

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****18 CFR Part 260****[Docket No. RM06–18–000; Order No. 682]****Revision of Regulations To Require Reporting of Damage to Natural Gas Pipeline Facilities**

Issued August 23, 2006.

**AGENCY:** Federal Energy Regulatory Commission, DOE.**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission is amending its regulations to require that jurisdictional natural gas companies report damage to facilities as the result of a natural disaster or terrorist activity that results in a reduction in pipeline throughput or storage deliverability. The Commission is issuing this Final Rule based on its experience following Hurricanes Rita and Katrina under the existing reporting requirements which only require pipeline companies to report service interruptions and therefore did not require natural gas companies to report significant hurricane damage to facilities in instances where service interruptions were avoided by rerouting gas supplies or other means. The Commission has determined that the additional reporting requirements are necessary in order to effectively monitor the nation's natural gas infrastructure in crisis situations.

**EFFECTIVE DATE:** The rule will become effective August 29, 2006.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** Before Commissioners: Joseph T. Kelliher, Chairman; Suede G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

**I. Introduction**

1. On June 9, 2006, the Federal Energy Regulatory Commission (Commission)

issued a Notice of Proposed Rulemaking (NOPR) in this proceeding.<sup>1</sup> In that NOPR, we proposed to revise § 260.9 of our regulations,<sup>2</sup> which requires the reporting of serious service interruptions on interstate natural gas pipeline facilities operated under authority granted by the Commission under the Natural Gas Act.<sup>3</sup> This Final Rule revises § 260.9 largely in the manner described in the NOPR, with certain modifications to clarify and limit the scope of the new reporting requirements in response to the comments that have been filed. The revisions to § 260.9 will ensure that the Commission has adequate and timely information concerning damage to jurisdictional pipeline and storage facilities as the result of natural disasters or terrorist activity.

**II. Background**

2. In the NOPR, the Commission explained that the severe hurricanes during the summer of 2005 did serious and widespread damage to the energy production and delivery systems of the United States, particularly in the Gulf Coast region. We noted that as of May 3, 2006, shut-in natural gas production in the Gulf of Mexico from Hurricanes Katrina and Rita was equivalent to 12.95 percent of current daily gas production.<sup>4</sup> The Commission also explained that it had participated in the Federal effort, led by the U.S. Department of Energy, to collect post-hurricane information on damage to the nation's energy infrastructure.<sup>5</sup> The Commission learned that, although it had been kept informed of serious service interruptions as the regulations required, it lacked vital information regarding the physical condition of facilities affecting operation of the pipeline grid.

3. The deficiency in reporting following the 2005 hurricanes resulted because the current reporting requirements of § 260.9 apply only in the event of service interruptions. In instances where service interruptions were avoided by adjusting nomination schedules, rerouting gas flows over alternate facilities, or drawing down storage supplies, § 260.9 did not require

that companies report damage to gas facilities. Therefore, it was necessary for our staff to informally gather information regarding damage to facilities from pipeline companies and industry groups by telephone calls and other means. While we took steps based on available information to encourage rapid repair of facilities and restoration of service, including the granting of waivers of various regulations where necessary,<sup>6</sup> the informal information gathering process was not adequate to ensure timely and accurate monitoring of gas infrastructure.

4. As the result of our experience during and following the 2005 hurricane season, we concluded that additional reporting requirements are necessary to ensure that the Commission has enough information to assess the status of the nation's natural gas pipeline infrastructure at any given time and share this information with other agencies, such as the U.S. Department of Energy and the U.S. Department of Transportation. Therefore, the Commission's June 9 NOPR proposed modifications to § 260.9 of the regulations to add a requirement that pipelines report damage to certificated facilities that results in loss of or reduction in service through such facilities and also report when service through such facilities has been restored. The Commission proposed to expand the informational requirements of § 260.9 to require reports including specific information concerning the location and cause of damage to facilities and service interruptions, the time of occurrence, emergency actions taken to maintain service, and other matters. The revised § 260.9 would also require that a company send copies of damage reports to state commissions, as is already required for reports of serious service interruptions. We also proposed to allow filing by e-mail and to eliminate the reference to filing by telegraph.

5. The NOPR was published in the **Federal Register** on June 19, 2006,<sup>7</sup> with July 19, 2006 being the deadline for comments. We received nine sets of comments on the NOPR. Comments were filed by American Gas Association (AGA),<sup>8</sup> American Public Gas

<sup>1</sup> 71 FR 35226 (June 19, 2006); FERC Stats. & Regs. ¶ 32,604 (2006).

<sup>2</sup> 18 CFR 260.9 (2006).

<sup>3</sup> 15 U.S.C. 717–717z (2006).

<sup>4</sup> Hurricane Katrina/Hurricane Rita Evacuation and Production Shut-in Statistics Report as of Wednesday, May 3, 2006 [Final Report], U.S. Department of the Interior, Minerals Management Service (May 3, 2006).

