135 FERC ¶ 61,009
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 284

Docket No. RM11-15-000

Bidding by Affiliates in Open Seasons for Pipeline Capacity

(April 7, 2011)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing revisions to its regulations governing interstate natural gas pipelines to prohibit multiple affiliates of the same entity from bidding in an open season for pipeline capacity in which the pipeline may allocate capacity on a *pro rata* basis, unless each affiliate has an independent business reason for submitting a bid. The Commission is also proposing that if more than one affiliate of the same entity participates in such an open season, then none of those affiliates may release any capacity obtained in that open season pursuant to a *pro rata* allocation to any affiliate, or otherwise allow any affiliate to obtain the use of the allowed capacity.

DATES: Comments are due **45 days after publication in the FEDERAL REGISTER**

ADDRESSES: You may submit comments, identified by docket number and in accordance with the requirements posted on the Commission's web site, http://www.ferc.gov. Comments may be submitted by any of the following methods:

- Agency Web Site: Documents created electronically using word processing software should be filed in native applications or print-to-PDF format, and not in a scanned format, at http://www.ferc.gov/docs-filing/efiling.asp.
- Mail/Hand Delivery: Commenters unable to file comments electronically must mail or hand deliver an original copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE, Washington, DC 20426. These requirements can be found on the Commission's website, *see*, e.g., the "Quick Reference Guide for Paper Submissions," available at http://www.ferc.gov/docs-filing/efiling.asp or via phone from FERC Online Support at (202) 502-6652 or toll-free at 1-866-208-3676.

INSTRUCTIONS: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures section of this document.

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NOTICE OF PROPOSED RULEMAKING

(April 7, 2011)

1. In this Notice of Proposed Rulemaking, the Commission proposes to revise its Part 284 regulations to prohibit multiple affiliate bidding in open seasons for interstate natural gas pipeline capacity and the subsequent release of acquired capacity to affiliates under certain circumstances. Specifically, the Commission proposes to prohibit multiple affiliates of the same entity from bidding in an open season for pipeline capacity in which the pipeline may allocate capacity on a *pro rata* basis, unless each affiliate has an independent business reason for submitting a bid. The Commission also proposes that if more than one affiliate of the same entity participates in such an open season, then none of those affiliates may release any capacity obtained in that open season pursuant to a *pro rata* allocation to any affiliate, or otherwise allow any affiliate to obtain the use of the allowed capacity. These proposals would prevent anticompetitive gaming of the *pro rata* allocation methodology by using multiple affiliates of the same entity to acquire a larger share of the available capacity than one affiliate would be able to acquire by itself.

I. Background

A. Open Seasons for Pipeline Capacity

2. The Commission's policy under the Natural Gas Act (NGA)[1] is to allocate available interstate pipeline capacity to the shipper that values it the most, up to the maximum rate.[2] In furtherance of this goal, the Commission favors the use of open seasons to allocate capacity and permits but does not require a net present value (NPV) evaluation as a tool for determining the highest valued use.[3]

3. Some pipelines hold open seasons to alert shippers to the availability of capacity on the pipeline and allow the shippers to bid for available capacity. The pipeline's open season process is an open and transparent procedure that is set forth in the pipeline's tariff. The pipeline notifies shippers of the availability of capacity by posting an open season notice on its EBB and/or website for the available capacity. During the open season, the Commission requires pipelines to sell all available capacity to shippers willing to pay the pipeline's maximum recourse rate.[4]

[1] 15 U.S.C. § 717 *et al.* (2006).

[2] *N. Natural Gas Co.*, 108 FERC ¶ 61,044, at P 11 (2004); *Texican N. La. Transport, LLC v. Southern Natural Gas Co.*, 129 FERC ¶ 61,270, at P 70 (2009) (Texican I), *order on reh'g*, 132 FERC ¶ 61,167, at P 23, 26 (2010) (*Texican II*).

[3] *Texican II*, 132 FERC ¶ 61,167 at P 26.

[4] *Promotion of a More Efficient Capacity Release Market*, 72 FR 65916 (November 26, 2007), FERC Stats. & Regs. ¶ 32,625, at P 40 (2007), (citing *Tenn. Gas Pipeline Co.*, 91 FERC ¶ 61,053 (2000), *reh'g denied*, 94 FERC ¶ 61,097 (2001), *petitions for review denied sub nom., Process Gas Consumers Group v. FERC*, 292 F.3d 831, 837 (D.C. Cir. 2002)).

