

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

18 CFR Part 161

[Docket No. RM98-7-000]

Reporting Interstate Natural Gas
Pipeline Marketing Affiliates on the
Internet

May 13, 1998.

AGENCY: Federal Energy Regulatory
Commission, DOE.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its Standards of Conduct regulations to require that interstate natural gas pipelines identify the names and addresses of their marketing affiliates on their web sites on the Internet and update the information within three business days of any change. Pipelines would also be required to state the dates the information was last updated.

DATES: Written comments must be received by the Commission by June 19, 1998.

ADDRESSES: File comments with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Stuart Fischer, Office of General Counsel, Federal Energy Regulatory Commission 888 First Street, N.E., Washington, DC 20426. Telephone: (202) 208-1033.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, DC 20426.

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Notice of Proposed Rulemaking

May 13, 1998.

The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations in Part 161.3 to require that interstate natural gas pipelines identify the names and addresses of their marketing affiliates on their web sites on the Internet. By doing so, the Commission will make it easier for the public to identify each interstate gas pipeline's current marketing affiliates. The Commission believes that the new regulation is necessary to further assist its oversight efforts as well as to permit shippers to effectively monitor transportation transactions between pipelines and their affiliated marketers.

I. Background

The Commission, in Order Nos. 497 *et seq.*¹ and Order Nos. 566 *et seq.*² established rules intended to prevent interstate natural gas pipelines from providing preferential treatment to their marketing or brokering affiliates. Specifically, the Commission adopted Standards of Conduct (codified at Part 161 of the Commission's regulations)³ and reporting requirements (codified in sections 161.3(h)(2) and 250.16).⁴

The Standards of Conduct govern the relationships between pipelines and their marketing affiliates. In general, they provide that pipelines and their marketing affiliates must function independently of each other. Pipelines cannot favor their marketing affiliates in providing transportation services or in providing transportation information or transportation discounts not available to non-affiliates.

Currently, there is no requirement in the Commission's regulations for pipelines to report the names of their marketing affiliates or changes in the status of marketing affiliates through, for example, acquisitions of new affiliates, or divestitures, consolidations, or name changes of prior affiliates. While pipelines are required to list all of their affiliated entities, including marketing entities, in their annual Form No. 2 filings, annual data cannot keep abreast of changes, and the Form No. 2 does not require pipelines to identify which entities are "marketing" or "brokering"

¹ Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986-1990 ¶ 30,820 (1988); Order No. 497-A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986-1990 ¶ 30,868 (1989); Order No. 497-B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986-1990 ¶ 30,908 (1990); Order No. 497-C, *order extending sunset date*, 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991-1996 ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas v. FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497-D, *order on remand and extending sunset date*, FERC Stats. & Regs. 1991-1996 ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497-E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497-F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497-G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991-1996 ¶ 30,996 (June 17, 1994).

² Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991-1996 ¶ 30,997 (June 17, 1994); Order No. 566-A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566-B, *order on rehearing*, 59 FR 65707 (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

³ 18 CFR 161.3 (1997).

⁴ 18 CFR 161.3(h)(2) and 250.16 (1997).

affiliates as defined under section 161.2(c) of the Commission's regulations.⁵

Despite the absence of a specific regulatory requirement to identify marketing affiliates, several pipelines have identified the names of their marketing affiliates in their tariffs and/or standards of conduct and filed updates whenever there were changes in identity. However, two pipelines recently decided to stop listing the names of their marketing affiliates in their standards of conduct because of the administrative burden of filing the information.⁶ As discussed below, by requiring the affiliate information to be posted on the Internet, pipelines will be able to provide up-to-date information with minimal administrative burden.

