

141 FERC ¶ 61,037
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 284

[Docket No. RM12-17-000]

Revisions to Procedural Regulations Governing Transportation by Intrastate Pipelines

(Issued October 18, 2012)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to revise its regulations to provide optional notice procedures for processing rate filings by those natural gas pipelines that fall under the Commission's jurisdiction pursuant to section 311 of the Natural Gas Policy Act of 1978 or section 1(c) of the Natural Gas Act. An intrastate pipeline may elect to use these procedures for approval of a filing pursuant to § 284.123 of the Commission's regulations. Under these procedures, if there is no protest to the filing as determined under this proposal, the filing would be deemed approved without a Commission order. The proposed rule would result in regulatory certainty and a reduction of regulatory burdens.

DATES: Comments are due **[INSERT DATE 30 days after publication in the FEDERAL REGISTER]**

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through <http://www.ferc.gov>. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- Mail/Hand Delivery: Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE, Washington, DC 20426.

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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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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Transportation by Intrastate Pipelines

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NOTICE OF PROPOSED RULEMAKING

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Docket No. RM12-17-000

NOTICE OF PROPOSED RULEMAKING

(October 18, 2012)

1. The Commission proposes new optional notice procedures which intrastate pipelines may elect to use when filing proposed rates or operating conditions pursuant to § 284.123 of the Commission's regulations.¹ Section 284.123 applies to filings by: (1) intrastate pipelines providing interstate services pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA)² and (2) Hinshaw³ pipelines providing interstate services subject to the Commission's Natural Gas Act (NGA) jurisdiction pursuant to blanket certificates issued under § 284.224 of the Commission's regulations.⁴ If there is no

¹ 18 CFR 284.123.

² 15 U.S.C. 3372.

³ Section 1(c) of the NGA exempts from the Commission's NGA jurisdiction pipelines which transport gas in interstate commerce if (1) they receive natural gas at or within the boundary of a state, (2) all the gas is consumed within that state, and (3) the pipeline is regulated by a state Commission. This exemption is referred to as the Hinshaw exemption after the Congressman who introduced the bill amending the NGA to include § 1(c). *See ANR Pipeline Co. v. Federal Energy Regulatory Comm'n*, 71 F.3d 897, 898 (1995) (briefly summarizing the history of the Hinshaw exemption).

⁴ 18 CFR 284.224.

protest to a filing made under these notice procedures, the filing would be deemed approved without a Commission order. The Commission finds that the new procedures will result in regulatory certainty and a reduction of regulatory burdens on intrastate pipelines.

I. Background

2. NGPA section 311 authorizes the Commission to allow intrastate pipelines to transport gas “on behalf of” interstate pipelines or local distribution companies served by interstate pipelines “under such terms and conditions as the Commission may prescribe.”⁵ NGPA section 601(a)(2) exempts transportation service authorized under NGPA section 311 from the Commission’s NGA jurisdiction. Congress adopted these provisions to eliminate the regulatory barriers between the intrastate and interstate markets and to promote the entry of section 311 pipelines into the interstate market. Shortly after the adoption of the NGPA, the Commission authorized Hinshaw pipelines to apply for NGA section 7 certificates authorizing them to transport gas in interstate commerce in the same manner as section 311 pipelines may do under NGPA section 311.⁶

3. Subpart C of the Commission’s Part 284 open access regulations (18 CFR 284.121-126) implements the provisions of NGPA section 311 concerning transportation by intrastate pipelines. NGPA section 311 provides that the rates of intrastate pipelines

⁵ 15 U.S.C. 3371(c).

⁶ *Certain Transportation, Sales and Assignments by Pipeline Companies not Subject to Commission Jurisdiction Under Section 1(c) of the Natural Gas Act*, Order No. 63, FERC Stats. & Regs. ¶ 30,118, at 30,824-825 (1980).

performing transportation service under the NGPA shall be fair and equitable. Section 284.123 of the regulations provides procedures for section 311 and Hinshaw pipelines to establish fair and equitable rates for interstate services.