4. NPV is a method for awarding capacity from the bids received during the open season.[5] NPV is a standard method of evaluating bids for capacity by using the time value of money to determine the present value of a time series of discounted cash flows.[6] The highest bidder, based on the NPV of the bid, receives the capacity. Factors determining NPV are price, volume of gas, and duration of the contract. The Commission has stated that a "net present value evaluation ... allocates capacity to the shipper who will produce the greatest revenue and the least unsubscribed capacity. As such, it is an economically efficient way of allocating capacity and is consistent with Commission policy."[7]

5. In the event that there is not sufficient capacity to meet all equal maximum bids, pipelines apply a tiebreaker mechanism. One such mechanism is the *pro rata* allocation methodology. Under a *pro rata* allocation tiebreaker mechanism, in the event that there is not sufficient capacity to meet all qualifying bids, the capacity is allocated *pro rata*,

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[5] NPV is not the only method a pipeline could use. Another is the "first come-first served" approach, where the first shipper to submit a qualifying bid receives the capacity.

[6] *Saltville Gas Storage Co., L.L.C.*, 128 FERC ¶ 61,257, at P 2 n.3 (2009).

[7] *Tenn. Gas Pipeline Co.*, 76 FERC ¶ 61,101, at 61,522 (1996), *order on reh'g*, 79 FERC ¶ 61,297 (1997), *order on reh'g*, 82 FERC ¶ 61,008 (1998), *remanded sub nom. Process Gas Consumers Group v. FERC*, 177 F.3d 995 (D.C. Cir. 1999), *order on compliance*, 91 FERC ¶ 61,333 (2000), *order on remand*, 91 FERC ¶ 61,053 (2000), *reh'g denied*, 94 FERC ¶ 61,097 (2001), *petitions for review denied sub nom. Process Gas Consumers Group v. FERC*, 292 F.3d 831, 837 (D.C. Cir. 2002).

i.e., based on the ratio of each shipper's respective nomination to all qualifying nominations, applied to the total available capacity.[8]

B. <u>Multiple Affiliate Bidding</u>

6. It has come to the attention of the Commission that some entities have developed and applied a strategy of bidding with multiple affiliates in open seasons for available capacity in order to defeat the *pro rata* allocation tiebreaker mechanism and obtain a greater share of the available capacity than a single bidder could have acquired by itself. Under conditions where the available capacity is limited and the value of the capacity is high, shippers are strongly motivated to obtain as much of that valuable capacity as possible in order to take advantage of the opportunity for profit. Where the available capacity is finite, the price is capped by the pipeline's maximum tariff rate, and the tiebreaker is a *pro rata* allocation, shippers can obtain more capacity than they would be able to obtain themselves by bidding multiple affiliates to defeat the *pro rata* allocation mechanism.

7. Since the *pro rata* allocation mechanism will result in proportional shares of the capacity being distributed to the qualifying bidders, each affiliate with a maximum NPV bid could then release the capacity to a single affiliate or otherwise allow its affiliate

[8] An alternative tiebreaker mechanism for multiple maximum bids is to award the capacity to the earliest applicant. The Commission has stated that "no single tiebreaker method is definitely better than other methods; each system has advantages and disadvantages…. So long as its method is reasonable [a pipeline] may choose any method it wishes for inclusion as the default tiebreaker in its tariff." *Trailblazer Pipeline Co.*, 103 FERC ¶ 61,225, at 61,869 (2003), *order on reh'g and compliance filing*, 108 FERC ¶ 61,049, at 61,305 (2004).

effectively to obtain the use of the allocated capacity, resulting in an entity receiving a larger share than it would have been able to acquire by itself. Such gaming of the *pro rata* allocation mechanism has a chilling effect on competition and permits entities that apply a multiple affiliate bidding strategy inappropriately to gain a disproportionate share of available capacity by denying a fair distribution to all maximum bidders. This has the effect of harming entities that submit only one bid and, by extension, harming their customers.

8. The foregoing discussion is based upon recent Commission experience with multiple affiliate bidding.[9] Based on that experience, the Commission now proposes to revise its regulations to make explicit that, unless independent business reasons exist, as discussed further below, such bidding is inappropriate and, therefore, prohibited.

