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By direction of the Commission.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2010-27132 Filed 10-26-10; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 284

[Docket No. RM11-1-000]

#### Capacity Transfers on Intrastate Natural Gas Pipelines

October 21, 2010.

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

**ACTION:** Notice of inquiry.

**SUMMARY:** The Federal Energy Regulatory Commission is seeking comments on whether and how holders of firm capacity on intrastate natural gas pipelines providing interstate transportation and storage services under section 311 of the Natural Gas Policy Act of 1978 and Hinshaw pipelines providing such services pursuant to blanket certificates issued under § 284.224 of the Commission's regulations should be permitted to allow others to make use of their firm interstate capacity.

**DATES:** Comments are due December 27, 2010.

**FOR FURTHER INFORMATION CONTACT:** James Sarikas (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6831, [James.Sarikas@ferc.gov](mailto:James.Sarikas@ferc.gov); Anna Fernandez (Legal Information), Office of the General Counsel, Federal Energy

Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6682, [Anna.Fernandez@ferc.gov](mailto:Anna.Fernandez@ferc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Notice of Inquiry

1. Recently, the Commission issued an order finding that the Commission's policy prohibiting buy/sell transactions applies to interstate open-access transportation services provided by (1) intrastate natural gas pipelines pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA)<sup>1</sup> and (2) Hinshaw pipelines<sup>2</sup> pursuant to blanket certificates issued under section 284.224 of the Commission's regulations.<sup>3</sup> In this Notice of Inquiry (NOI), the Commission is seeking comments on whether and how holders of firm interstate capacity on section 311 and Hinshaw pipelines should be permitted to allow others to make use of their firm interstate capacity, including to what extent buy/sell transactions should be permitted.<sup>4</sup>

##### I. Current Commission Policy

2. NGPA section 311 authorizes the Commission to allow intrastate natural gas pipelines to transport natural gas "on behalf of" interstate pipelines or local distribution companies served by interstate pipelines "under such terms and conditions as the Commission may prescribe."<sup>5</sup> NGPA section 601(a)(2) exempts transportation service authorized under NGPA section 311 from the Commission's NGA jurisdiction. Congress adopted these provisions in order to eliminate the regulatory barriers between the intrastate and interstate markets and to promote the entry of intrastate pipelines into the interstate market. Such entry eliminates the need for duplication of facilities between interstate and

intrastate pipelines.<sup>6</sup> Subpart C of the Commission's Part 284 open access regulations (18 CFR § 284.121-126) implements the provisions of NGPA section 311 concerning transportation by intrastate pipelines.<sup>7</sup>

3. Shortly after the adoption of the NGPA, the Commission authorized Hinshaw pipelines to apply for NGA section 7 certificates, authorizing them to transport natural gas in interstate commerce in the same manner as intrastate pipelines may do under NGPA section 311.<sup>8</sup> Specifically, section 284.224 of the Commission's regulations provides for the issuance of blanket certificates to Hinshaw pipelines to provide open access transportation service "to the same extent that, and in the same manner" as intrastate pipelines are authorized to perform such service by subpart C.

4. The Part 284, subpart C, regulations require that intrastate pipelines performing interstate service under NGPA section 311 must do so on an open-access basis.<sup>9</sup> However, consistent with the NGPA's goal of encouraging intrastate pipelines to provide interstate service, the Commission has not imposed on intrastate pipelines all of the Part 284 requirements imposed on interstate pipelines. For example, when the Commission first adopted the Part 284 open access regulations in Order No. 436, the Commission exempted intrastate pipelines from the requirement that they offer open access service on a firm basis.<sup>10</sup> The Commission found that requiring intrastate pipelines to offer firm service to out-of-state shippers could discourage them from providing any interstate service, because such a requirement could progressively turn the intrastate pipeline into an interstate pipeline against its will and against the will of the responsible state authorities. For the same reasons, when the Commission adopted Order No. 636<sup>11</sup> restructuring

<sup>1</sup> 15 U.S.C. 3371(a)(2).

<sup>2</sup> Section 1(c) of the Natural Gas Act (NGA) exempts from the Commission's NGA jurisdiction those pipelines which transport gas in interstate commerce if (1) They receive natural gas at or within the boundary of a state, (2) all the gas is consumed within that state and (3) the pipeline is regulated by a state Commission. This exemption is referred to as the Hinshaw exemption after the Congressman who introduced the bill amending the NGA to include section 1(c). See *ANR Pipeline Co. v. Federal Energy Regulatory Comm'n*, 71 F.3d 897, 898 (1995) (ANR) (briefly summarizing the history of the Hinshaw exemption).

