UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Contract Reporting Requirements	**)**	
of Intrastate Natural Gas Companies	**)**	**Docket No. RM09-2-000**

COMMENTS OF THE TEXAS PIPELINE ASSOCIATION IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING

Pursuant to the Federal Energy Regulatory Commission's ("FERC" or "Commission") July 16, 2009 Notice of Proposed Rulemaking[1] ("NOPR") and August 26, 2009 Notice Requesting Comments On Proposed Standardized Electronic Information Collection and Extending Time for Comments on Notice of Proposed Rulemaking[2] ("Standardized Electronic Procedures") in the above-captioned proceeding, the Texas Pipeline Association ("TPA")[3] submits these comments. The Commission proposes to revise the contract reporting requirements for those natural gas pipelines that fall under the Commission's jurisdiction solely because they engage in transactions authorized pursuant to Section 311 of the Natural Gas Policy Act[4] ("Section 311 Pipeline") or qualify under section 1(c) of the Natural Gas Act[5] ("Hinshaw Pipeline"). The Commission proposes to significantly increase the reporting burden on these entities by (1) requiring the existing annual § 284.126(b) transactional reports to be filed on a quarterly basis; (2) expanding the reports to include information similar to that which is required of interstate pipelines under § 284.13(b); (3) establishing a procedure for the reports to be filed in

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[1] *Contract Reporting Requirements of Intrastate Natural Gas Companies*, 128 FERC ¶ 61,029 (2009).

[2] *Contract Reporting Requirements of Intrastate Natural Gas Companies*, 128 FERC ¶ 61,187 (2009).

[3] TPA is an organization of thirty natural gas and liquids pipeline companies operating in the State of Texas; many of TPA's members operate infrastructure facilities in other states as well. TPA's members gather, process, treat, transport, store and deliver natural gas and liquids for their customers, which include producers, marketers, commercial and industrial end-users, other pipelines and local distribution companies. TPA's members include owners and operators of both Section 311 and Hinshaw pipelines.

[4] Natural Gas Policy Act of 1978, 15 U.S.C. § 3371 (2006) ("NGPA").

[5] 15 U.S.C. § 717(c), Pub. L. No. 83-323 ("NGA") (Hinshaw Amendment added to the Natural Gas Act on Mar. 27, 1954).

a uniform electronic format and posted on the Commission's web site, and (4) holding that those reports can not be submitted as privileged.

The NOPR represents another unnecessary reaction to a perceived lack of transparency in a market that is already the most transparent in the world. Like the November 20, 2008 Notice of Inquiry ("NOI"),[6] the NOPR fails to cite a single fact that warrants increased regulatory burdens for Section 311 and Hinshaw pipelines. Of the 18 parties filing comments in response to the NOI, only four were in favor of increased reporting requirements, and even that support was based on unsupported assertions about fairness rather than a need for transparency: "They assert that applying the same reporting requirements to all pipelines performing interstate service is both a matter of fairness and a practical solution to the discrimination and anti-competitive practices currently afflicting the market."[7] None of those commenters cited any specific examples of adverse market impacts resulting from the present regulatory regime or identified any specific discriminatory or anti-competitive conduct that would support the need for additional regulation.

In fact, the U.S. natural gas market is now considered the most transparent commodities market in the world due to the thousands of participants at numerous locations reporting prices.[8] Without any factual support to bolster the Commission's stated objective "to increase market transparency",[9] the Commission should not proceed with a rulemaking that would reverse thirty years of consistent precedent and be contrary to the clear Congressional intent that transactions under NGPA Section 311 are to be subjected to minimal regulation.

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[6] *Contract Reporting Requirements of Intrastate Natural Gas Companies*, FERC Stats & Regs. ¶ 35,559 (2008).
[7] NOPR at P 15.
[8] "Study Finds Natural Gas Market Transparency Outperforms All Other Commodity Markets in the U.S. and Europe", NGSA Press Release, Sept. 11, 2009.
[9] NOPR at P 16.

As the Commission is well aware from the protracted rulemaking in Docket No. RM08-2-000, many intrastate pipelines are unfamiliar with, and poorly equipped to accommodate, the FERC regulatory process and the Commission's increasingly burdensome transparency proposals. The Commission's efforts to implement capacity posting requirements for major non-interstate pipelines began more than two years ago with an initial notice of proposed rulemaking, and has yet to produce an effective final rule.[10] Rather than attempting to impose additional reporting requirements on intrastate pipelines at this time, the Commission would be better served to focus its efforts on developing a workable rule in Docket No. RM08-2-000 and then evaluate the cost and effectiveness of that rule before imposing another layer of regulatory requirements on entities that are not subject to Natural Gas Act ("NGA") regulation and are primarily regulated by State Commissions.

Additional reporting of Section 311 and Hinshaw transportation would not likely yield significant transparency benefits. The rule adopted in RM08-2-000 will provide the market with scheduled flow data on intrastate pipelines. Statements of Operating Conditions ("SOC") applicable to Section 311 transportation must now state information on maximum 311 rates, including rate component data. Annual 311 transportation reports submitted to the Commission provide volume and revenue information by customer and service type. Also, intrastate pipelines will have submitted cost of service filings to the State Commission and/or the FERC to support their 311 rates. Collectively, these items provide transparency to the market concerning the 311 transportation services of intrastate pipelines and provide all of the information being sought through this rulemaking except customer identity and receipt and delivery point identifications.

