receive.<sup>15</sup>

15. The Commission's interim schedule fully achieves that goal. Using DETM's example of a recall for the 6

p.m. Evening Cycle, if a releasing shipper recalls capacity for the Evening cycle, the replacement shipper has two additional opportunities (Intra-Day 1 and Intra-Day 2 cycles) to reschedule any of its scheduled gas that has been bumped. This is the same right that an interruptible shipper has to reschedule gas that is bumped at the Evening cycle.<sup>16</sup>

16. DETM's example incorrectly assumes that, under the Commission's policy, the replacement shipper must have the opportunity to reschedule bumped gas at the same nomination cycle at which the bump notice is received. But the Commission's policy (and the current NAESB standards) do not assure that a bumped shipper will be able to renominate at the same nomination cycle at which the bump has taken place. Interruptible shippers, for example, that are bumped at the Evening Nomination Cycle cannot nominate until the next nomination cycle (Intra-Day 1 Cycle).<sup>17</sup> The interim recall schedule adopted by the Commission, therefore, provides replacement shippers with the same protection against bumping as interruptible shippers have, in accordance with Commission policy.

17. In the alternative, DETM seeks a revision in the Commission's interim schedule. DETM's schedule provides, in its most relevant part, that a releasing shipper would receive scheduled volumes from the pipeline at 4:30 p.m., submit its recall notice at 4:30 p.m., with the pipeline notifying the replacement shipper of the recall at 4:30 p.m., so that the replacement shipper can post a new release at 5 p.m. and nominate under that release at 6 p.m.<sup>18</sup>

Nomination cycle (all times in CCT)	Receipt of scheduled volumes (from prior nomination cycle)	Recall notification to pipeline	Pipeline notification to replacement shipper of recall	Posting pre-arranged releases (version 1.5)	Nomination time (same day)
Evening .....	4:30 p.m. .... same day	4:30 p.m. ....	4:30 p.m. ....	5:00 p.m. ....	6:00 p.m.

recall capacity for the 6 p.m. Evening Nomination cycle.

<sup>12</sup> On April 25, 2002, Keyspan Delivery Companies (Keyspan) filed a motion for leave to file an answer and answer to DETM's rehearing request and an answer to DETM's request for clarification, and Consolidated Edison Company of New York and Orange and Rockland Utilities filed an answer to DETM's request for clarification. Under Commission regulations, answers are not permitted to rehearing requests (Rules 213(a)(2) and 713(d)(1)), and Keyspan's motion is accordingly denied. The answers to the request for clarification are accepted.

<sup>13</sup> Order No. 587-N, P. 27-29.

<sup>14</sup> Order No. 587-N, P. 17. Under this standard, if a replacement shipper fails to nominate under a released capacity contract, then the releasing shipper can recall capacity at any of the nomination times.

<sup>15</sup> Order No. 587-N, P. 30.

<sup>16</sup> See Order No. 587-G, 63 FR at 20078, FERC Stats. & Regs. Regulations Preambles [July 1996-December 2000] ¶ 31,062, at 30,671 (interruptible shippers bumped at 6 p.m. Evening Nomination have two opportunities to renominate); 18 CFR 284.12(a)(1)(i), Nominations Related Standards 1.3.2. (Version 1.5) (interruptible shipper, whose gas has been bumped by a firm shipper's Evening Nomination, is notified of the bump at 9 p.m. and

is able to renominate its gas for the next day at the Intra-Day 1 and Intra-Day 2 cycles).

<sup>17</sup> See note 17, *supra*. Similarly, interruptible shippers bumped at the Intra-Day 1 cycle have the opportunity to renominate at the Intra-Day 2 cycle; replacement shippers bumped by a recall at the Intra-Day 1 cycle will have the same ability to reschedule their gas at the Intra-Day 2 cycle.

<sup>18</sup> While DETM's proposed schedule also addresses recalls and notices of recalls at the Intra-Day 1 and Intra-Day 2 cycles, these provisions are of less importance, because under the Commission's interim schedule, replacement shippers' scheduled volumes cannot be bumped at the Intra-Day 1 and Intra-Day 2 cycles.

18. But DETM's proposed schedule fails to adhere to the fundamental precept adopted by the Commission in establishing its interim schedule: that releasing shippers must be provided with sufficient time after receipt of scheduled quantities to inform the pipeline of a recall.<sup>19</sup> Under DETM's proposal, three actions must occur concurrently: The releasing shipper must receive scheduled quantities from the pipeline at 4:30 pm. CCT; immediately determine whether it needs to recall capacity and notify the pipeline by 4:30 p.m. CCT; and the pipeline, also by 4:30 p.m. CCT, must notify the replacement shipper. The schedule provides the releasing shipper with no opportunity to consider or process the scheduled quantity information provided by the pipeline. Further, DETM's proposed schedule fails to provide the pipelines with any opportunity to process the recall before sending out the notice to the replacement shipper, since, under DETM's schedule, the notification to the replacement shipper must be made simultaneously with the recall notice. Thus, the Commission finds that DETM's proposed schedule is not an adequate substitute for the interim schedule adopted by the Commission.

