

FERC Proposes to Amend Financial Reporting Requirements for Natural Gas Pipeline Companies and Seeks Comments on Fuel Retention Practices

On September 20th, the Federal Energy Regulatory Commission (Commission or FERC) issued a notice of proposed rulemaking (NOPR) that would require natural gas pipeline companies to provide additional information in their FERC Form Nos. 2, 2-A and 3-Q. **Comments on the proposed regulations are due on November 13, 2007.**

The Commission also issued a notice of inquiry (NOI) seeking responses on specific questions relating to the Commission's policy on fuel retention practices of natural gas companies. **Comments will be due 60 days after the NOI is published in the *Federal Register*.**

PROPOSED CHANGES TO FINANCIAL REPORTING REQUIREMENTS

The NOPR proposes that, starting with 2009 reporting, pipelines be required to file additional information with respect to: (1) the acquisition and disposition of gas; (2) affiliate transactions and new rate policies; and (3) rate base and other key cost-of-service components. The Commission believes that increasing the amount of financial information reported will: (1) strengthen the ability of shippers to investigate whether pipeline rates are just and reasonable; (2) support the ability of customers to file complaints under Section 5 of the Natural Gas Act (NGA) to the extent rates may not be just and reasonable; and (3) address the decline in pipeline filings under Section 4 of the NGA following the elimination of the triennial restatement of rates filing requirement in Order No. 636.

The Acquisition and Disposition of Gas

The NOPR would require that natural gas pipeline companies report on a new schedule in Form Nos. 2 and 2-A, the differences between volumes of gas received from shippers and volumes of gas consumed in operations each month, the disposition and accounting treatment of any excess and the source and accounting treatment of gas used to meet any deficiency. In addition, the volumes of gas purchased that are applicable to each of the gas purchase expense accounts (Account Nos. 800-805) would be provided in a footnote on page 520. The NOPR proposes to expand the detail in Gas Operating Revenue reported on pages 300-301, to separately state sales amounts reported in Accounts 480-484. The NOPR also proposes that revenues in Account 495, Other Gas Revenues, be reported in 10 separate categories on page 308.

NEW | CLIMATE CHANGE POLICY UPDATES

Need to stay on top of fast-breaking climate change policy developments? Receive Van Ness Feldman's weekly Climate Change Policy Update via email. To subscribe, visit www.vnf.com.





Affiliate Transactions and New Rate Policies

With respect to affiliate transactions, the NOPR would require filers of Form Nos. 2 and 2-A to report: (1) transactions with associated or affiliated companies, including administrative and general costs billed from the parent; and (2) a description of the good or service transacted, the name of the associated or affiliated company, the FERC account charged or credited, and the amount charged or credited. The NOPR proposes to remove the \$250,000 threshold for reporting outside services on page 357.

To reflect the trend toward incremental rate treatment for new construction projects, the NOPR proposes to require that pipelines disaggregate costs and revenues associated with each individual project or facility for which they charge incremental rates. In addition, the NOPR would require pipelines to report revenues and volumes applicable to service provided at discounted and negotiated rates. The Commission stated that these proposals are necessary to ensure that recourse rates are just and reasonable and to protect against cross-subsidization.

Rate Base and Other Key Cost-of-Service Components

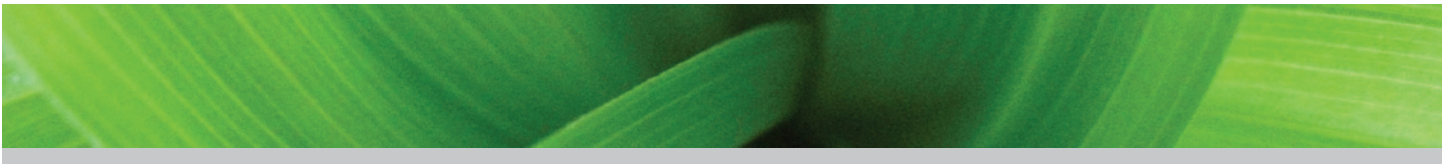
The NOPR would require filers of Form Nos. 2 and Form 2-A to provide additional details related to deferred income taxes, state income tax expenses, regulatory assets and liabilities, the salaries and wages billed by affiliates or affiliated service companies separate from other salary and wage distributions (Form No. 2 only), employee pensions and benefits, and asset retirement obligations (ARO). The Commission stated that requiring this information would enable all users of these forms to better assess reasonableness for cost of service purposes.