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[10] *See e.g. Transparency Provisions of Section 23 of the Natural Gas Act,* 72 FR 20791 (Apr. 26, 2007), FERC Stats. and Regs. ¶ 32,614 (2007).

Intrastate pipelines are diverse in their size, type of service offerings, and business practices. Therefore, the volume of 311 business varies for each intrastate pipeline. For many intrastate pipelines, Section 311 throughput is only a minor component of overall transportation and is only offered on an interruptible basis. One major intrastate entity has estimated that over the last five years, Section 311 transactions have accounted for between 1.10 and 4.27 percent of total throughput. Since many of these transactions are interruptible, section 311 contributions to pipeline revenues can be an even smaller percentage of overall revenue. Nevertheless, the large number of small, interruptible transactions under each Section 311 contract means that the NOPR's proposed reporting requirements would create a substantial reporting burden for Section 311 pipelines. The Commission needs to consider whether the increased regulatory burden is required, especially since no entity has asked the Commission to expand the 311 reporting requirements to increase transparency.

Should the Commission be inclined to proceed, notwithstanding the absence of any evidence to suggest that there is a transparency deficiency or any anti-competitive or discriminatory impacts in the U.S. natural gas market that could be remedied by quarterly Section 311 reporting, the TPA urges the Commission to consider a less onerous approach than that proposed in the NOPR. As discussed more fully in section II.C below, the proposed FERC-549D presents a myriad of problems given that it asks for information that may not be applicable to, or standardized among, intrastate pipelines and could cause competitive harm if customer identity and points are publicly disclosed. Moreover, the prevalence of multiple daily transactions under single contracts could result in a heavy reporting burden. Even though 311 transactions may be small and may not be a significant source of revenue, some TPA members have hundreds of Section 311 contracts, each with multiple daily transactions, which would result in the reporting of thousands of individual transportation transactions under those contracts each quarter. Depending on the number of 311 transactions that a smaller intrastate pipeline needs to report, such entities could incur significant costs to manually enter data into a web-based application, or even to compile an XML schema. As described more fully below, even obtaining industry common codes as required by the proposed rule will cost thousands of dollars.

The information being requested by the Commission through proposed FERC-549D is not necessarily consistent with industry practice in the intrastate market. For example, the NOPR proposes that contract reports by Section 311 and Hinshaw pipelines "include the 'industry common code' for each receipt and delivery point."[11] "Industry Common Code" is not a term that is used or recognized in the intrastate natural gas industry. Further, most intrastate pipelines do not establish primary and secondary delivery points under Section 311 contracts and it is not uncommon for a single contract to provide for firm intrastate and interruptible Section 311 transportation. Finally, direct connections with industrial end-users and power plants are more common in the intrastate market. Many of the agreements between intrastate pipelines and these customers contain confidentiality provisions. These provisions are in place to prevent the intrastate pipelines from releasing competitively sensitive fuel use information about the direct connection customer. The NOPR would require pipelines to violate these confidentiality provisions by publicly disclosing customer identification. In Texas, customer identity and location in tariffs are protected from disclosure by the Railroad Commission of Texas ("RRC") because of customers' competitive concerns and the concerns of pipelines arising from pipe-on-pipe competition.

If the Commission must adopt quarterly contract reporting requirements for Section 311 and Hinshaw pipelines, the TPA recommends that the Commission adopt a more reasonable

[11] NOPR at P 33.

approach. One solution might be to require quarterly reporting of the customer, volume, and revenue information already reported annually under section 284.126(b), while continuing the option for confidential treatment of customer identity. This alternative would achieve the goal of added transparency through more frequent reporting, while allowing intrastate pipelines to continue reporting information that is familiar to them. Indeed, in some respects, the existing reports already require intrastate pipelines to provide more data than interstate pipelines. The Section 311 reports require actual revenues received and volumes transported, while interstate pipelines do not regularly report that data.   If the Commission insists on significant changes to the data being reported and a complex new form, the Commission should host a technical conference with representatives from the intrastate market to develop a workable final rule and electronic reporting format.

In short, the Commission should not adopt the revised contract reporting requirements and standardized electronic form proposed by the NOPR because there is simply no evidence of a need for added transparency in the U.S. natural gas market and no evidence of anti-competitive or discriminatory activity. Nevertheless, if the Commission insists on implementing additional reporting requirements, it should require that the annual reports currently required under section 284.126(b) be filed on a quarterly basis and convene a technical conference to determine the most cost-effective, efficient and meaningful means of electronic submission of those reports.

