

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**Assessment of Information Requirements for FERC Financial Forms) RM07-9-000**

**INITIAL COMMENTS OF THE  
INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA**

Pursuant to the Commission's "Notice of Inquiry" into the need for changes or revisions to its reporting requirements for financial forms issued February 15, 2007, the Interstate Natural Gas Association of America (INGAA) submits the following comments, which are principally directed at the Commission's Form Nos. 2 and 2-A, "Annual Report for Major and Nonmajor Natural Gas Companies." Those forms are filed by INGAA's interstate natural gas pipeline company members pursuant to 18 CFR §§ 260.1 and 260.2.

The following comments first set out INGAA's views on the purpose of the Forms and their adequacy as presently constituted, and then address specific questions posed by the Commission insofar as appropriate at this time. INGAA will respond to specific proposals for changes in the Forms in its reply comments after those proposals have been fleshed out by commenters.

**I. The Purpose of the Forms**

The Commission's Forms 2 and 2-A provide the Commission and the industry with a snapshot of the financial position of an interstate pipeline including updated information for each account during the reporting period. As they are currently designed, preparation of the forms does not require pipelines to engage in projections or to make judgment calls based on the data but rather focuses on reporting what has actually occurred based on the Commission's Uniform

System of Accounts (USOA), 18 CFR § 201. As the Commission evaluates proposals to change the Form 2 requirements, INGAA urges the Commission to retain this focus on objective historical reporting.

The statutory purpose underlying Forms 2 and 2-A should inform the Commission's determination as to the scope of the information required. Section 10(a) of the Natural Gas Act ("NGA") is the statutory grant of authority empowering the Commission to require interstate natural gas pipelines to file reports with the Commission. That provision states that the Commission may require "such annual and other periodic or special reports . . . as necessary or appropriate to assist the Commission in the proper administration of this act." 15 U.S.C. § 717i (emphasis added). One of the Commission's administrative obligations under the NGA is to evaluate pipeline rates to determine if they have become "unjust, unreasonable, unduly discriminatory or preferential . . . ." NGA section 5(a), 15 U.S.C. § 717h(a) . The Commission may use its authority under section 10(a) to require reports from interstate pipelines that will permit the Commission to carry out its section 5 responsibilities. *See, e.g., Trunkline LNG Co. v. FERC*, 194 F.3d 68, 72 (D.C. Cir. 1999).

In its NOI, the Commission states:

The forms represent more than simply accounting documents; the information provided is essential to the public's right to examine, monitor, and assess utility and pipeline rates to ensure that they do not pay excessive or unduly discriminatory rates.

NOI at P 14. The forms authorized in section 10(a) are for the Commission's use in administering the NGA fairly, including providing the Commission with the information it needs to "examine, monitor, and assess utility and pipeline rates" on behalf of the public. The Commission's focus should be on determining the level of information the Commission requires

for this purpose. A balance is required that takes into consideration the need to avoid placing an undue burden on the reporting companies. The forms should provide enough information to determine when further investigation is warranted. There is no need to compel all of the information that might be useful to other agencies, to the public, or to a litigant in its case in chief challenging pipeline rates that previously have been found by the Commission to be just and reasonable.

The Commission recognized its obligation to reach a fair balance with respect to its reporting requirements in early rulemakings in which it reduced the data required by the Forms. In one such order deleting certain information requirements from Forms 1-F and 2-A, the Commission noted:

[W]hile the public may have some interest in this information, the Commission cannot thereby justify the continued collection of this data. The Commission [. . .] has determined that the information to be deleted from the forms is no longer necessary to the performance of the Commission's regulatory functions.

Order No. 101 at 31,292.<sup>1</sup> In another order reducing the data required by Form 2, the Commission agreed with the proposition “that cost/benefit analysis is an essential ingredient in weighing the need to collect data,” but stressed that:

The Commission must first consider which data are essential to its regulatory responsibilities, i.e., data which are necessary and appropriate to the lawful administration of the various statutes which the Commission administers. In the Commission's data-validation program, the following criterion for retaining data has been used: Is the information to be retained in a reporting requirement *essential* to the decision-making process at the Commission?

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<sup>1</sup> *Order Revising Annual Reports for Pub. Utils. and Licensees, and for Natural Gas Companies (Class C and Class D)*, FERC Stats. & Regs., Reg. Preambles 1977-81, ¶ 30,187 (1980).

Order No. 121 at 31,447 (emphasis in original);<sup>2</sup> *see also id.* at 31,445 (Information “should not continue to be collected by the Commission only for the purpose of convenience, if it is not otherwise required in Commission regulatory processes.”). Thus, the Commission itself has acknowledged that the information collected in the Forms is for purposes of the Commission’s administration of its statutory obligations.