<sup>3</sup> *Arizona Public Service Co. and Sequent Energy Management, L.P.*, 132 FERC ¶ 61,064 (2010) (APS/Sequent).

<sup>4</sup> This NOI relates to firm capacity on section 311 and Hinshaw pipelines used for interstate service subject to our jurisdiction under the NGPA or NGA and does not extend to non-jurisdictional capacity used for purely intrastate service.

<sup>5</sup> 15 U.S.C. 3371(c).

<sup>6</sup> *EPGT Texas Pipeline*, 99 FERC ¶ 61,295, at 62,252 (2002) (EPGT).

<sup>7</sup> 18 CFR 284.121-126 (2010).

<sup>8</sup> *Certain Transportation, Sales, and Assignments by Pipeline Companies not Subject to Commission Jurisdiction Under Section 1(c) of the Natural Gas Act*, Order No. 63, FERC Stats. & Regs. ¶ 30,118, at 30,824-25 (1980).

<sup>9</sup> 18 CFR 284.7(b), 284.9(b) and 284.122 (2010).

<sup>10</sup> *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 436, FERC Stats. & Regs. ¶ 30,665, at 31,502 (1985).

<sup>11</sup> See *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation and Regulation of Natural Gas Pipeline After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939, order on reh'g, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, order on reh'g, Order No. 636-B, 61 FERC ¶ 61,272 (1992), order on reh'g, 62 FERC ¶ 61,007 (1993), aff'd in part and remanded in part sub nom.

the services provided by interstate pipelines, the Commission exempted intrastate pipelines from the requirements of Order No. 636, including capacity release, electronic bulletin boards (now Internet Web sites) and flexible receipt and delivery points.<sup>12</sup>

5. Order No. 636 adopted the capacity release program in order to permit holders of firm capacity on interstate pipelines to “reallocate unneeded firm capacity” to the person who values it the most.<sup>13</sup> The Commission reasoned that the capacity release program would promote efficient load management by the pipeline and its customers and would, therefore, result in the efficient use of firm interstate pipeline capacity throughout the year. It further concluded that, “because more buyers will be able to reach more sellers through firm transportation capacity, capacity reallocation comports with the goal of improving nondiscriminatory, open access transportation to maximize the benefits of the decontrol of natural gas at the wellhead and in the field.”<sup>14</sup>

6. Prior to Order No. 636, the Commission had permitted interstate pipelines to obtain certificates for capacity brokering programs that would allow customers to assign their capacity directly to other customers on a first-come, first-served basis, without any requirement that the brokering shipper post the availability of its capacity or allocate it to the highest bidder.<sup>15</sup> In Order No. 636, however, the Commission decided that it could not monitor those certificated capacity brokering programs adequately to ensure against undue discrimination in the allocation of capacity.<sup>16</sup> When transactions occurred directly and privately between shippers, there was no way to verify that certain purchasers were not being favored unreasonably over others.<sup>17</sup> The Commission explained that “there are simply too many potential assignors of capacity and too many different programs for the Commission to oversee.”<sup>18</sup>

7. The capacity release program addressed those concerns by, among

*United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636–C, 78 FERC ¶ 61,186 (1997), *order on reh’g*, Order No. 636–D, 83 FERC ¶ 61,210 (1998).

<sup>12</sup> Order No. 636–B, 61 FERC at 61,992 n.26.

<sup>13</sup> Order No. 636, FERC Stats. & Regs. ¶ 30,939 at 30,418.

<sup>14</sup> *Id.*

<sup>15</sup> See *Algonquin Gas Transmission Corp.*, 59 FERC ¶ 61,032 (1992) (Algonquin).

<sup>16</sup> Order No. 636, FERC Stats. & Regs. ¶ 30,939 at 30,416.

<sup>17</sup> *United Distributions Co. v. FERC*, 88 F.3d at 1149–50 (quoting Order No. 636 at 30,416).

