

(b) How would such harmonization affect the costs and benefits of the Guides for consumers and businesses, particularly small businesses?

List of Subjects in 16 CFR Part 254

Advertising, Trade practices.

Authority: 38 Stat. 717, as amended; 15 U.S.C. 41-58.

By direction of the Commission.

Donald S. Clark,

Secretary

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM08-2-000]

Pipeline Posting Requirements Under Section 23 of the Natural Gas Act; Order Requesting Supplemental Comments

Issued July 16, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Requesting Supplemental Comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) seeks supplemental comments regarding potential revisions to the posting requirements adopted in Order No. 720 of the Commission's regulations.

DATES: Comments are due August 31, 2009.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Before Commissioners: Jon Wellinghoff, Chairman; Suedeen G. Kelly, Marc Spitzer, and Philip D. Moeller.

Pipeline Posting Requirements Under Section 23 of the Natural Gas Act; Order Requesting Supplemental Comments

1. The Federal Energy Regulatory Commission (Commission) is seeking supplemental comments in regard to the posting requirements adopted in Order

No. 720 and codified in § 284.14(a) of the Commission's regulations,¹ in response to limited issues raised in requests for rehearing of Order No. 720² and at the staff technical conference held in this docket on March 18, 2009.³ In particular, we seek comment on specific regulatory text relevant to arguments received on rehearing of Order No. 720. Comments should be submitted within 30 days of publication of this order in the **Federal Register**.

I. Background

2. In Order No. 720, the Commission adopted new regulations requiring major non-interstate pipelines to post certain data on publicly-accessible Internet Web sites.⁴ Order No. 720 implemented the Commission's authority under section 23 of the Natural Gas Act (NGA),⁵ as added by the Energy Policy Act of 2005 (EPA 2005).⁶ The order required major non-interstate pipelines, defined as those natural gas pipelines that are not natural gas companies under the NGA and deliver more than 50 million MMBtu per year, to post scheduled flow information and to post information for each receipt or delivery point with a design capacity greater than 15,000 MMBtu per day.⁷

3. While Order No. 720 required major non-interstate pipelines to comply with the new rules within 150 days of the rule's publication,⁸ a subsequent order in this docket extended the compliance deadline for major non-interstate pipelines until 150 days following the issuance of an order on rehearing.⁹ A staff technical conference was held on March 18, 2009, to gather additional information on certain issues raised on rehearing.¹⁰

¹ 18 CFR 284.14(a).

² *Pipeline Posting Requirements under Section 23 of the Natural Gas Act*, Order No. 720, FERC Stats. & Regs. ¶ 31,283 (2008). The Commission is not requesting additional comments regarding 18 CFR 284.14(b) which was also added by Order No. 720.

³ See Notice of Technical Conference, Docket No. RM08-2-000 (issued Feb. 24, 2009).

⁴ Additionally, the Commission adopted regulations requiring interstate pipelines to post information regarding no-notice service. Order No. 720 at P 1. These regulations are in effect and interstate pipelines must be in compliance with this requirement.

⁵ Section 23 of the Natural Gas Act; 15 U.S.C. 71712 (2000 & Supp. V 2005).

⁶ Energy Policy Act of 2005, Public Law No. 109-58, sections 1261 *et seq.*, 119 Stat. 594 (2005).

⁷ Order No. 720 at P 1.

⁸ *Id.* P 168.

⁹ *Pipeline Posting Requirements under Section 23 of the Natural Gas Act*, 126 FERC ¶ 61,047, at P 4 (2009).

¹⁰ See Notice of Technical Conference, Docket No. RM08-2-001 (issued Feb. 24, 2009); Notice of Agenda for Technical Conference, Docket No. RM08-2-001 (issued March 11, 2009).

4. Among other changes to the Commission's regulations, Order No. 720 adopted new § 284.14(a) identifying the data that major non-interstate pipelines must post. This section provides that information must be posted by major non-interstate pipelines for each receipt or delivery point with a design capacity greater than or equal to 15,000 MMBtu/day. The Commission stated in Order No. 720, that, "In the circumstance where the design capacity of a receipt or delivery point could vary according to operational or usage conditions, a major non-interstate pipeline must post the design capacity for the most common operating conditions of its system during peak periods."¹¹ Section 284.14(a) provides that the following information be posted regarding each applicable receipt or delivery point: Transportation Service Provider Name, Posting Date, Posting Time, Nomination Cycle, Location Name, Additional Location Information if Needed to Distinguish Between Points, Location Purpose Description (Receipt, Delivery, or Bilateral), Design Capacity, Scheduled Volume, Available Capacity, and Measurement Unit (Dth, MMBtu, or MCF).

II. Requests for Rehearing and Technical Conference Comments

5. The Commission received 24 requests for rehearing, clarification, or both of Order No. 720. Additionally, the Commission publicly noticed and held a staff technical conference on March 18, 2009, to gather additional information with respect to: (1) The definition of major non-interstate pipelines; (2) what constitutes "scheduling" for a receipt or delivery point; and, (3) how the 15,000 MMBtu per day design capacity threshold should be applied.¹²

6. Certain rehearing requests questioned how § 284.14(a) of the Commission's regulations applies to major non-interstate pipelines that operate with virtual or pooling points instead of, or in addition to, physical metered points.¹³ Texas Pipeline Association (TPA) proposed modifications to § 284.14(a) requiring

¹¹ Order No. 720 at P 92.