<sup>5</sup> See Homeland Security Presidential Directive (HSPD)–5 (February 28, 2003), directing the Secretary of Homeland Security to develop a National Response Plan.

<sup>6</sup> See NOPR, at P. 4.

<sup>7</sup> 71 FR 35226.

<sup>8</sup> AGA represents 197 local energy utility companies delivering gas to more than 56 million homes, business and industries in the United States. AGA states that its members account for about 83 percent of all natural gas delivered by local distribution companies.

Association (APGA),<sup>9</sup> Boardwalk Pipeline Partners, LP (Boardwalk Pipelines), Duke Energy Gas Transmission, LLC (Duke Energy),<sup>10</sup> Interstate Natural Gas Association of America (INGAA), National Fuel Gas Distribution Corporation (National Fuel Gas),<sup>11</sup> NiSource, Inc. (NiSource),<sup>12</sup> Paiute Pipeline Company (Paiute), and Williston Basin Interstate Pipeline Company (Williston Basin). The comments are described and addressed below.

### III. Comments

6. The commenters representing local distribution companies express strong support for the Commission's effort to ensure timely reporting of damage to the natural gas infrastructure. These commenters emphasize that information on the operating status of the pipelines' facilities is a critical component of price formation, particularly during periods of infrastructure distress such as that experienced as the result of Hurricanes Katrina and Rita. They believe the proposed reporting requirements are needed to help consumers assess the supply and transportation situation following such damaging events.

7. The other commenters represent the interstate pipeline industry and are potential respondents to the new reporting requirements. These commenters generally acknowledge the need for this expedited rulemaking proceeding to remedy the current gap in reporting requirements so that the Commission is able to quickly identify significant infrastructure problems in the event this season produces hurricanes as damaging as last year's.

8. However, the pipeline companies strongly urge the Commission to work toward the long-term goal of minimizing duplicative Federal reporting requirements by engaging in cooperative efforts with the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety

Administration (DOT/Pipeline Safety)<sup>13</sup> and the National Response Center. Some commenters believe the Commission and these other agencies ultimately should be able to develop a single, comprehensive form that could be filed in one place and made available to any agency needing the information.<sup>14</sup>

9. In the interim, the pipeline companies request that the Commission clarify and narrow the definition of "damage" in § 260.9 so that pipeline companies will not be required to file reports unnecessary to fulfill the Commission's objective in this rulemaking of ensuring that it has adequate and timely information to identify significant problems with the nation's natural gas infrastructure. The pipeline companies emphasize that, as proposed, the new reporting requirements would cause the agency to be inundated with reports of trivial damage from routine or unimportant occurrences which could result in important matters being obscured.

10. These commenters also state that their employees' efforts to locate and repair more serious areas of damage could suffer if they are busy completing and filing forms on less serious matters in the middle of an emergency. Thus, they urge the Commission to limit the damage reporting requirement to situations where there is severe damage causing serious disruption of service, and to exclude minor damage resulting from occasional third-party activities and disruptions resulting from routine maintenance.

11. The pipeline companies emphasize that, absent clarification and revision of the proposed regulations, the required reporting of damage to facilities could capture many events irrelevant to the Commission's objective in this rulemaking proceeding which, they believe, is to ensure timely identification of damage resulting from serious events that have the potential for impacts which, in the aggregate, may significantly undermine the integrity of the nation's gas infrastructure.

12. As examples of incidents for which immediate reporting generally is not necessary to achieve this objective, the pipeline companies note accidental backhoe damage from construction, a farmer's plow hitting a farm tap valve, compressor engine faults resulting in short periods of service disruption or reduction of throughput capability, corrosion and other damage revealed by

regular inspections and requiring a temporary reduction in pressure until repairs can be made, and maintenance to replace equipment at the end of its useful life or worn out from wear and tear. The pipeline companies also discuss how much customer load is seasonal, so that a compressor failure or even a line break, on a looped line, may have no effect on customer service at all, depending upon when it happens.

13. In sum, the pipeline companies stress that, while minor incidents and accidents and routine maintenance may temporarily reduce available service or capacity through particular facilities, such incidents generally have no serious effect on the affected pipeline system's ability to meet its service obligations or on the national pipeline grid. These commenters believe that for these types of routine occurrences, which number in thousands each year for the pipeline industry as a whole, existing reporting requirements are sufficient.<sup>15</sup> Thus, these commenters request that the Final Rule's expansion of current reporting requirements be limited to significant damage from terrorism or natural disasters or other serious events significantly affecting operation of the affected pipeline system or the interstate pipeline grid. These commenters believe the Commission should focus on damage resulting in a loss of or reduction in a significant amount of firm service capacity—e.g., firm service capacity of one million Dekatherms per day—for an extended period of time which, depending on the commenter, should be between three and 15 days. If the pipeline company believes a damaged facility can be fully restored to service within such time period, the commenters do not believe the new reporting requirements should apply unless, in the judgment of the pipeline company, the loss of or reduction in capacity of the damaged facilities is

<sup>9</sup> APGA is an association of approximately 650 municipal and other publicly-owned local distribution systems in 36 states.