The Commission also invited comments on whether research and development expenditures included in Account Nos. 824 (underground storage operations) and 859 (transmission system expense and equipment operations) should be reported in Form No. 2. Finally, the NOPR proposes to eliminate Form No. 11 and incorporate the information reported in that report into Form No. 3-Q.

In a concurring opinion, Commissioner Wellinghoff stated that, in addition to the information required by the NOPR, he proposes that filers submit an Energy Efficiency Statement describing how they have incorporated efficiency in the facility changes they report. Commissioner Wellinghoff believes that such a requirement would encourage pipelines to undertake energy efficiency improvements by increasing transparency and more broadly disseminating best practices across the industry.

NOTICE OF INQUIRY ON FUEL RETENTION PRACTICES

The Commission is seeking comments on its policy regarding in-kind fuel retention practices of natural gas pipelines. Current policy permits pipelines to recover fuel costs through either a fixed fuel retention percentage established in a general Section 4 rate case, or a fuel tracker mechanism that allows periodic changes to a pipeline's fuel retention percentage outside of a Section 4 rate case. In response to concerns by some in the industry that pipelines retain excessive amounts of gas and earn substantial profits on the sale of such gas, and given that with higher gas prices, fuel charges comprise a greater percentage of a shipper's overall transportation costs, the Commission is seeking comments on whether it should change its current policy and require a uniform method for pipeline recovery of fuel costs.



Specifically, the Commission is seeking input in response to the following questions:

- (1) Should the Commission continue to allow recovery of pipeline fuel costs through fixed fuel retention percentages?
- (2) Should the Commission mandate that all pipelines have a tracker mechanism for the recovery of fuel?
- (3) If the Commission requires pipelines to use a tracker, should it require a true-up mechanism?
- (4) Should the Commission retain its current policy?

The Commission posed numerous questions related to these 4 rather broad questions which relate to the costs and benefits, rate certainty, incentives for fuel and lost and unaccounted-for gas reduction, and increased fuel efficiency of the various fuel retention practices.

IMPLICATIONS OF THE NOPR AND NOI

The NOPR's proposal to expand the amount of information pipelines submit in their FERC financial reports and the NOI's request for comments on pipelines' fuel retention mechanisms respond to concerns that have been raised in recent years by certain sectors of the industry that inadequate information is publicly available to ascertain whether pipelines' rates are just and reasonable and that inadequate protections exist to ensure that pipelines do not overrecover costs of providing service. The NOPR, if adopted, would substantially increase the amount and type of information that pipelines currently report to the Commission, and this information could be used by Commission and third parties to develop and file NGA Section 5 complaints against pipelines' existing rates. The NOI, to the extent it leads to a rule that mandates a particular mechanism for the recovery of fuel, could substantially restrict the manner in which pipelines operate their systems and manage fuel use. These dockets offer industry participants the opportunity to provide input to the Commission and shape the policies that will result therefrom.

FOR ADDITIONAL INFORMATION

Van Ness Feldman regularly counsels clients on issues related to natural gas regulation and FERC rulemakings. If you are interested in additional information regarding the proposed rule, or any other energy-related federal activity, please contact Susan Olenchuk, Pam Anderson, Paul Korman, and John Burnes or any member of the firm's Natural Gas practice group.

© 2007 Van Ness Feldman, P.C.
All Rights Reserved. This document has been prepared by Van Ness Feldman for informational purposes only and is not a legal opinion, does not provide legal advice for any purpose, and neither creates nor constitutes evidence of an attorney-client relationship.