II. <u>Prohibition on Multiple Affiliate Bidding in Open Seasons for Pipeline Capacity</u>

9. The Commission is of the view that multiple affiliate bidding as described above lessens competition because other bidders not engaging in similar conduct will necessarily receive less capacity—not because such bidders value the capacity any less, but because they bid only through the unit of the company intending to use the capacity

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[9] *Tenaska Marketing Ventures, et al.*, 126 FERC ¶ 61,040 (2009) (order approving stipulations and agreements). *See also Trailblazer Pipeline Co.*, 101 FERC ¶ 61,405 (2002), *order on technical conference and denying reh'g*, 103 FERC ¶ 61,225 (2003), *order on reh'g and compliance filing*, 108 FERC ¶ 61,049 (2004). The Commission notes that the conduct on Trailblazer predated section 4A of the NGA, 15 U.S.C. § 717c-1 (2006), the anti-manipulation authority granted to the Commission in the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

or because they did not have multiple affiliates. Those who submit bids by multiple affiliates receive a disproportionate share of the available capacity, placing bidders that did not submit bids by multiple affiliates at a competitive disadvantage. In theory, a company could employ this strategy to the extreme by bidding hundreds or even thousands of affiliates in a single open season to squeeze out competitors and give that company a dominant share of the capacity. The affiliates bidding would not need to have any direct customers or employees to confer the competitive advantage to the affiliate designed to benefit from the multiple affiliate bidding—in fact, a company could create affiliate corporations merely for the sake of bidding in open seasons to obtain the benefit of multiple affiliate bidding. Regardless of the degree to which multiple affiliate bidding is used to obtain a competitive advantage, ultimately bidders that do not submit bids by multiple affiliates will be harmed, and by extension their customers will be harmed, by losing valuable capacity to bidders that employ a multiple affiliate bidding strategy.

10. Furthermore, this multiple bidding behavior frustrates the Commission's policy of allocating capacity to the shipper that values it the most. By bidding multiple affiliates under a *pro rata* tiebreaker, an entity can gain a greater share of valuable capacity not because it values the capacity more than other bidders, but merely because it arranges to submit more maximum NPV bids through the use of affiliates.

11. The Commission, however, recognizes that not all multiple affiliate bidding is used to defeat a *pro rata* allocation mechanism. In some cases, affiliates may have independent business reasons for submitting their bids. For example, a marketing arm of an energy company may bid to secure capacity for its wholesale customers and a retail

operation of the same company may bid to secure capacity to serve its retail customers, and each would have an independent business reason for its bid. Or a marketing company may have two or more affiliates operating in different geographic areas, thus serving distinct markets all of which may be served by transportation on the same pipeline. When affiliates bid in such cases, other bidders are not unduly harmed, undue discrimination is not practiced, and Commission policy is not violated.

12. Although there may be instances where affiliates have an independent business reason for bidding for given capacity, in the Commission's view amendments to our existing regulations are necessary to prevent entities without such independent reasons from defeating a *pro rata* allocation mechanism by using multiple affiliate bidding to lessen competition and obtain more capacity than they could independently. Therefore, the Commission proposes to add a new section 284.15 to its regulations, prohibiting multiple affiliates of the same entity from participating in an open season for pipeline capacity conducted by any interstate pipeline providing service under subparts B and G of Part 284 of the Commission's regulations in which the pipeline may allocate capacity on a *pro rata* basis, unless each affiliate has an independent business reason for submitting a bid. The Commission proposes that, for purposes of the new regulation, the term "affiliate" be defined as provided in section 358.3(a)(1) and (3) of the Commission's existing regulations.[10]

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[10] 18 C.F.R. § 358.3(a)(1) and (3) (2010). Section 358.3(a)(1) provides that an affiliate of a specified entity is "another person that controls, is controlled by or is under common control with, the specified entity. An affiliate includes a division of the

(continued…)

13. It is impossible to describe in advance every situation that demonstrates an independent business reason. This phrase is intended to assure companies bidding for capacity that our rule will not prohibit transactions with economic substance, in which the bidding affiliate is providing service of value to its customers that is facilitated or enhanced by the capacity being acquired, such as the scenarios described in P 11. Those scenarios are illustrative of situations in which a business unit uses awarded capacity to serve its own customers or otherwise acts consistently with its business plan, interests, and obligations. Indications that a company is not acting independently would be if the business unit is used by its parent or affiliate in a way that differs from its usual business operations, is used to perform transactions that an affiliate or parent could not, or is acting as an "alter ego" of an affiliate or parent. The independent business reason criterion ensures that bidders for pipeline capacity act in a market-driven, pro-competitive manner, not in an effort to gain an unfair competitive advantage in acquiring capacity. The general guidance provided here reflects the fact that we oversee a dynamic and evolving market where addressing yesterday's concerns may not address tomorrow's concerns. Over time, however, experience in applying this rule should be instructive to both the Commission and capacity market participants. As we apply the rule, we will be

specified entity that operates as a functional unit." Section 358.3(a)(3) defines the term "control."

mindful of the fact that we are not only taking steps to assure non-discriminatory access to capacity but also providing guidance to market participants in general.[11]

14. This proposed rule is designed to ensure that an entity cannot use multiple affiliates solely to secure a larger allocation of capacity than it could acquire by itself. The proposed rule would also provide clear notice to parties participating in open seasons for interstate pipeline capacity that multiple affiliate bidding and subsequent release of acquired capacity to one affiliate, or other devices to confer the value of the capacity on one affiliate, are prohibited.

