

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****18 CFR Part 284**

[Docket No. RM08-2-001; Order No. 720-A]

Pipeline Posting Requirements under Section 23 of the Natural Gas Act

January 21, 2010.

AGENCY: Federal Energy Regulatory Commission, DOE.**ACTION:** Order on Rehearing and Clarification.

SUMMARY: The Federal Energy Regulatory Commission modifies its regulations requiring major non-interstate pipelines to post daily scheduled volume information and other data for certain points. These modifications include a requirement that major non-interstate pipelines post information for receipt and delivery points at which design capacity is unknown. The Commission denies requests to revise its regulations requiring interstate natural gas pipelines to post information regarding the provision of no-notice service. The posting requirements will facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce to implement

section 23 of the Natural Gas Act, 15 U.S.C. 717t-2 (2000 & Supp. V 2005).

Effective Date: This rule will become effective March 3, 2010.**FOR FURTHER INFORMATION CONTACT:**Steven Reich (Technical), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6446, Steven.Reich@ferc.gov.Gabe S. Sterling (Legal), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8891, Gabriel.Sterling@ferc.gov.**SUPPLEMENTARY INFORMATION:****TABLE OF CONTENTS**

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Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, and John R. Norris.

Order on Rehearing and Clarification

Issued January 21, 2010

I. Introduction

1. On November 20, 2008, the Federal Energy Regulatory Commission

(Commission) issued Order No. 720,¹ requiring interstate and certain major non-interstate natural gas pipelines to post limited information on publicly accessible Internet Web sites regarding their operations. In this order, the Commission grants and denies requests

for rehearing and clarification of Order No. 720.

2. The Commission issued Order No. 720 and promulgated related regulations consistent with the Energy Policy Act of 2005 (EPAct 2005).² In EPAct 2005, Congress added section 23 to the Natural Gas Act (NGA), 15 U.S.C. 717t-

¹ Pipeline Posting Requirements under section 23 of the Natural Gas Act, 73 FR 73494 (Dec. 2, 2008), FERC Stats. & Regs. 31,283 (2008) (Order No. 720).

² Energy Policy Act of 2005, Public Law 109-58, 119 Stat. 594 (2005).

2 (2000 & Supp. V 2005) authorizing the Commission “to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce, having due regard for the public interest, the integrity of those markets * * * and the protection of consumers.”³ Section 23 further provides that the Commission may issue such rules as it deems necessary and appropriate to “provide for the dissemination, on a timely basis, of information about the availability and prices of natural gas sold at wholesale and interstate commerce to the Commission, State commissions, buyers and sellers of wholesale natural gas, and the public.”⁴

3. On December 21, 2007, the Commission issued a Notice of Proposed Rulemaking (NOPR), proposing to require both interstate and certain major non-interstate natural gas pipelines to post daily information regarding their capacity, scheduled flow volumes, and actual flow volumes at major points and mainline segments.⁵ The Commission proposed regulations that would make available the information needed to track daily flows of natural gas adequately throughout the United States.⁶ The posting proposal would facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce to implement section 23 of the Natural Gas Act.⁷

4. Order No. 720 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 and other information for each receipt or delivery point with a design capacity greater than 15,000 MMBtu per day.⁸ While Order No. 720 required major non-interstate pipelines to comply with the new rules within 150 days of the Final Rule’s publication,⁹ 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.¹⁰

³ NGA § 23, 15 U.S.C. 717t-2(a)(1) (2000 & Supp. V 2005).

⁴ 15 U.S.C. 717t-2(a)(2).

⁵ Pipeline Posting Requirements under section 23 of the Natural Gas Act, 73 FR 1116 (Jan. 7, 2008), FERC Stats. & Regs., Proposed Regulations 2004–2007 ¶ 32,626, at P 3 (2007).

⁶ *Id.*

⁷ *Id.* P 5.

⁸ Order No. 720 at P 1.

⁹ *Id.* P 168.

¹⁰ Pipeline Posting Requirements under section 23 of the Natural Gas Act, 126 FERC ¶ 61,047, at P 4 (2009).

5. Regarding interstate natural gas pipelines, Order No. 720 expanded the Commission’s existing posting requirements under 18 CFR 284 to include no-notice service. Interstate natural gas pipelines were required to comply with this posting requirement no later than 60 days following Order No. 720’s publication,¹¹ and should therefore be currently complying with the regulations.

6. Twenty-six requests for rehearing or clarification of Order No. 720 were submitted.¹² On January 16, 2009, the Commission issued an order granting rehearing for the purpose of providing additional time to respond to the requests for rehearing.¹³

7. A staff technical conference was held on March 18, 2009, to gather additional information on three issues raised in the requests for rehearing.¹⁴ The technical conference addressed: (1) The definition of major non-interstate pipelines; (2) what constitutes “scheduling” for a receipt or delivery point; and (3) how a 15,000 MMBtu per day design capacity threshold would be applied.¹⁵ Panelists making presentations at the conference and commenters from the audience represented a broad cross-section of the U.S. natural gas industry¹⁶ and the conference was widely attended.¹⁷

8. On July 16, 2009, the Commission issued an order requesting supplemental comments in response to limited issues raised in requests for rehearing of Order No. 720 and at the technical conference, with comments due within 30 days.¹⁸ Eight supplemental comments were filed.¹⁹

¹¹ Order No. 720 at P 167.

¹² A list of petitioners requesting rehearing and/or clarification is provided at Appendix A. All requests for rehearing, clarification, or both are referred to herein as “Requests for Rehearing and Clarification.”

¹³ Pipeline Posting Requirements under section 23 of the Natural Gas Act, Docket No. RM08-2-001, at 1 (Jan. 16, 2009).

¹⁴ Pipeline Posting Requirements under section 23 of the Natural Gas Act, Notice of Technical Conference, Docket No. RM08-2-001 (issued Feb. 24, 2009); Pipeline Posting Requirements under section 23 of the Natural Gas Act, Notice of Agenda for Technical Conference, Docket No. RM08-2-001 (issued March 11, 2009).

¹⁵ Notice of Agenda for Technical Conference, at P 1.

¹⁶ In the Matter of Pipeline Posting Requirements under section 23 of the Natural Gas Act Docket No. RM08-2-001, at 2–3 (Mar. 18, 2009) (Transcript of Technical Conference).

¹⁷ A transcript of this conference is available on the Commission’s e-Library system.

¹⁸ Pipeline Posting Requirements under section 23 of the Natural Gas Act, 128 FERC ¶ 61,030, at P 1 (2009) (Order Requesting Supplemental Comments).

¹⁹ A list of persons submitting supplemental comments is provided at Appendix B. These

9. As discussed below, the Commission affirms Order No. 720, granting a number of requests for rehearing and clarification and adopting regulations consistent with our findings. As a whole, the modifications that are adopted substantially reduce the number of major non-interstate pipelines that must comply with the proposed transparency regulations.

10. Major non-interstate pipelines must comply with the revised regulations within 150 days following publication in the **Federal Register**. Interstate pipelines must continue their current compliance with our transparency regulations.

II. Discussion

A. Authority for the Rule

11. Order No. 720 implemented the Commission’s authority under section 23 of the NGA,²⁰ as added by EPAct 2005,²¹ to facilitate transparency in markets for the sale or transportation of natural gas in interstate commerce by requiring major non-interstate pipelines and interstate pipelines to post certain data on publicly-accessible Internet Web sites. Congress granted the Commission this statutory authority to ensure transparency of natural gas prices, natural gas availability, and the price formation in the interstate natural gas market.²²

12. The Commission held in Order No. 720 that NGA section 23 authorizes the Commission to obtain and disseminate information, including information regarding non-interstate natural gas markets that affect the interstate natural gas market. The Commission’s decision substantially relied on the language of NGA section 23(a)(3)(A), which allows the Commission to “obtain the information * * * from *any market participant*.”²³ The Commission identified Congress’ use of the term “any market participant” as an intentional expansion of “the universe of entities subject to the Commission’s transparency authority beyond the entities subject to the Commission’s traditional rates, terms, and conditions jurisdiction under other sections of the NGA.”²⁴ Order No. 720 took particular note of Congress’ use of “any” in section 23 as a descriptor, attaching jurisdiction to market participants independently of the

comments are referred herein as “Supplemental Comments.”

²⁰ 15 U.S.C. 717t-2.

²¹ Energy Policy Act of 2005, Public Law 109–58, sections 1261 *et seq.*, 119 Stat. 594 (2005).

²² *Id.* P 8.

²³ 15 U.S.C. 717t-2(a)(3)(A) (emphasis added).

²⁴ Order No. 720 at P 17.

limitations prescribed elsewhere in the NGA.²⁵

13. The NGA limits the scope of the Commission's traditional regulatory authority to "natural gas companies" as the term is utilized in the NGA.²⁶ The Commission held in Order No. 720 that Congress contemplated different jurisdictional parameters for its transparency authority.²⁷ Additionally, the Commission found that the scope of section 23 is not limited by section 1(b) of the NGA.

14. The Commission emphasized that the regulations promulgated by Order No. 720 reflect the limitations that Congress placed on the Commission's authority in section 23. Order No. 720 explained that section 23 extends the Commission's authority *only* to the collection and dissemination of information for the purposes of promoting price transparency in the natural gas market.²⁸ The Commission's traditional regulatory authority remains limited to "natural gas companies" under section 1(b) of the Act.²⁹

1. Requests for Rehearing and Clarification

15. Some petitioners support the Commission's assertion of jurisdiction, with at least one petitioner supporting Order No. 720's requirement that certain major non-interstate pipelines post daily scheduled volume information and design capacity for certain receipt and delivery points "pursuant to [the Commission's] authority under section 32 [sic] of the NGA."³⁰ Yates and Agave particularly commend the Commission's new regulations and assertion of jurisdiction, stating that "the major non-interstate pipeline posting requirements adopted in Order No. 720 are a good first step towards the Commission's stated goal of facilitating transparency in markets for the sale or transportation of physical natural gas in interstate commerce."³¹

16. Several petitioners requesting rehearing argue that the Commission unlawfully expanded its statutory

authority by imposing posting requirements on major non-interstate pipelines, including natural gas gathering lines.³² They claim that the Commission does not have jurisdiction to impose posting requirements on intrastate pipelines, and that its transparency jurisdiction does not extend to intrastate activities at receipt and delivery points that are not involved in the Commission's jurisdictional activities.³³

17. Many petitioners reiterated arguments, made in comments to the NOPR, that the reference in NGA section 23 to "any market participant" is restricted to participants in the interstate market.³⁴ Gas Processors suggests that the Commission has derived its expanded jurisdictional powers from an ambiguous term without sufficient support, and that Congressional intent over that term "must not be read in a vacuum."³⁵ It also argues that the term "market participant" was not intended to extend the Commission's jurisdiction to intrastate pipelines because: (1) Section 23 was not intended to cover intrastate pipelines; (2) the Commission has never had jurisdiction over intrastate pipelines; and (3) Congress did not "expressly or implicitly" provide such jurisdiction in section 23.³⁶ Quoting section 23, Gas Processors points out the repeated use of the term "interstate" throughout the section, emphasizing that if Congress intended an expansion into the intrastate pipelines, they would have selected different language.³⁷ RRC agrees, stating that "[n]othing in the plain language of Section 23 of the NGA or the legislative history of [EPAct 2005] evinces Congressional intent to expand

the FERC's authority over intrastate pipelines."³⁸

18. TPA opines that the plain language of section 23 provides that "market participant" be limited to the interstate natural gas market.³⁹ It further argues that Congress had no need to exclude intrastate pipelines from the Commission's transparency jurisdiction because those entities are not subject to the Commission's jurisdiction "in the first place."⁴⁰

19. TPA repeats arguments made in its NOPR comments, and seeks rehearing of the Commission's determination that it has authority to issue the posting regulations. TPA argues that expansion of the jurisdiction of the Commission usually occurs through amendment of NGA section 1(b) by Congress.⁴¹ TPA asserts that Order No. 720 expands the Commission's jurisdiction using a process that is not supported by the Commission's own precedent.⁴² TPA cites Order No. 670,⁴³ discussing the procedures used to process market manipulation allegations, in support of its claim that the Commission should wait until Congress explicitly expands its jurisdiction to assert such authority over traditionally non-jurisdictional entities.⁴⁴ TPA further argues that the Natural Gas Policy Act of 1978 (NGPA) section 311 shows a clear distinction between intrastate and interstate jurisdiction, and concludes that, if Congress had intended to expand the Commission's jurisdiction, it would have amended NGA section 1(b) in a similar fashion.⁴⁵

20. Several petitioners, echoing comments that the Commission addressed in Order No. 720, argue that the regulations exceed the Commission's jurisdiction under section 1(b) of the NGA.⁴⁶ Petitioners argue that NGA section 23 is not "a stand alone

²⁵ *Id.* P 18.

²⁶ *Id.* P 19 citing 15 U.S.C. 717.

²⁷ *Id.*

²⁸ *Id.* P 22.

²⁹ Natural gas producers, processors, or users who have a *de minimis* market presence are explicitly exempted from the reporting requirements. *Id.* at P 23.

³⁰ Yates and Agave Request for Rehearing and Clarification at 1; Williston Basin Request for Rehearing and Clarification at 1 (acknowledging that the Commission has the authority to promulgate Order No. 720's new regulations pursuant to its authority under section 23 of the NGA).

³¹ Yates and Agave Request for Rehearing and Clarification at 3–4.

³² *Enogex Request for Rehearing and Clarification at 5–10; Gas Processors Request for Rehearing and Clarification at 3–7; LOC Request for Rehearing and Clarification at 3–10; California LDCs Request for Rehearing and Clarification at 13–15; Railroad Commission of Texas Request for Rehearing and Clarification at 5–10; Southwest Gas Request for Rehearing and Clarification at 3–5, 13–14; Targa Request for Rehearing and Clarification at 8–9; TPA Request for Rehearing and Clarification at 8–24.*

³³ *See, e.g.*, TPA Request for Rehearing and Clarification at 31–32.

³⁴ California LDCs Request for Rehearing and/or Clarification at 14–15; Gas Processors Request for Rehearing at 3–4; LOC Request for Rehearing at 8–9; Railroad Commission of Texas Request for Rehearing at 5–8; Southwest Gas Request for Clarification and Rehearing at 13–14; Targa Request for Rehearing at 8–9; TPA Request for Rehearing and Clarification at 9–11.

³⁵ Gas Processors Request for Rehearing and Clarification at 3–4.

³⁶ *Id.* at 4.

³⁷ *Id.*; *see also* RRC Request for Rehearing and Clarification at 6–8; TPA Request for Rehearing and Clarification at 8–12; LOC Request for Rehearing and Clarification at 10.

³⁸ RRC Request for Rehearing and Clarification at 6; *see also* LOC Request for Rehearing and Clarification at 9.

³⁹ TPA Request for Rehearing and Clarification at 9–11.

⁴⁰ *Id.* at 11.

⁴¹ TPA Request for Rehearing and Clarification at 12; Gas Processors Request for Rehearing and Clarification at 4–5; LOC Request for Rehearing and Clarification at 6; RRC Request for Rehearing and Clarification at 7–8.

⁴² TPA Request for Rehearing and Clarification at 12.

⁴³ *Prohibition of Energy Market Manipulation*, Order No. 670, 71 FR 4244 (Jan. 26, 2006), FERC Stats. & Regs. ¶ 31,202 (2006).

⁴⁴ TPA Request for Rehearing and Clarification at 12.

⁴⁵ *Id.* at 21 (citing 15 U.S.C. 3371(a)(2)).

⁴⁶ *Enogex Request for Rehearing and Clarification at 6–7; LOC Request for Rehearing and Clarification at 3–4; Railroad Commission of Texas Request for Rehearing and Clarification at 8–9; TPA Request for Rehearing and Clarification at 8, 16–19.*

provision,” but is subject to the jurisdictional limits established in section 1(b).⁴⁷ Thus, they contend that the fact that Congress did not amend the language in section 1(b) demonstrates that Congress did not intend to modify the Commission’s jurisdiction with section 23.⁴⁸ Petitioners state that section 1(b) is “unequivocally clear” regarding the entities to which section 23 applies.⁴⁹ The petitioners argue that because section 1(b) expressly bars the Commission from jurisdiction over intrastate pipelines, section 23 does as well.⁵⁰

21. Several petitioners also state that section 311 of the NGPA⁵¹ limits the Commission’s transparency jurisdiction to only interstate activities.⁵² These petitioners claim that, although section 311 “vests the Commission with the power to authorize an intrastate pipeline to transport natural gas on behalf of interstate pipelines,” section 311 did not expand the Commission’s jurisdiction under the NGA.⁵³ In fact, the NGPA explicitly defines “intrastate pipeline” as one “not subject to the jurisdiction of the Commission under the NGA.”⁵⁴ LOC states, for example, that the Commission cannot “destroy” this jurisdictional distinction placing intrastate pipelines beyond its NGA authority without express amendment from Congress.⁵⁵ Moreover, TPA cites to *Associated Gas Distributors v. FERC*,⁵⁶ where the court held that it was unreasonable for the Commission to presume that “obscure” language in section 311 authorized an expansion of its jurisdiction without legislative

⁴⁷ LOC Request for Rehearing and Clarification at 3; Enogex Request for Rehearing and Clarification at 7; Railroad Commission of Texas Request for Rehearing and Clarification at 8–9; TPA Request for Rehearing and Clarification at 22–23.

⁴⁸ LOC Request for Rehearing and Clarification at 9; RRC Request for Rehearing and Clarification at 8.

⁴⁹ RRC Request for Rehearing and Clarification at 8.

⁵⁰ RRC Request for Rehearing and Clarification at 8; LOC Request for Rehearing and Clarification at 8–9; Enogex Request for Rehearing and Clarification at 6–7; TPA Request for Rehearing and Clarification at 28–29.

⁵¹ 15 U.S.C. 3371(a)(2).

⁵² Enogex Request for Rehearing and Clarification at 9; LOC Request for Rehearing and Clarification at 5–8; Railroad Commission of Texas Request for Rehearing at 9; TPA Request for Rehearing and Clarification at 18–22.