4. Section 284.123(b) allows intrastate pipelines an election of the methodology upon which to base their rates for interstate services. Section 284.123(b)(1) permits an intrastate pipeline to elect to base its rates on the methodology used by the appropriate state regulatory agency (A) to design rates to recover transportation or other relevant costs included in a then effective firm sales rate for city-gate service on file with the state agency; or (B) to determine the allowance permitted by the state agency to be included in a natural gas distributor's rates for city-gate natural gas service. Section 284.123(b)(1) also permits an intrastate pipeline to use the rates contained in one of its then effective transportation rate schedules for intrastate service on file with the appropriate state regulatory agency which the intrastate pipeline determines covers service comparable to service under Subpart C of Part 284.

5. If the intrastate pipeline does not make an election under paragraph (b)(1) of § 284.123, § 284.123(b)(2) requires that it “apply for Commission approval, by order, of the proposed rates and charges” pursuant to the procedures in that paragraph. Section 284.123(b)(2)(i) provides for the pipeline to file a petition for approval of the proposed rates and charges, as well as information showing the proposed rates and charges are fair and equitable. Upon filing the petition for approval, the intrastate pipeline is permitted to commence the transportation service and charge and collect the proposed rate, subject to refund. Section 284.123(b)(2)(ii) provides that the rate proposed in the application will

be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for providing similar transportation service, unless within the 150 day period after the date on which the Commission received a filed application, the Commission either extends the time for action, or institutes a proceeding in which all interested parties will be afforded an opportunity for written comments and for the oral presentation of views, data, and arguments. The Commission has extended this 150 day period when necessary, for example, to allow settlement in contested proceedings or institute proceedings in complex cases.

6. Section 284.123(e) requires that, within thirty days of commencement of a new service, any intrastate pipeline that engages in transportation arrangements under Subpart C of Part 284 must file with the Commission a statement that includes the pipeline's interstate rates, the rate election made pursuant to § 284.123(b) of that section, and a description of how the pipeline will engage in these transportation arrangements, including operating conditions, such as gas quality standards and financial viability of the shipper. This statement is generally referred to as the pipeline's "Statement of Operating Conditions." Section 284.123(e) also requires that, if the pipeline changes its operations, rates, or rate election, it must amend the statement and file such amendments no later than thirty days after commencement of the change in operations or the change in rate election.

7. As part of its overall, more light-handed regulation of section 311 and Hinshaw pipelines, the Commission has established a policy of requiring a periodic review of the rates of both types of pipelines. The Commission has held that, because these pipelines

are not subject to the same reporting requirements or level of rate review as interstate pipelines, a periodic review of the rates of section 311 and Hinshaw pipelines is necessary to ensure that those rates remain fair and equitable. In Order No. 735, the Commission modified its previous triennial rate review policy in order to decrease the frequency of review from three to five years from the date the approved rates took effect.⁷ While the periodic rate review requirement is not part of the Commission's regulations, the Commission has consistently imposed that requirement in its orders approving each rate filing by an intrastate pipeline. The Commission imposes this rate requirement, both when the intrastate pipeline has chosen to elect a state-based rate pursuant to § 284.123(b)(1) or has proposed a rate for a Commission-approved rate pursuant to § 284.123(b)(2).⁸

II. Discussion

A. Optional Notice Procedure

8. In an effort to reduce burdens on regulated entities, the Commission is proposing to add a new optional notice procedure under which section 311 and Hinshaw pipelines could seek approval of proposed rates or operating conditions without the need for a Commission order. Under this procedure, the intrastate pipeline's filing would be

⁷ *Contract Reporting Requirements of Intrastate Natural Gas Companies*, Order No. 735, 75 Fed. Reg. 29,404, (May 26, 2010) FERC Stats. & Regs. ¶ 31,310, at P 96 (2010), *order on reh'g*, Order No. 735-A, 75 Fed. Reg. 80,685 (Dec. 23, 2010), FERC Stats. & Regs. ¶ 31,318, (2010).

⁸ Order No. 735 FERC Stats. & Regs. ¶ 31,310 at P 92 and cases cited.

deemed approved without any order of the Commission, if the filing is not protested within a specified period after notice of the filing or if any protests are resolved during a reconciliation period. This optional procedure would be included in § 284.123(g) of our regulations.