<sup>18</sup> *Id.*

other things, requiring that all reassignments be transparent. Order No. 636 prohibited private transfers of capacity between shippers and, instead, required that all release transactions be conducted through the pipeline. Therefore, when a releasing shipper releases its capacity, the replacement shipper must enter into a contract directly with the pipeline, and section 284.13(b) of the Commission’s regulations requires the pipeline to post information about the replacement shipper’s contract including any special terms and conditions.<sup>19</sup> In addition, the capacity release program requires certain categories of releases to be posted for bidding.<sup>20</sup>

8. In orders issued concurrently with Order No. 636, the Commission terminated the capacity brokering program.<sup>21</sup> The Commission also stated it would not authorize any more buy/sell transactions.<sup>22</sup> Traditionally, a buy/sell transaction is a commercial arrangement whereby a shipper holding interstate pipeline capacity buys gas at the direction of, on behalf of, or directly from another entity (e.g., an end-user), ships that gas through its interstate pipeline capacity, and then resells an equivalent quantity of gas to the downstream entity at the delivery point. The Commission believed that to permit buy/sell transactions to utilize interstate pipeline capacity after the capacity release mechanism went into effect would frustrate the new, nationally uniform capacity release program.<sup>23</sup>

9. On June 25, 2010, Arizona Public Service Company (APS) and Sequent Energy Management, L.P. (Sequent) (collectively, Petitioners) sought clarification that a certain proposed transaction involving a Hinshaw storage facility was not a prohibited buy/sell transaction as contemplated by Commission policy.<sup>24</sup> They contended that the Commission’s buy/sell prohibition was inapplicable to service

<sup>19</sup> As Order No. 636 emphasized:

The main difference between capacity brokering as it now exists and the new capacity release program is that under capacity brokering, the brokering customer could enter into and execute its own deals without involving the pipeline. Under capacity releasing, all offers must be put on the pipeline’s electronic bulletin board and contracting is done directly with the pipeline.

Order No. 636, FERC Stats. & Regs. ¶ 30,939 at 30,420 (emphasis in original).

<sup>20</sup> 18 CFR 284.8(c)–(e), (h) (2010).

<sup>21</sup> *Algonquin*, 59 FERC ¶ 61,032.

<sup>22</sup> *El Paso Natural Gas Co., et al.*, 59 FERC ¶ 61,031 (1992) (El Paso).

<sup>23</sup> *Id.* at 61,080.

<sup>24</sup> According to their petition, APS is Arizona’s largest electric utility company and Sequent purchases and sells natural gas and provides other energy-related services to customers throughout the United States.

on Hinshaw pipelines, because the buy/sell prohibition was intended to prevent the circumvention of the Commission’s capacity release program instituted in Order No. 636 and Hinshaw pipelines do not offer capacity release.

Alternatively, Petitioners requested a limited waiver should the Commission determine that the transaction was a prohibited buy/sell transaction. Under the proposed agreement, APS would have the right to deliver gas to Sequent and Sequent would take title to the gas and inject it into storage at Chevron Keystone Gas Storage, LLC (Keystone Storage), a Hinshaw pipeline with a limited blanket certificate to provide certain storage and hub services in interstate commerce. APS would have the right to require Sequent to redeliver gas to APS and title would pass back to APS at the Keystone Storage delivery point. Like other section 311 and Hinshaw pipelines, Keystone Storage’s tariff requires that the storage or transportation capacity holder possesses title to the gas being stored or transported.

10. The Petitioners raised an issue which the Commission had not previously addressed—whether the prohibition on buy/sell transactions applies to interstate open-access transportation services provided by section 311 and Hinshaw pipelines, and the *APS/Sequent* order found that the prohibition did apply. The Commission explained that, while Order No. 636 adopted the prohibition on buy/sell transactions in conjunction with the creation of the capacity release program for interstate pipelines, the prohibition on buy/sell transactions, together with the shipper-must-have-title rule, play a more fundamental role than just preventing the circumvention of the capacity release program.<sup>25</sup> These rules help enforce the central requirement of the Commission’s Part 284 regulations that all open-access pipelines, including section 311 and Hinshaw pipelines, “must provide such service without undue discrimination, or preference.”<sup>26</sup> They do this by ensuring that capacity is allocated among shippers in a transparent manner based on the procedures and not unduly discriminatory priorities in the pipeline’s Commission-approved tariff, either for the direct sale of capacity by the pipeline or for capacity release by firm shippers.<sup>27</sup>

<sup>25</sup> *APS/Sequent*, 132 FERC ¶ 61,064 at P 16.