<sup>10</sup> Duke Energy owns Texas Eastern Transmission, LP; Egan Hub Storage, LLC; Algonquin Gas Transmission, LLC; Saltville Gas Storage, LLC; and East Tennessee Natural Gas, LLC. It is a part-owner of Maritimes & Northeast Pipeline, L.L.C., and Gulfstream Natural Gas System, L.L.C.

<sup>11</sup> National Fuel Gas is a local distribution company subject to the jurisdiction of the New York Public Service Commission and the Pennsylvania Public Utility Commission. It is a member of AGA and supports AGA's comments.

<sup>12</sup> NiSource owns and operates five interstate pipelines, ten local distribution companies and a joint venture storage company.

<sup>13</sup> DOT/Pipeline Safety's reporting requirements are part of its administration of the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 60101 *et seq.*

<sup>14</sup> Additional discussion pertaining to reporting burden is included below in this Final Rule's Information Collection Statement.

<sup>15</sup> As discussed in the NOPR (at n. 9) and referenced by commenters, pipeline companies are required to submit reports of replacement facilities pursuant to 18 CFR 2.55(b) and annual reports of construction activities under the automatic provisions of the blanket certificate regulations in Part 157, Subpart F. Since these reports are annual reports due on or before May 1 of each year and hurricanes frequently occur in July, nine months can pass before a pipeline is required to report construction activities. Further, the information in these annual reports is not sufficient to determine whether a particular construction activity was undertaken due to damage to facilities resulting from a hurricane or other cause. In addition, while the emergency regulations in Part 284, Subpart I, require that the commencement of an emergency transaction be reported within 48 hours, the emergency regulations do not require the reporting of damage to facilities that may have made the emergency transaction necessary or reporting regarding facilities constructed to address the emergency.

significantly impairing its ability to meet its customers' needs for natural gas service.

14. Paiute Pipeline Company (Paiute), which operates a liquefied natural gas (LNG) peak shaving plant in Nevada, requests that all jurisdictional LNG storage facilities be exempted from the proposed new reporting requirements. Paiute believes LNG storage operators already are subject to adequate reporting requirements that were imposed as conditions of the original authorizations for their LNG storage facilities. Paiute also notes that a June 23, 2006 letter from the Director of the Commission's Office of Energy Projects (OEP Director) to LNG storage operators clarified the Commission's applicable reporting conditions, which are similar to the reporting requirements prescribed by the U. S. Department of Transportation pursuant to 49 CFR Part 191 for LNG storage facilities.

#### IV. Commission Response

15. On July 31, 2006, the U.S. Department of Energy (DOE) released a report titled "Impact of the 2005 Hurricanes on the Natural Gas Industry in the Gulf of Mexico Region." The report summarizes findings from Federal monitoring of the impact of Hurricanes Katrina and Rita on the natural gas industry in the Gulf of Mexico region from late August 2005 through early March 2006. It details the coordination of Federal agencies, including the Commission, and various natural gas industry personnel to track storm recovery efforts on a daily basis and identify disrupted natural gas flows and possible bypasses.

16. The July 31 report establishes insights into the complex supply delivery operation associated with offshore natural gas production and highlights the importance of accurate, timely information during supply-related emergencies. The report finds that 3,050 of the Gulf's 4,000 platforms and 22,000 of the 33,000 miles of Gulf pipelines were in the direct path of either Katrina or Rita, which caused destruction and substantial damage to offshore production platforms and pipelines, onshore production wells and pipelines, and other infrastructure supporting the Gulf production and delivery system. When active Federal monitoring of storm recovery efforts ended on March 8, 2006, production had returned to about 9 Bcf per day, with an estimated 9.4 percent of daily gas production remaining shut in as of June 19, 2006.

17. DOE's report illustrates and confirms the need for additional reporting requirements to ensure the

Commission's timely gathering of information to monitor the status of the nation's gas infrastructure in emergency situations. Therefore, the Commission will adopt its proposal to revise § 260.9 of the regulations to require that natural gas companies report damage to jurisdictional facilities as the result of hurricanes and other natural disasters, such as earthquakes and floods, or terrorist activity.

18. The Commission recognizes that in many instances reporting by pipeline companies pursuant to the existing and new reporting requirements of § 260.9 will duplicate aspects of the initial telephonic and subsequent written pipeline incident reports required by DOT/Pipeline Safety. However, in view of the timing and format in which such reports are submitted to DOT/Pipeline Safety, the Commission cannot at the present time rely on those reports to meet its goals in monitoring emerging problems with gas infrastructure during and immediately following natural disasters or terrorist events. Further, while the Commission has already initiated consultation with DOT/Pipeline Safety regarding the possible development of a unified reporting system to meet the needs of the Commission, DOT/Pipeline Safety, the National Resource Center and other Federal agencies, such an initiative does not offer an immediate solution to the problem of duplicative reporting requirements, as the commenters acknowledge.