III. Prohibition on Release of Capacity

15. The Commission adopted its capacity release program as part of the restructuring of interstate natural gas pipelines required by Order No. 636.[12] The capacity release

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[11] The approach taken here is similar to that taken in Order No. 644, which adopted market behavior rules for sellers of natural gas. *Amendments to Blanket Sales Certificates*, Order No. 644, FERC Stats. & Regs. ¶ 31,153 (2003), *reh'g denied* 107 FERC ¶ 61,174 (2004). Order No. 644 adopted rules that prohibited transactions without a "legitimate business purpose" and that were "intended to or foreseeably could manipulate market prices, market conditions, or market rules for natural gas." In that case the rule prohibited certain transactions (such as wash trades and collusion), but the Commission specifically declined to limit the rule to pre-determined circumstances. Order No. 644, FERC Stats. & Regs. ¶ 31,153 at P 32-36. Similarly, here we recognize scenarios in which the independent business reason standard can be met, and decline to limit the rule to pre-determined circumstances. The relevant market behavior rules adopted in Order No. 644 were rescinded after the Commission adopted section 1c.1 of the Regulations. *Amendments to Codes of Conduct for Unbundled Sales Service and for Persons Holding Blanket Marketing Certificates*, Order No. 673, FERC Stats. & Regs. ¶ 31,207 (2006).

[12] *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, 57 FR 13267 (April 16, 1992), FERC Stats. &

(continued…)

program permits firm shippers to release their capacity to others when they are not using it.[13] The Commission notes that some companies bidding with multiple affiliates have used capacity release as the final step in consolidating multiple shares of capacity for use by one of the company's units.[14] By releasing the capacity acquired in the open season, affiliates are able to transfer the capacity each acquires to a single company that benefits by obtaining more capacity than it could have obtained by itself.

16. In order to prevent the use of capacity release or other mechanisms as part of a scheme to game a *pro rata* allocation by transferring the benefit of the capacity to the affiliate that has a business use for the capacity, the Commission proposes to prohibit affiliates from releasing any capacity obtained in an open season pursuant to a *pro rata* allocation to any affiliate or otherwise from allowing any affiliate effectively to obtain

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Regs., Regulations Preambles January 1991 - June 1996 ¶ 30,939 (1992), *order on reh'g*, Order No. 636-A., 57 FR 36128 (August 12, 1002), FERC Stats. & Regs., Regulations Preambles January 1991 - June 1996 ¶ 30,950 (1992); *order on reh'g*, Order No. 636-B, 57 FR 57911 (Dec. 8, 1992), 61 FERC ¶ 61,272 (1992), *order on reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part, vacated and remanded in part, United Dist. Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

[13] In brief, under the Commission's capacity release program, a firm shipper (releasing shipper) sells its capacity by returning its capacity to the pipeline for reassignment to the buyer (replacement shipper). The pipeline contracts with, and receives payment from, the replacement shipper and then issues a credit to the releasing shipper. The replacement shipper on a long term, year or more release, may pay less than the pipeline's maximum tariff rate, but not more. 18 C.F.R. § 284.8(e) (2010). The results of all releases are posted by the pipeline on its Internet Web site and made available through standardized, downloadable files.

[14] *Tenaska Marketing Ventures, et al.*, 126 FERC ¶ 61,040 at P 13, 18.

the use of the allocated capacity. This will not inhibit two or more affiliates from obtaining and using valuable *pro rated* capacity where they each have an independent business reason for their bids. If the affiliate has an independent business reason for initially bidding on the capacity, it presumably has a need for the capacity once it has been awarded it. Therefore, requiring the capacity-winning affiliate to retain the capacity in such a circumstance should present little, if any, hardship to such affiliate. If a company believes that retaining capacity in a certain case would in fact create a hardship to an affiliate, the company can seek a waiver of the prohibition.[15]

17. This prohibition against capacity release reinforces the prohibition against multiple affiliate bidding unless each affiliate has an independent business reason for submitting a bid by further deterring affiliates from bidding for capacity for which they have no independent use. Should an affiliate violate the prohibition against multiple affiliate bidding, that affiliate would incur an additional violation with resulting penalties for transferring the advantage of the multiple affiliate bidding to the affiliated entity that would benefit from it. This complementary prohibition provides an additional deterrent to violation of the first prohibition, helping to ensure that the only instances of multiple