II. Proposed Changes to Regulations

The Commission proposes to add section 161.3(l), which would require pipelines to post on their web sites on the Internet, the names and addresses of their marketing affiliates and to update this information within three business days of any change. A pipeline would also be required to state the date the information was last updated. In Order No. 587 *et seq.*, the Commission began phasing out the use of electronic bulletin boards in favor of posting information on pipeline web sites on the Internet.⁷ The standards for Internet posting are set out in section 284.10 of the Commission's regulations, as amended in Order No. 587-G.⁸

III. Discussion

The Commission believes that the new regulation is necessary to further assist its oversight efforts as well as to enable the public to monitor pipeline-affiliate transactions. It is important for

the public and the Commission to have an updated picture of the pipelines' marketing affiliates to determine if pipelines are complying with the regulatory requirements. Marketing affiliations change rapidly in today's business climate. In *El Paso* and *Texas Gas*, the pipelines stated that they had made three changes to the lists of their marketing affiliates in the previous year. Moreover, the recent trend of mergers of large pipelines makes it imperative to determine which marketing entities are affiliated with which pipelines.⁹ The proposed requirements would ensure that the Commission and the public can identify pipelines' marketing affiliates.

To minimize the burden on pipelines and the Commission's administrative resources, we propose that each pipeline post the names and addresses of its marketing affiliates on the pipeline's web site on the Internet. In this way, the burden on pipelines would be slight, as pipelines already are required to have web sites under Order No. 587-C and would only have to add the affiliate information.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)¹⁰ generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities. The proposed rules will benefit small entities by making it easier for small customers to monitor pipelines'

transactions with their marketing affiliates.

V. Environmental Analysis

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.¹¹ The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.¹² This proposed rule falls within the categorical exclusion which specifies that information gathering, analysis, and dissemination are not major federal actions that have a significant effect on the human environment.¹³ The proposed rule also falls under the categorical exclusion for rules concerning the sale, exchange, and transportation of natural gas that requires no construction of facilities.¹⁴ Thus, neither an environmental impact statement nor an environmental assessment is required.

VI. Information Collection Statement

The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under Section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

Estimated Annual Burden:

Data collection	No. of respondents	No. of responses	Hours per response	Total annual hours
FERC-592	74	1	5	370

⁵ 18 CFR 161.2(c) (1997).

⁶ In *El Paso Natural Gas Pipeline Company*, 79 FERC ¶ 61,086 (1997) (*El Paso*), the pipeline stated that it had revised its standards of conduct three times in the previous year to reflect changes to corporate structure or names of marketing affiliates and believed that such filings were unnecessary. The Commission ruled that *El Paso* did not have to revise its standards of conduct each time the identity of a marketing affiliate changed. More recently, in *Texas Gas Transmission Corp.*, 83 FERC ¶ 61,048 (1998) (*Texas Gas*), the Commission accepted a pipeline's request to delete the names of its marketing affiliates from its standards of conduct. In *El Paso*, the pipeline stated that the names of its marketing affiliates were publicly available through the capacity allocation log on its

electronic bulletin board. In *Texas Gas*, the pipeline stated that it would post on its electronic bulletin board a list of its marketing affiliates.

⁷ Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), III FERC Stats. & Regs. Regulations Preambles ¶ 31,038 (Jul. 17, 1996); Order No. 587-B, 62 FR 5521 (Feb. 6, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,046 (Jan. 30, 1997); Order No. 587-C, 62 FR 10684 (Mar. 10, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,050 (Mar. 4, 1997). In Order No. 587-G, the Commission issued regulations requiring that pipelines conduct all transportation transactions over the Internet, rather than over electronic bulletin boards, by June 1, 1999. 63 FR 20072 (April 23, 1998).

⁸ *Id.* (to be codified at 18 CFR 284.10).

⁹ Recent examples include Natural Gas Pipeline Company of America's merger with KN Energy, and *El Paso Natural Gas Company's* merger with Tennessee Gas Pipeline Company and its affiliated pipelines.

¹⁰ 5 U.S.C. 601-612 (1996).

¹¹ Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Statutes and Regulations, Regulations Preambles 1986-1990 ¶ 30,783 (1987).