<sup>26</sup> *Id.* (citing sections 284.7(b)(1) and 284.9(b) of the Commission’s regulations, which are applicable to intrastate pipelines providing service under Subpart C of the Part 284 regulations).

<sup>27</sup> *APS/Sequent*, 132 FERC ¶ 61,064 at P 16.

11. The Commission acknowledged that it does not require section 311 and Hinshaw pipelines to include capacity release provisions in their tariffs, nor have any such pipelines done so. However, it did not follow from this fact that the prohibition on buy/sell transactions was unnecessary. Rather, the Commission stated that the absence of a capacity release program for section 311 and Hinshaw pipelines means that their tariffs contain no provisions to ensure that capacity reassignments by shippers are transparent and non-discriminatory. In these circumstances, a blanket authorization of buy/sell transactions would allow holders of capacity on such pipelines to privately contract to allow another party to make use of their capacity without informing the pipeline or publicly disclosing the transaction. This, the Commission stated, would create the same potential for discrimination and inability of the Commission to monitor capacity reassignment which led to the adoption of the capacity release program as the sole method for capacity reassignment on interstate pipelines.<sup>28</sup>

12. Recognizing, however, that capacity reassignments could promote more efficient use of firm pipeline capacity, and given the absence of any generic capacity reassignment programs on section 311 and Hinshaw pipelines, the Commission agreed to consider, on a case-by-case basis, requests for waiver of the buy/sell prohibition, where it can be shown that a particular buy/sell transaction provides significant benefits to the market.<sup>29</sup> Along those same lines, the Commission found that, in this case, good cause existed to grant Petitioners a limited waiver of the Commission's buy/sell prohibition in order to allow the proposed agreement to proceed.<sup>30</sup>

13. Neither of the Petitioners sought rehearing of the *APS/Sequent* order. However, following that order, fifteen motions to intervene out-of-time were filed. Also filed were five requests for rehearing of the *APS/Sequent* order and each of those requests were filed by entities seeking late intervention. The entities seeking rehearing are: (1) Texas Pipeline Association (TPA); (2) BG Energy Merchants, LLC (BG Energy); (3) Morgan Stanley Capital Group Inc. (Morgan Stanley); (4) the Associations;<sup>31</sup> and (5) the Marketer

Group.<sup>32</sup> Of the five rehearing requests, four asked that the Commission reverse its ruling expanding the buy/sell prohibition to section 311 and Hinshaw pipelines and one asked the Commission to consider requiring section 311 and Hinshaw pipelines to offer capacity release. Two of the four requests seeking reversal stated that issues regarding the secondary market on section 311 and Hinshaw pipelines, including the buy/sell prohibition, should have been addressed in a NOI proceeding to examine the available options and their implications.

14. The Marketer Group, Morgan Stanley, TPA and the Associations requested that the Commission reverse its ruling expanding the buy/sell prohibition to section 311 and Hinshaw pipelines.<sup>33</sup> They contended, among other things, that the Commission erred by expanding the buy/sell prohibition to section 311 and Hinshaw pipelines on the basis of discrimination concerns without a record establishing the existence of discrimination. If the Commission seeks transparency, Morgan Stanley argued that a necessary precursor is a capacity release mechanism. In fact, Morgan Stanley argued that the efficiency gains cited by the *APS/Sequent* order cannot be fully realized absent a capacity release mechanism on section 311 and Hinshaw facilities. The Associations suggested that if the Commission wishes to address any issues with regard to the secondary market of capacity on section 311 and Hinshaw pipelines, it should initiate a notice of inquiry proceeding to examine any available options and their implications.

15. The Marketer Group, Morgan Stanley, TPA and the Associations also argued that the *APS/Sequent* order failed to establish a record addressing the potential effect, results, and impacts on shippers. Among the issues they argued the *APS/Sequent* order did not consider are: (1) The potential market uncertainty that may result from the expansion of the buy/sell prohibition to section 311 and Hinshaw pipelines; (2) the impact on the efficient use of section 311 and Hinshaw pipeline capacity; (3)

<sup>32</sup> The Marketer Group includes Barclays Capital Energy Inc., Chevron U.S.A. Inc., Citigroup Energy Inc., ConocoPhillips Company, Encana Marketing (USA) Inc., Iberdrola Renewables, Inc., J.P. Morgan Ventures Energy Corporation, Tenaska Marketing Ventures, Sempra Energy Trading LLC and Shell Energy North America (U.S.) L.P.