⁵³ LOC Request for Rehearing and Clarification at 5–6; RRC Request for Rehearing and Clarification at 9; TPA Request for Rehearing and Clarification at 18–22.

⁵⁴ LOC Request for Rehearing and Clarification at 5–6; RRC Supplemental Comments at 9; TPA Request for Rehearing and Clarification at 18–22.

⁵⁵ LOC Request for Rehearing and Clarification at 6.

⁵⁶ *Assoc. Gas Distrib. v. FERC*, 899 F.2d 1250 (D.C. Cir. 1990).

history to support an expansion.⁵⁷ TPA, LOC, and RRC also focus on previous case-law limiting the Commission’s traditional rates, terms, and conditions jurisdiction under section 311.⁵⁸

22. Other petitioners focus on NGA section 23(d)(2) which provides that the Commission shall not require natural gas producers, processors, or users who have a *de minimis* market presence to comply with the reporting requirements of section 23.⁵⁹ On rehearing, RRC renews arguments made in response to the NOPR regarding the *de minimis* exception. Contrary to the Commission’s interpretation, RRC believes that, had Congress intended to give the Commission even limited jurisdiction over intrastate pipelines, it would have listed them in section 23(d)(2).⁶⁰ Because section 23(d)(2) makes no such reference, RRC contends that the Commission’s findings are contrary to the plain language of section 23.⁶¹

23. Some petitioners assert that the Commission is seeking information on gas flows that are outside of the Commission’s jurisdiction, regardless of the facilities at issue.⁶² TPA argues that the collection of design capacity and gas flow data does not relate to the availability and prices of natural gas, thereby exceeding the Commission’s transparency jurisdiction.⁶³ Enogex argues that the new regulations make it impossible to discern the Commission’s jurisdiction from State jurisdiction because the intrastate and interstate volumes of gas that move on the Enogex system are so commingled that they cannot be distinguished for capacity posting purposes.⁶⁴

24. Targa, California LDCs, RRC, and TPA all contend that Order No. 720 is an improper regulation of intrastate operations and rates.⁶⁵ These petitioners

⁵⁷ TPA Request for Rehearing and Clarification at 19–20.

⁵⁸ TPA Request for Rehearing and Clarification at 21–22; LOC Request for Rehearing and Clarification at 6–10; RRC Request for Rehearing and Clarification at 16. TPA and LOC also raise arguments linking section 311 to section 601 of the NGPA. LOC Request for Rehearing and Clarification at 5–8; TPA Request for Rehearing and Clarification at 18–21.

⁵⁹ 15 U.S.C. 717t–2(d)(2).

⁶⁰ RRC Request for Rehearing and Clarification at 7; *see also* TPA Request for Rehearing and Clarification at 23–24.

⁶¹ RRC Request for Rehearing and Clarification at 7–8.

⁶² Enogex Request for Rehearing at 9–10; TPA Request for Rehearing and Clarification at 13–15.

⁶³ TPA Request for Rehearing and Clarification at 13–15.

⁶⁴ Enogex Request for Rehearing and Clarification at 9–10.

⁶⁵ Targa Request for Rehearing and Clarification at 9; California LDCs Request for Rehearing and Clarification at 14–15; RRC Request for Rehearing

argue that the Final Rule may adversely interfere with State regulation of non-interstate pipelines.⁶⁶ California LDCs challenge the Commission’s claim that it is not regulating intrastate operations of non-interstate pipelines. The petitioner alleges that compliance with Order No. 720 entails daily postings of customer-specific and facility-specific information, effectively regulating intrastate operations.⁶⁷

2. Commission Determination

25. After consideration, the Commission rejects the requests for rehearing and reaffirms its holding that it has jurisdiction over the matters addressed in Order No. 720. NGA section 23 provides the Commission limited jurisdiction over major non-interstate pipelines for the purpose of requiring public disclosure of information to enhance market transparency.

26. Most petitions for rehearing reiterate arguments the Commission considered and addressed at length in Order No. 720. For example, petitioners take issue with the Commission’s interpretation of the expansive language used in NGA section 23. In Order No. 720, the Commission held that Congress deliberately chose the term “any market participant” in section 23 to expand the Commission’s jurisdiction beyond the universe of natural gas companies to which it would otherwise be limited, recognizing that the public needs information from a wide variety of entities in order to facilitate transparency.⁶⁸ Section 1 is not referenced in section 23 and the term “natural gas company” is not used in section 23. Petitioners have not raised any new arguments regarding the meaning of “any market participant” in section 23. The Commission continues to believe that Congress did not intend to limit the Commission’s transparency jurisdiction to entities it traditionally regulates.⁶⁹

27. As stated in Order No. 720, section 23(d)(2) would be unnecessary surplusage if Congress did not intend to give the Commission authority over entities otherwise excluded by section 1(b) of the NGA.⁷⁰ Petitioners raise no new arguments regarding this issue.

and Clarification at 9–11; TPA Request for Rehearing and Clarification at 25–28.

⁶⁶ California LDCs Request for Rehearing and Clarification at 14–15; RRC Request for Rehearing and Clarification at 9–11; TPA Request for Rehearing and Clarification at 3, 25–28.

⁶⁷ California LDCs Request for Rehearing and Clarification at 14–15.

⁶⁸ Order No. 720 at P 18.

⁶⁹ *Id.* P 19.

⁷⁰ *Id.* P 23.

Likewise, no new arguments were presented regarding the Commission's authority to enact rules under sections 23(a)(1) and 23(a)(2). These subsections grant discretion to the Commission to achieve interstate price transparency and to provide for public dissemination of information.⁷¹

28. The Commission also finds no merit in arguments raised by petitioners related to section 311 of the NGPA. While section 311 limits the Commission's jurisdiction regarding some intrastate natural gas pipeline activities, section 23 of the NGA provides a different jurisdictional basis promoting different Congressional goals. Section 23 grants the Commission authority to ensure that the information necessary for interstate market transparency is available to the public. The term *any market participant* includes non-interstate pipelines, thus the Commission has the authority to require those participants to post certain information to facilitate market transparency.

29. Petitioners also reiterated arguments, addressed in Order No. 720, that previous case law limits the Commission's transparency jurisdiction.⁷² The Commission affirms its conclusion that the cases cited by commenters apply only to the jurisdictional limits set forth in section 1 of the NGA prior to the enactment of EPAct 2005.⁷³ Such case law is not applicable to regulations adopted by the Commission pursuant to section 23 of the NGA.

30. In response to Enogex, it is immaterial for purposes of our transparency jurisdiction whether non-interstate and interstate volumes of gas are commingled. Under section 23, if natural gas volumes have a greater than *de minimis* effect on the interstate natural gas market, and the other requirements of section 23 are met, the Commission has the authority to require posting of such volumes regardless of whether flowing natural gas is characterized as "interstate" or "non-interstate."

31. The Commission emphasizes that its transparency jurisdiction is limited to the dissemination of information that will aid in market transparency. Section 23 gives the Commission no jurisdiction related to, and our regulations do not govern the rates, terms, and conditions of service of major non-interstate pipeline operations. The Commission is

requiring only the posting of essential information to ensure market transparency and is not engaging in traditional regulation of rates, terms, and conditions of service.

32. The Commission finds that Order No. 720 accurately implemented its authority under the limited jurisdiction Congress conferred in NGA section 23.⁷⁴ Therefore, we deny rehearing.

B. Need for the Rule

33. Order No. 720 found that a broad cross-section of the natural gas industry supports the transparency goals of the pipeline posting requirements.⁷⁵ In Order No. 720, the Commission exercised the authority conferred by Congress following consideration of comments on the NOPR, and based on its experience regulating the interstate natural gas market. Order No. 720 discussed interstate pipeline postings as well as other sources of market information, determining that additional information by non-interstate pipelines would enhance transparency further.⁷⁶

34. Order No. 720 found that information regarding wholesale natural gas price fundamentals was incomplete given the lack of access to scheduled flow information from major non-interstate pipelines.⁷⁷ This informational gap exists because, while interstate pipelines must post daily scheduled flow information under our current regulations, no similar information is available regarding scheduled flows prior to or following transportation on interstate pipelines. Order No. 720 attempted to fill this informational gap with supply-related information from large non-interstate pipelines upstream of interstate pipelines and demand-related information from large non-interstate pipelines downstream of interstate pipelines. Supply and demand fundamentals for the interstate natural gas market can be more fully understood utilizing information from non-interstate pipelines.

⁷⁴ The Commission's conclusion here is consistent with its findings in Order No. 704 regarding the annual reporting requirement for market participants adopted pursuant to our NGA section 23 authority. *See Transparency Provisions of section 23 of the Natural Gas Act*, Order No. 704, 73 FR 1014 (Jan. 4, 2008), FERC Stats. and Regs. ¶ 31,260 (2007), *order on reh'g*, Order No. 704-A, 73 FR 55726 (Sept. 26, 2008), FERC Stats. & Regs. ¶ 31,275 (2008), *order on reh'g*, Order No. 704-B, 125 FERC ¶ 61,302 (2008).

⁷⁵ Order No. 720 at P 29.

⁷⁶ *Id.* P 39–50. Additionally, the Commission determined that increased transparency regarding no-notice natural gas flows was needed on interstate pipelines. *Id.* P 161.

⁷⁷ *Id.* P 40.

1. Requests for Rehearing and Clarification

35. On rehearing, a limited number of petitioners object to Order No. 720's findings that transparency needs to be increased in the interstate natural gas market, and question whether the regulations adopted in Order No. 720 actually increase transparency.

36. For example, LOC states that Order No. 720 "failed to support its finding that there exists any necessity for the enactment of the proposed rules."⁷⁸ RRC argues that our pipeline posting regulation is "a solution in search of a problem," adding that recent Commission initiatives have improved market transparency and that there has been no showing that additional transparency is required.⁷⁹

37. TPA requests rehearing on the grounds that the Commission has not demonstrated that interstate market transparency is enhanced by major non-interstate pipeline information. It alleges that the Commission has "consistently disregarded the consensus among market participants" on this point.⁸⁰

38. TPA takes Order No. 720 to task for focusing on comments "of a handful of intervenors expressing general support for the [NOPR]" rather than acknowledging the substantial number of intrastate pipelines and other participants that see no need for increased transparency.⁸¹ TPA argues, citing *National Fuel Gas Supply Corporation v. FERC*,⁸² that the Commission must cite evidence of an industry problem prior to rulemaking action.⁸³ TPA particularly objects to Order No. 720's finding that the transparency rule assists market participants to understand the impact of hurricanes and other natural disasters on natural gas supply. Further, TPA argues that "nowhere in this proceeding has the Commission or any market participant provided an adequate explanation of how the proposed rule would detect market manipulation."⁸⁴

39. Southwest Gas argues that the transparency rule did not specifically demonstrate a need for information from LDCs related to daily capacity and

⁷⁸ LOC Request for Rehearing and Clarification at 11. *See also* TRC Request for Rehearing and Clarification at 14–15.

⁷⁹ RRC Request for Rehearing and Clarification at 11–15.

⁸⁰ TPA Request for Rehearing and Clarification at 33.

⁸¹ *Id.* at 35–37.

⁸² 468 F.3d 831, 843 (D.C. Cir. 2006).

⁸³ TPA Request for Rehearing and Clarification at 37.

⁸⁴ *Id.* at 39.

⁷¹ *Id.* P 16.

⁷² Railroad Commission of Texas Request for Rehearing and Clarification at 15–16; LOC Request for Rehearing and Clarification at 6–7; Enogex Request for Rehearing and Clarification at 6–7.

⁷³ Order No. 720 at P 20.

scheduled retail transportation.⁸⁵ Southwest Gas complains that Order No. 720 did not adequately explain the nexus between data provided by State-regulated LDCs and price formation for natural gas sold at wholesale and in interstate commerce.⁸⁶

40. Additionally, some petitioners request rehearing on the grounds that Order No. 720 failed to fully consider the existing sources of data regarding non-interstate natural gas flows as required by section 23.⁸⁷

2. Supplemental Comments

41. In its supplemental comments, AGA makes arguments similar to Southwest Gas.⁸⁸ AGA states that LDCs are fundamentally distributors of natural gas and that LDC scheduled flow postings would not further the Commission's transparency goals.⁸⁹ AGA notes that no wholesale natural gas price formation occurs on an LDC's system⁹⁰ and argues that available capacity calculations for LDCs may be misleading.⁹¹

3. Commission Determination

42. The Commission continues to believe that the major non-interstate pipeline posting requirements are needed and denies the requests for rehearing.

43. The Commission notes, as an initial matter, that some of the requests for rehearing appear to argue that the Commission has substantially increased transparency in interstate markets in recent years, but that such transparency is sufficient and more need not be done. However, these petitioners misconstrue section 23 of the NGA and Congress' transparency objectives. As discussed in Order No. 720, the Commission has been *directed* by Congress to facilitate price transparency in markets for the sale or transportation of physical natural

gas in interstate commerce⁹² and given the authority to prescribe such rules as may be necessary to effectuate the Congressional goal.⁹³ As the Congressional mandate implicitly acknowledges, lack of transparency is not a "problem" readily susceptible to a single regulatory solution. Transparency enhances the ability of market participants to make informed, efficient decisions based upon public information. In other words, enhanced transparency is typically beneficial to markets, even markets, such as the U.S. wholesale natural gas market, that are already competitive. It is not a necessary prerequisite to adoption of our regulations to find, as some petitioners appear to demand, that the interstate natural gas market cannot function without the rule. As petitioners acknowledge, the Commission has improved market transparency in several different ways in recent years and the interstate natural gas market is competitive and robust. These successes, however, do not preclude other means of further enhancing transparency. This is particularly true where the Commission has identified a "gap" in relevant market information available to market participants.

44. Many of the petitions for rehearing repeat arguments made in response to the NOPR and addressed in Order No. 720. As the Commission found in Order No. 720, there presently exists a gap in information available to interstate market participants necessary to more fully understand supply and demand fundamentals and therefore price formation.⁹⁴ A significant amount of natural gas flows from producing basins to interstate markets on non-interstate pipelines. These scheduled flows impact supply considerations in interstate markets. Similarly, flows on non-interstate pipelines at the end of the delivery chain impact demand considerations in the interstate market.⁹⁵ These considerations are fundamental to Order No. 720's determination that information about scheduled non-interstate pipeline natural gas flows would enhance transparency in the interstate natural gas market. Without access to information about supply and demand, interstate natural gas market participants are left with incomplete information to understand interstate

wholesale prices. Incomplete information leads to market inefficiencies because wholesale buyers and sellers of natural gas have inconsistent levels of market knowledge and are less able to understand price outcomes.⁹⁶

45. Existing interstate pipeline posting data is used extensively by the public to understand daily market conditions and price formation. The public can access an interstate pipeline's Internet Web site to ascertain capacity availability and operational conditions. Also, data aggregators scour these Web sites and sell analysis and services based on this data, with many market participants, including producers, pipelines, end users, marketers, traders, and financial firms paying subscription fees to these data aggregators to evaluate the interstate natural gas market. The demand for such data by market participants is a persuasive factor regarding its transparency value. Based upon the comments in this rulemaking and our natural gas market experience, the Commission believes that there is robust interest by the public regarding similar scheduled flow data from non-interstate pipelines to form a more complete picture of the U.S. wholesale natural gas market. We therefore disagree with commenters arguing that such data is not valued by the public.

46. As discussed below, data provided by major non-interstate pipelines will help interstate natural gas market participants understand both supply and demand and, thus, price formation.

Understanding of Supply Fundamentals Will Be Enhanced

47. Some petitioners, including TPA, argue that information from non-interstate pipelines that provide natural gas supplies would not enhance interstate market transparency. Order No. 720 notes the substantial impact that non-interstate pipelines have on the establishment of national wholesale natural gas prices. Non-interstate pipelines, particularly those in the south-central United States, connect large production areas with interstate pipelines.⁹⁷

48. Despite TPA's protestations, obtaining data from TPA's members is particularly important for interstate market transparency. Onshore Texas locations account for thirty percent

⁸⁵ Southwest Gas Request for Rehearing and Clarification at 12.

⁸⁶ *Id.* at 13–14.

⁸⁷ LOC Request for Rehearing and Clarification at 11; RRC Request for Rehearing and Clarification at 11–15; TPA Request for Rehearing and Clarification at 30–31.

⁸⁸ The Order Requesting Supplemental Comments requested additional comments on discrete issues raised by commenters in requests for rehearing and clarification. Order Requesting Supplemental Comments at P 7–10. Some commenters submitted supplemental comments on subjects outside the requested scope. While the Commission did not request such extraneous supplemental comments, such as AGA's supplemental comments regarding need for the rule, we nevertheless address such comments in this order to ensure that the record is complete.

⁸⁹ AGA Supplemental Comments at 10.

⁹⁰ *Id.* at 13.

⁹¹ *Id.* at 16–17. *See also* California LDCs Supplemental Comments at 8.

⁹² 15 U.S.C. 717f–2(a)(1).

⁹³ 15 U.S.C. 717f–2(a)(2).

⁹⁴ Order No. 720 at P 39.

⁹⁵ Of course, non-interstate pipelines that deliver natural gas to end-users may also deliver gas to other pipelines for subsequent transportation similar to transportation provided by interstate pipelines.

⁹⁶ Transparency plays a fundamental role in the fairness, efficiency, and functioning of orderly markets. Greater transparency results in greater market efficiency because price signals to market participants more accurately reflect underlying supply and demand fundamentals.

⁹⁷ Order No. 720 at P 45.

(approximately 5.7 Tcf in 2007) of U.S. natural gas production.⁹⁸ Texas has more non-interstate pipelines than any other State—45,000 of the 58,600 miles of natural gas pipelines in the State are intrastate pipelines and account for almost 16 Bcf/d of pipeline capacity.⁹⁹ The pipeline network in Texas has experienced significant growth over the past several years as a result of increased demand for pipeline capacity caused by the rapid development and expansion of natural gas production in the Barnett Shale Formation.¹⁰⁰ New pipelines have been built, and expansions to existing ones undertaken, to meet increased demand. The importance of Texas non-interstate transportation to understanding interstate price fundamentals is growing as production shifts from old depleting gas basins to new gas basins.

