

where it will occur and what aircraft types are involved.

Issued under authority delegated in 49 CFR 1.56a(h)(2) in Washington, D.C. on January 12, 1995.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM95-5-000]

Release of Firm Capacity on Interstate Natural Gas Pipelines

January 12, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to amend its capacity release regulations to permit firm shippers of natural gas to negotiate prearranged releases of capacity for a full calendar month without compliance with the Commission's advance posting and bidding requirements. The amendment would make it easier to negotiate short-term capacity release transactions and would ease the reporting burden on industry.

DATES: Comments are due February 21, 1995.

ADDRESSES: An original and 14 copies of comments must be filed and refer to Docket No. RM95-5-000. Comments should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208-2294

Joseph Vasapoli, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208-0620.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street NE., Washington DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200 or 300bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format. After 60 days the document will be archived, but still accessible. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street NE., Washington DC 20426.

Notice of Proposed Rulemaking

January 12, 1995.

In Order No. 636,¹ the Federal Energy Regulatory Commission (Commission) established a mechanism under which firm holders of capacity could release unneeded capacity they held on interstate pipelines to other shippers needing that capacity. The Commission is proposing to amend one provision of its capacity release regulations, § 284.243(h), to extend to one month the time period for which shippers can release firm capacity without having to comply with the Commission's advance posting and bidding requirements. The current regulations restrict this ability to less than one calendar month.

I. Reporting Requirements

The proposed rule affects the information required to be maintained on pipeline electronic bulletin boards (EBBs). The public reporting burden for EBBs is contained in the information requirement FERC-549(B), "Gas Pipeline Rates: Capacity Release Information." If adopted, the proposed rule would eliminate the need for the industry to continue the current practice of using two capacity release postings (a less-than-one month release coupled

¹ Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13267 (Apr. 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (Apr. 8, 1992), *order on reh'g*, Order No. 636-A, 57 FR 36128 (Aug. 12, 1992), III FERC Stats. & Regs. Preambles ¶ 30,950 (Aug. 3, 1992), *order on reh'g*, Order No. 636-B, 57 FR 57911 (Dec. 8, 1992), 61 FERC ¶ 61,272 (1992), *appeal re-docketed sub nom.*, Atlanta Gas Light Company and Chattanooga Gas Company, *et al. v.* FERC, No. 94-1171 (D.C. Cir. May 27, 1994).

with a one-day release) to complete a full month release transaction. Under the proposed rule, full month releases could be accomplished with only one such posting. The Commission estimates that approximately 1,500 paired release transactions occur per year. At an average burden of one hour per posting, the annual reduction in burden as a result of this rule is approximately 1,500 hours.

A copy of this proposed rule is being provided to the Office of Management and Budget (OMB). Interested persons may send comments regarding the burden estimates or any other aspect of this collection of information, including suggestions for further reductions of this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, N.E., Washington, D.C. 20426 [Attention: Michael Miller, Information Services Division, (202) 208-1415, FAX (202) 208-2425]. Comments on the requirements of this proposed rule may also be sent to the Office of Information and Regulatory Affairs of OMB, Washington, D.C. 20503 [Attention: Desk Officer for Federal Energy Regulatory Commission (202) 395-6880, FAX (202) 395-5167].

II. Background

Under the regulations promulgated in Order No. 636, holders of firm capacity on pipelines could reassign that capacity in two ways. The releasing shipper could choose to have the pipeline post the notice of release on the pipeline's Electronic Bulletin Board (EBB) so other shippers could submit bids for that capacity, with the capacity awarded to the highest bidder. Or, the releasing shipper could enter into a pre-arranged deal with another shipper (replacement shipper) for the release of capacity. For a pre-arranged release at less than the maximum rate, the pipeline had to post the release on its EBB to permit other shippers to bid for that capacity. If a shipper bid more than the pre-arranged release rate, the designated replacement shipper was given the opportunity to match that bid to retain the capacity.

In Order No. 636-A, several petitioners requested an exemption from the bidding process for short-term pre-arranged release transactions, contending that the requirements for advance posting and bidding are too administratively difficult for such transactions and could inhibit the efficient allocation of capacity.² In response, the Commission promulgated § 224.243(h), permitting firm shippers to

² Order No. 636-A, III FERC Stats. & Regs. Preambles at 30,553.

release capacity to a designated replacement shipper for a period of less than one calendar month without having to comply with the advance posting and bidding requirements. Releases under this provision would have to be posted no later than 48 hours after the release transaction begins. In addition, the Commission prohibited parties in transactions covered by this exception from rolling-over or granting extensions without complying with the requirements for prior notice and bidding.