<sup>33</sup> TPA, in addition to the foregoing, requests that the Commission clarify that the shipper-must-have-title rule also does not apply to section 311 and Hinshaw pipelines. Section 311 and Hinshaw pipelines generally include in their statements of operating conditions a requirement that shippers possess title to the gas being stored or transported.

the burden and impracticability of entities having to seek a waiver for buy/sell transactions on section 311 and Hinshaw pipelines; and (4) the extent of the Commission's jurisdiction to impose the buy/sell prohibition on section 311 and Hinshaw pipelines given Congress' decision to provide the Commission with only limited jurisdiction over section 311 and Hinshaw pipelines. The Marketer Group states that, if the Commission believes that it may be in the public interest to apply the buy/sell prohibition to section 311 and Hinshaw pipelines, the Commission should issue a NOI in which a record can be compiled to examine the necessity for and the implications associated with the issue.

16. In its rehearing request, BG Energy requested that the Commission institute a notice and comment proceeding to consider requiring a uniform capacity release program for section 311 and Hinshaw pipelines that requires capacity to be posted and subject to bidding on a non-discriminatory basis. It contended that a firm shipper on a section 311 or Hinshaw pipeline that wants to release or acquire interstate capacity encounters cumbersome, lengthy, and non-transparent procedures.

17. In a contemporaneous order in the *APS/Sequent* proceeding, the Commission is denying the late interventions and dismissing the requests for rehearing.<sup>34</sup> In that order, the Commission finds that the entities requesting late intervention seek only to raise general policy issues concerning capacity reassignment on section 311 and Hinshaw pipelines which are more appropriately addressed in a rulemaking proceeding.

## II. Discussion

18. As stated above, the Commission is issuing this NOI to consider whether and how holders of firm interstate capacity on section 311 and Hinshaw natural gas pipelines should be permitted to allow others to make use of their firm interstate capacity, including to what extent buy/sell transactions should be permitted. Specifically, the Commission requests comments on the following questions:

### A. Questions Related to Application of Buy/Sell Prohibition to Section 311 and Hinshaw Pipelines

1. The requests for rehearing in *APS/Sequent* suggest that marketers and others holding firm interstate capacity

<sup>34</sup> *Arizona Public Service Company and Sequent Energy Management, L.P.*, 133 FERC ¶ 61,049 (2010).

<sup>28</sup> *Id.* P 17.

<sup>29</sup> *Id.* P 19.

<sup>30</sup> *Id.* P 21.

<sup>31</sup> The Associations include Natural Gas Supply Association, Electric Power Supply Association, and Independent Petroleum Association of America.

on section 311 and Hinshaw pipelines are using buy/sell transactions to allow others to make use of their capacity. Are buy/sell transactions commonly used in connection with service on section 311 and Hinshaw pipelines or are such transactions relatively rare? Are such transactions more commonly used with respect to storage capacity as in *APS/Sequent* or are they used with respect to all types of services? Have such transactions provided for more efficient use of firm capacity on section 311 and Hinshaw pipelines?

2. Are there any experiences or concerns of undue discrimination or preference or loss of market transparency related to the buy/sell transactions which have occurred on section 311 and Hinshaw pipelines?

3. Could buy/sell transactions be allowed without risk of undue discrimination or preference or loss of market transparency? Section 311 and Hinshaw pipelines generally include in their statements of operating conditions a requirement that shippers possess title to the gas being stored or transported. Is application of the shipper-must-have-title rule sufficient to minimize concerns about undue discrimination and transparency, since it ensures that the capacity holder has an interest in the gas being transported?<sup>35</sup>

4. When the Commission grandfathered existing buy/sell transactions at the time of Order No. 636, the Commission required participants in those transactions to notify the interstate pipeline of them, and the Commission required the pipeline, for informational purposes, to post notice of the transactions on its electronic bulletin board.<sup>36</sup> Would a similar reporting requirement for participants in buy/sell transactions to notify the relevant section 311 and Hinshaw pipelines and for those pipelines to post notice of them reasonably mitigate concerns related to undue discrimination or preference or loss of market transparency?

5. In *ANR*,<sup>37</sup> the U.S. Court of Appeals for the District of Columbia Circuit held that the Commission must provide a reasonable justification for excluding section 311 pipelines from requirements imposed on interstate pipelines, where such regulatory differences may place the interstate pipelines at a competitive disadvantage. Would allowing buy/sell transactions on section 311 and Hinshaw pipelines, but not on interstate natural gas pipelines, cause any

competitive disadvantage to interstate pipelines?