49. The value of non-interstate pipeline supply flows is not confined to Texas. In Colorado, Wyoming, and Utah, development of new, large-diameter intrastate pipelines is proceeding at a fast pace, as proved reserves of coalbed methane, tight sands, and conventional natural gas supplies are identified.¹⁰¹ During the past several years, at least eight large-capacity pipeline header systems have been built in Wyoming to transport natural gas from local gathering systems.¹⁰² In the Piceance Basin in western Colorado and the Uinta Basin in eastern Utah, several new large gathering systems have been developed to feed expanding natural gas production into the interstate pipeline network.¹⁰³ These supply sources have a significant effect on interstate price formation because new supply can

⁹⁸ U.S. Energy Information Administration, *Natural Gas Annual 2007*, Gross Withdrawals and Marketed Production of Natural Gas by State and the Gulf of Mexico 2003–2007 (2007), p. 8 (available at http://www.eia.doe.gov/pub/oil_gas/natural_gas/data_publications/natural_gas_annual/current/pdf/table_003.pdf).

⁹⁹ Energy Information Administration, *Intrastate Natural Gas Segment* (available at http://www.eia.doe.gov/pub/oil_gas/natural_gas/analysis_publications/ngpipeline/intrastate.html). The size and importance of non-interstate transportation in Texas is manifest. Sixteen Bcf/d is enough gas to serve all the industrial or power load in the U.S.

¹⁰⁰ U.S. Energy Information Administration, *Expansion of the U.S. Natural Gas Pipeline Network: Additions in 2008 and Projects through 2011*, (Sept. 2009) (available at http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/pipelinetwork/pipelinetwork.pdf) (“About 10 percent of all newly added natural gas pipeline capacity for 2008, or 4.6 Bcf per day, was attributable to new intrastate pipelines built to transport expanding Barnett shale production specifically”).

¹⁰¹ U.S. Energy Information Administration, *supra* note 97.

¹⁰² *Id.*

¹⁰³ *Id.*

reduce regional and national gas prices. The faster the implications of new supply are assessed, the better the market can integrate those implications into pricing decisions.

50. In these states and elsewhere, capacity could be limited at key points, impacting regional, interstate wholesale prices. Supply or demand driven events on non-interstate pipelines that impact regional wholesale prices cannot be fully understood by market participants without access to receipt and delivery point information.

51. Existing data sources on gas supply flows are insufficient for participants to adequately evaluate physical daily market activity. As the Commission discussed in Order No. 720, the Energy Information Administration (EIA) publishes data on monthly production by State based on a survey and with a three month lag.¹⁰⁴ Similarly, monthly consumption data is published by State with a four month lag.¹⁰⁵

Understanding of Demand Fundamentals Will Be Enhanced

52. Petitioners not only question the value of increased transparency of the operations of non-interstate pipelines at the beginning of the delivery chain, but also at the end of the delivery chain. For example, Southwest Gas and AGA argue that the Commission has not articulated an adequate nexus between data provided by LDCs (oftentimes companies that primarily deliver natural gas to end-users) and interstate natural gas price formation. The Commission disagrees and continues to believe that the pipeline posting regulations will enhance understanding of demand fundamentals.

53. Order No. 720 not only identified the information gap now present, but also provided data explaining the possible scope of the transparency problem regarding demand for natural gas. For example, we noted that up to 90 percent of daily consumption of natural gas in Texas is not captured through the Commission’s current interstate pipeline posting requirements.¹⁰⁶ Instead, such consumption data is available only from

¹⁰⁴ Energy Information Administration, *Natural Gas Deliveries to All Consumers by State 2007–2009* (Nov. 2009) (available at http://www.eia.doe.gov/oil_gas/natural_gas/data_publications/natural_gas_monthly/ngm/current/pdf/table_16.pdf).

¹⁰⁵ Energy Information Administration, *Marketed Production of Natural Gas in Selected States and the Federal Gulf of Mexico* (Nov. 2009) (available at http://www.eia.doe.gov/oil_gas/natural_gas/data_publications/natural_gas_monthly/current/pdf/table_05.pdf).

¹⁰⁶ Order No. 720 at P 44.

EIA in aggregated format several months following actual delivery.¹⁰⁷ Such stale data is unhelpful for interstate market participants seeking to understand price formation in today’s rapidly-changing energy markets.

54. Demand clarity is a persistent problem in U.S. interstate natural gas markets. For example, California accounts for 10 percent of U.S. natural gas consumption, of which one-third is utilized for electric power generation.¹⁰⁸ About 13 percent of California’s consumption is met by in-State production with the rest met by imports from surrounding states.¹⁰⁹ Interstate pipelines serving California, with four exceptions, terminate at the State border.¹¹⁰ Market participants can currently “see” imports into California, flows between PG&E and Southern California Gas Company (SoCal Gas), and flows into SoCal Gas producing zones by virtue of the Commission’s existing interstate pipeline posting regulations and using PG&E’s and SoCal Gas’ Pipe Ranger and Envoy systems.¹¹¹ However, market participants have limited information regarding gas receipts and deliveries once gas is delivered to PG&E’s and SoCal Gas’ systems. Non-interstate transportation and distribution are dominated by: PG&E, with 6,136 miles of transportation pipelines; SoCal Gas, with 2,890 miles of transmission and storage pipelines; and SDG&E, with 168 miles of transmission pipelines.¹¹²

¹⁰⁷ *Id.*

¹⁰⁸ U.S. Energy Information Administration, *Natural Gas Annual 2007: Consumption of Natural Gas 2003–2007 by State, 2007* (2007) at 41 (available at http://www.eia.doe.gov/pub/oil_gas/natural_gas/data_publications/natural_gas_annual/current/pdf/table_015.pdf).

¹⁰⁹ *Id.*

¹¹⁰ Interstate pipelines currently serving California include El Paso Natural Gas Company (El Paso), Kern River Transmission Company, Mojave Pipeline Company, Gas Transmission-Northwest, Transwestern Pipeline Company (Transwestern), Questar Southern Trails Pipeline, Tuscarora Pipeline and the Bajonorte/North Baja Pipeline. Kern River, Mojave, Tuscarora, and North Baja pipeline have significant capacity in California, while all other pipelines terminate at the California border. See California Public Utilities Commission, *Natural Gas Market Study* (Feb. 2006) at 28 (available at http://www.dps.cuc.ca.gov/WORD_PDF/REPORT/54256.pdf).

¹¹¹ Sempra’s Envoy system posts daily information at SoCal Gas’ interconnection with interstate pipelines, PG&E, and five “producer zones.” PG&E’s Pipe Ranger system posts daily information only at interconnects with interstate pipelines and SoCal Gas’ system. Most of the gas flow information posted on Envoy and Pipe Ranger is readily available from interstate pipeline postings and provides little additional market information useful for understanding the intrastate flow of gas. *Envoy Interactive Map* (available at https://www.envoyproj.sempra.com/help/help_pipeline_map.html).

¹¹² Pacific Gas and Electric Co., *Fast Facts* (available at <http://www.pge.com/about/company/>

55. SoCal Gas and PG&E are two of the largest distribution companies in the U.S. When major natural gas transportation interruptions occur on these systems inside California, market participants are unable to accurately assess interstate market implications.¹¹³ For example, the western energy crisis of 2000–2001 resulted in high power and natural gas prices in California which were compounded by restricted flows of gas into California due to an explosion on the El Paso pipeline that connects west Texas production to California earlier in 2000. The ability to observe flows on the PG&E and SoCal systems would have enabled market participants, the California Public Utility Commission, and the public to better understand the severity of local gas shortages and their impact on prices and gas supply.

56. The frequent price differences observed between PG&E and SoCal Gas city gate prices provide a further example of the need for greater transparency in the California intrastate market. Intrastate pipeline constraints within California likely cause these price divergences, but the nature and extent of these constraints is unobservable to the public. The public has access to flow data at the interconnects of PG&E with two interstate pipelines in southern California (with El Paso at the Topock receipt point and Transwestern at the Needles receipt point). Capacity at the Topock receipt point is not fully utilized and cheaper gas should theoretically flow north on PG&E's system to equalize prices between PG&E and SoCal Gas. In order to effectively understand constraints on intrastate pipelines (and the effects on interstate market prices), it is imperative that the public have access to better, more timely information on intrastate scheduled gas flows in California.

57. Lack of demand transparency in California markets is detrimental to well functioning and competitive interstate markets in a number of ways. For example, a holder of pipeline capacity on PG&E's non-interstate pipeline system could potentially hoard capacity at key points, driving up gas prices in California, while depressing interstate prices at the California border. Such non-interstate activity not only would

profile/); Securities and Exchange Commission, *Sempra Energy Form 10-K Annual Report* at 25 (Feb. 24, 2009) (available at

¹¹³ Since most information is only posted at major interconnections with interstate pipelines and between PG&E and SoCal Gas, conditions in-state are not readily discernible.

have an immediate impact on interstate wholesale prices at the border, but would have a ripple effect outward, perhaps affecting prices throughout the southwest. In another example, the regional impact of a surge in California gas demand by power generators, perhaps due to hot weather or a nuclear outage, could be more easily understood and assessed if the location of such surges could be identified at individual delivery points. Again, obtaining information only at the California border would be insufficient to understand interstate market prices since the price-affecting constraints may be occurring within the State.

58. Based upon the foregoing examples and the Commission's discussion in Order No. 720, the Commission believes that there is sufficient nexus between demand-side non-interstate flow information and interstate price formation to sustain the Commission's regulations, contrary to the position of AGA and Southwest Gas.

Non-Interstate Pipeline Scheduled Flow Postings During Times of Natural Disaster Would Benefit Interstate Market Participants

59. TPA objects to Order No. 720's conclusion that information regarding supply flowing through non-interstate pipelines is particularly important during times of natural disaster or when pipelines are unexpectedly shut down. TPA contends that most non-interstate pipelines will not be able to post scheduled flow data during an emergency.¹¹⁴ The Commission disagrees and continues to believe that non-interstate pipeline postings are crucial to ameliorate market misunderstandings during hurricanes and other situations that occasion pipeline outages.

60. Even if, as TPA suggests without support, major non-interstate pipelines would be unable to meet their posting obligations during hurricanes, the fact that an emergency is so severe as to preclude postings would provide an important signal to the market regarding the emergency's impact on natural gas supply. Further, posting information up to and following an emergency would give crucial insight regarding staged shutdown of supply before an emergency event and renewed operation of supply infrastructure following an emergency event.

61. For example, in September 2005, hurricanes Katrina and Rita forced the

shut down of Henry Hub for 11 days.¹¹⁵ Henry Hub is the location for interconnection of four non-interstate and nine interstate pipelines. Because of these interconnections, the location is of vital importance for transportation of natural gas from the producing region in the Gulf to the consuming markets in the Northeast and the Midwest.¹¹⁶ It is also a crucial pricing point for interstate natural gas. Although no interstate pipeline flows were scheduled or prices reported for this fourteen day period, the lack of postings reflected the outage status of Henry Hub. Resumption of scheduled flow postings by interstate pipelines sent an important signal to market participants that markets were beginning to normalize.

Scheduled Flow Information Posted by Major Non-Interstate Pipelines Could Be Utilized To Detect Manipulation and Discriminatory Behavior

62. We also reject TPA's assertion that non-interstate scheduled flow information could not be utilized to detect market manipulation and discriminatory behavior. As we discussed in Order No. 720, the Commission and other market participants regularly review supply and demand fundamentals to determine if prices are the result of such market forces.¹¹⁷ Understanding supply in large non-interstate pipelines leading into the interstate market and demand in large non-interstate pipelines downstream of the interstate market will enable market observers to better understand prices and, therefore, identify potential cases of market manipulation.

63. The Commission has utilized interstate scheduled flow postings in its investigations of market manipulation and unduly discriminatory behavior. The Commission will now include relevant non-interstate posting data in its evaluations of such allegations.

C. Definition of Major Non-Interstate Pipeline

1. Delivery Threshold

64. Consistent with the need for greater transparency in the interstate natural gas market and Congress' directive in section 23 of the NGA, Order No. 720 required major non-interstate pipelines to post daily information regarding scheduled volumes at specified points of receipt

¹¹⁵ 2008 State of Markets Report, Federal Energy Regulatory Commission, Division of Energy Market Oversight at 6 (available at <http://www.ferc.gov/market-oversight/st-mkt-ovr/2008-som-final.pdf>).

¹¹⁶ Henry Hub is the interconnecting location of twelve pipelines and transportation capacity at the Hub is more than 1.8 Bcf per day.

¹¹⁷ Order No. 720 at P 50.

¹¹⁴ TPA Request for Rehearing and Clarification at 38.

and delivery. The Commission adopted a definition of “major non-interstate pipeline” as a pipeline that: (1) Is not a “natural gas pipeline” under section 1 of the NGA; and (2) delivers annually more than 50 million MMBtu of natural gas measured in average deliveries over the past three years.¹¹⁸ The Commission found that a delivery threshold of 50 million MMBtu would capture large non-interstate pipelines with operations that have a substantial impact on interstate natural gas prices. Further, the 50 million MMBtu threshold is consistent with the threshold that the Commission has adopted for interstate pipelines to file FERC Form No. 2.¹¹⁹ The Commission also held that such a threshold would eliminate compliance burdens for smaller non-interstate pipelines.¹²⁰

a. Requests for Rehearing and Clarification

65. Encana requests that the Commission clarify that new pipelines will not be required to post information until at least three years following initial operation as they will not have average deliveries for the three previous calendar years upon which to determine if they exceed the threshold.¹²¹ TPA supports Encana’s requested clarification.¹²² Shell requests clarification that a major non-interstate pipeline is one that delivered annually more than 50 million MMBtus for each of the preceding three years.¹²³

b. Commission Determination

66. Section 284.1(d)(2) of the Commission’s regulations provides that major non-interstate pipelines are pipelines that deliver “annually more than fifty (50) million MMBtus (million British thermal units) of natural gas measured in average deliveries for the previous three calendar years.”¹²⁴ We believe this language to be unambiguous, requiring the aggregation of pipeline deliveries over the previous three calendar years and division by three. Shell’s request for clarification is therefore denied.

67. As Encana argues,¹²⁵ the Commission did not explicitly state how

¹¹⁸ See 18 CFR 284.1(d). Fifty million MMBtu of natural gas deliveries per year is roughly equivalent to 136 MMcf of deliveries per day.

¹¹⁹ Order No. 720 at P 66.

¹²⁰ *Id.* P 67.

¹²¹ Encana Request for Clarification and Clarification at 3.

¹²² TPA Request for Rehearing and Clarification at 51–52.

¹²³ Shell Request for Rehearing and Clarification at 6–8.

¹²⁴ 18 CFR 284.1(d)(2).

¹²⁵ Encana Request for Rehearing and Clarification at 3.

the threshold calculation would apply to pipelines with less than three years of operational data. The Commission finds that the appropriate threshold to determine if a new pipeline qualifies as major non-interstate pipeline is whether the pipeline has the capability to deliver more than 50 million MMBtu of natural gas annually. That is, until a non-interstate pipeline has experienced three years of operational flow, it must utilize its maximum delivery capacity to determine whether it is a major non-interstate pipeline subject to this transparency rule. Section 284.1(d), defining “major non-interstate pipeline,” is amended accordingly.

68. The Commission disagrees with Encana and TPA that new pipelines, including large non-interstate pipelines with possible natural gas flows that could have significant effects on the interstate markets, should be wholly exempt from the posting requirements of this rule for the first three years of their existence. New major non-interstate pipelines have more than a *de minimis* impact on interstate markets and, as such, the Commission’s posting requirements shall apply.

69. Further, the Commission will not adopt a threshold for new pipelines that utilizes projected three-year natural gas deliveries as a proxy for actual deliveries. The Commission agrees with Encana that a non-interstate pipeline that gathers production may “have difficulty in projecting the volume of natural gas that it will deliver.”¹²⁶ Thus, the Commission will not require new non-interstate pipelines to develop natural gas delivery projections simply to determine whether they are a major non-interstate pipeline subject to our transparency rules.

70. Instead, the Commission determines that, until a new pipeline develops three years of operational flow data, it must utilize design capacity to determine whether the pipeline is a major non-interstate pipeline subject to the rule. As discussed in Order No. 720, the Commission believes that design capacity data typically will be readily accessible to pipelines, especially newly constructed pipelines. As such, the Commission expects that a design capacity threshold will be the least burdensome method for most new pipelines to determine if they are subject to our transparency regulations. Further, in the absence of scheduled flow data, capacity is the best measure of the potential impact of a new pipeline on the interstate natural gas markets.

¹²⁶ Encana Request for Rehearing and Clarification at 4.

71. Accordingly, the Commission denies Encana’s and TPA’s requested clarification. However, the Commission requires pipelines without three years’ operational data to utilize design capacity to determine whether they are major non-interstate pipelines. Section 284.1(d) of our regulations is modified to include this requirement.

2. Treatment of Non-Contiguous Pipeline Systems

72. In Order No. 720, the Commission defined major non-interstate pipelines utilizing a 50 million MMBtu annual delivery threshold.¹²⁷ The order clarified that the threshold would be applied on a “facility-by-facility” basis.¹²⁸

a. Requests for Rehearing and Clarification

73. AGA, Southwest Gas, and Bear Paw/ONEOK Gathering Companies request either clarification, rehearing, or both regarding the meaning of “facility-by-facility.” Particularly, petitioners request clarification as to how the delivery threshold for major non-interstate pipelines applies to pipeline systems that are non-contiguous (*i.e.*, pipelines that are not directly interconnected with each other).¹²⁹ AGA argues that non-contiguous pipeline systems should be viewed separately to determine whether each pipeline system is a major non-interstate pipeline or is eligible for the exceptions for posting in section 284.14(b)(2).¹³⁰

74. Southwest Gas requests that the Commission clarify that separate facilities should be based, at least for an LDC, upon the LDC’s own “operational grouping of lines and facilities within an operational area.”¹³¹ Southwest Gas also requests clarification that its separate operating systems need not comply with the posting regulations based upon factual representations made in its comments.¹³²

75. Bear Paw/ONEOK supports the Commission’s determination that major non-interstate pipelines be determined on a facility-by-facility basis. However, they request clarification that “facility-by-facility” analysis is appropriate where “physically separate facilities are

¹²⁷ This threshold is included in the definition of “major non-interstate pipeline” in 18 CFR 284.1(d).