I. BACKGROUND

Intrastate pipelines are authorized to provide transportation and storage services in interstate commerce pursuant to Section 311 of the NGPA.[12] Hinshaw pipelines may provide

[12] 15 U.S.C. § 3371(c).

similar interstate services pursuant to blanket certificates issued under the NGA.[13] Intrastate and Hinshaw pipelines providing such services must provide them on an open access, nondiscriminatory basis.[14] However, neither are subject to the same reporting and posting requirements applicable to interstate pipelines providing open access transportation and storage service under Part 284 of the Commission's regulations.[15] In particular, Section 284.13(b) requires interstate pipelines to publicly post on their Internet web site the following details about new transactions, including revisions to a contract, no later than the first nomination under a transaction:

- The name of the shipper
- The contract number (for firm service)
- The rate charged
- The maximum rate
- The duration (for firm service)
- The receipt and delivery points and zones covered
- The quantity of gas covered
- Any special terms or details, such as any deviations from the tariff
- Whether any affiliate relationship exists

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[13] Order No. 63, Certain Transportation, Sales, and Assignments by Pipeline Companies not Subject to Commission Jurisdiction Under Section 1(c) of the Natural Gas Act, FERC Stats. & Regs., Regs. Preambles, 1977–1981 ¶ 30,118 (1980).

[14] *See* 18 CFR §§ 284.7(b), 284.9(b) and 284.122.

[15] Order No. 637, Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, III FERC Stats. & Regs. Regs. Preambles 1996–2000 ¶ 31,091, at pp. 31,320–26, *order on reh'g*, Order No. 637-A, III FERC Stats. & Regs., Regs. Preambles 1996–2000 ¶ 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) [hereinafter "Order No. 637"].In Order No. 637, the Commission revised its reporting requirements for interstate pipelines but did not modify the reporting requirements for NGPA Section 311 intrastate pipelines and Hinshaw pipelines provided in section 284.126(c) of the Commission's regulations. Order No. 637, at pp. 31,320–26.

In contrast, Section 311 and Hinshaw pipelines under section 284.126(b) must file an annual report containing"

- The name of the shipper receiving the transportation service
- The type of service performed
- Total volumes transported for the shipper
- Total revenues received for the shipper

On September 3, 2008, SGRM, an interstate storage provider with market-based rates, filed a request for waiver of section 284.13(b)'s requirement that interstate storage providers with market-based rates post the rates charged in firm and interruptible transactions.[16] SGRM argued that the posting required the disclosure of commercially sensitive pricing information that gives prospective customers and competitors, such as intrastate pipelines providing Section 311 service, an unfair competitive advantage. Alternatively, SGRM requested that the Commission institute a rulemaking to address the potential elimination of these posting requirements insofar as they apply to interstate storage providers with market-based rates.

The Commission denied SGRM's request. The Commission then turned the proposal on its head; a proposal asking for less regulation of interstate pipelines has turned into a vehicle for greater regulation of intrastate pipelines. The Commission issued the NOI to consider whether "it should require Section 311 and Hinshaw pipelines to post the details of their transactions with individual shippers in a manner more comparable to the reporting requirements applicable to interstate pipelines under section 284.13(b) of the Commission's regulations."[17]

After receiving responses from eighteen interested parties, fourteen of whom were opposed to additional reporting requirements, the Commission issued the NOPR on July 16,

[16] *See* Docket No. RP08-606-000, SGRM, September 3, 2008 Petition.
[17] NOI, at P 1.

2009 to implement a quarterly version of the section 284.126(b) reporting requirements for Section 311 and Hinshaw pipelines (including both storage and transportation information). Currently, such reports are filed annually and require the shippers' identity, type of service, volumes transported and total revenues for the shipper. The new rule would require the report to be filed quarterly and also requires the reporting of the following additional information:

- The rate charged under each contract, including a separate statement of each rate component
- The duration of the contract
- The primary receipt and delivery points covered by the contract
- The quantity of natural gas the shipper is entitled to transport, store, or deliver; and
- Whether there is an affiliate relationship between the pipeline and the shipper[18]

The preamble, but not the regulatory text, states that "such reports be posted without any information redacted as privileged."[19]

On August 26, 2009, without even waiting for comments on the proposal, the Commission issued the proposed Standardized Electronic Procedures which proposes to adopt for reporting purposes an XML Schema. Under the XML approach, filing entities submitting their quarterly data would be required to submit an XML filing package that conforms to the XML Schema developed and maintained by FERC. Filers would be allowed to submit their XML filing packages using the existing eFiling portal. Once submitted, the XML filing package would undergo quality checks to see if it conforms to the XML Schema. Filing entities would receive an email confirmation if the filing is successful or needs to be corrected. In addition, the Commission seeks comment on whether an ASP.NET web-based form is more appropriate.

[18] NOPR at P 18.
[19] NOPR at P 30.

Under the ASP.NET approach, the Commission would create a web-based form that would be accessible to filers on the FERC website. Filing entities would not use the eFiling portal to submit their data. The web-based form would be formatted and contain blank fields that filing entities can fill in with data for each shipper it provides with transportation or storage service each quarter. Once submitted, the data would undergo quality checks. Filing entities would receive an email confirmation if the submission is successful or needs to be corrected.[20] The Commission invited comment on specific questions related to the proposed new form; the TPA responds to those questions later in these comments.

II. COMMENTS

A. The Commission Should Not Adopt Quarterly Contract Reporting Requirements for Section 311 and Hinshaw Pipelines.

1. Adoption of the NOPR's proposed reporting requirements would not be reasoned decision-making because the Commission has failed to demonstrate a lack of transparency in the U.S. natural gas market.