19. However, the Commission is revising the proposed regulations to narrow the scope of the new reporting requirements, since it was not our intention in the June 9 NOPR to require that pipeline companies immediately report incidents involving equipment failure, accidents and other situations which neither result in serious service interruptions (which are already subject to reporting under § 260.9) nor threaten a pipeline company's ability to meet its service obligations or otherwise significantly affect the integrity of the nation's gas infrastructure. While the commenters are correct that information relating to many such incidents is reflected in the annual construction reports pipeline companies are required to file,<sup>16</sup> our reason here for not requiring that these incidents be reported under § 260.9 is because immediate reporting in such instances is not crucial to our objective in this rulemaking proceeding of ensuring that our reporting requirements are adequate for timely gathering of information to monitor gas infrastructure in crisis

situations that present serious threats to such infrastructure. Therefore, we will revise the proposed regulations to make clear that § 260.9 does not require the reporting of such incidents.

20. We do not agree, however, that our objectives can be met if we limit reporting under § 260.9 to damage to facilities only used for firm service or only in instances where throughput or capacity is reduced by more than a certain amount or the pipeline expects the facilities to be compromised for more than a few days. Since the new reporting requirements will be triggered by natural disasters or terrorist activity, the Commission will need all relevant information regarding damage to facilities and all affected pipeline systems. While a particular pipeline system may be able to take measures so that damage to its facilities does not cause that pipeline system to experience any immediate service interruptions, the damage on that pipeline system contributes to cumulative impacts that may significantly strain the gas infrastructure. Further, following a natural disaster or terrorist event, the Commission needs information on the status of all affected facilities, including facilities experiencing minimal damage, to facilitate the identification of possible paths for rerouting gas around more seriously damaged facilities.

21. In view of these considerations, the Commission is adopting new reporting requirements but is revising its proposal in the NOPR so that the additional reporting will be limited to requiring that pipeline companies report any damage to pipeline or storage facilities from a natural disaster or terrorist activity if such damage reduces pipeline throughput or storage deliverability. These limited new reporting requirements will ensure that the Commission has adequate, timely information to assess the status of gas infrastructure immediately following a natural disaster or terrorist event. However, as some commenters recognize, there may be other situations in which damage to pipeline and storage facilities creates the potential for destabilization of the gas infrastructure. Therefore, as a means of obtaining information regarding such occurrences without imposing overly inclusive reporting requirements that would unduly burden respondents, revised § 260.9 also will include a provision, as recommended by some commenters, to encourage pipeline companies to report any other damage which the pipeline companies, in their judgment, think creates the potential for serious delivery problems on their own systems or the pipeline grid. We are providing for this

<sup>16</sup> *Id.*

additional reporting in pipeline companies' discretion in recognition of their systems' wide variations in size, configuration, and levels and types of service. Incorporating a further level of discretion into the reporting provisions of § 260.9 is appropriate, since pipeline companies know their own systems and the nuances of their operations, and therefore can judge what other instances involving damage to facilities present the potential for significant problems on their own systems or the pipeline grid.

22. We also agree with Paiute's position that existing reporting requirements applicable to LNG storage operators are adequate, and that it is therefore appropriate to exclude damage to such facilities from the new reporting requirements in § 260.9. As emphasized by Paiute, when the Commission authorizes new LNG storage facilities under either section 3 of the NGA for imported LNG supplies or under section 7 of the NGA for liquefied domestic natural gas facilities, the Commission makes such authorization subject to specific reporting conditions.<sup>17</sup> These conditions require that an LNG storage operator report to Commission staff within 48 hours any significant non-scheduled event.<sup>18</sup> In the event an abnormality is of significant magnitude to threaten public or employee safety, cause significant property damage, or interrupt service, notification is required to be made immediately, provided that making such notification shall not unduly interfere with any necessary or appropriate emergency repair, alarm, or other emergency procedure. Further, on June 23, 2006, as noted by Paiute in its comments, the OEP Director sent all LNG storage operators a letter providing guidance and instructions for reporting significant incidents and reiterating and reinforcing the reporting conditions applicable to LNG storage operators.

23. In view of the above-described reporting requirements already

applicable to LNG facilities, the Commission agrees that it is not necessary to make the new reporting requirements of § 260.9 applicable to such facilities. Therefore, revised § 260.9 will specifically exclude the reporting of damage to LNG facilities.