¹²⁸ Order No. 720 at P 64.

¹²⁹ AGA Request for Rehearing and Clarification at 27–28; SWG Request for Rehearing and Clarification at 7; Bear Paw/ONEOK Request for Rehearing and Clarification at 10–11.

¹³⁰ AGA Request for Rehearing and Clarification at 27–28.

¹³¹ Southwest Gas Request for Rehearing and Clarification at 7.

¹³² *Id.* at 7–9.

not operated on an integrated basis.”¹³³ Bear Paw/ONEOK claims that such a clarification would eliminate incentives for non-interstate pipelines to splinter their facilities into individual companies to avoid posting obligations.¹³⁴

b. Commission Determination

76. The Commission clarifies that the phrase “facility-by-facility” as used in Order No. 720 applies both to determine whether a pipeline is a major non-interstate pipeline under 18 CFR 284.1(d) and also whether a major non-interstate pipeline is nevertheless exempted from the posting requirements as provided in 18 CFR 284.14(b). The phrase “facility-by-facility” was intended by the Commission to indicate that major non-interstate pipelines would be defined by a common sense grouping of related facilities.

77. Identifying all of the facilities within a major non-interstate pipeline requires consideration of both physical interconnection and operational integration. Put differently, a major non-interstate pipeline is composed of a set of facilities that is *both* physically interconnected and operationally integrated. We believe that this clarification captures the impact that major non-interstate pipelines have on price formation. If a set of facilities is physically interconnected and operationally integrated, then the facilities, as a whole, impact the natural gas market as one entity rather than as multiple entities.

78. By “operationally integrated,” the Commission means transportation of natural gas through a centralized scheduling process. It is at this level of integration that the facilities can be coordinated to such an extent that they may have the effect of a single entity in the natural gas market. Whether pipelines are organized into separate corporate divisions or formal operating systems is not relevant to this analysis. For example, if two interconnected sets of facilities are operated jointly from a central dispatch center, then the facilities together constitute a single pipeline for purposes of evaluation under the rule, even if the facilities are separately owned. On the other hand, even if two interconnected sets of facilities are owned by a single entity, they are nevertheless separate pipelines for purposes of the rule if they do not schedule natural gas through a joint scheduling process.

¹³³ Bear Paw/ONEOK Request for Rehearing and Clarification at 10–11.

¹³⁴ *Id.*

79. Finally, the Commission will not address Southwest Gas’s requested clarification regarding whether 18 CFR 284.14 applies to Southwest Gas’s operating systems in Arizona, Nevada, and California. Southwest Gas did not provide sufficient information for the Commission to make such a determination. Southwest Gas should review its pipeline system based upon the clarifications granted herein.

D. Posting Requirements for Major Non-Interstate Pipelines

1. Posting Requirements at Points Where Design Capacity Is Unknown or Does Not Exist

80. In Order No. 720, the Commission required all major non-interstate pipelines subject to our posting regulations to post scheduled natural gas flow and design capacity information for each receipt and delivery point with a design capacity equal to or greater than 15,000 MMBtu per day.

81. In the Commission’s request for supplemental comments, it sought additional input on proposals submitted at the March 18, 2009 technical conference and subsequent post-conference comments regarding application of our posting regulations to receipt and delivery points at virtual or pooling points.¹³⁵ Specifically, the Commission requested comment on requirements to post at such points with a maximum flow equal to or greater than 15,000 MMBtu per day.¹³⁶ The request for supplemental comments included possible revisions to our regulations, including revisions that would require posting by major non-interstate pipelines at eligible virtual and pooling points.¹³⁷ Further, the order requesting supplemental comments proposed exempting from posting receipt points where actual flows were less than 5,000 MMBtu each day for the prior three years.¹³⁸

a. Requests for Rehearing and Clarification

82. Many petitioners requested rehearing or clarification regarding how Order No. 720’s major non-interstate pipeline posting regulations apply to points where design capacity is unknown or does not exist. Such points may include, but are not limited to, virtual points, pooling points, points that are not operated by the pipeline, and other physical points for which the

¹³⁵ Order Requesting Supplemental Comments at P 7.

¹³⁶ *Id.* P 10.

¹³⁷ *Id.* P 7.

¹³⁸ *Id.*

pipeline cannot reasonably determine the design capacity.

83. AGA states that many LDCs schedule volumes to paper pooling points without reference to individual physical points.¹³⁹ AGA suggests that the Commission consider requiring posting scheduled volumes at paper pooling points where the scheduled volumes exceed 15,000 MMBtu per day.¹⁴⁰

84. Both ONEOK Gathering and Nicor request that the Commission clarify whether scheduled volumes to virtual points should be posted.¹⁴¹ TPA also requests clarification that historical data utilized for planning purposes is not required to be posted.¹⁴²

b. Supplemental Comments

85. Atmos generally supports the regulatory language proposed in the Commission’s order requesting supplemental comments stating that the proposal “represents a good compromise between the expensive and extensive reporting required under [the NOPR] and the very limited reporting requirements proposed by others.”¹⁴³ Atmos suggests, however, that the Commission allow major non-interstate pipelines to utilize historical data rather than actual flow data to determine posting eligibility for each point.¹⁴⁴

86. ONEOK Gathering likewise supports the regulations proposed in the order requesting supplemental comments with “minor clarifications.”¹⁴⁵ It requests clarification that the three-year review of receipt point flows to determine whether the point is exempted from posting is three calendar years rather than a rolling three year period.¹⁴⁶

87. Occidental supports the Order Requesting Supplemental Comments’ proposal to limit posting only to scheduled points, and requests modification of the regulatory language to further clarify this subject, including a definition of virtual and pooling points.¹⁴⁷ Occidental suggests utilizing an average of multiple days’ actual flow rather than peak day actual flow to determine posting eligibility for each

¹³⁹ AGA Request for Rehearing and Clarification at 25.

¹⁴⁰ *Id.* at 26.

¹⁴¹ Nicor Request for Rehearing and Clarification at 5–7; ONEOK Gathering Request for Rehearing and Clarification at 10–11.

¹⁴² TPA Request for Rehearing and Clarification at 48–49.

¹⁴³ Atmos Supplemental Comments at 2.

¹⁴⁴ *Id.* at 3.

¹⁴⁵ ONEOK Gathering Supplemental Comments at 4.

¹⁴⁶ *Id.* at 5.

¹⁴⁷ Occidental Supplemental Comments at 3.

point.¹⁴⁸ Occidental states that it is inappropriate to require posting based upon a single-day anomaly in gas flow.¹⁴⁹

88. TPA requests that the Commission extend the proposed exemption for receipt points with less than 5,000 MMBtu of flow each day both to delivery points and to points for which a design capacity is known.¹⁵⁰ TPA argues that points “flowing less than 15,000 MMBtu every day for three years have no significant impact on pricing.”¹⁵¹ TPA also suggests utilizing an average throughput as a threshold to determine whether a point with no known design capacity must be posted.¹⁵² KM Intrastate Pipelines support TPA’s supplemental comments.¹⁵³ Atmos likewise suggests that the proposed exemption be extended to delivery points.¹⁵⁴

89. AGA’s supplemental comments request clarification as to how posted capacity is determined for non-physical points where volumes are scheduled.¹⁵⁵ AGA also suggests that the Commission clarify the manner in which volumes are calculated for non-physical receipt and delivery points.¹⁵⁶ AGA suggests that the Commission adopt a threshold based upon scheduled volumes for posting of points with no known design capacity.

c. Commission Determination

90. The Commission grants the requests for rehearing and clarification. As petitioners note, Order No. 720 did not address the posting of virtual, pooling, or other points to which natural gas volumes are scheduled and yet where design capacity is unknown or does not exist. Based on the additional information received, the Commission finds that major non-interstate pipelines must post scheduled flow data for points where design capacity is unknown or does not exist with scheduled maximum natural gas volumes equal to or greater than 15,000 MMBtu on any day within the prior three calendar years. The Commission amends 18 CFR 284.14(a)(1) to implement this requirement.

91. As petitioners and commenters have stated, some major non-interstate pipelines schedule natural gas flows to virtual or pooling points where there is no physically-measurable design

capacity.¹⁵⁷ Further, there exist a small number of physical receipt and delivery points where major non-interstate pipelines cannot reasonably determine a physical design capacity. Nevertheless, transportation to these points may be substantial and have a significant effect on interstate natural gas price formation. Petitioners have presented no arguments that scheduled volumes to such points have only *de minimis* effects on interstate price formation.

92. For purposes of determining whether a point with no known design capacity must be posted, major non-interstate pipelines shall use the largest scheduled natural gas flow over the past three calendar years.¹⁵⁸ If the largest daily scheduled flow is equal to or greater than 15,000 MMBtu, then the point is subject to posting. The potential impact on the natural gas market of a physically metered point is best understood through reference to its design capacity. The greater the capacity of the point, the greater the natural gas flows that could occur at the point and the greater the market impact. For this reason, the Commission adopted in Order No. 720 a design capacity threshold for posting at points where design capacity is known. For a point with no known design capacity, the closest approximation for design capacity is the maximum flow scheduled to the point. Additionally, maximum scheduled daily flow will not be burdensome for major non-interstate pipelines to calculate for points with no known design capacity.

93. The Commission clarifies that, as with posting related to points with a known design capacity, postings at points with no known design capacity are required only for *scheduled* volumes. The Commission is not requiring the posting of unscheduled natural gas volumes or actual flow. Nor is it requiring posting regarding points to which no volumes are scheduled. As discussed in Order No. 720, the posting of unscheduled volumes would be unduly burdensome.¹⁵⁹

94. The Commission’s regulations further reduce the burden on posting pipelines with virtual points by requiring posting based upon calendar year data. Thus, major non-interstate

pipelines need only review scheduled volume data annually to determine whether points where no design capacity is known must be posted. Points with scheduled natural gas flows equal to or greater than 15,000 MMBtu per day become eligible for posting on January 1 of the following year.

95. The Commission will not adopt alternative proposals regarding the appropriate posting threshold for points with no known design capacity. Atmos suggests that the Commission adopt a threshold utilizing historical metered flows. TPA suggests utilizing an average of maximum scheduled flows at each point. Neither of these suggestions more closely approximates design capacity than a single-day maximum scheduled flow. Further, identifying multiple maximum scheduled flow days or appropriate historical actual metered flow would be more burdensome than identifying a single-day maximum scheduled flow.¹⁶⁰

96. The Commission also finds that the appropriate timeframe for the scheduled flow threshold that we adopt is three years. A three calendar year review is sufficient to identify reportable points on major non-interstate pipelines while allowing pipelines to remove points that are no longer significant.¹⁶¹ We also clarify, as TPA requests, that historical data need not be posted for points at which no design capacity is known.

2. Posting Requirements at Points Where Design Capacity Is Known

97. In Order No. 720, the Commission required major non-interstate pipelines to post information for receipt and delivery points with design capacity equal to or greater than 15,000 MMBtu per day.¹⁶² The Commission found that market participants could utilize design capacity and scheduled volume information to help determine available capacity at a particular point and, therefore, required posting of both design capacity and scheduled volumes.¹⁶³ Order No. 720 clarified that, where the design capacity of a receipt or delivery point could vary according to operational or usage conditions, major

¹⁴⁸ *Id.* at 4–5.

¹⁴⁹ *Id.* at p. 5.

¹⁵⁰ TPA Supplemental Comments at 5.

¹⁵¹ *Id.*

¹⁵² *Id.* at 4.

¹⁵³ KM Supplemental Comments at 1.

¹⁵⁴ Atmos Supplemental Comments at 5.

¹⁵⁵ AGA Supplemental Comments at 25.

¹⁵⁶ *Id.* at 26.

¹⁵⁷ The Commission will not amend its regulations to define “virtual points” or “pooling points” as suggested by some petitioners. These terms are not utilized in the regulations. Instead, the posting regulations distinguish between points at which design capacity is known, on the one hand, or is unknown or does not exist.

¹⁵⁸ We discuss, *infra*, the timing of postings for all newly-eligible receipt and delivery points, including both points for which design capacity is known and unknown.

¹⁵⁹ Order No. 720 at P 57.

¹⁶⁰ Consistent with TPA’s suggestion, we have clarified section 284.14(a)(4) of our regulations to reflect that the “Method of Determining Posted Capacity” includes “Maximum Volume” rather than “Maximum Average Volume.”

¹⁶¹ We note, as we did in Order No. 720, that our regulations do not require that pipelines remove any points from points that are posted. Indeed, we welcome the greater transparency afforded by postings at receipt and delivery points even where the Commission’s regulations permit posting to terminate.

¹⁶² Order No. 720 at P 82; *see* 18 CFR 284.14(a).

¹⁶³ Order No. 720 at P 82, 84.

non-interstate pipelines must post the design capacity for the most common usage conditions of its system during peak periods.¹⁶⁴

98. In the Order Requesting Supplemental Comments, the Commission sought comment on a proposal to exempt from posting all receipt points at which design capacity was known that experienced actual flow of less than 5,000 MMBtu per day on every day within the prior three years.¹⁶⁵ The Commission explained that this proposal was based upon its understanding, from the record in this proceeding, that many major non-interstate pipelines have receipt points with design capacities greater than 15,000 MMBtu per day and yet consistently flow far less natural gas than this design capacity.¹⁶⁶ The proposal balanced the transparency goal of the rule with the costs associated with posting at such receipt points.

a. Requests for Rehearing and Clarification

99. ONEOK Gathering, Nicor, Atmos, Shell, and TPA request clarification regarding whether posting is required for a physical point if natural gas flows are not scheduled to the point.¹⁶⁷

100. Enogex argues that the Commission erred in concluding that the posting of scheduled volumes and design capacity at a given point will allow shippers to determine how much capacity is available at the point.¹⁶⁸ Enogex states, without further explanation, that “capacity constraints and other conditions on a pipeline’s system affect the amount of capacity that can be made available on a daily basis.”¹⁶⁹

101. ONEOK Gathering requests clarification regarding the calculation of design capacity for points with meters for which the major non-interstate pipeline does not have control.¹⁷⁰ In such circumstances, ONEOK Gathering suggests that the Commission permit major non-interstate pipelines to rely upon representations made by the entity controlling the point or to make reasonable estimates of design capacity.

¹⁶⁴ *Id.* at P 92.

¹⁶⁵ Order Requesting Supplemental Comments at P 10.

¹⁶⁶ *Id.*

¹⁶⁷ Nicor Request for Rehearing and Clarification at 7–8; ONEOK Gathering Request for Rehearing and Clarification at 11; Atmos Request for Rehearing and Clarification at 2–3; Shell Request for Rehearing and Clarification at 8–9; TPA Request for Rehearing and Clarification at 48–50.

¹⁶⁸ Enogex Request for Rehearing and Clarification at 11.

¹⁶⁹ *Id.* at 11.

¹⁷⁰ ONEOK Gathering Request for Rehearing and Clarification at 9–10.

ONEOK Gathering also requests clarification regarding design capacity postings for receipt and delivery points on major non-interstate pipelines with greater capacity than interconnected interstate pipelines.¹⁷¹ Further, ONEOK Gathering requests clarification regarding how pipeline design capacity should be calculated as a general matter or, in the alternative, establishment of a safe harbor for calculations regarding design capacity.¹⁷²

b. Supplemental Comments

102. In its supplemental comments, Atmos requests that the Commission extend the proposed exemption for receipt points with less than 5,000 MMBtu of flow each day both to points for which design capacity is unknown.¹⁷³ Atmos argues that extension of the exemption to points for which design capacity is unknown would provide regulatory consistency in that points with a known design capacity would be treated similarly to points with an unknown design capacity.¹⁷⁴ TPA echoes these comments, urging also that the exemption threshold be raised to 15,000 MMBtu per day for all points, including points where design capacity is known or not known.¹⁷⁵ TPA argues that points flowing less than 15,000 MMBtu per day every day for three years have no significant impact on pricing in the U.S.¹⁷⁶

103. NGSA also urges that the proposed exemption should be adopted and extended to points at which design capacity is known. NGSA claims that the proposed exemption “exposes a problem inherent in using design capacity as a threshold—it may capture points that are not truly significant.”¹⁷⁷ NGSA requests that the Commission modify its regulations to provide that points with physically metered design capacity are eligible for the exemption and also that the exemption threshold be increased to 12,000 MMBtu per day.¹⁷⁸

c. Commission Determination

104. The Commission denies the requests for rehearing and clarification. Regarding Enogex’s comments, the Commission continues to believe, as stated in Order No. 720, that, as a general matter, “[m]arket observers may estimate availability by subtracting

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ Atmos Supplemental Comments at 5.

¹⁷⁴ *Id.* at 6.

¹⁷⁵ TPA Supplemental Comments at 4–5.

¹⁷⁶ *Id.* at 5.

¹⁷⁷ NGSA Supplemental Comments at 5.

¹⁷⁸ *Id.*

scheduled volumes from design capacity.”¹⁷⁹ The Commission understands that day-to-day operational factors can sometimes affect available capacity in ways that are not readily apparent. However, just as we have observed regarding similar postings made by interstate pipelines, market participants will very often be able to ascertain available capacity from the data to be posted by major non-interstate pipelines.

105. Additionally, the Commission’s regulations do not prohibit major non-interstate pipelines from posting additional information, including, for example, operational considerations that could affect available capacity.