When the Commission cites no complaints and provides no evidence to support its decision, its orders are not reasoned decision making.[21] As the United States Court of Appeals for the D.C. Circuit explained in rejecting FERC's attempt to expand standards of conduct to non-marketing pipeline affiliates,

> FERC has cited *no* complaints and provided *zero* evidence of actual abuse between pipelines and their non-marketing affiliates. FERC staked its rationale in part on a record of abuse, but that record is non-existent. Professing that an order ameliorates a real industry problem but then citing no evidence demonstrating that there is in fact an industry problem is not reasoned decision making.[22]

[20] *See* Standardized Electronic Procedures at PP 4-5.
[21] *National Fuel Gas Supply Corp. v. FERC*, 468 F. 3d 831, 843 (D.C. Cir 2006).
[22] Id. (emphasis in original).

The NOPR provides absolutely nothing in the way of factual support for the rulemaking's purported objective, that is "to increase market transparency"[23] in the U.S. natural gas market, and with good reason. The Commission would be hard-pressed to offer a rational basis for increasing transparency in a market that is "the most price transparent commodity market in the world."[24] Amending the Commission's regulations to require Section 311 and Hinshaw pipelines to report detailed contract information quarterly in the name of transparency, without offering any evidence or complaints of an actual lack of transparency, would not be reasoned decision-making.

Further, the only aspect of market transparency that could be increased by the proposed rule is transportation rates. Transportation rates for Section 311 service are already regulated by the Commission under Subpart C of Section 284 of the Commission's regulations.[25] Although discounting is allowed, the market can readily determine the maximum rates. The transparency of this maximum rate information has already been enhanced by the Commission's recent adoption of a requirement that maximum rate information be included in the last page of all SOCs. The SOCs lay out the terms and conditions of Section 311 service and are filed with and are available from the Commission.

The SGRM petition and the four comments filed in this docket supporting additional reporting requirements contain no evidence of a need for additional transparency and cite no specific examples of anti-competitive impacts or discrimination. Just like the rule vacated in *National Fuel Supply Corp.*, the record in this rulemaking contains no evidence of any industry

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[23] NOPR at P 16.
[24] William P. Albrecht, "Price Transparency in the U.S. Natural Gas Market" at p. 1 (July 14, 2009) available at http://www.ngsa.org.
[25] 18 C. F. R. § 284.121 *et seq.*

problem that needs a solution. Proceeding with this rulemaking would not be reasoned decision making.

2. Congress did not intend for Section 311 and Hinshaw Pipelines to face extensive federal regulatory burdens.

Prior to enactment of the NGPA, the interstate and intrastate natural gas markets operated as a bifurcated system with two separate natural gas markets.[26] The result of the bifurcated system was shortages of natural gas in nonproducing states and severe market distortions.[27] In response to supply shortages in the interstate natural gas market in the late 1970s, Congress passed the NGPA.[28] The U.S. Court of Appeals for the D.C. Circuit explained "[o]ur reading of the statute and legislative history indicates that Congress intended that intrastate pipelines should be able to compete in the transportation market without bearing the burden of full regulation by

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[26] As a result of the price disparity between the interstate and intrastate markets, newly discovered natural gas resources were sold to the intrastate market—and the interstate market was unable to compete with the intrastate market for new supplies of natural gas. H.R. Rep. No. 95-496, 91–2 (1977).

[27] *See Oklahoma v. FERC*, 661 F.2d 832, 834 (10th Cir. 1981); *See also* H.R. Rep. No. 95-496, 95 (1977).

[28] H.R. Rep. No. 95-496, 95 (1977).

> This authority may save interstate pipelines great expense by avoiding the need to duplicate intrastate pipeline routes in order to obtain natural gas from producing areas presently served only be intrastate pipeline systems.
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> The amendment facilitates development of a national natural gas transportation network without subjecting intrastate pipelines, already regulated by State agencies, to FPC regulation over the entirety of their operations. Instead, the intrastate pipelines are immunized from State or Federal regulation as common carriers and from FPC regulation under the Natural Gas Act. The intrastate pipelines are only subject to FPC regulation under this legislation to the extent the intrastate pipeline is involved in an authorized sale of natural gas to interstate pipelines or an authorized transportation of natural gas on behalf of interstate pipelines. Other operations of an intrastate pipeline are not intended to be subject to FPC regulation by reason of this amendment.

H.R. Rep. No. 95-543, 45 (1977), cited by Order No. 46, Sales and Transportation of Natural Gas, 44 Fed. Reg. 52,179, 52,180, n.7 (Sept. 7, 1979) (codified at 18 C.F.R. Parts 157, 281, and 284).