¹² 18 CFR 380.4 (1997).

¹³ 18 CFR 380.4(a)(5) (1997).

¹⁴ 18 CFR 380.4(a)(27) (1997).

Total Annual Hours for Collection (Reporting + Recordkeeping, (if appropriate))=370.

Information Collection costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost per respondent to be the following:

Annualized Capital/Startup Costs
Annualized Costs (Operations & Maintenance)	\$19,492
Total Annualized Costs ..	\$19,492

All pipelines are currently required to maintain web sites and so the Commission estimates that the burden to post the information will be minimal once it has been assembled.

The Office of Management and Budget's (OMB's) regulations require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

Title: FERC-592, Marketing Affiliates of Interstate Pipelines.

Action: Proposed collections.

OMB Control No: 1902-0157.

Respondents: Business or other for profit, including small business.

Frequency of Responses: On occasion.

Necessity of the information: The proposed rule revises the requirements contained in 18 CFR 161.3. Pipelines will be required to post their affiliates' names and addresses on the Internet, update this information within three business days of whenever a change takes place, and state the date the information was last updated. These proposed revisions will not change the format of what is currently reported to the Commission. However, the revisions of § 161.3 will require additional information that must be posted on the Internet.

The posting of affiliate information on the Internet meets the Commission's need for access to up-to-date information to monitor self-implementing activities of the pipelines to ensure that transportation services are being carried out in non-discriminatory manner and can also respond to the increased pace of changes in the energy marketplace without unduly burdening market participants. The information is maintained by natural gas pipeline companies involved in transactions with marketing affiliates and their functional equivalents. The Commission through its monitoring activities, collects and analyzes data for use in making decisions. The monitoring

activities focus on areas affecting competition such as: preferential treatment to affiliates; cross-subsidization and cost shifting between customers and affiliates; fair access to information; unfair activities and noncompliance with the Commission's regulations.

Additionally, the information is also used by nonaffiliated shippers or others (such as state commissions) to determine whether they have been harmed by affiliate preference and, in some cases, to prepare evidence for formal proceedings following the filing of a complaint.

These data are required to carry out the Commission's policies in accordance with the general authority in Sections 311, 501, and 504 of the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301-3432) and Sections 4, 5, 7, 8, 10, 14, 16 and 20 of the Natural Gas Act (NGA) (15 U.S.C. 717-717w). The information required is mandatory.

Internal Review: The Commission has reviewed the requirements pertaining to the standards of conduct for interstate natural gas pipeline companies and their marketing affiliates or brokering companies and determined that the proposed revisions are necessary to ensure nondiscriminatory access to the national pipeline grid through the investigation of complaints and allegations of abuses. Requiring such information assists the Commission to protect customers from excessive transportation rates and service discrimination. As pipelines are permitted to implement more nontraditional forms of pricing and service, the Commission will monitor the industry to ensure the pipelines are not being preferential or unduly discriminatory, charging unjust and unreasonable rates, or providing services that are inadequate or undesirable.

These requirements conform to the Commission's plan for efficient information collection, communication, and management through the advancement of information technology within the natural gas industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimate associated with the information requirement.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 88 First Street, NE, Washington, DC 20426 [Attention: Michael Miller, Division of Information Services, Phone: (202) 208-1415, fax:

(202) 273-0873, email:michael.miller@ferc.fed.us]

For submitting comments concerning the collection of information(s) and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395-3087, fax: (202) 395-7285]

VII. Comment Procedures

The Commission invites interested persons to submit written comments or other information concerning this proposed rulemaking. All comments in response to this notice must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. RM98-7-000. An original and fourteen (14) copies of such comments should be filed with the Commission on or before June 18, 1998. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's public reference room at 888 First Street, NE, Washington, DC, 20426, during business hours. Additionally, comments can be viewed and printed remotely via the Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202-208-2222, or by E-mail to RimsMaster@FERC.fed.us.