19. NAESB is considering developing a timeline for partial day recalls. Until NAESB acts, however, the interim schedule adopted by the Commission fairly balances the interests of the releasing and replacement shippers by providing releasing shippers with enhanced recall rights immediately while ensuring that bumped replacement shippers are still provided with an opportunity to reschedule any scheduled capacity that is bumped.

20. Moreover, the Commission finds no reason to defer or amend its interim schedule at this point, because DETM is not bound to accept recall conditions in its capacity release transactions. As the Commission made clear in Order No. 587-N, the Commission's regulation and interim schedule applies only to those situations in which a replacement shipper has agreed to purchase capacity subject to an intra-day recall. The Commission made clear that a releasing shipper's ability to recall capacity during the gas day is prospective only and is based on the terms of the capacity release agreement.<sup>20</sup> Thus, DETM is fully able to protect against intra-day recalls by not purchasing released capacity unless a limitation on recall rights is included in the terms and conditions of the release. For example,

DETM could enter into release contracts under which a releasing shipper is obligated to provide DETM with earlier notice of recalls than the notice provided by the Commission's interim schedule.

#### *B. Determination of Unscheduled Capacity*

21. In Order No. 587-N, the Commission provided that releasing shippers could recall capacity at any of the four nomination cycles if the capacity has not been previously scheduled for the gas day by the replacement shipper. DETM requests clarification that a replacement shipper who has scheduled all or any portion of its acquired capacity during the gas day will be considered to have previously scheduled that capacity even if that capacity is not scheduled and flowing at the precise time the releasing shipper submits its recall notice. DETM maintains that this clarification is necessary because gas markets do not take gas on a predictable even-flow basis. DETM states, for example, that electric generation loads nearly always burn gas for only part of the gas day, and at flow rates exceeding a uniform-hourly flow of  $1/24$  of contract demand. DETM maintains its clarification will better reflect these flexible load profiles.

22. DETM's clarification request and example are not entirely clear, because they do not appear to reflect the way in which the scheduling standards operate. Under the scheduling standards, shippers are required to schedule gas for an entire gas day; they do not schedule gas for specific hourly flows.<sup>21</sup> The scheduled quantity reflects the total quantity of gas the shipper will use that day, regardless of its flow rate. Determinations of flow rate are left to the determination of the interconnected parties, and whether a shipper can exceed a uniform hourly flow depends on the individual pipeline's tariff.<sup>22</sup> Thus, even in the situation posited by DETM, where a market, such as electric generation, may have fluctuating hourly flow requirements, a daily quantity must be scheduled, and the replacement shipper cannot schedule different quantities for specific hours, as implied by DETM's example.

23. Although the predicate for DETM's requested clarification is

unclear, the Commission will provide clarification as to how its unscheduled capacity should be determined based on the daily quantity scheduled. Under the Commission's policy, if a replacement shipper has not scheduled its full contract quantity for a gas day, the releasing shipper can recall and reschedule any portion of the unscheduled capacity at the next intra-day nomination opportunity. To provide a specific example, suppose a replacement shipper has a release contract for 1000 Dth/day of capacity, and has scheduled 500 Dth of that contract at the Evening Nomination Cycle for the next gas day. The releasing shipper can then recall, and renominate, the unscheduled quantity (500 Dth) at the first Intra-Day Nomination Cycle. Since the replacement shipper has not scheduled its released capacity, the replacement shipper is not having scheduled gas bumped by the releasing shipper's recall. In effect, the replacement shipper would be in no different position than an interruptible shipper which has not scheduled capacity for that day. The interruptible shipper cannot count on being able to submit an intra-day nomination to increase its daily scheduled quantity, since its intra-day nomination is lower in priority than that of a firm shipper. By the same token, a replacement shipper that has failed to schedule gas under a release contract should not be able to rely on its ability to submit an intra-day nomination to increase its scheduled quantity. If, however, DETM faces specific situations in which it needs to reserve the right to make an intra-day nomination (when it has not scheduled its full contract quantity), DETM can seek to have such a limitation on recall rights included as a term of the release agreement.<sup>23</sup>

#### *The Commission Orders*

The request for rehearing is denied, and clarification is provided as discussed in the body of the order.

By the Commission.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

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<sup>21</sup> 18 CFR 284.12(a)(1)(i), Nominations Related Standards 1.3.1, 1.3.9 (all nominations including intra-day nominations should be based on a daily quantity; thus an intra-day nominator need not submit an hourly nomination).

<sup>22</sup> 18 CFR 284.12(a)(1)(i), Nominations Related Standards 1.3.9 (the interconnected parties should agree on the hourly flows of the intra-day nomination, if not otherwise addressed in the transporter's contract or tariff).

<sup>19</sup> Order No. 587-N, P. 39.

<sup>20</sup> Order No. 587-N, P. 17 n. 26, P. 61.

<sup>23</sup> See discussion in P. 20, *supra*.