24. However, Paiute's comments have caused the Commission to identify wording in existing and proposed § 260.9 which needs to be revised in order to avoid the potential for a significant gap in reporting. Specifically, the current and proposed wording of § 260.9 provide for the reporting of damage and service interruptions only with respect to natural gas facilities operated under "certificate" authorization from the Commission. Since import and export facilities authorized under section 3 of the NGA are not certificated facilities, § 260.9 does not explicitly address these facilities. In particular, the Commission is concerned that the reporting requirements of § 260.9 do not presently specifically apply to border crossing facilities authorized under NGA section 3. Such facilities, which are used to import or export gas between the United States and Canada or Mexico, are of national security interest, as evidenced by the requirement, pursuant to Executive Order Nos. 10485 and 12038, dated September 3, 1953, and February 3, 1978, respectively, and the Secretary of Energy's Delegation Order No. 00-004.00A, effective May 16, 2006, that applicants for such facilities must accept Presidential Permits granted by the Commission after consultation with the Secretary of State and the Secretary of Defense.<sup>19</sup> Under the conditions of a Presidential Permit, the President of the United States may determine that the safety of the United States demands that the United States take possession and control of any facilities operated under the Presidential Permit.<sup>20</sup> Section 260.9 is revised to ensure that NGA section 3 non-LNG facilities are subject to the reporting requirements.

## V. Summary of Final Rule's Regulations

25. Section 260.9(a) currently requires that natural gas companies report serious service interruptions. The amended regulations add a new requirement to § 260.9 in revised subparagraph (a)(1) that natural gas companies report (i) damage to natural gas facilities from a hurricane or other natural disaster or terrorist activity that results in loss of or reduction in

pipeline throughput or storage deliverability, and (ii) when the damaged facilities' pipeline throughput or storage deliverability has been fully restored. Section 260.9 also is amended, as reflected in revised subparagraph (a)(2), to provide that, in the event of damage to a natural gas company's jurisdictional natural gas facilities by reason other than hurricane, earthquake or other natural disaster or terrorist activity, the natural gas company should report such damage if, in the natural gas company's judgment, such damage creates the potential for serious delivery problems on its own system or the pipeline grid.

26. Section 260.9(b) is amended to remove the reference to "telegraph" and to require that natural gas companies make required reports of interruptions to service or damage to facilities by e-mail or, as currently provided for in § 260.9(b), facsimile transmission. All reports shall be due at the earliest feasible time after an interruption of service or damage to pipeline facilities for which a report is required pursuant to subparagraph (a)(1) or provided for in subparagraph (a)(2).

27. The information required by § 260.9(b) is revised to reflect the addition of the proposed new requirement that natural gas companies report damage to facilities and subsequently report when the damaged facilities have been repaired. Revised § 260.9(b) requires that a report of service interruption or damage to natural gas facilities state:

- (1) The location of the service interruption or damage to natural gas pipeline or storage facilities;
- (2) The nature of any damage to pipeline or storage facilities;
- (3) Specific identification of the facilities damaged;
- (4) The time the service interruption or damage to the facilities occurred;
- (5) The customers affected by the service interruption or damage to the facilities;

(6) Emergency actions taken to maintain service; and

(7) Company contact and telephone number.

28. Section 260.9(b) also is revised to require that a company make a subsequent report stating when pipeline throughput or storage deliverability has been restored.

29. Section 260.9(d) is revised to change, from 20 days to 30 days following a service interruption or damage to facilities, the time within which a natural gas pipeline company must furnish to the Commission a copy of any incident report required to be made to the U.S. Department of

<sup>17</sup> See, e.g., Sabine Pass LNG, L.P. and Cheniere Sabine Pass Pipeline Company, 109 FERC ¶ 61,324 (2004) at Appendix B, Environmental Condition 44.

<sup>18</sup> Examples of reportable LNG-related incidents set forth in the conditions include, but are not limited to, fires; explosions; free flow of LNG for five minutes or more that results in pooling; unintended movement or abnormal loading by environmental causes, such as an earthquake, landslide or flood, that impairs the serviceability, structural integrity, or reliability of an LNG facility; any crack or other material defect that impairs an LNG facility's structural integrity or reliability; any malfunction or operating error that causes a dangerous rise in the pressure of an LNG facility; any leak that constitutes an emergency; or any safety-related condition that could lead to an imminent hazard and cause a 20 percent reduction in operating pressure or shutdown of operation of an LNG facility.

<sup>19</sup> See, e.g., Clark Fork & Blackfoot, L.L.C. and EnCana Border Pipelines Limited, 115 FERC ¶ 61,131 (2006).

<sup>20</sup> *Id.*, at Appendix, Presidential Permit, Article 10.

Transportation under the Natural Gas Pipeline Safety Act of 1968.

30. Section 260.9(e) currently requires that a company send copies of reports of service interruptions to state commissions. Section 260.9(e) is revised by adding a new requirement that a company also must send state commissions copies of reports of damage to facilities required by revised subparagraph (a)(1)(i) and (ii).