List of Subjects in 18 CFR Part 161

Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission. Commissioner Massey concurred with a separate statement attached.

Linwood A. Watson, Jr.,
Acting Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 161, Chapter I, Title 18 of the *Code of Federal Regulations*, as set forth below.

PART 161—STANDARDS OF CONDUCT FOR INTERSTATE PIPELINES WITH MARKETING AFFILIATES

1. The authority citation for Part 161 continues to read as follows:

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

2. In Section 161.3, paragraph (l) is added to read as follows:

§ 161.3 Standards of conduct.

* * * * *

(1) A pipeline must post the names and addresses of its marketing affiliates on its web site on the public Internet and update the information within three business days of any change. A pipeline must also state the date the information was last updated. Postings must conform with the requirements of § 284.10 of this chapter.

(Issued May 13, 1998)

MASSEY, Commissioner, *concurring*:

The general proposal in today's Notice of Proposed Rulemaking has my full support. A requirement that pipelines report on their Internet websites the names of their marketing affiliates or changes in the status of their marketing affiliates is necessary to provide the Commission and the industry with information that may otherwise be unavailable in today's rapidly changing market environment.

The proposal raises one question, however, which I believe should be pursued further. Is the proposed requirement that pipelines update information about their affiliates within three business days of a change in status sufficient to meet the needs of the Commission and the industry at large?

I would prefer a requirement for reporting within 24 hours, and want to make three points related to this issue. First, the NOPR offers no justification for the three day time period. Second, it is widely known that with today's technology, updating information of this nature on a pipeline website is not burdensome. Therefore, the ability to add vital information in a shorter time frame would not be problematic. Finally, the Commission has required companies in the other industries we regulate to make similar updates in a 24-hour time period. For example, the Commission's regulations require electric transmission providers to report to the Commission and on the OASIS each emergency that results in any deviation from the Commission's standards of conduct within 24 hours of the deviation.¹ Pipelines are required to post discounts given to their affiliates within 24 hours of the time at which gas first flows.² Hydroelectric power licensees have agreed to reporting deviations from state water quality standards within 24 hours.³ As the industry contemplates the Commission's proposal, I would welcome comment on this issue.

¹ 18 CFR 37.4(a)(2) (1997).

² 18 CFR 161.3(h)(2) (1997).

³ Wisconsin Electric Power Company, 80 FERC ¶ 62,215 (1997).

William L. Massey,

Commissioner.

[FR Doc. 98-13293 Filed 5-18-98; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

18 CFR Part 385

Federal Energy Regulatory Commission.

[Docket No. PL98-1-000]

Public Access to Information and Electronic Filing; Request For Comments and Notice of Intent to Hold technical Conference

May 13, 1998.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Request for Comments for Notice of Intent to Hold Technical Conference.

SUMMARY: The Federal Energy Regulatory Commission (Commission) intends to develop a comprehensive information management system that accepts filings and disseminates information electronically. The Commission seeks public comment to determine the best way to implement its electronic filing initiative. After reviewing the comments, the Commission intends to hold a technical conference to discuss its implementation process.

DATES: Comments are due June 30, 1998.

ADDRESSES: Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Brooks Carter, Office of the Chief Information Officer, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 501-8145.

Carolyn Van Der Jagt, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, (202) 208-2246.

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I. Introduction

The growing availability and use of electronic media and the increasing competitiveness of the natural gas, oil, and electric industries are compelling the Federal Energy Regulatory Commission (Commission) to manage its information resources more strategically. Advances in information technology (IT) permit the filing and dissemination of information at a faster rate and more cost-effectively than the traditional paper distribution methods.

The Commission's ultimate goal is to improve its use of IT to reduce regulatory burdens, cut processing times, simplify filing processes, and generate better information for use by its staff, regulated industries, and the public. The Commission views its efforts to implement a system for electronic filing and dissemination of information as a large and complex undertaking. It believes that certain