The Commission adopted the less-than-one calendar month exception to balance two objectives of the capacity release mechanism.³ The exception served to promote a robust secondary market by ensuring that parties could quickly and efficiently consummate short-term deals in emergency situations, such as a power plant outage resulting in excess capacity, without the administrative complications resulting from the advance posting and bidding requirements. On the other hand, the restriction to less-than-one calendar month was intended to ensure that normal monthly transactions would have to comply with the advance posting and bidding requirements to ensure open and non-discriminatory access to the capacity release market. The Commission expressed confidence that the pipelines could design capacity release procedures to efficiently handle full calendar month transactions.

The capacity release system has now been in effect for a full year and the Commission has begun the process of evaluating the system's operation. In the course of this review, the staff of the Commission has conducted informal discussions about the operation of the capacity release system and possible changes or modifications to improve the system with all major segments of the gas industry, including pipelines, local distribution companies, marketers, producers, end-users, and others interested in the capacity release market, such as companies developing third-party bulletin boards.

III. Discussion

The Commission is now proposing to amend § 284.243(h) to extend the short-term release exception from less than one calendar month to a full calendar month. The revision would permit firm shippers to negotiate pre-arranged releases for a full calendar month without having to comply with the

advance posting and bidding requirements.

During the course of staff's review of the capacity release system, industry participants overwhelmingly recommended that the less-than-one calendar month exception be modified to a full calendar month. They argued that the industry generally conducts its gas purchases on a monthly basis, so that customers requiring capacity need to acquire a full month's capacity. They further pointed out that most monthly transactions occur during a very compressed time period known as bid week and that this time pressure requires that shippers be able to obtain released capacity quickly with the certainty that the deal will go through as negotiated.

As a result, the industry has developed a practice of designing so-called "29/1 day" deals to arrive at full month releases. Under this practice, shippers release capacity under the § 284.243(h) exception for 29 days (or less than one calendar month) and then post a release offer for bidding for the remaining day of the month. This practice ensures that the designated replacement shipper can obtain a full month's capacity, since rarely do other shippers want to purchase capacity for one day or the one-day prearranged deal is posted at the maximum rate. While this procedure does permit full month releases, the industry participants claimed that posting for one day is administratively cumbersome. They pointed out that the 29/1 day deals require two EBB postings, the consummation of a second contract with the pipelines, and the need for two bills. Pipelines similarly have sought waivers of the Commission's regulations to change the definition of short-term prearranged releases to one full calendar month to eliminate the administrative burdens associated with double release requests.⁴

Based on the seeming unanimity of support for extending the short term exception to one full calendar month, the Commission is proposing to make this change. This revision should promote a more effective capacity release market because it will better comport with the industry's purchasing practices and will provide the speed and certainty needed for one month transactions, without entailing the administrative burdens inherent in the 29/1 day deals.

⁴ Natural Gas Pipeline Company of America, 67 FERC ¶ 61,385 at 62,316-17 (1994) (Commission denied the requests because it wanted to ensure that changes to the capacity release system were uniform for all pipelines).

The Commission's original reason for restricting the short-term exception to less-than-one calendar month deals was to limit the exception to emergency situations, so as to maximize the open bidding for capacity. The Commission believed at the time that the pipelines' posting and bidding procedures could be designed to permit normal one-month transactions. However, the widespread use of 29/1 day deals demonstrates that bidding for one month deals is not taking place, and any attempt to limit or restrict the 29/1 practice in order to further promote bidding would seem only to create further inefficiencies. On balance, therefore, the greater speed and efficiency made possible by the elimination of the less-than-one calendar month restriction appears to outweigh any potential loss from the elimination of the advance posting and bidding requirements. The Commission and the industry will still be able to monitor one month deals for adherence to the Commission's policies against undue discrimination because all deals will be posted on the pipelines' EBBs within 48 hours.

Given the apparent broad support for changing the short term exception, the Commission is proposing to make this one change at this time so it can be implemented as quickly as possible. This, however, is not the end of the Commission's inquiry. The Commission still is considering further adjustments to the capacity release mechanism.