6. Consistent with the NPGA's goal of encouraging intrastate pipelines to provide interstate service, the Commission has not imposed on intrastate pipelines all of the Part 284 requirements imposed on interstate pipelines. Would extending the buy/sell prohibition to service on section 311 and Hinshaw pipelines deter intrastate pipelines from participating in the interstate market? If so, explain what burdens such a prohibition places on section 311 and Hinshaw pipelines that would make them less likely to offer interstate service.

#### *B. Questions Related to Requiring Section 311 and Hinshaw Pipelines Providing Firm Service To Also Allow Capacity Release*

1. The Commission has consistently held that capacity reassignments promote more efficient use of firm pipeline capacity by enabling a holder of such capacity to permit its capacity to be used by another party for a higher valued use. However, Order No. 636 did not require section 311 and Hinshaw pipelines providing firm interstate services to offer capacity release because of a concern that imposing all the requirements of Order No. 636 on such pipelines could discourage them from offering interstate services. Should the Commission reexamine its decision not to require section 311 and Hinshaw pipelines to offer capacity release in light of market changes since the issuance of Order No. 636 in 1992 and the success of the interstate capacity release program?

2. As discussed above, the U.S. Court of Appeals for the District of Columbia Circuit has held that the Commission "must provide a reasonable justification for excluding" an intrastate pipeline from a requirement that binds interstate pipelines.<sup>38</sup> Similarly, the Commission has held that it may grant intrastate facilities "additional flexibility," but not if lighter regulation would "harm any party [or] impede the Commission's goal of fostering a national pipeline grid."<sup>39</sup> Does the absence of a transparent method for shippers on section 311 and Hinshaw pipelines to reassign their capacity interfere with the Commission's goal of fostering an efficient national pipeline grid in which buyers and sellers of natural gas have the maximum ability to reach one another? Would requiring some or all section 311 and Hinshaw pipelines to offer capacity release provide sufficient

benefits to the market as a whole to outweigh any costs incurred as a result of such a requirement? Does exempting section 311 and Hinshaw pipelines from offering capacity release give them a competitive advantage over interstate pipelines?

3. Should any requirement for section 311 and Hinshaw pipelines to offer capacity release be limited to some category of such pipelines whose services significantly affect interstate markets? If so, how should that category be defined (e.g., based on size as shown by annual throughput above a certain level, percentage of business that is interstate, or storage providers with market-based rates)?

4. In Order No. 720,<sup>40</sup> the Commission required major non-interstate pipelines, defined as those pipelines that are not natural gas companies under the NGA and deliver annually more than 50 million MMBtu measured in average deliveries over the past three years, to post daily scheduled volume information. Should the Commission adopt the threshold utilized in Order No. 720 to determine which section 311 and Hinshaw pipelines would be required to offer capacity release?

5. In this regard, based upon our review of existing section 311 and Hinshaw pipelines, there are some intrastate pipelines whose current service consists virtually entirely of interstate service provided under NPGA section 311.<sup>41</sup> This is particularly true of some of the newer section 311 and Hinshaw storage providers. Should any requirement to offer capacity release be limited to section 311 and Hinshaw pipelines whose business is predominantly interstate? If so, what standard should be used to determine if such a pipeline's business is predominantly interstate?

6. The capacity release program is only applicable to firm services, and the Commission does not require section 311 and Hinshaw pipelines to offer firm services. Would a requirement that section 311 and Hinshaw pipelines offering firm service also offer capacity release discourage such pipelines from offering any firm interstate service?

<sup>40</sup> *Pipeline Posting Requirements under Section 23 of the Natural Gas Act*, Order No. 720, FERC Stats. & Regs. ¶ 31,283 (2008), Order No. 720-A, 75 FR 5178 (Jan. 21, 2010), FERC Stats. & Regs. ¶ 31,302 (2010), Order No. 720-B, 75 FR 44,893 (July 30, 2010), FERC Stats. & Regs. ¶ 31,314 (2010).

<sup>41</sup> For example, Regency Intrastate Gas, LLC and Bay Gas Storage, Ltd. transport over 95 percent of their throughput as interstate gas. Crosstex LIG, LLC and Enterprise Texas, LLC along with Regency Intrastate Gas, LLC predominately serve the interstate market and have recently undertaken major expansions that are primarily dedicated to moving shale gas into the interstate marketplace.