## VI. Environmental Analysis

31. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.<sup>21</sup> As stated in the NOPR, no environmental consideration is raised by promulgation of a rule that is procedural in nature or that does not substantially change the effect of legislation or regulations being amended.<sup>22</sup> The regulations adopted herein make changes to the type of information to be provided to the Commission by pipeline companies and the way it is provided, and slightly alter the timeframe (giving the companies more time) to file with the Commission a copy of the incident report required to be filed with the U.S. Department of Transportation. The modified procedures will not substantially change the regulatory requirements to which pipeline companies are currently subject. Accordingly, the preparation of an environmental document is not required.

## VII. Regulatory Flexibility Act Certification

32. The Regulatory Flexibility Act of 1980 (RFA)<sup>23</sup> generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such an analysis if proposed regulations would not have such an effect. Under the industry standards used for the RFA, a natural gas pipeline company qualifies as a "small entity" if it has annual receipts of \$6.5 million or less.

33. Most companies regulated by the Commission do not fall within the RFA's definition of a small entity.<sup>24</sup>

Approximately 114 natural gas companies are potential respondents subject to the additional reporting requirements adopted by this rule. For the year 2004 (the most recent year for which information is available), 32 companies had annual revenues of less than \$6.5 million.

34. Section 260.9 of the regulations already requires natural gas companies to report serious service interruptions. Thus, the new reporting requirements will only increase the number of reports that a company must file to the extent that damage to facilities is the result of a natural disaster or terrorist action and does not result in a loss of or reduction in service. Further, the required information will already be known and identified by companies and can be submitted either by e-mail or facsimile. While the revised provisions of § 260.9 also encourage natural gas companies to report damage to jurisdictional facilities as the result of occurrences other than natural disasters and terrorist activity if, in the natural gas company's judgment, such damage may create the potential for serious delivery problems on its system on the pipeline grid, such reporting is in the respondent's discretion. In view of these considerations, the Commission hereby certifies that this Final Rule's amendments to the regulations will not have a significant impact on a substantial number of small entities.

## VIII. Information Collection Statement

35. Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, record keeping, and public disclosure (collections of information) requirements imposed by agency rules.<sup>25</sup> Pursuant to OMB regulations, the Commission is submitting these reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA).<sup>26</sup> Upon approval of a collection of information OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

which is not dominant in its field of operation. The Small Business Size Standards component of the North American Industry Classification System (NAICS) defines a small natural gas pipeline company as one that transports natural gas and whose annual receipts (total income plus cost of goods sold) did not exceed \$6.5 million for the previous year.

<sup>25</sup> 5 CFR 1320.11 (2005).

<sup>26</sup> 44 U.S.C. 3507(d) (2005).

36. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502-8415, fax: (202) 273-0873, e-mail: [michael.miller@ferc.gov](mailto:michael.miller@ferc.gov)].

37. As discussed above, § 260.9 of the Commission's regulations already requires natural gas companies to report serious service interruptions. The new requirements will only increase the number of reports that a pipeline company is required to file to the extent that damage to facilities is the result of a natural disaster or terrorist activity and does not cause an interruption of service. Since these reports are event-driven, it is possible that there will be no additional reports filed at all if the pipelines do not experience any hurricane, other act of nature, or act of terrorism in a year. While the revised provisions of § 260.9 also encourage natural gas companies to report damage to jurisdictional facilities as the result of occurrences other than natural disasters and terrorist activity if, in the natural gas company's judgment, such damage may create the potential for serious delivery problems on its system on the pipeline grid, such reporting is in the respondent's discretion.

38. Information regarding damage to facilities will be readily ascertainable by companies and may be submitted either by e-mail or facsimile. Such electronic submission of reports will reduce the number of data entry errors, permit Commission staff to analyze data in a timely manner, and provide for storage of data on digital storage media. The new rule eliminates the no longer feasible option of filing by telegraph. It is expected that electronic filing will save time and resources since electronic filings require fewer personnel than are needed for paper processing and mailing. The integrity of the data should be improved because the Commission and companies subject to its jurisdiction will be able to correct errors more promptly. The Commission has initiated consultation with DOT/Pipeline Safety to pursue the commenters' recommendation that the Commission and other Federal agencies cooperate to develop a unified reporting system that would minimize duplicative filing requirements.

39. FERC-576, "Report of Service Interruptions," identifies the Commission's information collection relating to Part 260, "Statements and Reports (Schedules)," of the regulations which apply to natural gas pipeline companies having facilities subject to

<sup>21</sup> Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987).

<sup>22</sup> 18 CFR 380.4(a)(2)(ii) (2006).

<sup>23</sup> 5 U.S.C. 601-612.

