

FERC Adopts New Information Posting Requirements for Interstate and Major Non-Interstate Gas Pipelines

On November 20, the Federal Energy Regulatory Commission (“Commission”) issued a Final Rule adopting new regulations that require certain “major non-interstate pipelines” and interstate pipelines to publicly post certain operational and scheduling information. The Commission stated that the posting requirements are designed to facilitate transparency in markets for the sale or transportation of physical natural gas in interstate commerce pursuant to Section 23 of the Natural Gas Act. “Major non-interstate pipelines” will have 150 days from the date of publication in the Federal Register to comply with the Final Rule. Interstate pipelines must comply with the new regulations 60 days from the date of publication in the Federal Register.

POSTING REQUIREMENTS FOR “MAJOR NON-INTERSTATE PIPELINES”

Under the Final Rule, Order No. 720, “major non-interstate” gas pipelines must publicly post on a daily basis on an Internet web site (1) information relevant to the design capacity of each receipt or delivery point that has a design capacity equal to or greater than 15,000 MMBtu/day, and (2) the amount scheduled at each such delivery point whenever capacity is scheduled.

Who Must Comply?

Order No. 720 defines a “major non interstate pipeline” as a company that (1) is not a “natural gas company” under section 1 of the Natural Gas Act, *i.e.*, an intrastate pipeline or Hinshaw pipeline, and (2) “delivers annually more than fifty (50) million MMBtu (million British thermal units) of natural gas measured in average deliveries for the previous three calendar years.”

The Commission adopted three exemptions from the posting requirements for major non-interstate pipelines:

- *Major non-interstate pipelines that lie entirely upstream of a processing, treatment, or dehydration plant.*
The Commission clarified that nitrogen processing would be considered processing at a processing plant for purposes of the rule, and that a pipeline may be upstream of a processing plant if it flows into another line that flows into a processing plant. The Commission declined to grant blanket exemptions for gathering pipelines and pipelines that lie partially upstream and partially downstream of a processing, treatment, or dehydration plant.
- *Major non-interstate pipelines that deliver more than 95 percent of the natural gas volumes they flow directly to retail end-users as measured by average deliveries over the preceding three calendar years.* The exemption applies only to deliveries to consumers under “retail transactions,” described as “bundled transactions through [a local distribution company] at a state-approved tariff rate.” Volumes transported from one LDC to another should not be deemed deliveries to retail customers for purposes of the end-user exemption. Gas consumed “at retail” also includes natural gas consumed or used for operational reasons by the posting pipeline.

- *Non-interstate storage providers.* The Commission determined that the relevant information is already captured by the Final Rule's requirement that major non-interstate pipelines with receipt or delivery points at a connection with a storage provider post data for such points that have a design capacity of 15,000 MMBtu/day or greater.

The Commission declined to exempt (1) pipelines in "concentrated and transparent markets"; (2) sendout pipelines covered under Section 3 of the NGA, i.e., liquefied natural gas sendout pipelines; (3) Hinshaw pipelines; and (4) LDCs operating under a NGA Section 7(f) service area determination. The Commission further refused to adopt a "safe harbor" for good faith posting of data. The Commission clarified, however, that it will not impose the Final Rule on non-interstate pipelines located in Alaska.

What Information Must Be Posted?

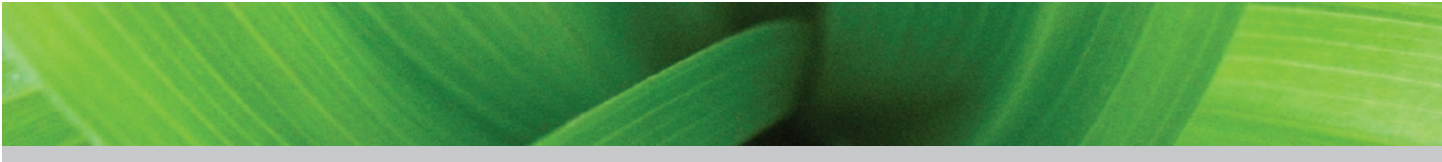
Non-interstate pipelines must post scheduling information for each receipt and delivery point with a design capacity equal to or greater than 15,000 MMBtu/day, and information related to the design capacity for each such point. The Commission decided not to adopt its proposal to require the posting of actual flow information and segment information. In limiting reporting to points with a design capacity of 15,000 MMBtu/day or greater, the Commission stated that the Final Rule excludes posting at "insignificant or minor points on a pipeline system."

Major non-interstate pipelines must post the following data on their Internet websites at no later than 10:00 p.m. central clock time the day prior to gas flow: Transportation Service Provider Name; Posting Date; Posting Time; Nomination Cycle; Location Name; Additional Information if Needed to Distinguish Between Points; Location Purpose Description (Receipt, Delivery, or Bilateral); Design Capacity; Scheduled Volume; Available Capacity; and Measurement Unit.

The information must remain posted for one year. The Final Rule does not impose NAESB posting requirements on major non-interstate pipelines; pipelines need only comply with the "manner of posting" set forth in section 284.12 of the Commission's regulations.

Jurisdictional Issues Related to Non-Interstate Pipelines

In the Final Rule, the Commission rejected the arguments of a number of parties, including intrastate pipelines, Hinshaw pipelines, and gathering facilities, that the Commission does not have jurisdiction to impose the Final Rule's posting requirements on non-interstate pipelines that are not subject to the Commission's traditional NGA jurisdiction. In Order No. 720, the Commission distinguished between its traditional authority under Section 1 of the NGA, which is limited to "natural gas companies," and its transparency authority under Section 23 of the NGA, which extends to "any market participant." The Commission stated that it is "not regulating the intrastate operations of non-interstate pipelines" or "regulating the rates or terms and conditions of service for non-interstate pipelines," and concluded that it has "ample authority" to issue regulations which "will require major non-interstate pipelines only to post information."



NEW POSTING REQUIREMENTS FOR INTERSTATE PIPELINES

Interstate pipelines must post the volumes of no-notice transportation flows at each receipt and delivery point before 11:30 a.m. central clock time three days after the day of gas flow. The Final Rule requires interstate pipelines to post less information than under the proposed rule, which would have required the posting of *all* actual flows “at receipt points, on the mainline, at delivery points, and in storage fields.” The Commission stated that the requirement to post no-notice volumes will allow “market participants and other market observers to understand the historical pattern of flows and will enable them to better predict future no-notice flows.”

FOR ADDITIONAL INFORMATION

For additional information, assistance, or counsel in responding to the Final Rule, please contact Paul Korman, Curt Moffatt, Susan Olenchuk, or Greg Junge, in our Washington, D.C. office at (202) 298-1800, Pam Anderson in our Seattle office at (206) 623-9372, or any other member of the Van Ness Feldman Natural Gas practice.

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