FERC under the Natural Gas Act."[29] The Commission itself has explained that "[o]ne purpose of the Natural Gas Policy Act was to induce intrastate pipelines to participate in the interstate pipeline grid by ensuring that it would not be burdensome to do so. This participation by intrastate pipelines eliminates the need for duplication of facilities between interstate and intrastate pipelines."[30]

Congress enacted Section 311 to remove some of the barriers between the interstate and intrastate natural gas markets, with the deliberate intent that intrastate pipelines would not become subject to the burden of the Commission's jurisdiction under the NGA. Commission precedent is clear on this point —"[t]he Commission has determined that requiring intrastate pipelines to comply with all the requirements applicable to interstate pipelines could make it unduly burdensome to participate in interstate markets, contrary to the intent of the NGPA". Although the NOPR recognizes this precedent[31], what is not clear from the NOPR is why the Commission nevertheless seeks to depart from Congress' intent and its own precedents and require intrastate pipelines to report even more contract information than is required of interstate pipelines, albeit on a quarterly basis. Coupled with the Commission's efforts to impose posting requirements on major non-interstate pipelines in Docket No. RM08-2, the Commission is piling more and more federal regulation on the intrastate market. One reaction to this increased regulation could be a decision by intrastate pipelines to reduce their involvement with the Commission and its regulations by limiting the amount of capacity made available to the interstate markets. There is no requirement that intrastate pipelines offer Section 311 service and, as pointed out above, for some intrastate pipelines, Section 311 transactions provide only

[29] *Mustang Energy Corp. v. FERC*, 859 F.2d 1447, 1457 (D.C. Cir. 1988).
[30] *EPGT Texas Pipeline, L.P.*, 99 FERC ¶ 61,295, at p. 62,252 (2002).
[31] NOPR at P 24-25.

minimal incremental revenue. For these pipelines, the burden of complying with additional regulations might outweigh the benefits of making intrastate capacity available to the interstate market under Section 311. The more regulation the Commission imposes on Section 311 transactions, the more likely it is that intrastate pipelines will think twice before providing Section 311 service. The NOPR runs contrary to Congressional intent, and could result in a reduction in 311 service.

3. The Commission should wait until Order No. 720 has been successfully implemented to impose further reporting requirements on intrastate pipelines.

It has been more than two years since the Commission issued its initial notice of proposed rulemaking in Docket No. RM08-2,[32] and after multiple technical conferences there remains significant issues to be resolved before major non-interstate pipelines will be required to begin posting capacity and availability information.[33] As the Commission has learned in Docket No. RM08-2, intrastate natural gas pipelines are generally smaller, local operations accustomed to regulation by state agencies, and are simply not well-equipped to comply with FERC regulation in the same manner as interstate pipelines. They do not have the same infrastructure or operating budgets as interstate pipelines. Before imposing another set of reporting requirements on section 311 and Hinshaw pipelines, the Commission should complete the rulemaking commenced over two years ago in RM08-2-000, assess the industry's response to Order No. 720, and the impact of that rule on market transparency compared with the actual costs of implementing the rule. Then, if there is a demonstrated need for additional market transparency, the Commission might consider implementing further regulations.

[32] *Transparency Provisions of Section 23 of the Natural Gas Act*, 72 FR 20791 (Apr. 26, 2007), FERC Stats. and Regs. ¶ 32,614 (2007).

[33] *See, e.g. Pipeline Posting Requirements Under Section 23 of the Natural Gas Act*, 128 FERC ¶ 61,030 (2009) (Commission order seeking supplemental comments regarding potential revisions to the posting requirements adopted in Order No. 720 and codified in § 284.14(a) of the Commission's regulations).

B. If the Commission Does Implement Quarterly Contract Reporting, it Should Not Adopt the NOPR and Proposed Form FERC-549D But Rather Require the Information in the Existing Annual Reports Under Section 284.126(b) to be Filed on a Quarterly Basis and Convene a Technical Conference to Develop a Workable Electronic Means of Submission.

1. The NOPR and proposed Form FERC-549D would create a substantial reporting burden for intrastate pipelines.

The Commission estimates an average of 3.5 burden hours per quarter to generate the information required by the NOPR and physically populate the proposed Form FERC-549D.[34] For most TPA members, this will be a gross underestimate. Indeed, the TPA is mystified as to how the Commission estimates reporting burdens. To our knowledge, the Commission has never consulted with the TPA or any of its members on this subject.

Many TPA members have anywhere from fifty to more than 300 contracts that include Section 311 transportation. Many of these contracts have multiple receipt and delivery points. Given the prevalence of daily transactions in the marketplace, the total number of transactions in a given quarter will number in the thousands for many TPA members. Form FERC-549D is a 68-line form. If that information must be generated and verified for thousands of transactions per quarter, it is likely that the reporting burden will be significantly higher than 3.5 hours, particularly if ASP.NET reporting is implemented and the fields must be filled out manually. Many intrastate operations are small and can not devote staff exclusively to completing FERC forms. Accounting, contracting, regulatory, operations, and administration personnel will be pulled away from their existing duties each quarter to prepare, verify and submit a report that virtually no market participants are requesting. The added burden proposed by the NOPR and Form FERC-549D seems particularly excessive given the radical change from the current

[34] *Contract Reporting Requirements of Intrastate Natural Gas Companies*, 128 FERC ¶ 61,187 at P 7 (2009)

reporting obligations. As discussed above, imposing a heavy regulatory burden on Section 311 and Hinshaw pipelines is inconsistent with Congressional intent.