In sum, in exercising its authority to require the filing of Forms 2 and 2-A reports, the Commission should balance the amount and type of information it needs in periodic reports for the purpose of administering section 5 against the burden it places on the pipelines in connection with periodic filings. In determining the appropriate balance, the Commission should consider that the reports must be filed quarterly and annually by every pipeline. When these filings are made there is no presumption that a pipeline’s rates have become unjust and unreasonable and no *prima facie* case has been made demonstrating that a filing company’s rates are unlawful. Indeed, if there is any presumption to be applied it is that a pipeline’s rates are just and reasonable because the Commission previously has made that finding.

**II. The Information Currently Included in the Forms Is Sufficient for the Commission’s Lawful Purposes; Requiring Extensive Additional Information Would Be Arbitrary and Unlawful.**

Forms 2 and 2-A should provide both the Commission and the public with sufficient information to alert the Commission when further investigation of a particular pipeline’s rates would be warranted in the pursuit of the Commission’s section 5 responsibilities. This level of information in the Forms provides the proper balance for the Commission’s administration of the

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<sup>2</sup> *Order Revising Form No. 2 Annual Report of Natural Gas Companies (Class A and Class B)*, FERC Stats. & Regs., Reg. Preambles 1977-81, ¶ 30,222 (1980), *reh’g denied*, 14 FERC ¶ 61,267 (1981).

NGA. In fact, based on recent experience, it appears that the Forms already provide the information necessary for this purpose.

In two recent cases, the Commission relied on Form 2 and Form 2-A data to find sufficient cause to investigate pipeline rates under section 5. *Public Serv. Comm'n v. National Fuel Gas Supply Corp.*, 115 FERC ¶ 61,299, *on reconsideration*, 115 FERC ¶ 61,368 (2006) (“*National Fuel*”) and *Panhandle Complainants v. Southwest Gas Storage Co.*, 117 FERC ¶ 61,318 (2006) (“*Southwest Storage*”). The Commission has relied on Form 2 data in earlier cases as well. *See, e.g., Indicated Shippers v. Sea Robin Pipeline Co.*, 76 FERC ¶ 61,151 (1996). These cases are significant because in each instance the respondent claimed that the Form 2 or 2-A data was not sufficient to show that a pipeline’s rate levels were unlawful. The Commission, however, found that the data provided by the Forms was sufficient to demonstrate a need to investigate the pipeline’s rates further in a section 5 proceeding. Thus, the existing Forms are an administratively efficient mechanism for providing the Commission and the public with the information needed to evaluate when further investigation is required to determine whether a specific pipeline’s rates have become unjust, unreasonable, unduly discriminatory or preferential.<sup>3</sup> Moreover, in other cases, Form 2 data supplied the basis for settlements that foreclosed any arguable need for section 5 rate proceedings and thus avoided the expense and time required for hearing and litigation procedures. *See, e.g., Tuscarora Gas Transmission Co.*,

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<sup>3</sup> There is substantial, readily accessible cost and revenue data in the current Form 2. Going down the list of information, there are operations and maintenance expenses (accounts for gathering, underground storage, and transmission) as well as administrative and general expenses, evaluated at current and previous year amounts, broken out at Commission USOA account levels. Additionally, rate base information is set forth in property, plant and equipment accounts, the accumulated depreciation accounts, the deferred federal income tax accounts, and if applicable, the regulatory asset accounts. Other cost of service items, such as depreciation expenses, taxes other than income, and revenue credits, can be reviewed in the Form 2. A pipeline’s revenues and billing are also accessible in the Form 2.

116 FERC ¶ 61,003 (2006); *East Tennessee Natural Gas, LLC*, 113 FERC ¶ 61,099 (2005); *Dominion Transmission, Inc.*, 111 FERC ¶ 61,285 (2005).

In addition, there are other contexts in which the Commission has required, or pipelines have voluntarily filed, reports or made postings that provide information to the public in addition to that provided by Form 2. For example, each pipeline must post an index of customers, which provides useful billing determinant and affiliate transaction information and identifies contracts with negotiated rates. Likewise, a pipeline's web site also contains transactional reports of newly executed contracts, available capacity and discounts awarded. Negotiated rate contract information is filed prior to its effectiveness and is available either through the tariff or publication of the contract itself on the pipelines' websites.