IV. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.⁵ The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.⁶ The action taken here falls within categorical exclusions provided in the Commission's regulations.⁷ Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)⁸ generally requires a description

⁵ Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987).

⁶ 18 CFR 380.4.

⁷ See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5).

⁸ 5 U.S.C. 601-612.

³ See Order No. 636-A, III FERC Stats. & Regs. Preambles at 30,554; Order No. 636-B, 61 FERC at 61,994-95.

and analysis of final rules that will have significant economic impact on a substantial number of small entities. Since the proposed regulations do not increase the burdens on any companies or entities, they will not have a significant impact on small entities. Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant impact on a substantial number of small entities.

VI. Information Collection Requirement

OMB regulations require approval of certain information collection requirements imposed by agency rules.⁹ The information requirements affected by this proposed rule are in FERC-549B, "Gas Pipeline Rates: Capacity Release Information" (1902-0169). The Commission is issuing the proposed rulemaking including the information requirements to carry out its regulatory responsibilities under the Natural Gas Act (NGA) and Natural Gas Policy Act (NGPA) to promote a more effective capacity release market as instituted by the Commission's Order No. 636. The Commission's Office of Pipeline Regulation uses the data to review/monitor capacity release transactions as well as firm and interruptible capacity made available by pipelines and to take appropriate action, where and when necessary. The collection of information is intended to be the minimum needed for posting on EBBs to provide information about the availability of service on interstate pipelines.

The Commission is submitting to the Office of Management and the Budget a notification of the proposed revision to the collection of information. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208-1415], FAX (202) 208-2425. Comments on the requirements of this rule can be sent to OMB's Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for Federal Energy Regulatory Commission (202) 395-6880, FAX (202) 395-5167].

VII. Comment Procedures

The Commission invites interested persons to submit written comments on the matters proposed in this notice, including any related matters or alternative proposals that commenters may wish to discuss. An original and 14

copies of comments to this notice must be filed with the Commission no later than February 21, 1995. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, and should refer to Docket No. RM95-5-000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 941 North Capitol Street NE., Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission,
Lois D. Cashell,
Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 284, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for Part 284 continues to read as follows:

Authority: 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7532; 43 U.S.C. 1331-1356.

2. In § 284.243, the first sentence of paragraph (h)(1) is revised to read as follows:

§ 284.243 Release of firm capacity on interstate pipelines.

* * * * *

(h)(1) A release of capacity by a firm shipper to a replacement shipper for a period of one calendar month or less need not comply with the notification and bidding requirements of paragraphs (c) through (e) of this section. * * *

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International Trade Commission

19 CFR Part 210

Advance Notice of Proposed Rulemaking Concerning Commission Voting Procedures in Investigations and Related Proceedings on Unfair Practices in Import Trade.

AGENCY: International Trade Commission.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: The Commission is considering revision of its recently effective final rules for investigations and related proceedings under section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) to do the following: increase the number of votes required for the Commission to either review an initial determination (ID) on a matter other than temporary relief or grant a request for oral argument in connection with such a review; and prescribe the effect of a tie vote concerning post-review disposition of an ID on a matter other than temporary relief.

The Commission hereby solicits written comments from interested persons to aid the Commission in determining whether it should revise the final rules in the manner specified below.

DATES: Comments will be considered if received on or before March 20, 1995.

ADDRESSES: A signed original and 18 copies of each set of comments, along with a cover letter stating the nature of the commenter's interest in the proposed rulemaking, should be submitted to Donna R. Koehnke, Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3061. Hearing-impaired individuals can obtain information concerning the proposed rulemaking by contacting the Commission's TDD terminal at 202-205-1810.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 1994, the Commission published final rules for 19 CFR part 210 to replace the interim rules currently found in 19 CFR parts 210 and 211.¹ Final rule 210.43(d)(3) indicates that the Commission will review an initial determination (ID) concerning a matter other than temporary relief when at least one of the participating Commissioners votes in favor of a review. Final rule 210.45(a) similarly provides that the Commission must grant a request for oral argument in connection with such a review when at least one of the participating Commissioners votes in favor of such argument.²

¹ See 59 FR 39020 (Part II) (Aug. 1, 1994).

² IDs concerning temporary relief are processed differently from other types of IDs and thus are not

Continued

⁹ 5 CFR 1320.13.