<sup>24</sup> 5 U.S.C. 601(3), citing section 3 of the Small Business Act, 15 U.S.C. 623. Section 3 of the SBA defines a "small business concern" as a business which is independently owned and operated and

the Commission's jurisdiction under the Natural Gas Act. This Final Rule establishes a new requirement that natural gas pipeline companies report damage to jurisdictional facilities as the result of natural disasters and terrorist activity and report when damaged facilities are fully restored to service. The regulations maintain the existing requirement that natural gas companies report serious interruptions of service and report restoration of service. The regulations also require natural gas pipeline companies to submit copies of required damage reports to relevant state agencies and maintain the requirement that copies of serious service interruptions be submitted to the relevant state agencies. The rule provides an additional 10 days for the pipeline company to file with the Commission a copy of any incident reporting form required to be filed within 30 days of the incident with the U.S. Department of Transportation pursuant to the Natural Gas Pipeline Safety Act of 1968.

40. *Public Reporting Burden:* Three commenters stated that the Commission's burden estimates in the NOPR were too low,<sup>27</sup> and five

commenters felt that the requirements were overly broad and burdensome.<sup>28</sup> Further, six commenters stated their concerns about the duplication of the information that is provided to the Commission and to the Department of Transportation.<sup>29</sup> As discussed above, it was not the Commission's intention to require that natural gas companies report accidents, equipment failures or other occurrences having minimal effect on normal operations. Rather, the Commission's limited objective in adopting additional reporting requirements is to ensure that natural gas companies report damage as the result of hurricanes or other natural disasters or terrorist activities since these events present the potential for serious destabilization of the nations' gas infrastructure, as demonstrated following Hurricanes Katrina and Rita. Therefore, the Final Rule revises the proposed regulations to limit the scope of the new reporting requirements accordingly. Further, the Final Rule revises the proposed regulations to exclude LNG facilities from the scope of the reporting requirements under § 260.9, as recommended in the comments. Finally, while the Final Rule

clarifies that the § 260.9 reporting requirements cover non-LNG facilities authorized under section 3 of the NGA, we have explained that there are few such facilities and they generally are limited to a few hundred feet of pipeline extending from the international borders. In view of these revisions and clarifications in this Final Rule, we find that the NOPR's estimates of reporting burden remain appropriate and believe that commenters' concerns should be assuaged. While the provisions of revised § 260.9 encourage natural gas companies to also report damage to jurisdictional facilities as the result of causes other than natural disasters and terrorist activity, if the natural gas company believes such damage presents the potential for causing serious delivery problems on its system or the pipeline grid, such additional reporting is not mandatory.

41. In light of the above discussion, the burden estimates for complying with the additional filing requirements of this rule pursuant to the procedures in the amended § 260.9 of the Commission's regulations are the same as estimated in the NOPR issued in this proceeding on June 9, 2006, as set forth below:

Data collection	Number of respondents	Number of responses	Hours per response	Total hours
FERC-576 .....	15	35	2	70

*Total Annual Hours for Collection: 70.*

These are mandatory information collection requirements.

*Information Collection Costs:* The Commission sought comments about the time and corresponding costs needed to comply with this requirement. No comments were received. Because of the regional differences and the various staffing levels that will be involved in preparing the documentation (legal, technical and support) the Commission is using an hourly rate of \$150 to estimate the costs for filing and other administrative processes (reviewing instructions, searching data sources, completing and transmitting the collection of information). The estimated annual cost is anticipated to be \$10,500 (70 hours × \$150).

*Title:* FERC 576 "Report of Service Interruptions."

*Action:* Information Collection.

*OMB Control No.:* 1902-0004.

*Respondents:* Natural gas companies/business or other for-profit.

*Frequency of Responses:* On occasion.

*Necessity of Information:* The amended regulation revises the reporting requirements for service interruptions and damage to facilities subject to the Federal Energy Regulatory Commission's jurisdiction. The information filed with the Commission apprises it of serious pipeline service interruptions and also of serious damage to the nation's natural gas pipeline infrastructure. The amendment enhances this information by requiring filers to describe specifically which facilities have been damaged and how the damage occurred.

42. Comments on the Final Rule may also be sent to the Office of Management and Budget. For information on the requirements, submitting comments on the collection of information and the associated burden estimates including suggestions for reducing this burden, please send your comments to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, (202) 502-

8415; or send comments to the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: 202-395-7285, e-mail: [oria\\_submission@omb.eop.gov](mailto:oria_submission@omb.eop.gov), and reference this rulemaking Docket No. RM06-18-000 in your submission.

## IX. Document Availability

43. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and print the contents of this document via the Internet through 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. From FERC's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available in eLibrary in PDF and Microsoft Word format for viewing, printing, and

<sup>27</sup> Boardwalk Pipeline, Williston Basin, and NiSource.

<sup>28</sup> Duke Energy, Boardwalk Pipeline, Williston Basin, INGAA, and NiSource.