[15] If multiple affiliate bidding occurs in open seasons for relatively short term capacity, hardship is unlikely. If multiple affiliates acquire longer-term capacity, later changes in markets or corporate structure could create a hardship for an affiliate to keep the capacity it had been awarded. For example, a successful bidder might lose the market for which the capacity had been obtained and wish to release the capacity to an affiliate for other use, or a company may reorganize to merge the successful bidder with another affiliate or to reassign the successful bidder's functions to another affiliate. In such cases, the affected entity should seek a waiver of the prohibition and present the facts that support a release of the capacity to an affiliate.

affiliate bidding are those with independent business reasons for each bid. In the Commission's view, this prohibition, in combination with the provision prohibiting multiple affiliate bidding unless each affiliate has an independent business reason for submitting a bid, will fairly ensure that both steps of the gaming process are prohibited.

IV. Regulatory Requirements

A. Information Collection Statement

18. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.[16] The proposed regulations discussed above do not impose reporting or recordkeeping requirements on applicable entities as defined by the Paperwork Reduction Act.[17] As a result, the Commission is not submitting this NOPR to OMB for review and approval.

B. Environmental Analysis

19. 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.[18] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human

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[16] 5 C.F.R. § 1320.11 (2010).

[17] 44 U.S.C. §§ 3502(2)-(3) (2006).

[18] *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulation Preambles 1986-1990 ¶ 30,783 (1987).

environment.[19] The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are corrective, clarifying or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[20] Therefore an environmental review is unnecessary and has not been prepared in this rulemaking.

C. **Regulatory Flexibility Act**

20. The Regulatory Flexibility Act of 1980 (RFA)[21] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such an analysis if proposed regulations would not have such an effect.[22] Most companies regulated by the Commission do not fall within the RFA's definition of a small entity.[23]

21. The rule proposed herein should have no significant negative impact on those entities, be they large or small, subject to the Commission's regulatory jurisdiction under the NGA. Most companies to which the rules proposed herein, if finalized, would apply, do not fall within the RFA's definition of small entities. In addition, the proposed rule is

[19] 18 C.F.R. § 380.4 (2010).

[20] 18 C.F.R. §§ 380.4(a)(2)(ii), 380.4(a)(5), and 380.4(a)(27)(2010).

[21] 5 U.S.C. §§ 601-612 (2006).

[22] 5 U.S.C. § 605(b) (2006).

[23] 5 U.S.C. § 601(3) (citing section 3 of the Small Business Act, 15 U.S.C. § 623 (2006)). Section 3 defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

only triggered if more than one affiliate of the same entity participates in an open season for pipeline capacity in which the pipeline may allocate capacity on a *pro rata* basis, and each affiliate does not have an independent business reason for submitting a bid. Therefore, the rule would only affect a limited number of small entities. The rules proposed herein, if finalized, will not have a significant economic effect on these small entities because the rule does impose any reporting or recordkeeping requirements. Therefore, the Commission certifies that the proposed rules will not have a significant economic effect on a substantial number of small entities.

D. Comment Procedures

22. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due 45 days from publication in the *Federal Register*. Comments must refer to Docket No. RM11-15-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

23. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's web site at http://www.ferc.gov. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

24. Commenters that are not able to file comments electronically must mail or hand deliver an original copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE, Washington, DC 20426.

25. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

E. Document Availability

26. In addition to publishing the full text of this document in the *Federal Register*, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (http://www.ferc.gov) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington DC 20426.

27. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

28. User assistance is available for eLibrary and the FERC’s web site during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202)

502-8371, TTY (202)502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

List of subjects in 18 CFR Part 284

By direction of the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

In consideration of the foregoing, the Commission proposes to amend part 284, Chapter I, Title 18, Code of Federal Regulations, to read as follows:

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. 7101-7352; 43 U.S.C. 1331-1356.

2. Section 284.15 is added to read as follows.

§ 284.15 Bidding by affiliates in open seasons for pipeline capacity.

(a) Multiple affiliates of the same entity may not participate in an open season for pipeline capacity conducted by any interstate pipeline providing service under subparts B and G of this part, in which the pipeline may allocate capacity on a *pro rata* basis, unless each affiliate has an independent business reason for submitting a bid.

(b) If more than one affiliate of the same entity participates in an open season subject to paragraph (a) of this section, none of those affiliates may release any capacity obtained in that open season to any affiliate, or otherwise allow any affiliate effectively to obtain the use of the allocated capacity.

(c) For purposes of this section, an affiliate is any person that satisfies the definition of affiliate in §§ 358.3(a)(1) and (3) of this part with respect to another entity participating in an open season subject to paragraph (a) of this section.