106. Regarding the calculation of design capacity, the Commission confirms the statement in Order No. 720: “[i]n 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.”¹⁸⁰ This guidance is consistent with the guidance that we have provided to interstate pipelines subject to our long standing posting requirements.¹⁸¹ Regarding ONEOK Gathering’s specific request for guidance regarding major non-interstate points with greater capacity than an interconnected interstate pipeline, the Commission clarifies that the obligation to post design capacity relates to the major non-interstate pipeline’s facilities. As such, major non-interstate pipelines must post design capacity of their facilities even if an interconnecting facility’s capacity is less than the major non-interstate pipeline’s.

107. Major non-interstate pipelines must use reasonable efforts to determine design capacity at physical receipt and delivery points. To the extent that a major non-interstate pipeline is uncertain as to how to calculate design capacity at a point, they are free to contact the Commission’s compliance help desk for informal guidance.¹⁸² Therefore, the Commission will not adopt a safe harbor for the posting of design capacity.

108. No commenter objected to the proposal, contained in the Commission’s order requesting

¹⁷⁹ Order No. 720 at P 84.

¹⁸⁰ *Id.* P 92.

¹⁸¹ *Id.*

¹⁸² As we reminded major non-interstate pipelines in Order No. 720, the Commission’s help desk can facilitate responses to questions regarding compliance with our regulations. See *Obtaining Guidance on Regulatory Requirements*, 123 FERC ¶ 61,157 (2008).

supplemental comments, to adopt an exemption from posting for receipt points with actual flow of less than 5,000 MMBtu per day on each day within the prior three years. With two minor modifications, the Commission adopts this exemption. Namely, the exemption shall apply to receipt points with *scheduled* natural gas volumes of less than 5,000 MMBtu per day on each day within the prior three *calendar* years. These modifications are consistent with the Commission's determination to post scheduled volumes rather than actual flow and should be less burdensome for major non-interstate pipelines to implement than a rolling exemption based upon actual flow.¹⁸³

109. The Commission will not further extend this exemption as requested by some commenters. The Commission clarifies that the exemption applies to only receipt points, not delivery points or points that operate both as receipt and delivery points. The exemption is intended primarily to apply to pipelines that receive gas from declining production areas.¹⁸⁴ These pipelines may have receipt points that were designed to accommodate natural gas flows of 15,000 MMBtu per day, but, because of declining production over time, flows into these points have dwindled to consistently *de minimis* levels. In such circumstances, it is unlikely that excess capacity at the point could become utilized in the future and the burden of posting at the point may exceed the transparency value.

110. As Order No. 720 explained, one of the chief goals of our posting regulations for major non-interstate pipelines is to assist the public's estimates of available capacity on large non-interstate pipelines, and the potential impacts on interstate price formation. Delivery points with excess capacity may often be utilized to provide additional service. As just one example, a delivery point that supplies several industrial consumers of natural gas may encounter reduced scheduled flows during economic downturns caused by reduction of output from the industrial consumers. Capacity is available, however, and use of the point may increase as economic conditions improve. This data would be useful for

¹⁸³ TPA Supplemental Comments at 5; NGSA Supplemental Comments at 4–6; Atmos Supplemental Comments at 5.

¹⁸⁴ While the exemption could be utilized to exempt receipt points under other circumstances, we decline to further restrict the exemption. Such restrictions would complicate application of the exemption, increasing the burden on major non-interstate pipelines.

market participants to review as they consider the effect of increased demand on interstate natural gas prices.¹⁸⁵

111. Additionally, the Commission clarifies that the exemption applies only to points with a stated design capacity—we decline to extend the exemption to points for which no design capacity is known.¹⁸⁶ As discussed above, the exemption is intended to apply to receipt points that were designed to accommodate natural gas flows of 15,000 MMBtu per day, but, because of declining production over time, flows into these points have dwindled to *de minimis* levels. Extending this exemption to points for which design capacity is unknown would be inconsistent with our determination that such points should be subject to posting if scheduled flows exceed 15,000 MMBtu per day on any day within the prior three years.

112. Lastly, the Commission clarifies that the posting exemption for receipt points with scheduled natural gas volumes of less than 5,000 MMBtu per day on each day within the prior three calendar years does not require that pipelines remove points that have been subject to posting. We emphasize, as we did in Order No. 720, that our posting regulations are *minimum* posting requirements. Major non-interstate pipelines may elect to post additional data regarding their operations.

3. Timing of Posting of Eligible Points

113. In the Order Requesting Supplemental Comments, the Commission sought additional comment on the appropriate time for posting to begin for newly eligible points. The order sought comments on one proposal that would require posting for each receipt and delivery point to begin within 45 days of the point's eligibility for posting.¹⁸⁷

a. Supplemental Comments

114. TPA's supplemental comments claim that 45 days is insufficient time

¹⁸⁵ Further, given the determination to require updating of posted points only on a bi-annual basis, a delivery point that was "dropped" from posting could experience resurgent flow for over seven months before posting resumed. Such a result is contrary to the transparency goals expressed in NGA section 23.

¹⁸⁶ 18 CFR 284.14(a)(2) of the regulations adopted herein by its terms applies to the entirety of section 284.14(a)(1), including both points for which a design capacity is posted and those that are not. Section 284.14(a)(2) applies only to receipt points with scheduled volumes of less than 5,000 MMBtu per day for each day within the prior three years. Points where no design capacity is posted, by definition, have experienced scheduled flows equal to or greater than 15,000 MMBtu per day and are thus not eligible for the exemption.

¹⁸⁷ Order Requesting Supplemental Comments at P 9.

for review of flow data to determine if posting is required, even if such determinations utilize monthly billing data.¹⁸⁸ AGA urges the Commission to require new receipt and delivery points to be added annually rather than on a rolling 45-day basis. AGA claims that such a modification would reduce compliance burdens for major non-interstate pipelines.¹⁸⁹ TPA requests that the Commission require major non-interstate pipelines to determine, on a semi-annual basis, whether points with no known design capacity must be posted. ONEOK Gathering supports TPA's request that eligible points be determined on a bi-annual basis.¹⁹⁰

b. Commission Determination

115. The Commission grants rehearing and revises section 284.14(a)(3) of its regulations to require major non-interstate pipelines to begin Internet postings for newly eligible receipt and delivery points within 45 days of the point's eligibility for posting.

116. The Commission understands commenters' arguments that posting new points on a rolling basis would be burdensome for major non-interstate pipelines, but believes that these burdens are overstated and substantially outweighed by the transparency benefit of timely posting of newly eligible points.¹⁹¹ Major non-interstate pipelines have access to, and utilize on a daily basis, all of the information necessary to determine whether a receipt or delivery point must be posted under our regulations. The posting of newly eligible points is of substantial value to market participants as new receipt and delivery points or increased scheduled flow to points could have *immediate*, substantial effect on market prices. Balancing the transparency benefits of timely posting for newly eligible points with this burden, we believe that a 45-day requirement for the posting of newly eligible points is appropriate. Such a requirement would allow major non-interstate pipelines to utilize monthly billing and report data to determine the eligibility of new points.¹⁹²

¹⁸⁸ TPA Supplemental Comments at 3.

¹⁸⁹ AGA Supplemental Comments at 27.

¹⁹⁰ ONEOK Gathering Supplemental Comments at 4.

¹⁹¹ The Commission notes that newly eligible points may be newly constructed receipt and delivery points or existing points that have become eligible for posting due to an increase in scheduled natural gas volumes.

¹⁹² To the extent that a major non-interstate pipeline does not believe that it can, using reasonable efforts, determine the eligibility of new points and begin posting within 45 days of their eligibility, it may request waiver from the Commission of this requirement.

117. We decline to require only an annual or semi-annual review of new points as AGA and others suggest. Volumes at points that are large enough to require posting may have a significant impact on wholesale natural gas price formation. Delaying posting for a full year at such points would be contrary to the Commission's transparency goals.

4. Clarifications Regarding the Major Non-Interstate Posting Requirements

a. Confidentiality of Data To Be Posted

118. In Order No. 720, the Commission rejected requests to abandon this rule on the grounds that posted information would competitively disadvantage non-interstate pipelines or non-interstate pipeline transportation customers.¹⁹³ This determination was based upon the Commission's substantial experience with interstate posting requirements and the general, aggregated nature of the information to be posted by non-interstate pipelines.

119. AGA argues on rehearing that posting at delivery points with one or few transportation customers could have anti-competitive effects in certain situations.¹⁹⁴ Additionally, AGA believes that, in certain circumstances, the Commission's posting requirements could require LDCs to violate other regulatory requirements regarding the posting of customer-specific data.¹⁹⁵

120. California LDCs make similar arguments in their request for rehearing of Order No. 720, echoing arguments previously made in response to the NOPR. They request that the Commission clarify that major non-interstate pipelines are not required to post confidential customer information.¹⁹⁶ Enogex argues that the posting of certain information could disclose the identity of end-users on an LDCs system.¹⁹⁷

121. California LDCs' supplemental comments provide additional detail regarding their position. California LDCs' supplemental comments argue that posting scheduled flow information may violate the California Public Utility Commission's (CPUC's) confidentiality regulations. Specifically, according to these commenters, posting information required by Order No. 720 may cause the California LDCs to violate the CPUC's directives to preserve customer

privacy.¹⁹⁸ Further, the comments repeat arguments made in their request for rehearing and comments in response to the NOPR that disclosure of scheduled flows could competitively disadvantage generators that receive natural gas at a delivery point.¹⁹⁹ Additionally, the California LDCs expand on prior comments that disclosure of location names or location information could disclose critical energy infrastructure information or information about military installations with national security implications.²⁰⁰

122. In supplemental comments, NGSA requests clarification that posting is required only for aggregated scheduled volumes, not specific delivery accounts.²⁰¹ NGSA also requests that the Commission permit market participants to seek exemptions for posting at certain points to protect commercially sensitive information.²⁰²

123. Most of the arguments raised by petitioners and commenters were discussed and rejected in Order No. 720.²⁰³ The regulations therein adopted required only posting of aggregated, not account-specific, scheduled flow data.²⁰⁴ The Commission noted that its interstate pipeline posting regulations require posting at receipt and delivery points even if the points are customer-specific and the industry has benefitted from the transparency afforded by such postings.²⁰⁵ Congress clearly expressed an intent in NGA section 23 to ensure that relevant market data is made available to the public.²⁰⁶ For these reasons, we reject petitioners' requests to limit the posting of information.

124. Additionally, the Commission does not believe its regulations require the disclosure of potentially sensitive information regarding the physical location of receipt and delivery points or actual natural gas flows that would implicate national security. Our major non-interstate posting requirements do not mandate disclosure of the physical location or composition of receipt and delivery point facilities.

125. Lastly, the Commission does not believe that its regulations are in conflict with State public utility commissions' general prohibitions

regarding disclosure of private customer data. We note that the CPUC itself has not raised this issue in this proceeding—nor have any other non-interstate pipelines within California other than the California LDCs. The California LDCs' claim that our posting regulations "likely" would identify particular customers on their systems and customer's usage.²⁰⁷ Such concerns are speculative and commenters fail to identify any specific points where application of our posting requirements would be inconsistent with the CPUC's privacy guidelines. The Commission therefore denies rehearing and declines to modify its regulations as requested by the petitioners.

b. Duplicate Postings

126. AGA and National Grid request clarification regarding posting of information by major non-interstate pipelines at points of interconnection with interstate pipelines.²⁰⁸ They argue that such postings are duplicative of postings made by interstate pipelines. Additionally, Bear Paw/ONEOK argues that postings should not be required by major non-interstate pipelines at locations downstream of processing facilities if such postings would be duplicative of postings made by interstate pipelines.²⁰⁹

127. In response to AGA's, National Grid's, and Bear Paw/ONEOK's requests, the Commission clarifies that major non-interstate pipelines must post at eligible points at interconnections with interstate pipelines and denies the requests for rehearing. Postings at interconnections with interstate pipelines are not necessarily duplicative as the Commission's posting requirements for interstate pipelines differ from the requirements for major non-interstate pipelines. Further, available capacity at points of interconnection may differ between interstate and major non-interstate pipelines and this information would be unavailable if only interstate pipelines posted data. Even if posted information is, on occasion, duplicative, market participants can utilize posted information from one pipeline to better evaluate the accuracy of information posted by the interconnected pipeline. It has been the Commission's experience administering our interstate posting requirements that "duplicative" postings at interconnections between interstate

¹⁹³ Order No. 720 at P 88–89.

¹⁹⁴ AGA Request for Rehearing and Clarification at 24.

¹⁹⁵ *Id.*

¹⁹⁶ California LDCs Request for Clarification and Rehearing at 17–18.

¹⁹⁷ Enogex Request for Rehearing and Clarification at 10.

¹⁹⁸ PG&E and SoCal Gas Supplemental Comments at 6.

¹⁹⁹ *Id.* at 5–6.

²⁰⁰ *Id.* at 5.

²⁰¹ NGSA Supplemental Comments at 6.

²⁰² *Id.*

²⁰³ Order No. 720 at P 88–89.

²⁰⁴ While our major non-interstate pipeline posting regulations do not require the posting of account-specific data, they do not prohibit such postings.

²⁰⁵ Order No. 720 at P 88–89.

²⁰⁶ *Id.*

²⁰⁷ PG&E and SoCal Gas Supplemental Comments at p. 6.

²⁰⁸ AGA Request for Rehearing and Clarification at 22–24; National Grid Request for Rehearing and Clarification at 9–10.

²⁰⁹ Bear Paw/ONEOK Supplemental Comments at 9–10.

pipelines are very helpful to market participants.

c. Monthly and Weekly Scheduling

128. In Order No. 720, the Commission concluded that major non-interstate natural gas pipelines should post data on a daily basis.²¹⁰ Less frequent postings would not provide sufficient transparency for market observers to understand price fluctuations in a timely manner.

129. On rehearing, Targa claims that the requirement to post scheduled data on a daily basis “likely would require [Targa] to redefine the nature of its relationships with current and future customers.”²¹¹ Targa explains that it does not utilize daily scheduling or nominations, but that it reads its system meters on a monthly basis.²¹² Targa reads Order No. 720 as requiring it “to establish an internal gas control function” to comply with the Commission’s posting regulations.²¹³

130. As the Commission stated in Order No. 720, the Commission’s major non-interstate pipeline posting regulations do not regulate the rates, terms, or conditions of service for major non-interstate pipelines.²¹⁴ To the extent that Targa complains of the need to designate personnel to ensure compliance with the data posting requirements, we deny the company’s rehearing request. Compliance with the Commission’s regulations is mandatory for all non-exempt major non-interstate pipelines. However, to the extent that Targa’s comments assume that Order No. 720 requires major non-interstate pipelines to schedule natural gas transportation on a daily basis, we clarify that Order No. 720 imposes no such requirement. Natural gas transportation that is not scheduled need not be posted. If natural gas transportation is scheduled on a daily basis, then such scheduled volumes should be posted along with other required data.

131. Further, the Commission clarifies that, if a major non-interstate pipeline schedules natural gas transportation using a timeframe different from daily scheduling (e.g., weekly or monthly scheduling), postings must nevertheless occur on a daily basis utilizing the most recent scheduling data. Major non-interstate pipelines that engage in such scheduling practices must use reasonable efforts to estimate daily

²¹⁰This requirement is contained in section 284.14(a)(4) of the Commission’s regulations.

²¹¹Targa Request for Rehearing and Clarification at 9.

²¹²*Id.*

²¹³*Id.*

²¹⁴Order No. 720 at P 24.

natural gas scheduled flows. Further, major non-interstate pipelines must explain the basis for such estimates on their Internet Web sites. For example, if a major non-interstate pipeline schedules natural gas transportation for the upcoming week, it could post daily scheduled flows in equal amounts each day (i.e., 1/7 of the weekly scheduled amount) if it believes that deliveries will be uniform each day.

d. Postings for Bi-Directional Scheduled Volumes

132. In Order No. 720, the Commission required major non-interstate pipelines to post, for each eligible point and on a daily basis, “Scheduled Volume”²¹⁵ and incorporated this requirement in 18 CFR 284.14(a)(4).

133. Atmos requests clarification regarding posting of Scheduled Volume at points with bi-directional scheduled natural gas flows (i.e., points of both receipt and delivery).²¹⁶ Atmos urges the Commission to determine that net volumes be posted at such points. Similarly, Atmos requests clarification regarding posting at points where bi-directional scheduled transportation results in displacement.²¹⁷

134. In response to Atmos’ request, the Commission clarifies that bi-directional scheduled volumes should not be netted against each other prior to posting. The Commission modifies 18 CFR 284.14(a)(4) consistent with this determination and requires Scheduled Volume to be posted for each direction of scheduled natural gas flow. While the Commission agrees, as Atmos argues, that market observers should be aware that Atmos’ and other major non-interstate pipelines’ bi-directional scheduling affects available capacity, the Commission believes that, for transparency purposes, posting more information about such scheduling is preferable than less information. Postings for points that operate as both receipt and delivery points should include Scheduled Volume in each direction separately.²¹⁸ To the extent that a major non-interstate pipeline believes that such posting would provide misleading data regarding

²¹⁵Order No. 720 at P 94.

²¹⁶Atmos Request for Rehearing and Clarification at 5–6.

²¹⁷*Id.* at 6–7.

