

**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
AMERICAN PUBLIC GAS ASSOCIATION
IN RESPONSE TO NOTICE OF INQUIRY**

Pursuant to the Notice of Inquiry (“NOI”) issued by the Federal Energy Regulatory Commission (“Commission” or “FERC”) in the above-captioned proceeding on November 20, 2008, the American Public Gas Association (“APGA”) hereby submits its response to the Commission’s request for comments regarding contract reporting requirements for those natural gas pipelines that fall under the Commission’s jurisdiction pursuant to section 311 of the Natural Gas Policy Act of 1978¹ or section 1(c) of the Natural Gas Act.²

I. INTRODUCTION

As explained in the NOI, in Order No. 637³ the Commission adopted new regulations requiring interstate pipelines to post information about individual transactions on their websites under 18 CFR 284.13(b). In September 2008, an interstate storage provider with market-based rates, SG Resources Mississippi, LLC (“SGRM”), filed a request for waiver of the section 284.13(b)(1)(iii) and (b)(2)(ii) requirements that interstate pipelines post the rates charged in

¹ 15 U.S.C. § 3372 (2008).

² 15 U.S.C. § 717(c) (2008).

³ *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, *reh’g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff’d in part and remanded in part sub nom. Interstate Natural Gas Ass’n of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh’g*, 106 FERC ¶ 61,088 (2004), *aff’d sub nom. American Gas Ass’n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

firm and interruptible transactions by the first nomination of service.⁴ SGRM argued that mandatory disclosure of pricing information by interstate storage providers gives competing non-interstate storage providers an unfair competitive advantage. The Commission declined to grant SGRM and other interstate storage providers with market based rates an exemption from the reporting requirements⁵ and instead issued a Notice of Inquiry in the instant proceeding regarding whether reporting requirements should be extended to those intrastate pipelines that compete in the interstate market.

II. COMMENTS

The Commission should create comparable posting requirements for all section 311 intrastate pipelines and Hinshaw pipelines to those posting requirements for interstate pipelines. As the Commission recently reaffirmed, Order No. 637 adopted the posting requirements codified in section 284.13(b) “for the purpose of enabling the Commission and shippers to monitor market-based transactions, as well as cost-based transactions, for undue discrimination and preference and to promote competition through price transparency.”⁶ In Order 637-A, the Commission found it “axiomatic that greater, more complete and detailed information about transactions will greatly improve shippers’ ability to make informed decisions, and both shippers’ and the Commission’s ability to monitor the market.”⁷ As the Commission explained in *SGRM*, Order No. 637-A “held that keeping commercially-sensitive information about prices charged in contracts for jurisdictional service confidential would violate the NGA.”⁸ In *SGRM* the Commission further explained that the NGA “clearly contemplates full disclosure of

⁴ See Docket No. RP08-606-000, SGRM September 2, 2008 Petition.

⁵ *SGRM*, 125 FERC ¶ 61,191 (2008).

⁶ *Id.* at P 22.

⁷ Order No. 637-A, at 31,612-13.

⁸ *SGRM*, at P 23.

contractual terms and prices, as means of preventing undue discrimination or preference,”⁹ and quoted section 4(c) accordingly:

Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time ... and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing *all rates and charges for any transportation or sale subject to the jurisdiction of the Commission*, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services. [Emphasis added by the Commission.]

Thus, the Commission recognizes that posting transactional rates, whether market or cost based, is “axiomatic” because it promotes price transparency, prevents undue discrimination, and enables shippers and the Commission to monitor markets. Furthermore, the Commission has found that protecting commercially sensitive pricing information regarding jurisdictional services violates the Commission’s obligations under the NGA. Despite the Commission’s position on the necessity of promoting transparency by requiring the posting of transactional information, the Commission has, thus far, failed to extend posting requirements similar to those found at section 284.13(b) to non-interstate pipelines that provide jurisdictional services.

The Commission’s oversight in this regard leaves the segment of the market for jurisdictional services provided by non-interstate pipelines shrouded in darkness, despite the fact that “distinctions between intrastate and interstate natural gas markets [. . .] are not meaningful from the perspective of market price formation.”¹⁰ Although the Commission may grant such non-interstate pipelines “additional flexibility,” the Commission may not rely on lighter regulation if it will “harm any party [or] impede the Commission’s goal of fostering a national pipeline grid.”¹¹ At present, shippers and the Commission have an incomplete picture of the

⁹ *Id.* quoting Order No. 637-A at 31,613.

¹⁰ 18 CFR Part 284 Pipeline Posting Requirements under Section 23 of the Natural Gas Act, 125 FERC ¶ 61,211

¹¹ *EGPT Texas Pipeline*, 99 FERC ¶ 61,295, at 62,252-53 (2002).

supply and demand fundamentals underlying the market for jurisdictional services. The current state of affairs undermines the Commission's goals of preventing undue discrimination and promoting competition through price transparency.

In *ANR Pipeline Co. v. FERC*, 71 F.3d 897, 902 (D.C. Cir. 1995), the United States Court of Appeals for the District of Columbia Circuit ("DC Circuit") held that the Commission erred when it excluded jurisdictional services provided by non-interstate pipelines from a prohibition against blended rates that applied to jurisdictional services provided by interstate pipelines without a "reasonable justification." In *ANR* the DC Circuit highlighted the fact that the Commission previously determined that blended rates are anticompetitive and contrary to the NGA.¹² The DC Circuit also noted the Commission's prior holding that the prohibition on blended rates was intended to have a "generic effect" in fostering a competitive gas market.¹³

The present circumstance is analogous. As in *ANR*, the Commission has previously "held that keeping commercially-sensitive information about prices charged in contracts for jurisdictional service confidential would violate the NGA,"¹⁴ yet it has not extended its posting requirements to non-interstate providers of jurisdictional services. The Commission has also held that the requirements codified in section 284.13(b) were enacted "for the purpose of enabling the Commission and shippers to monitor market-based transactions, as well as cost-based transactions, for undue discrimination and preference and to promote competition through price transparency,"¹⁵ and has not provided a reasonable justification for excluding the portion of the market controlled by non-interstate pipelines.

¹² *ANR*, at 901.

¹³ *Id.* at 901-902.

¹⁴ *SGRM*, at P 23.

¹⁵ *Id.* at P 22, citing Order No. 637-A.

III. CONCLUSION

The burden is on the Commission to provide a reasonable justification for excluding section 311 intrastate pipelines and Hinshaw pipelines that provide jurisdictional services from its posting requirements under section 284.14(b). No such reasonable justification exists, however, because the current exclusion only serves to obscure market transparency and create a potential discriminatory advantage for the affected non-interstate pipelines. The Commission should, therefore, adopt posting requirements for section 311 intrastate pipelines and Hinshaw pipelines that provide jurisdictional services that are substantially similar to the existing posting requirements under section 284.14(b).

Respectfully Submitted,

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