<sup>35</sup> See *El Paso*, 59 FERC ¶ 61,031 at 61,079.

<sup>36</sup> *Id.* at 61,080.

<sup>37</sup> See *ANR*, 71 F.3d 897.

<sup>38</sup> See *ANR*, 71 F.3d 897.

<sup>39</sup> See *EPGT*, 99 FERC ¶ 61,295 at 62,252-3.

Would this concern be minimized if the requirement to offer capacity release is limited to larger section 311 and Hinshaw pipelines whose services are predominantly interstate?

7. If section 311 and Hinshaw pipelines are required to offer capacity release, should the regulations be the same as the capacity release regulations for interstate pipelines set forth in section 284.8 of the Commission's regulations? Would a subset of those regulations be sufficient for purposes of preventing undue discrimination and promoting transparency, while minimizing any burden on the pipelines offering capacity release?

19. Finally, as we recognized in the *APS/Sequent* order, the Commission has not previously addressed the issue of whether the buy/sell prohibition applies to interstate service provided by section 311 and Hinshaw pipelines. Thus, until the Commission issued that order, there was no clear policy prohibiting such transactions. Therefore, the Commission will not institute any enforcement actions with respect to prior buy/sell transactions involving section 311 and Hinshaw pipelines. In addition, the Commission grants a blanket waiver of the prohibition on buy/sell transactions to allow existing and new buy/sell transactions involving section 311 and Hinshaw pipelines to continue to take place until the Commission issues a further order in this proceeding. This will avoid disrupting any ongoing relationships established through currently existing buy/sell transactions and also avoid discouraging beneficial new arrangements, while the Commission considers the policy issues raised in this proceeding. As we recognized in the *APS/Sequent* order, capacity reassignments can promote more efficient use of firm pipeline capacity by enabling a holder of such capacity to permit its capacity to be used by another party for a higher valued use.

### III. Procedure for Comments

20. The Commission invites interested persons to submit comments and other information on the matters, issues, and specific questions identified in this notice. Comments are due 60 days from the date of publication in the **Federal Register**. Comments must refer to Docket No. RM11-1-000, and must include the commenter's name, the organization they represent, if applicable, and their address.

21. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard

word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

22. Commenters unable to file comments electronically must mail or hand deliver an original copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. The current requirements are specified on the Commission's Web site, see, e.g., the "Quick Reference Guide for Paper Submissions," available at <http://www.ferc.gov/docs-filing/efiling.asp>, or via phone from FERC Online Support at 202-502-6652 or toll-free at 1-866-208-3676.

23. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters are not required to serve copies of their comments on other commenters.

### IV. Document Availability

24. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

25. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and downloading. To access this document in eLibrary, type the docket number (excluding the last three digits) in the docket number field.

26. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact the Commission's Online Support at 1-866-208-3676 (toll free) or 202-502-6652 (e-mail at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov)) or the Public Reference Room at 202-502-8371, TTY 202-502-8659 (e-mail at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov)).

By direction of the Commission.

**Nathaniel J. Davis, Sr.**,

*Deputy Secretary.*

[FR Doc. 2010-27156 Filed 10-26-10; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### 19 CFR Part 111

[Docket No. USCBP-2010-0038]

RIN 1651-AA80

#### Permissible Sharing of Client Records by Customs Brokers

**AGENCIES:** Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend Customs and Border Protection (CBP) regulations in title 19 of the Code of Federal Regulations (CFR) pertaining to the obligations of customs brokers to keep clients' information confidential. The proposed amendment would allow brokers, upon the client's consent in a written authorization, to share client information with affiliated entities related to the broker so that these entities may offer non-customs business services to the broker's clients. The proposed amendment would also allow customs brokers to use a third-party to perform photocopying, scanning, and delivery of client records for the broker. These proposed changes are intended to update the regulation to reflect modern business practices, while protecting the confidentiality of client (importer) information. In addition, the proposed changes would align the regulations with CBP's previously published rulings concerning brokers' confidentiality of client information.

**DATES:** Comments must be received on or before December 27, 2010.

**ADDRESSES:** You may submit comments, identified by *docket number*, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2010-0038.

- *Mail:* Trade and Commercial Regulations Branch, U.S. Customs and Border Protection, 799 9th Street, NW. (Mint Annex), Washington, DC 20229-1179.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All