²¹⁸The Commission will leave the manner of posting such bi-directional flows to the major non-interstate pipeline’s discretion. For example, a major non-interstate pipeline may choose to reflect bi-directional scheduled volumes at a single point as two separate points, one for each direction of scheduled flow. Alternatively, it could list two separate volumes for a single point, identifying the direction of each scheduled volume.

available capacity at the point, it may post a narrative explaining how such scheduled volumes affect available capacity.

e. Timing of Postings

135. In Order No. 720, the Commission determined postings by major non-interstate pipelines should be made no later than 10:00 p.m. central clock time on the day prior to scheduled gas flow.²¹⁹ AGA and National Grid request that the Commission include this requirement in the regulations adopted.²²⁰ The Commission agrees and section 284.14(a)(4) of our regulations has been modified to require postings by 10 p.m. central clock time the day prior to scheduled flow.

f. Reporting by Customer Class

136. In Order No. 720, the Commission required major non-interstate pipelines to post information regarding scheduled flows on an aggregated basis.²²¹ Yates requests that the Commission expand this requirement to include postings at each point by customer class and to identify affiliate relationships.²²² Yates argues that such postings could enable market participants to detect unduly discriminatory activities by major non-interstate pipelines.²²³

137. The Commission will not require the posting of additional data by customer class. As explained in Order No. 720, the Commission’s primary goal is to enhance the transparency of the interstate natural gas market by requiring major non-interstate pipelines to post information regarding scheduled natural gas volumes that may impact interstate natural gas price formation. Requiring customer class-specific data would not further this goal.

g. Conversion From Standard Cubic Feet (scf)

138. The pipeline posting regulations adopted in Order No. 720 provided for measurements in Btu to determine whether major non-interstate pipelines were subject to the rule and the receipt and delivery points to be posted. In supplemental comments, NGS suggests that the Commission clarify that it is acceptable for major non-interstate pipelines to utilize a standard conversion of 1,000 Btu per scf to

²¹⁹Order No. 720 at P 97.

²²⁰AGA Request for Rehearing and Clarification at 28; National Grid Request for Rehearing and Clarification at 10.

²²¹Order No. 720 at P 137.

²²²Yates Request for Rehearing and Clarification at 5–7.

²²³*Id.* at 7.

determine whether a point is required to be posted.²²⁴

139. We grant the requested clarification. To the extent that a pipeline cannot reasonably determine scheduled volumes utilizing Btu, it may choose to utilize 1,000 Btu per scf as a conversion factor. This conversion factor may be used to establish whether a pipeline is a major non-interstate pipeline subject to the Commission's regulations and also whether specific receipt and delivery points must be posted.

h. Clarification of Information To Be Posted

140. California LDCs request clarification that available capacity should be calculated, for purposes of postings by major non-interstate pipelines, by subtracting Design Capacity from Scheduled Volume.²²⁵ The Commission agrees and clarifies that Available Capacity for physical points is calculated by subtracting Design Capacity from Scheduled Volume. To the extent that Available Capacity is not an appropriate estimate of the additional volumes of natural gas that could be scheduled at a point, pipelines may provide an explanation accompanying their postings.

E. Exemptions

1. Pipelines Upstream of Processing Plants

141. In Order No. 720, the Commission adopted an exemption to the posting requirements contained in § 284.14(a) for major non-interstate pipelines that lie entirely upstream of a processing, treatment, or dehydration plant.²²⁶ The Commission declared that a pipeline may be upstream of a processing plant if it flows into another line that flows into a processing plant.²²⁷ The Commission did not provide a general exemption for gathering pipelines.²²⁸ The Commission also declined to adopt an exemption for pipelines that lie partially upstream and partially downstream of a processing, treatment, or dehydration plant, instead holding that the increased threshold mitigated compliance difficulties posed for such pipelines.²²⁹ The Commission held that, in contrast to the "primary function test," the new regulation exemptions served as an easily-applied bright-line test for determining whether

a major non-interstate pipeline should post information in compliance with this rule.²³⁰

a. Requests for Rehearing and Clarification

142. Anadarko and Encana request rehearing, and Shell requests clarification, regarding whether the Commission should extend the exemption to major non-interstate pipelines that are entirely upstream of processing, treatment or dehydration plants but for the presence of stub lines incidental to the operation of those plants.²³¹ Anadarko comments that if the only portion of a major non-interstate pipeline system that is downstream of a processing, treatment, or dehydration plant is a stub line incidental to that plant, solely used to connect that plant to an interstate pipeline, then that major non-interstate pipeline should not be required to comply with the reporting requirements of section 284.14(a).²³²

143. Anadarko cites Commission precedent, claiming that stub lines are generally held to be incidental to the provision of gathering services and, as such, are not subject to Commission jurisdiction under section 1 of the NGA.²³³ Anadarko and Encana both state that the relevant information for the gas flowing through the stub lines would be captured at the receipt point on whatever pipeline that sub line flows into; thus requiring posting under Order No. 720 would be duplicative.²³⁴ Encana further urged the Commission to adopt such an exemption to avoid unnecessary burdens on gathering and processing companies in exercising its transparency authority.²³⁵

144. Copano seeks clarification that the exemption for pipelines lying entirely upstream of processing applies to a pipeline where, under normal operating conditions, the entire gas stream flowing on the pipeline is delivered into a downstream pipeline and is contractually committed to be processed at a processing plant located on the downstream pipeline.²³⁶

145. Enogex comments the Commission should exempt non-

contiguous systems located entirely upstream of processing plants.²³⁷ Enogex states that Enogex Gas Gathering LLC operates several separate, non-contiguous systems. Enogex also requests that the Commission apply the modified primary function test to determine whether facilities are exempt under the Final Rule rather than the bright-line test promulgated therein.²³⁸ Enogex cites Commission precedent applying the primary function test, claiming that the modified primary function test is the standard the Commission has consistently applied to determine whether a given facility performs a gathering or transmission function.²³⁹

b. Commission Determination

146. The Commission is persuaded that a major non-interstate pipeline with a stub line incidental to a processing plant and that delivers all of its transported gas directly into a single pipeline should not be required to comply with the posting requirements. The Commission, therefore, grants rehearing on this issue. However, if a major non-interstate pipeline's stub line delivers gas to multiple pipelines or to end-users, then the major non-interstate pipeline will not be exempt.

147. The Commission agrees with Anadarko and Encana that major non-interstate pipelines with stub lines that deliver gas entirely into a single pipeline are in a substantially similar position regarding impact on interstate natural gas price formation as pipelines that lie entirely upstream of processing plants. As the Commission stated in Order No. 720, natural gas that requires processing is not fungible with interstate pipeline quality natural gas and, therefore, data regarding the transportation of such natural gas has substantially less transparency value.²⁴⁰ While natural gas that enters a stub line following processing is of "pipeline quality," transportation of that gas directly to a single pipeline has no different price effect than if natural gas flowed directly from a processing plant into an adjacent, interconnected interstate pipeline.

148. If a pipeline downstream of a processing plant makes deliveries of natural gas to more than one pipeline or to end-users, then such deliveries could have an effect on the supply of natural gas to different portions of the interstate market and, therefore, on price

²²⁴ *Id.*

²²⁵ California LDCs Request for Rehearing and Clarification at 19.

²²⁶ Order No. 720 at P 113.

²²⁷ *Id.*

²²⁸ *Id.* at P 114.

²²⁹ *Id.* at P 115.

²³⁰ Anadarko Request for Rehearing and Clarification at 6-7; Encana Request for Rehearing and Clarification at 5-7; Shell Request for Rehearing and Clarification at 4-6.

²³¹ Anadarko Request for Rehearing and Clarification at 6.

²³² *Id.*

²³³ *Id.* at 7; Encana Request for Rehearing and Clarification at 6-7.

²³⁴ Encana Request for Rehearing and Clarification at 6.

²³⁵ Copano Request for Rehearing and Clarification at 5.

²³⁶ Enogex Request for Rehearing and Clarification at 9.

²³⁷ *Id.* at 7-9.

²³⁸ *Id.* at 7.

²³⁹ Order No. 720 at P 113.

formation. To the extent that Anadarko and Encana request rehearing to expand the exemption beyond stub line delivery directly to a single pipeline, the Commission rejects the requests.

149. Further, the Commission rejects Copano's request for rehearing. Order No. 720 stated that, for purposes of this exemption, "a pipeline may be upstream of a processing plant if it flows into another line that flows into a processing plant."²⁴¹ Copano requests that we extend this analysis to contractual agreements to process gas downstream from a major non-interstate pipeline. We understand Copano's request to include situations where, although a contractual commitment exists to deliver natural gas to a processing plant, some or all of the delivered natural gas molecules may be delivered into interstate or non-interstate pipelines without processing.²⁴² In this circumstance, at least some of the delivered natural gas is fungible with pipeline quality natural gas and, for the reasons we expressed in Order No. 720, the Commission will not extend the exemption to major non-interstate pipelines that deliver pipeline quality natural gas.²⁴³

150. Regarding Enogex's request for clarification of the exemption regarding non-contiguous pipelines, the Commission directs Enogex and other non-contiguous gathering pipelines to our clarifications regarding companies operating non-contiguous pipelines, *supra* at P 71 *et seq.* To the extent that Enogex operates separate pipelines, it must determine whether each pipeline is a major non-interstate pipeline subject to the posting requirements.

151. For the reasons expressed in Order No. 720, the Commission denies Enogex's request for rehearing regarding use of the modified primary function test to define the exemption for unprocessed gas transportation. As Enogex correctly observes, the test is the method utilized by the Commission "to determine whether a given facility performs a gathering or transmission function."²⁴⁴ The test was created to assist the Commission to determine whether facilities are transmission facilities subject to our traditional rates, terms, and conditions regulation. NGA section 23 embodies a different purpose (*i.e.*, transparency of interstate natural

gas price formation) with a different jurisdictional reach (*i.e.*, any market participant) and the modified primary function test is therefore inapposite. Further, application of the test would require case-by-case evaluation by each potential major non-interstate pipeline to determine its status under the rule. As Order No. 720 held, application of the test would be unnecessarily burdensome for pipelines and the Commission.²⁴⁵

2. Pipelines That Deliver Primarily to End Users

152. Order No. 720 adopted an exemption to the posting requirements in section 284.14 of the Commission's regulations for major non-interstate pipelines that deliver more than 95 percent of their volumes to retail customers as measured by average deliveries over the preceding three calendar years.²⁴⁶ This exemption is codified at 18 CFR 284.14(b)(2).

153. The Commission explained that many sales to end-users have substantial impacts on wholesale energy markets.²⁴⁷ In part, the Commission relied upon its findings in Order No. 704-A to define "retail" sales of natural gas as bundled transactions through an LDC at State-approved tariff rates.²⁴⁸ Order No. 720 concluded that, where such transactions dominate a major non-interstate pipeline's deliveries, the transparency importance of a pipeline's postings is diminished. Balancing this lessened transparency benefit with the burdens on LDCs to post data, the Commission decided to exempt LDCs from posting if a pipeline's retail deliveries exceed 95 percent of the total deliveries averaged over three calendar years. The Commission also noted that, by increasing the threshold to become a major non-interstate pipeline from 10 million MMBtu (as proposed in the NOPR) to 50 million MMBtu, it had already exempted a large number of small LDCs from the posting regulations.²⁴⁹

a. Requests for Rehearing and Clarification

154. AGA, MidAmerican, National Grid, NICOR, Dow Pipeline, ONEOK Gathering, and California LDCs argue on rehearing that the Commission should extend the retail delivery exemption to major non-interstate pipelines with the

requisite deliveries to all end-users, not just retail transactions.²⁵⁰

155. AGA, MidAmerican, and National Grid complain that Order No. 720 substantially departed from the NOPR in that the NOPR proposed to exempt pipelines based upon deliveries to end-users rather than retail deliveries.²⁵¹ These companies argue that, as a result, affected companies had no opportunity to comment on the scope of this exemption.

156. MidAmerican states that the only rationale provided by the Commission explaining the exclusion of unbundled transactions was a reference to Order No. 704.²⁵² MidAmerican understands Order No. 704-A as confirming the Commission's concern regarding interstate transportation to end-users and not transportation from LDCs to end-users.²⁵³ MidAmerican argues that data regarding deliveries to any customers under State-approved transmission tariffs is not useful to understand wholesale natural gas prices.

157. Nicor argues that the Commission's analogy to Order No. 704-A is misplaced. Nicor states that Order No. 704-A imposed an annual reporting requirement for wholesale purchases and sales by market participants while Order No. 720 imposes posting requirements for major non-interstate pipelines.²⁵⁴ Nicor argues that all sales of natural gas on its system are either being sold at retail or "just delivered."²⁵⁵ Nicor's argument stems from its conclusion that "flows on a LDC's system would not meaningfully add to * * * understanding of the supply and demand fundamentals that affect wholesale natural gas prices."²⁵⁶ Even if the Commission does not modify the exemption, Nicor argues that the regulatory text should be clarified that retail transactions are only those bundled transactions at a tariff rate.²⁵⁷

²⁴¹ *Id.* P 113.

²⁴² To the extent that Copano, or another major non-interstate pipeline, delivers natural gas to another pipeline that must then physically flow through a processing plant, then the exemption would apply as the Commission stated in Order No. 720. *Id.*

²⁴³ *Id.*

²⁴⁴ Enogex Request for Rehearing and Clarification at p. 7.

²⁴⁵ Order No. 720 at P 114.

²⁴⁶ *Id.* P 120.

²⁴⁷ *Id.* P 121 (citing Order No. 704-A at P 40-43).

²⁴⁸ *Id.*

²⁴⁹ *Id.* P 122.

²⁵⁰ AGA Request for Rehearing and Clarification at 10-16; MidAmerican Request for Rehearing and Clarification at 3-5; National Grid Request for Rehearing and Clarification at 4-8; NICOR Request for Rehearing and Clarification at 2-5; Dow Pipeline Request for Rehearing and Clarification at 3-5; ONEOK Gathering Request for Rehearing and Clarification at 6-8; California LDCs Request for Rehearing and Clarification at 18-19.

²⁵¹ AGA Request for Rehearing and Clarification at 5-6; MidAmerican Request for Rehearing and Clarification at 6-9; National Grid Request for Rehearing and Clarification at 4-8.

²⁵² MidAmerican Request for Rehearing and Clarification at 7.

²⁵³ *Id.* at 7-10. MidAmerican suggests that the paragraphs cited in Order No. 704-A relate to interstate transportation only.

²⁵⁴ Nicor Request for Rehearing and Clarification at 3-4.

²⁵⁵ *Id.*

²⁵⁶ *Id.* at 4.

²⁵⁷ *Id.* at 2-5.

158. Targa claims that the Commission's determination in Order No. 720 to exempt only major non-interstate pipelines with greater than 95 percent of deliveries to retail customers is unsupported by the record in this proceeding.²⁵⁸ Targa points to the fact that the only comments received on this point were submitted by pipelines and pipeline representatives counseling against this type of limitation to the exclusion.²⁵⁹ Targa also claims that the Commission has not drawn a legally cognizable distinction between pipelines that deliver more than 95 percent of annual flows to end-users and pipelines that deliver 95 percent of flows to retail customers.²⁶⁰

159. Other petitioners seek to expand the exemption not only to cover deliveries to all end-users, but to other transactions as well. For example, Targa argues for further expansion of the exemption to cover Hinshaw pipelines that supply natural gas to end-users and other pipelines within a State. Targa states that there is no justification for disparate treatment of such supply pipelines and LDCs for purposes of the exemption.²⁶¹ AGA agrees with Targa on this point.

160. National Grid and AGA argue that two other transactions should also be part of the 95 percent of deliveries included in the exclusion: volumes delivered to and from a liquefied natural gas storage facility behind an LDC's citygate and volumes that flow through delivery points shared with other LDCs.²⁶² National Grid states that these transactions, like all deliveries to end-users, cannot contribute to an understanding of wholesale price formation.

161. AGA additionally argues that deliveries from one LDC to another should be deemed a delivery to end use customers.²⁶³ California LDCs request that the Commission require LDCs to post information only at citygates and not within the LDC systems themselves.²⁶⁴

b. Commission Determination

162. The Commission grants rehearing to provide an exemption from the

²⁵⁸ Targa Request for Rehearing and Clarification at 10–14.

²⁵⁹ *Id.* at 12.

²⁶⁰ *Id.* at 14.

²⁶¹ Targa Request for Rehearing and Clarification at 10–14.

²⁶² National Grid Request for Rehearing and Clarification at 9–10; AGA Request for Rehearing and Clarification at 11–17.

²⁶³ AGA Request for Rehearing and Clarification at 20–21.

²⁶⁴ California LDCs Request for Rehearing and Clarification at 15–17; California LDCs Supplemental Comments at 6–9.

posting requirements for all major non-interstate pipelines that deliver more than 95 percent of their annual flows to end-users as measured by average deliveries over the preceding three calendar years. We agree with AGA, MidAmerican, National Grid, NICOR, Dow Pipeline, ONEOK Gathering, and California LDCs that deliveries to end-users generally have the same effect on deliveries to retail customers (a subset of all end-users). As the Commission explained elsewhere in Order No. 720 and above, transparency is enhanced through an understanding of natural gas scheduled flows on non-interstate systems. The structure of natural gas price sales and transportation transactions by an LDC to end-users is irrelevant for purposes of interstate price formation.²⁶⁵

163. The Commission also clarifies, as National Grid and AGA suggest, that deliveries to on-system storage facilities (including deliveries to on-system liquefied natural gas (LNG) storage) are included within the exemption. Such deliveries have no effect on interstate natural gas price formation. The Commission modifies section 284.14(b)(2) to include deliveries to on-system storage.

164. We deny AGA's request to include deliveries from one LDC to another in the end-use exemption and California LDCs' request to limit posting by LDCs only to citygates. In such circumstances, LDCs are not providing service to end-users, but are operating in essentially the same fashion as traditional intrastate pipelines. To the extent that National Grid's and AGA's requests regarding shared points relate to deliveries and receipts from one LDC to another, those requests are also denied.

165. The Commission will also clarify that major non-interstate pipelines other than LDCs can qualify for this exemption if they meet the delivery threshold. However, we deny rehearing as requested by Targa and AGA to broadly exempt Hinshaw pipelines that supply natural gas to end-users and other pipelines within a State. Pipelines that deliver substantial quantities of natural gas to other pipelines for subsequent re-delivery to end-users are not similarly situated with pipelines that deliver 95 percent of their volumes to end-users. Receipts and deliveries at interconnections between pipelines

²⁶⁵ Because we grant the rehearing request and revise our regulations consistent with the proposal contained in the NOPR, we need not address AGA's, MidAmerican's, and National Grid's arguments regarding the notice provided regarding the Final Rule or Dow Pipeline's alternative request for waiver.

provide useful market information to understand changes in daily flows in response to such things as regional prices; pipeline maintenance; and pipeline disruptions, for example caused by a compressor outage.

