FERC Proposes Daily Posting Requirements for Intrastate Pipelines and Annual Reporting Requirements for Buyers and Sellers of Natural Gas

April 24, 2007

On April 19th, the Federal Energy Regulatory Commission (Commission or FERC) issued a notice of proposed rulemaking (NOPR) that would (1) require intrastate pipelines to post on a daily basis capacities of, and volumes flowing through, the major receipt and delivery points and mainline segments, (2) require that buyers and sellers of more than a *de minimis* volume of natural gas annually report aggregate numbers and volumes of physical natural gas transactions, and (3) require all buyers and sellers of natural gas to report annually whether they sell natural gas under FERC's blanket certificate and whether they report transactions to price index developers. **Initial comments on the proposed regulation will be due 45 days after the NOPR is published in the *Federal Register*, and reply comments will be due 75 days thereafter.**

Proposed Daily Reporting of Flow Volume and Capacity by Intrastate Pipelines

Under the proposed rule, intrastate pipelines would be required to post daily to the Internet the capacities of, and volumes flowing through, their major receipt and delivery points and mainline segments. The daily posting would be required to be posted within 24 hours from the close of the gas day on which the gas flows, i.e., on or before 9:00 AM Central Standard Time for flows occurring on the gas day that ended 24 hours before.

The Commission states that its authority to require intrastate pipelines to submit such information is grounded in the new section 23 of the Natural Gas Act (NGA), enacted as part of the Energy Policy Act of 2005. That provision directs the Commission to facilitate price transparency in markets for the sale and transportation of physical natural gas in interstate commerce and authorizes the Commission to obtain information about the availability and price of natural gas sold "at wholesale and interstate commerce from any market participant." According to the Commission, Congress's use of the phrase "any market participant" instead of "natural gas company" purposefully expanded the group of entities subject to the Commission's transparency authority beyond those currently subject to the Commission's rate and certificate jurisdiction under other parts of the NGA, to include intrastate pipelines. The Commission maintains that requiring non-jurisdictional entities such as intrastate pipelines to report daily flow information will provide information relevant to "the availability and price" of gas sold at wholesale and in interstate commerce.

The Commission believes that the benefits of the daily posting requirements include (1) improving the ability of market participants to assess supply and demand and to price physical natural gas transactions; (2) presenting market participants a clearer view of the impacts of events, such as hurricanes, on the U.S. natural gas delivery system on infrastructure, the industry, and the economy as a whole; and (3) allowing the Commission and other market observers to identify and remedy potentially manipulative activity.

Under the proposed rule, intrastate pipelines would be required to post actual flow information, rather than scheduled volumes, as the current rules require of interstate pipelines. The NOPR requests comments, however, on whether interstate pipelines should also be required to post actual flow information.

Proposed Annual Reporting of Natural Gas Transactions

The Commission proposes to require that buyers and sellers of more than a *de minimis* volume of natural gas report to the Commission on an annual basis aggregate numbers and volumes of physical natural gas transactions. The Commission would define "*de minimis*" as physical natural gas

VanNess Feldman
ATTORNEYS AT LAW

A Professional Corporation

1050 Thomas Jefferson Street, NW
Washington, DC 20007-3877
(202) 298-1800
(202) 338-2416

The Millennium Tower
719 Second Avenue
Suite 1150
Seattle, Washington 98104
(206) 623-9372
(206) 623-4986

www.vnf.com

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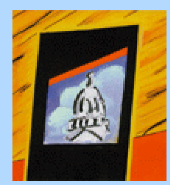

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transactions that amount to less than 2,200,000 MMBtus for the previous calendar year. "Physical natural gas transactions" would be defined as a sale or purchase of natural gas with an obligation to deliver or receive physically, even if the natural gas is not physically transferred due to some offsetting or countervailing trade. "Physical natural gas transactions" would not include financially-settled transactions and physically-settled futures contracts that do not go to delivery.

Specifically, the proposed rule would require buyers and sellers of natural gas above *de minimis* volumes to report information for the previous calendar year, including: (a) the total amount of physical natural gas transactions by number and volume; (b) the breakdown of transactions by purchases and sales; (c) the number and volume breakdown of purchases and sales by whether they were conducted in monthly or daily spot markets; and (d) the number and volume breakdown of purchases and sales by type of pricing, identifying whether the pricing was fixed or indexed.

In addition, under the Commission's proposal, all natural gas buyers and sellers making use of their blanket certificate authority, including those transacting less than the *de minimis* volume, would be required to report their identification information, whether they report transactions to publishers of electricity or natural gas price indices, and whether any such reporting complies with the Commission's guidelines on price reporting.

The NOPR states that the benefits of the proposed reporting requirements will be (1) obtaining information about the overall level of activity of market participants in the physical natural gas markets, (2) expanding the understanding of index pricing by interested entities, (3) restoring confidence in the natural gas index prices and their formation, and (4) improving the reliability of information reported to price indices.

Implications of the Proposed Rule

The proposed rule reflects the first time the Commission has exercised its authority under section 23 of the NGA to improve the transparency of natural gas transportation and sales markets. In addition to interpreting its authority under section 23 to require intrastate pipelines to post daily capacity and actual flow information, the Commission proposes to require buyers and sellers of more than *de minimis* volumes of natural gas and holders of blanket certificates – currently not subject to reporting requirements – to report substantial amounts of transactional information. The Commission also seeks comments on whether the proposed information posting requirements should be extended to interstate pipelines.

For Additional Information

For additional information on this NOPR or on other intrastate or interstate pipeline issues, please contact Susan Moore in our Washington, DC office at (202) 298-1800, or Pam Anderson in our Seattle office at (202) 623-9372, or any member of the firm's Natural Gas practice group.

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