> *2. If the Commission proceeds, the TPA recommends the implementation of a quarterly version of the annual report currently required under a section 284.126(b) as a feasible means of increasing market transparency.*

As demonstrated above, the Commission should not proceed with the proposed rule. If the Commission does proceed, it should go forward with a much more limited and less burdensome approach. In light of the heavy regulatory burden associated with the NOPR and proposed form FERC-549D, as well as the confusion currently surrounding the form that will be discussed in greater detail in section C of these comments below, the TPA recommends a more modest approach to implementing quarterly reporting requirements. Rather than create a new 68-line form soliciting detailed contract information, the Commission should increase the frequency of the existing reporting requirements under section 284.126(b) by requiring the report to be filed quarterly. The annual report already in certain respects requires more information than interstate pipelines are required to post under section 284.13(b), in particular actual volume and revenue data for each shipper. More importantly, the annual report is one that is familiar in format and content to intrastate pipelines and, with only four to five lines of information per shipper, would not result in nearly the reporting burden that intrastates would face under the NOPR's proposal.

An essential element of the TPA's alternative proposal, however, would be the continued ability of Section 311 and Hinshaw pipelines to protect the identity of their customers and their locations. Confidential treatment of customer identity and location is important for three reasons. First, direct connections with industrial end-users and power plants are more common in the intrastate market. Many of the agreements between intrastate pipelines and these customers contain confidentiality provisions. These provisions are in place to prevent the intrastate pipelines from releasing competitively sensitive fuel use information about the direct connection customer. The NOPR would require pipelines to violate these confidentiality provisions by publicly disclosing customer identification. Moreover, depending on the method of disclosure, identifying a customer's location can be tantamount to disclosure of the customer's identity.

Second, requiring public disclosure of Section 311 customer identity would create a competitive imbalance between intrastate pipelines offering Section 311 and Hinshaw service and those that do not. In Texas, customers and prices for Section 311 services are generally the same as or similar to those of intrastate service customers. However, unlike in the interstate market, pipelines do not need certificates to build intrastate pipelines. Thus, there is often more than one pipeline serving a particular location. Therefore, while TPA's members that provide section 311 transportation are generally not in direct competition with interstate pipelines, they are in direct competition with other intrastate pipelines that may not offer Section 311 transportation. Intrastate pipelines in Texas are not required by the RRC to publicly disclose customer identification and location, a position recently upheld yet again by the Texas Attorney General.[35] Therefore, requiring section 311 pipelines to publicly disclose contract information including price, customer, and duration, will place pipelines offering Section 311 service at a competitive disadvantage to those pipelines offering strictly intrastate service. One group of

[35] *See* Letter from Cindy Nettles, Assistant Attorney General, State of Texas, to the Honorable John James Tintera, Acting Executive Director, Texas Railroad Commission (April 16, 2009) (opining that customer names and delivery points are protected as trade secrets, and requiring the Railroad Commission to protect them as such). *See also* Texas Attorney General Open Records Decision No. 552, 1990 Tex. AG LEXIS 189 (Apr. 24, 1990) (finding that Lone Star Gas Company established that the names of its customers were trade secrets within the meaning of Section 7 of the Open Records Act); Letter from Dan Morales, Attorney General, State of Texas, to the Honorable Lena Guerrero, Chair, Texas Railroad Commission, (April 24, 1992) (opining that Westar Transmission Corporation's customer information was protected as a trade secret under Open Records Decision No. 552); (These documents are on file at the Texas Attorney General's office).

potential suppliers will be forced to disclose rates and contract duration to specific customers, and one group will not. Before mandating disclosure of customer identity and location, the Commission should consider the impact of its proposal on the intrastate markets, an area clearly outside the Commission's jurisdiction. The Commission is not empowered to interfere with intrastate markets and should refrain from doing so, even indirectly.

Finally, a preemptive prohibition on parties requesting privileged treatment is contrary to the Commission's longstanding rules governing such requests. In *Natural Gas Pipeline Company of America*, 80 FERC ¶ 61,372, at p. 62,264 (1997), the Commission held that "Natural is free to request confidential treatment for the submission pursuant to section 385.1112 and 388.112 of the Commission's regulations, and the parties may argue for disclosure of the report. Until that time, it would be premature for the Commission to rule on this issue." While the Commission could ultimately deny a request for confidential treatment, the Commission must consider all such requests in accord with Part 388 of the regulations on a case-by-case basis.

It is especially important for the Commission to consider the actual regulatory burden imposed on a market that was not meant to be subject to full FERC regulation, as well as any unintended consequences of its action in that market, since the Commission has not provided any evidence of the purported transparency problem that it is targeting in this proceeding. If any additional reporting requirements are to be implemented, they should not be unduly burdensome to intrastate pipelines or their customers. Increasing the frequency of an existing report rather than creating an entirely new one is a logical starting point.

3. A technical conference with FERC Staff and industry representatives would be an appropriate venue to develop a workable Final Rule.