<sup>29</sup> AGA, INGAA, Duke Energy, Boardwalk Pipeline, Williston Basin, and NiSource.

downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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

#### X. Effective Date

45. These regulations are effective August 29, 2006. Section 553(d) of the APA<sup>30</sup> generally requires a rule to be effective not less than 30 days after publication in the **Federal Register** unless good cause is found to shorten the time period. The need for this rule to fill a gap in the Commission's reporting requirements was identified as the result of the Hurricanes Rita and Katrina. Another hurricane season is in progress. Therefore, it is crucial that this rule's reporting requirements be in effect immediately to ensure that the Commission has adequate information to monitor the nation's natural gas infrastructure and identify any gas supply delivery problems and possible paths to reroute gas supplies around facilities damaged by a hurricane. Accordingly, the Commission finds good cause to make this rule effective immediately upon publication in the **Federal Register**.

#### XI. Congressional Notification

46. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a major rule within the meaning of section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>31</sup> The Commission will submit the Final Rule to both houses of Congress and the Government Accountability Office.<sup>32</sup>

#### List of Subjects in 18 CFR Part 260

Natural gas, Reporting and recordkeeping requirements.

By the Commission.

**Magalie R. Salas,**  
Secretary.

■ In consideration of the foregoing, the Commission amends Part 260 of Chapter I, Title 18, Code of Federal Regulations, as follows.

#### PART 260—STATEMENTS AND REPORTS (SCHEDULES)

■ 1. The authority citation for part 260 continues to read as follows:

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

■ 2. Section 260.9 is amended by revising the section heading and paragraphs (a), (b), (d) and (e) to read as follows:

##### **§ 260.9 Reports by natural gas pipeline companies on service interruptions and damage to facilities.**

(a)(1) Every natural gas company must report to the Director, Division of Pipeline Certificates, at the earliest feasible time:

(i) Damage to any jurisdictional natural gas facilities other than liquefied natural gas facilities caused by a hurricane, earthquake or other natural disaster or terrorist activity that results in a loss of or reduction in pipeline throughput or storage deliverability; and

(ii) Serious interruptions of service to any shipper involving jurisdictional natural gas facilities other than liquefied natural gas facilities. Such serious interruptions of service shall include interruptions of service to communities, major government installations and large industrial plants outside of communities or any other interruptions which are significant in the judgment of the pipeline company. Interruptible service interrupted in accordance with the provisions of filed tariffs, interruptions of service resulting from planned maintenance or construction and interruptions of service of less than three hours duration need not be reported.

(2) In the event of damage to a natural gas company's jurisdictional natural gas facilities other than liquefied natural gas facilities by reason other than hurricane, earthquake or other natural disaster or terrorist activity, the natural gas company should report such damage if, in the natural gas company's judgment, such damage creates the potential for serious delivery problems on its own system or the pipeline grid.

(b) Any report of damage to facilities required by paragraph (a)(1)(i) of this section, any report of service interruption required by paragraph (a)(1)(ii) of this section and any report made pursuant to paragraph (a)(2) of this section in a natural gas company's discretion must be submitted by the natural gas company by e-mail to [pipelineoutage@ferc.gov](mailto:pipelineoutage@ferc.gov) or by facsimile transmission to the Director, Division of Pipeline Certificates, Office of Energy Projects at FAX number (202) 208-2853.

(1) Reports required by paragraph (a)(1)(i) or (ii) or made in a natural gas company's discretion pursuant to paragraph (a)(2) shall be made at the earliest feasible time and must state:

(i) The location and cause of the service interruption or damage to natural gas pipeline or storage facilities;

(ii) The nature of any damage to pipeline or storage facilities;

(iii) Specific identification of any facilities damaged;

(iv) The time the service interruption or damage to facilities occurred;

(v) The customers affected by the interruption of service or damage to facilities;

(vi) Emergency actions taken to maintain service; and

(vii) Company contact and telephone number.

(2) Following a report required by paragraph (a)(1)(i) of this section of damage to natural gas facilities resulting in loss of pipeline throughput or storage deliverability or a report pursuant to paragraph (a)(2) of this section in a natural gas company's discretion, the natural gas company shall report to the Director, Division of Pipeline Certificates, at the earliest feasible time when pipeline throughput or storage deliverability has been restored.

\* \* \* \* \*

(d) In any instance in which an incident or damage report involving jurisdictional natural gas facilities is required by Department of Transportation reporting requirements under the Natural Gas Pipeline Safety Act of 1968, a copy of such report shall be submitted to the Director, Division of Pipeline Certificates, within 30 days of the reportable incident.

(e) When a report of damage to facilities is required by paragraph (a)(1)(i) of this section or a report of service interruption is required by paragraph (a)(1)(ii) of this section, a copy of the e-mail or facsimile report required pursuant to paragraph (b) of this section must be sent to each State commissions for the States in which the reported service interruptions or damage has occurred.

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<sup>30</sup> 5 U.S.C. 553(d) (2006).

<sup>31</sup> 5 U.S.C. 804(2) (2000).

<sup>32</sup> 5 U.S.C. 801(a)(1)(A) (2000).