166. Lastly, the Commission notes that reference to NGA section 23(d)(2) is unavailing to most non-interstate pipelines seeking to avoid posting of data.²⁶⁶ That section prohibits the Commission from requiring compliance from "natural gas producers, processors, or users who have a *de minimis* market presence." Most non-interstate pipelines are not producers, processors, or users of natural gas.

3. Storage Facilities

167. In Order No. 720, the Commission adopted an exemption for major non-interstate pipelines that function as stand-alone storage providers.²⁶⁷ This exemption is codified in 18 CFR 284.14(b)(3). The Commission reasoned that much of the flow data that could be obtained from storage providers would be provided by interconnected interstate or major non-interstate pipeline postings.²⁶⁸ Further, the Commission clarified that flow data affecting interstate price formation, not natural gas storage inventory, would enhance transparency and, thus, posting of storage-specific data was unnecessary.²⁶⁹ Given these facts, the Commission exempted major non-interstate pipeline storage providers from the posting requirements of the rule as such postings would be unduly burdensome.²⁷⁰

a. Requests for Rehearing and Clarification

168. Enogex argues on rehearing that the exemption should be extended to all major non-interstate pipelines that provide storage service in addition to transportation service.²⁷¹ Enogex states that the Commission provided no explanation for excluding from the exemption major non-interstate pipelines with storage and transportation service.²⁷²

b. Commission Determination

169. The Commission denies Enogex's request for rehearing. As explained in Order No. 720 and *supra* at P 33 *et*

²⁶⁶ 15 U.S.C. 717t–2(d)(2).

²⁶⁷ Order No. 720 at P 136.

²⁶⁸ *Id.* P 136–37.

²⁶⁹ *Id.* P 136.

²⁷⁰ *Id.* P 137.

²⁷¹ Enogex Request for Rehearing and Clarification at 10.

²⁷² *Id.*

seq.,²⁷³ the posting of scheduled flow information on major non-interstate pipelines will enhance interstate transparency and market efficiency. In Order No. 720, the Commission exempted non-interstate storage providers from the posting regulations because it determined that scheduled flow, not natural gas storage inventory information, furthered the rule's transparency goal. The Commission also noted that, because major non-interstate pipelines that provide transportation service would provide scheduled flow information to receipt and delivery points connected to non-interstate storage providers, at least some flow data into and out of storage providers would be publicly available. Given these facts, the Commission determined that the exemption was warranted.

F. Safe Harbor

170. In response to the NOPR, certain commenters requested a safe harbor for postings made by major non-interstate pipelines under the promulgated regulations to excuse inadvertent posting errors by non-interstate pipelines that make a good-faith effort to comply with the posting requirements. The Commission declined to adopt a safe harbor, differentiating between the posting requirements set forth in the order and the very limited circumstances where the Commission has, in the past, provided a safe harbor.²⁷⁴

a. Requests for Rehearing and Clarification

171. Certain petitioners and commenters request rehearing of the Commission's determination to not adopt a safe harbor provision based on claimed uncertainties and ambiguities in the posting requirements.²⁷⁵

172. TPA and Occidental seek clarification that the Commission will not penalize unintentional mistakes by parties acting in good faith.²⁷⁶ TPA comments that enforcement of our regulations regarding major non-interstate pipelines within six months is a narrow timeframe and that such pipelines will be hard pressed to design and implement systems to post the required data.²⁷⁷ TPA also notes that errors are likely to occur during the

normal course of business.²⁷⁸ Occidental comments that the potential for inadvertent posting errors is particularly significant based on the fact that the posting requirements apply to parties who historically have not been subject to posting requirements and because many have not tracked the data that the Commission is requiring them to report.²⁷⁹

173. California LDCs do not take issue with the Commission's determination to not adopt a safe harbor provision in perpetuity. Instead, it recommends that the Commission adopt a limited safe harbor for the first six months after the new regulations are implemented so that non-interstate pipelines which make a good faith effort to comply will not be penalized if they make inadvertent errors in reporting.²⁸⁰

b. Commission Determination

174. Nothing in the supplemental comments persuades the Commission to depart from the reasoning in Order No. 720 and the petitioners' requests are denied. While the Commission has, on rare occasions, adopted a safe harbor in other contexts, it does not believe one is warranted here. The safe harbor adopted in the Policy Statement on Price Indices was a direct extension of our policy goal to "encourage [industry participants] voluntarily to report energy transactions to providers or price indices."²⁸¹ The posting requirements set forth in Order No. 720 and this order are *mandatory* posting requirements adopted consistent with the directives of EPAct 2005, and are not the voluntary reporting of price data to an index developer; therefore, there is no policy need to provide an incentive for posting the information required.²⁸² As discussed in Order No. 720, other mandatory requirements, such as the filing of FERC Form No. 2, generally do not include a safe harbor.²⁸³

175. The Commission further distinguishes the decision here not to adopt a safe harbor from the temporary safe harbor adopted in Order No. 704-A. There, the Commission determined that, as FERC Form No. 552 would be completed by a large number of relatively unsophisticated companies with little experience filing materials

with the Commission, a one-time safe harbor for initial filings of the form was appropriate.²⁸⁴ Major non-interstate pipelines tend to be large, sophisticated natural gas transportation businesses, often with substantial experience complying with State public service commission reporting requirements, and with dedicated regulatory staff available to ensure compliance with our regulations.

176. Further, the Commission does not believe that the posting requirements set forth in Order No. 720 were unclear or ambiguous; however, to the extent that commenters believed they were unclear or ambiguous, they have been provided an opportunity to request clarification or rehearing, which many did. Additionally, major non-interstate pipelines will have 150 days following publication of this Order No. 720-A in the **Federal Register** before they must comply with the posting regulations. The Commission expects that all major non-interstate pipelines will have sufficient opportunity to create internal operating procedures to ensure compliance.²⁸⁵

177. The Commission will exercise discretion evaluating non-compliance by major non-interstate pipelines with our posting requirements. As the Commission has explained,²⁸⁶ Office of Enforcement staff considers a number of factors to determine whether investigations involving noncompliance are warranted and whether a violation of the Commission's regulations warrants sanctions or other remedies. In fact, Office of Enforcement staff "frequently exercises prosecutorial discretion to resolve minor infractions with voluntary compliance measures rather than with penalties."²⁸⁷ The most recent Office of Enforcement Annual Report is replete with examples of self-reports of minor errors which were not pursued by the Office of Enforcement.²⁸⁸

G. Interstate Pipeline Posting of No-Notice Service

178. Order No. 720 required interstate natural gas pipelines to post volumes of

²⁷³ Order No. 720 at P 39–56.

²⁷⁴ *Id.* P 151–52.

²⁷⁵ California LDCs Request for Rehearing and Clarification at 17; Occidental Request for Rehearing and Clarification at 6–7; TPA Supplemental Comments at 46.

²⁷⁶ TPA Supplemental Comments at 46; Occidental Supplemental Comments at 6–7.

²⁷⁷ TPA Supplemental Comments at 46.

²⁷⁸ *Id.*

²⁷⁹ Occidental Request for Rehearing and Clarification at 7.

²⁸⁰ California LDCs Request for Rehearing and Clarification at 17.

²⁸¹ *Price Discovery in Natural Gas and Electric Markets; Policy Statement on Natural Gas and Electric Price Indices*, 104 FERC ¶ 61,121 (2003), clarified, 109 FERC ¶ 61,184 (2004).

²⁸² Order No. 720 at P 152.

²⁸³ *Id.*

²⁸⁴ Order No. 720 at P 71.

²⁸⁵ We remind major non-interstate pipelines that they may contact our Compliance Help Desk for assistance regarding compliance with our regulations, including questions regarding posting scheduled flow data at receipt and delivery points.

²⁸⁶ *Enforcement of Statutes, Regulations and Orders, Revised Policy Statement on Enforcement*, 123 FERC ¶ 61,156, at P 23–26 and P 31–32 (2008).

²⁸⁷ *Id.* P 9.

²⁸⁸ 2009 Report on Enforcement, Docket No. AD07-13-002 at 10–14 (2009) (inadvertent errors in Electric Quarterly Report submissions not sanctioned; inadvertent violation of price reporting guidelines not sanctioned).

no-notice service flows at each receipt and delivery point before 11:30 a.m. central clock time (the timely cycle under NAESB Nomination Standard 1.32) three days after the day of gas flow.²⁸⁹ In the NOPR, the Commission considered requiring interstate natural gas pipelines to post actual flow information within twenty-four hours, but upon further consideration in Order No. 720, the Commission required the posting of only no-notice volumes within three days after the day of gas flow. Order No. 720 found that this would achieve the goals of the Commission with less of a burden than full posting of actual flows with a twenty-four hour deadline.²⁹⁰ Because the Commission gave interstate pipelines more time to post and because an interstate pipeline should already have the no-notice information that we are requiring them to post, the Commission found that this requirement was not unduly burdensome.²⁹¹

179. The Commission explained that making information on no-notice volumes available is important because it allows interstate natural gas market participants and other market observers to better understand price formation and historical patterns of flow.²⁹² Without no-notice information, the market cannot see large and unexpected increases in gas demand and, therefore, cannot understand price formation both during and after no-notice service is utilized.

180. The Commission noted that no-notice service information would be of particular importance in understanding price behavior in the northern tier of the country during extreme weather conditions.²⁹³ The Commission also noted that no-notice information could also prevent manipulation and unduly discriminatory behavior because it would increase transparency and therefore discourage such activities.²⁹⁴ In addition, the Commission noted that no-notice postings would help shippers understand why capacity that appears to be available is actually not available during situations when no-notice service is being used.²⁹⁵

a. Requests for Rehearing and Clarification

181. Williston Basin seeks rehearing and INGAA requests clarification and rehearing of the Commission's decision

to require interstate natural gas pipelines to post volumes of no-notice service flows, both claiming that the requirement is arbitrary and capricious.²⁹⁶

182. Williston Basin comments that the requirement to post information on no-notice service would not provide any useful market information and would therefore have no impact on market decisions.²⁹⁷ Williston Basin claims that the majority of no-notice service relates to storage activity which is based on weather-driven demand, and because most no-notice shippers inject in the summer months at prevailing market rates and withdraw at a different time when prices are different, the true market price of the gas on that particular day is not reflected.²⁹⁸ Williston Basin states that the posting of scheduled pipeline capacity and volume data provides the timeliest and accurate information for assessing market fundamentals, and reporting no-notice service is not necessary and would not provide any relevant market information.²⁹⁹

183. Williston Basin and INGAA both request that the Commission adopt the same *de minimis* standard for no-notice interstate pipeline postings as applied to major non-interstate pipeline postings.³⁰⁰ Williston Basin claims that it is discriminatory for the Commission to not apply the same standard for interstate pipelines.³⁰¹ INGAA states that there are certain delivery points that are so small that they have no measurable impact on market fundamentals and are not worth the cost and administrative burden necessary to comply with the rule; therefore, INGAA suggests that the Commission establish a *de minimis* rule that would exempt delivery points with an average annual delivery rate of less than 2,500 Mcf per day.³⁰²

184. On rehearing, INGAA argues that the no-notice reporting requirement is not supported by a substantial record of evidence because the Commission did not develop a record on the various ways pipelines provide and measure no-notice service.³⁰³ INGAA asks the Commission to consider that interstate

pipelines have varying tariffs and contracts for how they provide no-notice transportation services for customers. INGAA requests that the Commission clarify that a pipeline can satisfy the no-notice posting requirement by providing data corresponding to how it provides no-notice transportation service.³⁰⁴ For example, INGAA claims that in the majority of cases, there is no way for a pipeline to determine a receipt point for its no-notice service, therefore, it recommends that the Commission clarify that interstate pipelines are not required to post no-notice volumes at receipt points.³⁰⁵ In addition, INGAA asks the Commission to recognize the role of aggregation in the administration of no-notice service and asks the Commission to clarify that interstate pipelines who report aggregate volume to customers and who use aggregate volume to administer no-notice service contracts satisfy the no-notice posting requirement by posting aggregate volumes.³⁰⁶

185. INGAA also asks that the Commission take into consideration that interstate pipelines have varying metering and measurement equipment, and INGAA requests that the Commission clarify that a pipeline can satisfy the no-notice posting requirement by posting estimated volumes when a pipeline estimates its no-notice volumes for operational purposes (e.g., volumes are posted on a monthly or weekly basis; meters are controlled by third parties).³⁰⁷ INGAA states that it would not be economic for pipelines to install real-time measurements equipment at each delivery point; therefore, INGAA asks the Commission to clarify that it is appropriate for a pipeline to report whatever information is available to the pipeline within the three days allowed for posting.

b. Commission Determination

186. The Commission denies Williston Basin's and INGAA's requests for rehearing. The Commission believes that the posting of information about no-notice service will enhance transparency and that this requirement is not unduly burdensome. The Commission continues to believe that no-notice service has an impact on market decisions and price formation as described in Order No. 720. The Commission recognizes that a large percentage of no-notice service relates to

²⁸⁹ Order No. 720 at P 160.

²⁹⁰ *Id.* P 162, 166.

²⁹¹ *Id.* P 166.

²⁹² *Id.* P 165.

²⁹³ *Id.* P 163.

²⁹⁴ *Id.* P 165.

²⁹⁵ *Id.* P 164.

²⁹⁶ Williston Basin Request for Rehearing and Clarification at 1; INGAA Request for Rehearing and Clarification at 1-2.

²⁹⁷ Williston Basin Request for Rehearing and Clarification at 1-2.

²⁹⁸ *Id.* at 2.

²⁹⁹ *Id.* at 3; INGAA Request for Rehearing and Clarification at 6-7.

³⁰⁰ Williston Basin Request for Rehearing and Clarification at 3.

³⁰¹ INGAA Request for Rehearing and Clarification at 7.

³⁰² *Id.* at 1-2.

³⁰³ *Id.* at 2.

³⁰⁴ *Id.* at 2-3.

³⁰⁵ *Id.* at 3-5.

³⁰⁶ *Id.* at 5-6.

weather-driven storage activity, and many no-notice shippers inject in the summer months at prevailing market rates and withdraw at a different time when prices are different; however, during such occasions, when no-notice shippers withdraw gas, the absence of posting of no-notice service means that the market cannot see these large responses to gas demand at a time when the market is particularly sensitive to variations in natural gas availability. Market participants do not have access to information necessary to understand price formation during such occasions, and for this very reason, the Commission believes that the posting of no-notice service volumes is necessary to achieve transparency.

187. The Commission denies petitioners' requests for rehearing and clarification that would establish a *de minimis* standard for posting of information about no-notice service. The Commission is not persuaded to adopt a *de minimis* standard for no-notice posting because it believes that all interstate no-notice volumes are relevant to interstate wholesale price formation.³⁰⁸ Even very small or transitory no-notice volumes can have a substantial impact on natural gas prices during times of system stress. Indeed, it is precisely at these times when no-notice service is most utilized.

188. The Commission's conclusion is reinforced by our authority, exercised in Order No. 637 and elsewhere, to require interstate pipelines to post substantial data regarding their operations.³⁰⁹ However, if a pipeline believes that its no-notice service is so insubstantial so as to not influence price formation, the pipeline may submit a detailed description of its no-notice operations and request a waiver from our regulations. The Commission will consider such requests on a case-by-case basis.

189. The Commission takes into consideration the fact that interstate pipelines have varying tariffs and contracts for providing no-notice service. The Commission recognizes

³⁰⁸ Unlike non-interstate transportation that has an indirect effect on interstate natural gas price formation, interstate transportation has a direct effect on prices.

³⁰⁹ *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, 65 FR 10156 (Feb. 25, 2000), FERC Stats. & Regs. ¶ 31.091, at 31,332, *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

that sometimes there is no way for a pipeline to determine a receipt point for its no-notice service; however, the Commission denies the request that interstate pipelines not be required to post no-notice volumes at receipt points. To the extent that the receipt point data is available for no-notice service, pipelines must post that information. In the event that a pipeline does not have receipt point data, then the pipeline may indicate that the required data field is left intentionally blank. The Commission also recognizes that some pipelines traditionally report aggregate no-notice volumes to their customers. However, posting aggregate volumes does not satisfy the no-notice posting requirement if a pipeline has access to the records of the daily volumes. If the data is available or could be made available, then the pipeline must post the non-aggregated volume data, even if it prefers a different format when dealing with customers. If a pipeline does not have access to non-aggregated data, then it should post aggregated data.

190. Finally, the Commission assures petitioners that it has taken into consideration the fact that interstate pipelines have varying metering and measurement equipment and clarifies that pipelines must only post information that is available to them. Our transparency regulations do not require the construction of new metering equipment. Instead, an interstate pipeline should post whatever data it has available within three days of the flow, noting any deficiencies in the posting on its Web site. A pipeline should not post estimated volumes, but rather actual flow. If, subsequent to an initial posting, more complete no-notice service data becomes available, interstate pipelines must update previously posted information.

H. Additional Exemptions

1. Natural Gas Companies With Service Area Determinations Under NGA Section 7(f)

191. In Order No. 720, the Commission stated that local distribution companies with service area determinations under section 7(f) of the NGA were not categorically excluded from the posting requirements as such companies that exceed the 50 million MMBtu annual threshold may have a substantial impact on regional interstate natural gas markets.³¹⁰

192. WGL requests clarification and, in the alternative, rehearing regarding the definition of "major non-interstate

pipeline" as applied to natural gas companies that have obtained service area determinations under section 7(f) of the NGA.³¹¹ Our pipeline posting requirements apply to "major non-interstate pipelines." As provided in 18 CFR 284.1(d), major non-interstate pipelines are comprised only of those pipelines not subject to our NGA jurisdiction as "natural gas companies."³¹² WGL contends that a strict reading of the regulation would exclude local distribution companies with service area determinations under section 7(f) as such companies are "natural gas companies" under the NGA.

193. AGA requests clarification that LDCs that have service area determinations under section 7(f) can qualify for the posting exemptions contained in 18 CFR 284.14(b).