More than two years after its initial notice of proposed rulemaking in Docket No. RM08-2-000,[36] the Commission hosted a technical conference and sought post-conference supplemental comments "to better inform its decision making in this rulemaking."[37] In that proceeding, the Commission ultimately recognized that its understanding of intrastate pipeline operations based on its experience regulating interstate pipelines was not consistent with the actual operations of intrastate pipelines. By convening a technical conference with intrastate pipeline market participants, the Commission gained valuable first-hand information about an industry that the Commission was not familiar with, and hopefully moved closer to reaching a workable final rule. The Commission has previously recognized the value of technical conferences in dealing with reporting and formatting issues.[38]

The Commission should apply the same approach in this proceeding. Rather than trying to pound the square interstate reporting approach into the round intrastate hole, the Commission should solicit input from intrastate market participants at an early stage to develop a rule and reporting format that addresses the Commission's concerns in a way that is reasonable. In the end, this will yield a better final rule.

C. Comments in Response to the Notice Requesting Comments On Proposed Standardized Electronic Information Collection

Notwithstanding the TPA's arguments in opposition to quarterly contract reporting requirements for Section 311 and Hinshaw pipelines, the TPA on behalf of its members will provide responses to the specific questions posed with regard to proposed Form FERC-549D.

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[36] *Transparency Provisions of Section 23 of the Natural Gas Act*, 72 FR 20791 (Apr. 26, 2007), FERC Stats. and Regs. ¶ 32,614 (2007).
[37] *Pipeline Posting Requirements Under Section 23 of the Natural Gas Act*, 128 FERC ¶ 61,030 at P 7 (2009) (Order Requesting Supplemental Comments).
[38] *See* e.g., Order No. 703, *Filing Via the Internet*, Final Rule. Nov. 15, 2007 at p 5.

First, with respect to whether an ASP.NET web-based form is more appropriate than an XML Schema approach, some TPA members favor an XML Schema approach while others favor a web-based ASP.NET approach. It is the TPA's understanding that the ASP.NET web-based form could require the manual entry of data into each field for each transaction under every contract for the preceding quarter. Given the number of transactions that some TPA member pipelines are involved in each month, a web-based approach could significantly increase the reporting burden for those participants.

On the other hand, some TPA members have very few Section 311 transactions each month, and could benefit from a direct ASP.NET web-based approach. Therefore, the TPA recommends that the Commission make both options available to accommodate the wide disparity in the amount of data different intrastate pipelines will be required to report.

The Commission also invited comments on the following issues:

1. Problems in measuring data elements collected in the table and data dictionary

There are a number of sources of confusion for many of TPA's members with respect to specific data elements collected in Form FERC-549D, and this is one reason a technical conference should be convened before any Final Rule is issued in this proceeding. The TPA will highlight two concerns here. First, the prevalence of multiple transactions, especially daily deals, under a single contract, results in confusion – in addition to the shear volume of reporting described above - with respect to contract reporting on a quarterly basis. Under any given Section 311 contract, shippers might have the flexibility to do multiple daily, weekly, or monthly deals at different points. Proposed Form FERC-549D does not appear to accommodate the reporting of this type of arrangement and it would be burdensome and difficult to capture such data in a standardized format.

Second, most intrastate pipelines do not establish primary and secondary receipt and delivery points under Section 311 contracts. Some contracts will include specific points. However, many Section 311 contracts are for only interruptible transportation and provide system-wide rights, but those rights can only be exercised on a mutually agreeable transaction-by-transaction basis, if capacity is available. Proposed Form FERC-549D is not set up to accommodate this type of arrangement and it would be difficult to implement a standardized form when each intrastate pipeline has different contracting practices.

2. Terms and definitions of the elements in the table, data dictionary and instructions

The Commission proposes to require that receipt and delivery points be identified by "the industry common code" for each point.[39] Most of the TPA members have no idea what the common code means and do not believe that such codes exist for many of the intrastate receipt and delivery points that would be covered by the reporting requirements. As far as the TPA has been able to determine, industry common codes were mandated for interstate pipelines in Order No. 563-A, fifteen years ago.[40] TPA members affiliated with interstate pipelines have advised that obtaining an industry common code for a point is a costly and bureaucratic procedure. The requirement is apparently now administered by a contractor through the North American Energy Standards Board ("NAESB"). As the Commission has recognized, intrastate pipelines are not members of NAESB and should not be compelled to comply with NAESB requirements.[41] TPA has been advised that to obtain industry common codes for pipelines with between 101 and 1,000 points, the cost would be $5,169 for non-NAESB members and that this payment is required annually. Requiring pipelines who should be subjected to minimal Federal regulation to pay a

[39] NOPR at P 33.
[40] Standards for Electronic Bulletin Boards Requirement under part 284 of the Commission's Regulations, 59 F.R. 23624 (1994).
[41] Order No. 563-A required pipelines to work with PI-GRID, which is now IHS.

third party thousands of dollars per year, and rename their points is completely unwarranted. The proposal would result in a windfall to the contractor with no benefits to the marketplace. If the Commission believes that receipt and delivery point information must be disclosed, TPA suggests that the Commission allow each intrastate pipeline providing 311 service to use an existing point identification codes or to develop proprietary point identification codes.