Some commenters have urged the Commission to expand significantly the information required in the annual and quarterly forms for the purpose of evaluating pipelines' current rate levels. See NOI at PP 11-12. While INGAA reserves a response to these proposals until they have been more fully fleshed out in comments, these proposals in general do not strike a proper and lawful balance under NGA sections 5 and 10(a). Experience shows that the Commission is able to perform its section 5 responsibilities fully using the information that currently is in the Forms and is publicly available on the pipelines' web sites and elsewhere. The Commission recognized this, at least implicitly, in the *National Fuel* and *Southwest Storage* proceedings, where it made determinations that sufficient showings (premised largely on Forms 2 and 2-A data) had been made to warrant initiating section 5 investigations, *and then* ordered the filing of further studies. The Commission should take care that an expanded Form 2 does not blur unlawfully the distinction between sections 4 and 5, and effectively shift the burden of proof established under section 5. See *Public Serv. Comm'n v. FERC*, 866 F. 2d 487, 490-91 (D.C.

Cir. 1989). The Commission should be especially wary of converting Form 2 from a financial reporting document into the equivalent of an annual cost and revenue study. Outside of a rate case, the Commission has never required a pipeline to submit the type of detailed information sought by the "Industry Coalition."

Finally, some of the changes that have been urged on the Commission would necessarily require a large degree of subjectivity, such as what expense is a cost of service item versus non-cost of service. In a rate case, reasonable people may and often do disagree over such questions, and a final resolution may only follow protracted litigation. Requiring such judgment calls would unduly complicate Form 2 and the obligation for accountants to certify the accuracy of the report.

In sum, the Commission's experience demonstrates that the information already available through Form 2 and the other periodic forms filed by pipelines, as well as the additional information that the Commission requires be made available by a pipeline on its website and elsewhere, is sufficient to provide the Commission and the public with all of the data necessary to evaluate a pipeline's rate levels and determine whether further investigation under section 5 is prudent. The "proper administration" of the Commission's section 5 responsibilities is fully served by the Forms as they currently are constituted.

### **III. Response to Questions Posed**

**(1) Do the annual and quarterly Financial Forms provide sufficient data for the public to permit an evaluation of the filers' jurisdictional rates? (2) If not, what additional data is needed to conduct such an evaluation?**

In the NOI at PP 11-12, the Commission has listed a number of specific changes or additional details sought by users of Form 2 gleaned from its outreach program. INGAA assumes these proposals will be further fleshed out in comments filed in response to the

Commission's questions. As noted above, INGAA will reply to such comments once its members have had an opportunity to review specific proposals. As a general proposition, any proposal that would require additional information that is not collected in accord with the USOA, or is to be reported in a different format, will result in an additional regulatory burden. As the Commission is aware, many companies have struggled to meet the current filing deadlines. If companies are required to provide additional data, reformat or manipulate data maintained and previously reported in accord with the USOA, substantial additional time will be required to accomplish that task.

**(3) Do the financial reports provide sufficient data to the public to determine revenues attributable to the sale of excess fuel retention? If not, what additional data is needed to conduct such an evaluation?**

The *National Fuel* case demonstrates that there is adequate public information available for a complainant to initiate a section 5 investigation. Form 2 contains a detailed reporting of gas account data on p. 520, as well as information on all volumes, revenues and expenses associated with gas purchases and sales. This information should be adequate to determine the revenues and expenses associated with fuel and loss activity.

**(4) Is the information included in the financial reports sufficient to audit formulaic rates?**

Contract specific data on discounted services and negotiated rates, where formula rates may apply, is disclosed in transactional reports and through the negotiated rate filings.

**(5) and (6).**

INGAA has no comments on these questions, which pertain to the electric power industry (5), or are directed to users of Form 2 (6).

**(7) How burdensome would any requirement for additional information be to filers of Financial Forms?**



INGAA will address the burden after reviewing specific proposals.

**(8) Are there specific reporting requirements that are no longer necessary or unduly burdensome that should be deleted?**

**(9) What technical revisions, if any, need to be made to the Financial Forms? For example, identify any suggested changes in instructions, desirable software upgrades, and whether there are errors embedded in the forms which need to be corrected.**

INGAA members will be filing separate comments that include proposed revisions.

**(10) Should the Commission require electric utilities, licensees and interstate natural gas and oil pipeline companies to provide notification when their total sales or transactions fall below the minimum thresholds established in the Commission's regulations such that they are no longer subject to these filing requirements?**

INGAA does not oppose such a notice requirement.

**(11) Should the Commission require a showing of good cause before granting an extension of time in which to file the required forms?**

INGAA urges the Commission to appreciate the substantial time and extraordinary efforts of employees required to prepare Forms 2, 2-A, 3-Q and other financial forms. The very nature of the obligation makes it inevitable that there will be occasions when extensions reasonably can be granted to enable filers to "get it right," particularly if reporting requirements are increased.

**(12) Are these concerns of sufficient importance to warrant a rulemaking and, if so, what rules should the Commission promulgate? Commenters are encouraged to be as specific as possible.**

If in the Commission's view meritorious proposals are made that will change the existing financial form obligations, INGAA urges the Commission to proceed by notice and comment rulemaking.

Respectfully submitted,

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