194. The Commission grants WGL's request for rehearing and modifies 18 CFR 284.1(d) to provide that pipelines with a Commission-approved service area determination may be major non-interstate pipelines if they exceed the delivery threshold and otherwise do not qualify for an exemption. The Commission agrees with WGL that there is no practical difference between an LDC operating entirely within a single State and LDCs operating in multiple states under a section 7(f) service area determination. Consistent with WGL's and AGA's requests, the Commission also clarifies that LDCs with service area determinations may be major non-interstate pipelines for purposes of this rule.

2. Pipelines Owned or Operated by End Users

195. Dow Chemical requests clarification, or in the alternative rehearing, regarding application of the Commission's pipeline posting regulations to pipelines that are owned and/or operated by an end-user to transport natural gas to that end-user.³¹³ Dow Chemical argues that price transparency in the interstate market would not be enhanced by requiring such pipelines to post scheduled flow information.³¹⁴

196. The Commission grants the requested clarification. Where a pipeline delivers all of its transported natural gas directly to an end-user that owns or operates the pipeline, the pipeline is an extension of the end-user's plant or other natural gas consumption facilities. To require

³¹¹ WGL Request for Rehearing and Clarification at 3.

³¹² 18 CFR 284.1(d).

³¹³ Dow Chemical Request for Rehearing and Clarification at 3.

³¹⁴ *Id.* at 4.

posting in such circumstances would be the functional equivalent of requiring each large consumer of natural gas to post consumption information on a daily basis. However, if a pipeline delivers natural gas to entities other than the owner or operator of the pipeline, then it is not exempted from the regulation. The Commission modifies section 284.14(b) of our regulations to incorporate this exemption.

III. Cost of Compliance

197. In Order No. 720, the Commission estimated the compliance costs of the pipeline posting regulations for both interstate and major non-interstate pipelines.³¹⁵ The order found that the average annual cost of compliance for interstate pipelines and major non-interstate pipelines was approximately \$5,000 and \$30,000, respectively.³¹⁶

A. Requests for Rehearing and Clarification

198. No petitioner objects to the Commission's estimate of compliance costs for interstate pipelines. However, two petitioners question the compliance costs for major non-interstate companies. California LDCs claim that initial compliance costs for each LDC may exceed \$500,000 to calculate and record the design capacity of delivery points as well as establishing procedures to capture new delivery points for which posting is required. Based upon these costs, the California LDCs conclude that the cost of compliance far outweighs the benefits of the rule.³¹⁷

199. TPA argues that some TPA members will encounter increased compliance costs to design and implement scheduling processes at points where they currently do not schedule natural gas.³¹⁸ Further, TPA notes that non-interstate pipelines may schedule delivery of natural gas to LDCs at sets of delivery points rather than individual delivery points. TPA claims that the rule would require such pipelines to establish mechanisms to account for scheduled flows to each point.³¹⁹ Further, TPA claims that "[s]ome TPA members * * * estimate implementation and start-up costs in the hundreds of thousands of dollars."³²⁰ While TPA acknowledges that Order

No. 720 did not adopt posting requirements for segments or actual flow, and thus, reduced the potential cost of compliance, it argues that Order No. 720 ignores other costs estimated by TPA members.³²¹

B. Commission Determination

200. The Commission disagrees with the California LDCs and TPA and finds, as it did in Order No. 720, that the benefits of our transparency regulations substantially outweigh the cost of compliance. Enhanced transparency will result in a more efficient wholesale natural gas market, more informed and better market choices made by market participants, and, ultimately, lower natural gas prices for consumers.

201. The Commission notes that Order No. 720's cost of compliance estimates were based upon comments received in response to the NOPR and the substantial reduction in compliance costs attendant in the Commission's decision not to require posting of actual natural gas flows or on pipeline segments. Further, Order No. 720 acknowledged that both start-up and annual compliance costs would vary among pipelines.³²²

202. The Commission emphasizes that only scheduled natural gas volumes are to be posted. The comments by TPA do not dissuade the Commission from the determination that "most if not all of the gas control divisions of the affected companies currently have ready access to the information captured" by the rule.³²³ In large part, it appears that TPA's concerns stem from fundamental misunderstandings of the Final Rule. For example, TPA notes that some of its member pipelines do not schedule flows at certain points, but that the rule requires such pipelines to restructure their operations to adopt a scheduling process.³²⁴ The regulations do not require pipelines to modify their operations so as to schedule natural gas flows at point where such flows have not heretofore been scheduled. Section 284.14(a) of the Commission's regulations makes clear that major non-interstate pipelines must post the amount of natural gas scheduled at each relevant point "whenever capacity is scheduled."³²⁵ Likewise, TPA assumes that volumes scheduled to an aggregated receipt point for an LDC customer must be broken out by physical receipt point. As clarified in this order, the

Commission's regulations will allow for posting of aggregated scheduled flows to virtual or pooling points. The Commission does not believe that major non-interstate pipelines will incur significant expenses adopting new scheduling procedures as our regulations do not require such changes.

203. TPA and the California LDCs claim that the major non-interstate pipelines that they represent may incur start-up costs of hundreds of thousands of dollars to comply with Order No. 720. Such costs seem disproportionately high given that other major non-interstate pipelines have not expressed similar concerns on rehearing. The Commission also finds such claims doubtful given the sophistication of these pipelines, their experience with electronic data capture, their familiarity with the receipt and delivery points on their systems, and, for at least some of these pipelines, their substantial experience with posting flow data on electronic databases. For these reasons and given the generality of the compliance cost claims by TPA and the California LDCs, the Commission will not modify the conclusion that compliance costs for the rule exceed the substantial value of enhanced market transparency.

IV. Information Collection Statement

204. The Office of Management and Budget (OMB) regulations require it to approve certain reporting and recordkeeping (information collection) requirements imposed by an agency.³²⁶ In the Final Rule and in this Order on Rehearing and Clarification, the Commission addresses two requirements for the posting or collection of information, one for interstate and one for major non-interstate pipelines.³²⁷ The Commission adopts no changes to its regulations regarding posting requirements for interstate pipelines. However, the Commission has submitted notification of the modified information collection requirements for major non-interstate pipelines to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act of 1995.³²⁸

205. The requirement for major non-interstate pipelines to post scheduled volume information would impose an information collection burden on major non-interstate pipelines. Certain non-interstate pipelines have asserted on rehearing that costs would be high if

³¹⁵ Order No. 720 at P 86.

³¹⁶ *Id.* P 171.

³¹⁷ California LDCs Request for Rehearing and Clarification at 12–13.

³¹⁸ TPA Request for Rehearing and Clarification at 41.

³¹⁹ *Id.*

³²⁰ *Id.* at 42.

³²¹ *Id.* at 43.

³²² Order No. 720 at P 171.

³²³ *Id.* P 56.

³²⁴ TPA Request for Rehearing and Clarification at p. 41.

³²⁵ 18 CFR 284.14(a).

³²⁶ 5 CFR 1320.11.

³²⁷ The OMB regulations cover both the collection of information and the posting of information. 5 CFR 1320.3(c). Thus, the proposal to post information would create an information collection burden.

³²⁸ 44 U.S.C. 3507(d).

additional equipment were needed to meet quick posting deadlines. However, the Commission does not believe that installation of additional equipment will be necessary to meet major non-interstate pipelines' obligations. The burden that is imposed by these regulations is largely for the collection

and posting of this information in the required format.³²⁹ Elsewhere in this preamble, the Commission has further addressed requests for rehearing and clarification regarding the burden of the requirements.

206. OMB regulations require OMB to approve certain information collection

requirements imposed by agency rule. The Commission submitted notification of this rule to OMB.

Public Reporting Burden:

The start-up and annual burden estimates for complying with this rule are as follows:

Data collection	Number of respondents	Number of daily postings per respondent	Estimated annual burden hours per respondent	Total annual hours for all respondents	Estimated start-up burden per respondent
Part 284 FERC-551: Major Non-Interstate Pipeline Postings	70	2	365	25,550	40

The total annual hours for collection (including recordkeeping) for all

respondents is estimated to be 25,550 hours.

Information Posting Costs: The average annualized cost for each

respondent is projected to be the following (savings in parenthesis):

	Annualized capital/startup costs (10 year amortization)	Annual costs	Annualized costs total
FERC-551: Major Non-Interstate Pipeline Postings	\$142	\$30,000	\$30,142

Title: FERC-551.

Action: Proposed Information Posting and Information Filing.

OMB Control No.: 1902-0243.

Respondents: Business or other for profit.

Frequency of Responses: Daily posting requirements.

Necessity of the Information: The daily posting of additional information by interstate and major non-interstate pipelines is necessary to provide information regarding the price and availability of natural gas to market participants, State commissions, the Commission and the public. The posting would contribute to market transparency by aiding the understanding of the volumetric/availability drivers behind price movements; it would provide a better picture of disruptions in natural gas flows in the case of disturbances to the pipeline system; and it would allow the monitoring of potentially manipulative or unduly discriminatory activity.

V. Regulatory Flexibility Act

207. The Regulatory Flexibility Act of 1980 (RFA)³³⁰ generally requires a description and analysis of final rules that will have significant economic

impact on a substantial number of small entities. The RFA requires consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on such entities. A natural gas pipeline is considered a small entity for the purposes of the Regulatory Flexibility Act if its average annual receipts are less than \$7.0 million.³³¹ In Order No. 720, the Commission stated its belief that none of the pipelines required to comply with requirements in the rule had receipts of less than \$7.0 million annually and therefore, the daily posting proposal will not impact small entities.

208. In keeping with the provisions of the RFA, the Commission established a delivery threshold of 50 million MMBtu which would eliminate compliance burdens for smaller non-interstate pipelines by taking into account the resources that are available to small entities in order to comply with the posting requirements. In response to the comments on rehearing and supplemental comments, the Commission is also exercising an additional regulatory alternative by

exempting some major non-interstate pipelines with certain operational characteristics from the posting requirements and otherwise modifying the requirements to lessen the burden on posting pipelines. For example, the Commission is directing major non-interstate pipelines to review points with no known design capacity annually, rather on a rolling basis, to determine whether information for the point must be posted. Further, major non-interstate pipelines are exempt from posting scheduled natural gas volumes at points that have scheduled flows less than 5,000 MMBtu per day on each day within the prior three calendar years.

209. Additional exemptions include: Major non-interstate pipeline that have stub lines incidental to a processing plant and that delivers all of its transported gas directly into a single pipeline; major non-interstate pipelines that deliver more than 95 percent of their annual flows to end-users as measured by average deliveries over the preceding three calendar years; major non-interstate pipelines that deliver to on-system storage facilities (including deliveries to on-system LNG storage);

³²⁹ See 5 CFR 1320.3(b)(2) ("The time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records)

will be excluded from the "burden" if the agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.").

³³⁰ 5 U.S.C. 601-612.

³³¹ See U.S. Small Business Administration, *Table of Small Business Size Standards*, http://www.sba.gov/ids/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf (effective July 31, 2006).

pipelines that transport all of their natural gas directly to an end-user that owns or operates the pipeline.

VI. Document Availability

210. In addition to publishing the full text of this document in the **Federal Register**, the Commission will provide all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC'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.

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

212. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or e-mail at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at public.reference@ferc.gov.

VII. Effective Date and Compliance Deadlines

213. Order No. 720 set compliance deadlines for interstate and major non-interstate pipelines to comply with the transparency posting requirements.³³² The Commission ordered interstate pipelines subject to the new posting requirements to comply with the promulgated regulations no later than 60 days following publication in the **Federal Register**; major non-interstate pipelines were given 150 days after such publication to comply.³³³ On January 15, 2009, in response to motions from major non-interstate pipelines for an extension of time to comply with Order No. 720, the Commission extended compliance for major non-interstate pipelines until 150 days following the publication of an order addressing the pending requests for rehearing.³³⁴ The Commission did not modify the deadline by which interstate pipelines must comply with the requirements of

Order No. 720.³³⁵ The compliance deadlines were chosen to allow the applicable entities sufficient time to update their information technology systems and establish an Internet Web site for the postings.

A. Requests for Rehearing and Clarification

214. No parties submitted requests for rehearing or comments regarding the deadline for compliance with the Final Rule.

B. Commission Determination

215. The Commission's regulations regarding the posting of data related to no-notice service by interstate pipelines are not modified in this order. Interstate pipelines should continue compliance with our regulations.

216. The Commission's revised regulations regarding postings by major non-interstate pipelines will become effective 30 days following publication in the **Federal Register**. The Commission continues to believe, that, for major non-interstate pipelines, a compliance deadline of 150 days following the issuance of this order on rehearing allows sufficient time for pipelines to update their information technology systems and establish an Internet Web site for the required postings. This time frame for compliance will allow major non-interstate pipelines to complete the current heating season without the need to implement new posting procedures while ensuring that new postings are available prior to the next heating season. Therefore, major non-interstate pipelines must comply within 150 days of the issuance of this order on rehearing.

List of Subjects in 18 CFR Part 284

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

By the Commission. Commissioner Norris voting present.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

■ For the reasons stated in the preamble, the Federal Energy Regulatory Commission amends 18 CFR Chapter I as follows.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT 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 (d) to read as follows:

§ 284.1 Definitions.

* * * * *

(d) *Major non-interstate pipeline* means a pipeline that fits the following criteria:

(1) It is not a "natural gas company" under section 1 of the Natural Gas Act, or is a "natural gas company" and has obtained a service area determination under section 7(f) of the Natural Gas Act from the Commission;

(2) It delivers annually more than fifty (50) million MMBtu (million British thermal units) of natural gas measured in average deliveries for the previous three calendar years; or, if the pipeline has been operational for less than three years, its design capacity permits deliveries of more than fifty (50) million MMBtu of natural gas annually.

■ 3. Section 284.14 is revised to read as follows:

§ 284.14 Posting requirements of major non-interstate pipelines.

(a) *Daily posting requirement.* A major non-interstate pipeline must post 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 (million British thermal units)/day; or

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

(2) Notwithstanding the requirements of subsection 284.14(a)(1), a receipt point is not subject to the posting requirements of this section if the

³³² Order No. 720 at P 167-68.

³³³ *Id.*

³³⁴ *Pipeline Posting Requirements Under section 23 of the Natural Gas Act*, 126 FERC ¶ 61,047, at P 2, 4 (2009).

³³⁵ *Id.* at P 4. Thus, interstate pipelines were required to begin posting no-notice flow no later than January 30, 2009.

maximum scheduled volume at the receipt point was less than 5,000 MMBtu on every day within the prior three calendar years. If a point has operated as both a receipt and delivery point any time within the prior three calendar years, 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 that 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 by 10:00 p.m. central clock time the day prior to scheduled natural gas flow:

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 Volume), Scheduled Volume, Available Capacity (Calculated as Posted Capacity minus Scheduled Capacity), and Measurement Unit (Dth, MMBtu, or MCf). For receipt or delivery points with bi-directional scheduled flows, the Scheduled Volume for scheduled flow in each direction must be posted. The information in this subsection must remain posted for at least a period of one year.

(b) *Exemptions to daily posting requirement.* The following categories of major non-interstate pipelines are exempt from the posting requirement of § 284.14(a):

(1) Those that are located upstream of a processing, treatment or dehydration plant;

(2) Those that deliver more than ninety-five percent (95%) of the natural gas volumes they flow directly to end-users or on-system storage as measured in average deliveries for the previous three calendar years;

(3) Storage providers;

(4) Those that deliver the entirety of their transported natural gas directly to an end-user that owns or operates the major non-interstate pipeline.

Note: The following Appendix will not appear in the Code of Federal Regulations.

APPENDIX A: LIST OF PETITIONERS AND ABBREVIATIONS

Petitioners	Abbreviations
1. American Gas Association	AGA.
2. Anadarko Petroleum Corporation	Anadarko.
3. Atmos Pipeline-Texas	Atmos.
4. Bear Paw Energy LLC and ONEOK Field Services Company, LLC	Bear Paw/ONEOK.
5. Copano Energy LLC	Copano Energy.
6. Dow Chemical Company	Dow Chemical.
7. Dow Pipeline Company and Dow Intrastate Gas Company	Dow Pipeline.
8. Ecana Oil & Gas (USA) Inc.	Encana.
9. Enogex LLC and Enogex Gas Gathering LLC	Enogex.
10. Gas Processors Association	Gas Processors.
11. Interstate Natural Gas Association of America	INGAA.
12. Louisiana Office of Conservation	LOC.
13. MidAmerican Energy Company	MidAmerican.
14. National Grid Gas Delivery Companies	National Grid.
15. Nicor Gas Company	Nicor.
16. ONEOK Gas Transportation, LLC and ONEOK Gas Transmission, LLC	ONEOK Gathering.
17. Pacific Gas & Electric Company	PG&E.
18. Pacific Gas & Electric Company, Southern California Gas Company, and San Diego Gas & Electric Company	California LDCs.
19. Railroad Commission of Texas	Railroad Commission of Texas.
20. Shell Offshore, Inc	Shell.
21. Southwest Gas Corporation	Southwest Gas.
22. Targa Louisiana Intrastate LLC	Targa.
23. Texas Pipeline Association	TPA.
24. Washington Gas Light Company	WGL.
25. Williston Basin Interstate Pipeline Company	Williston Basin.
26. Yates Petroleum Corporation and Agave Energy Corporation	Yates.

APPENDIX B: LIST OF SUPPLEMENTAL COMMENTERS AND ABBREVIATIONS

Supplemental Commenters	Abbreviations
1. American Gas Association	AGA.
2. Atmos Pipeline—Texas	APT.
3. Kinder Morgan Texas Intrastate Pipeline Group	KM.
4. Occidental Permian Ltd	Occidental.
5. ONEOK Gas Transmission, LLC and ONEOK Westex Transmission, LLC	ONEOK Gathering.
6. Natural Gas Supply Association	NGSA.
7. Pacific Gas & Electric Company, Southern California Gas, and San Diego Gas & Electric Company	California LDCs.
8. Texas Pipeline Association	TPA.