TPA has similar issues with FERC Staff's proposed definition of "Shipper Identification Number." The Staff's suggested definition for Field 20 on proposed form FERC-549 is "Shipper ID – Use the unique Data Universal Numbering System (D-U-N-S®) Number assigned by the Dun & Bradstreet Corporation and accepted by the NAESB as the common code for the shipper."[42] Some Section 311 shippers do not have a DUNS number, and would have no need to obtain one other than to obtain 311 transportation in compliance with this proposed rule. TPA's preferred approach would be to allow the public document to contain coded references to individual shippers and points, with the key to the code available to the Commission in the event there is a need to investigate any allegations of discriminatory behavior. If the Commission insists on requiring disclosure of confidential customer identity and location, the Section 311 pipeline should be permitted to simply fill in the exact legal name of the shipper as it appears on the service contract rather than require shippers to obtain DUNS numbers.

3. Whether the units of measure are appropriate

The process of reporting average contract rates and the rate detail behind the average rates will be a purely manual process. TPA members would prefer to use only the average rates determined by dividing the revenues by the volumes.

4. Whether the instructions are clear or require modification

[42] Proposed FERC-549D, Appendix Page 6.

The instructions need clarification generally as to when pipelines are to report contract volumes versus actual volumes. The proposed form requires contract beginning and ending dates to be stated as a calendar quarter (Field Nos. 27 and 28). Should this instead be the actual contract dates? How would evergreen provisions be depicted?

The staff-suggested definition for Field No. 5 ("Report is to confirm transportation of gas under Section 284.122") suggests that reports would be required for intrastate service as well as section 311 service. The Commission has no jurisdiction to require reporting of intrastate service and has provided no justification for requiring such information to be reported.

In addition, some intrastate pipelines offer Section 311 services under the same contract as purely intrastate service. The directions must be clarified to require only the reporting of Section 311 receipt and delivery points, revenues, volumes, etc. where the contract being reported also provides for intrastate transportation.

Finally, the Commission should clarify whether Fields 1-18 must be completed for each contract or whether they must simply be filled out once by each intrastate pipeline.

5. *The accuracy of the agency's burden estimate of the proposed collection of information;*

As discussed in greater detail in Section II.B.1 above, the Commission has grossly underestimated the burden on intrastate pipelines that would result from this rulemaking. As the Commission should be aware from the comments it received in Docket No. RM08-2-000, intrastate pipelines do not have the same infrastructure or technical resources as interstate pipelines. They do not have sophisticated systems and are not set up to collect and tabulate the type of data the Commission is requesting in this NOPR. Moreover, in light of the number of active contracts that each pipeline provides service under in a given quarter, the numerous daily, weekly, and monthly transactions at multiple receipt and delivery points executed under those contracts each quarter, and the 68 fields that must be filled in, verified, and audited on proposed form FERC-549D, the reporting burden is likely to be significantly larger than the 3.5 hours estimated by the Commission.

The Commission's estimate of the cost of compliance is clearly erroneous. There is not one TPA member who believes this report can be completed in just 3.5 hours, regardless of the extent of the pipeline's Section 311 operations. In fact, due to the large number of small-volume, interruptible 311 transactions that many intrastate pipelines are involved in, the burden of additional reporting might outweigh the benefits of participating in the interstate market. The Commission ignores the over $5,000 per company annual cost for industry common codes. This rule will cost intrastate pipelines significantly more time and money than the Commission's estimates. Moreover, the Commission does not address the issue of cost recovery. Intrastate consumers will not want to pay for information that does not benefit them, and most intrastate pipelines discount from their maximum rates to remain competitive. Even if the Commission allowed the full cost of complying with federally imposed reporting requirements to be included in an intrastate pipeline's Section 311 rates, intrastate pipelines may not be able to recover the additional costs in their already discounted 311 contracts.

6. *Ways to enhance the quality, utility and clarity of the information to be collected; and*
7. *Ways to minimize the respondent information collection burden*

As discussed in section II.B.2 of these comments, the TPA is proposing, notwithstanding its arguments against implementation of any quarterly reporting requirements for intrastate pipelines, that the Commission require the information in the existing annual section 284.126(b) transportation reports to be filed on a quarterly basis. The intrastate pipeline industry is already familiar with the information reported on these forms, so the burden of expanding to quarterly reporting would be minimal. Industry observers are already familiar with the information that is reported in the annual reports, including volume and revenue information for each Section 311 and Hinshaw shipper. Industry observers would receive clear information on a more timely basis without posing an undue burden on intrastate pipelines or potentially discouraging intrastates from making their capacity available to the interstate market.

8. The most effective way for the Commission to present the collected information to the public on the FERC website.

The TPA requests that the Commission respect the need of intrastate pipelines to protect certain customer information as confidential. As described in section II.B.2 above, many direct connection customers' contracts explicitly require the pipeline not to disclose their fuel use publicly due to competitive concerns. Likewise, requiring Section 311 pipelines to disclose customer identification and location would place them at a competitive disadvantage to intrastate pipelines that do not offer Section 311 service and are not required to disclose customer information by the Railroad Commission of Texas.

IV. CONCLUSION

For the reasons stated herein, TPA on behalf of its members respectfully urges the Commission not to adopt quarterly contract reporting requirements for Section 311 and Hinshaw pipelines. If the Commission decides to proceed with adoption of quarterly contract reporting, TPA urges the Commission to convene a technical conference and/or modify its final rule consistent with these comments so that competitive harm is not done to the intrastate market.

Respectfully submitted,

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