¹² Notice of Technical Conference, Docket No. RM08-2-001 (issued Feb. 24, 2009).

¹³ Requests for rehearing, clarification, or both filed by the following participants raise this question: American Gas Association, Atmos Pipeline, Nicor Gas Company, ONEOK Gas Transportation, LLC, and ONEOK WesTex Transmission, LLC

posting only at points where scheduling occurs.¹⁴

III. Discussion

7. The Commission is seeking supplemental comments to better inform its decision making in this rulemaking. In particular, the Commission seeks comment regarding various proposals to post information for virtual or pooling receipt and delivery points. In addition, the Commission requests comment on whether and how to adopt a proxy for design capacity for physical points for which the design capacity is unknown. To this end, the Commission attaches hereto proposed revisions to § 284.14(a) of our regulations addressing these matters.

8. The Commission recognizes that a number of major non-interstate pipelines use virtual or pooling receipt or delivery points. Major non-interstate pipelines that schedule gas to virtual or pooling receipt or delivery points play a vital role in markets for the sale or transportation of natural gas in interstate commerce. While the Commission understands that major non-interstate pipelines operate in a variety of ways, the Commission is developing regulations of general applicability that pertain to all such pipelines. To this end, the Commission contemplates that, on rehearing, the posting obligation may apply to metered, virtual, or pooling receipt and delivery points on major non-interstate pipelines.

9. The regulatory text included as an attachment provides that design capacity is the method to determine whether a receipt or delivery point should be posted. However, where design capacity is unknown (for example, where the pipeline does not have access to design specifications or where the applicable point is not a physical meter, but rather a virtual or pooling receipt or delivery point), the regulation would allow major non-interstate pipelines to utilize the maximum flow experienced during any day within the previous three years as a proxy for design capacity. In addition, the attachment makes clear that major non-interstate pipelines would be required to post information for receipt or delivery points within 45 days of the point becoming eligible for posting. The Commission seeks comment on these matters.

10. Further, the Commission seeks comment on whether and how to

provide an exemption for receipt points with *de minimis* natural gas flows, even if such points have a design capacity above the posting threshold. The attached draft regulatory text provides an exemption from the posting requirement for *receipt points* which have experienced actual flows less than 5,000 MMBtu every day for the previous three years. The Commission understands that many major non-interstate pipelines have receipt points with design capacities greater than 15,000 MMBtu/day and yet consistently flow far less than this design capacity. The proposed revision responds to commenters' concerns regarding the posting of *de minimis* volumes and recognizes that such receipt points, individually, may have a *de minimis* effect on downstream natural gas availability.

IV. Conclusion

Persons wishing to comment on the matters discussed in this order should submit such comments to the Commission no later than 30 days following publication of this order in the **Federal Register**.

List of Subjects in 18 CFR Part 284

Continental shelf; Incorporation by reference; Natural gas; Reporting and recordkeeping requirements.

By the Commission.

Kimberly D. Bose,
Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 284, Chapter I, Title 18, Code of Federal Regulations, as follows:

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

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

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

2. In § 284.1, revise paragraph (a) to read as follows:

§ 284.14. Posting requirements of major non-interstate pipelines.

(a) *Daily posting requirement.* A major non-interstate pipeline must provide on a daily basis on a publicly-accessible Internet Web site and in downloadable file format equal and timely access to information regarding receipt or delivery points, including non-physical scheduling points.

(1) A major non-interstate pipeline must post data for each receipt or

delivery point, or for any point that operates as both a delivery and receipt point for the major non-interstate pipeline, to which natural gas transportation is scheduled:

(i) With a physically metered design capacity equal to or greater than 15,000 MMBtu/day; or

(ii) If a physically metered design capacity is not known or does not exist for such a point, with a maximum flow equal to or greater than 15,000 MMBtu on any day within the prior three years.

(2) Notwithstanding the requirements of 284.14(a)(1), a receipt point is not subject to the posting requirements of this section if the maximum flow at the receipt point was less than 5,000 MMBtu on every day within the prior three years. If a point has operated as both a receipt and delivery point any time within the last three years, then this subsection 284.14(a)(2) shall not apply to that point.

(3) A major non-interstate pipeline that must post data for a receipt or delivery point shall do so within 45 days of the date on which the point becomes eligible for posting.

(4) For each delivery or receipt point that must be posted, a major non-interstate pipeline must provide the following information: Transportation Service Provider Name, Posting Date, Posting Time, Nomination Cycle, Location Name, Additional Location Information if Needed to Distinguish Between Points, Location Purpose Description (Receipt, Delivery, Bilateral, or Non-physical Scheduling Point), Posted Capacity (physically metered design capacity or maximum flow within the last three years), Method of Determining Posted Capacity (Capacity or Maximum Average Volume), Scheduled Volume, Available Capacity (Calculated as Posted Capacity minus Scheduled Capacity), and Measurement Unit (Dth, MMBtu, or MCf). The information in this subsection must remain posted for a period of one year.

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¹⁴ See Post-Technical Conference Comments of the Texas Pipeline Association (submitted March 30, 2009).