9. The Commission is taking this action as part of its commitment to continually review its regulations and streamline or eliminate requirements that impose an unnecessary burden on regulated entities. The Commission believes that this notice procedure would provide an expedited and less burdensome method of processing filings by section 311 and Hinshaw pipelines which present few, if any, contested issues. Many of the intrastate pipeline companies filing rates and/or statements of operating conditions pursuant to § 284.123 are small and have few interstate shippers. Discount rate agreements are common, with the result that often the pipeline performs most of its interstate services at rates which are discounted substantially below its maximum rates for such services. Most pipeline filings under § 284.123 are not protested by any shipper. If a rate filing is protested, the protests often raise issues which are relatively amenable to settlement. The proposed optional notice procedure would permit approval of uncontested filings without the need for any Commission order upon expiration of a 60-day notice period (or other period established by the Secretary of the Commission for a particular filing). If a protest were filed within the notice period, proposed § 284.123(g) provides for an additional 30-day reconciliation period to resolve contested filings without the need for the parties to file a formal settlement offer pursuant to the

Commission's settlement rules in § 385.601, *et seq.*⁹ or a Commission order on the pipeline's proposal.

10. Currently our regulations permit similar prior notice blanket certificate procedures for interstate pipelines in § 157.205. That program has been in place for over three decades and has significantly reduced regulatory burden and provides pipelines certainty with regard to the disposition of their applications.¹⁰ The Commission believes that proposed § 284.123(g) would similarly lessen regulatory burdens, provide increased regulatory certainty, and create an improved framework in which to achieve settlement of contested cases.

11. The optional notice procedure in proposed § 284.123(g) would operate as follows: Within ten days after a filing by an intrastate pipeline pursuant to the optional notice procedure, the Secretary of the Commission would issue a notice of the filing, which would be published in the FEDERAL REGISTER. That notice would provide a deadline for interventions and initial comments fourteen days after the date of the filing and for final comments and protests sixty days after the date of the filing or such other date established by the Secretary of the Commission. As proposed, any person or the Commission's staff is permitted to file a protest prior to the deadline. If no protest is filed within the time allowed, the filing would be deemed approved without a

⁹ 18 CFR § 385.601, *et seq.* (2012).

¹⁰ *Interstate Pipeline Certificates for Routine Transactions*, Order No. 234, FERC Stats & Regs. ¶ 30,368 (1982).

Commission order, upon expiration of the time for filing protests, unless the intrastate pipeline has withdrawn, amended, or modified its filing or the filing is rejected prior to that date.

12. If a protest is filed, proposed § 284.123(g)(5) allows a reconciliation period for negotiations in a structured process to promote settlement of contested cases.

Specifically, this section would permit the intrastate pipeline, the person who filed the protest in accordance with proposed § 284.123(g)(4), any intervenors, and staff thirty days from the deadline for protests to the pipeline's filing, to resolve the protest, and to convene informal settlement conferences to assist in resolving the protest. If all protests to the filing are withdrawn pursuant to proposed paragraph (g)(6) by the end of the reconciliation period, the filing would be deemed approved. Alternatively, proposed paragraph (g)(7) permits the pipeline to amend or modify a tariff record in order to resolve concerns raised in a protest. Proposed paragraph (g)(7) provides that such a filing will toll the notice period established under paragraph (g)(3) of this section for the original filing, and the Secretary of the Commission will issue a notice establishing new deadlines for comments and protests for the entire filing pursuant to paragraph (g)(3). The intrastate pipeline may request a deadline for protests less than 60 days after the date of the filing. If there are no protests to the amendment or modification and any protests to the entire filing which have been filed are withdrawn, the amended filing would be deemed approved as of the day after the new deadline for protests established by the Secretary.

13. If a filing is still contested after the above procedures are completed, the filing would not be deemed approved and, within sixty days from the deadline for filing protests, the Commission would establish procedures to resolve the proceeding. The 150-day period in existing § 284.123(b)(2)(ii) under which filings are deemed approved unless the Commission acts within that period does not apply to filings pursuant to the new notice procedures.

14. While the proposed rules would establish a reconciliation period to promote settlement of protested filings, compliance with the Commission's rules regarding off-the-record communications in § 385.2201 would be required. Under the general rule set forth in § 385.2201(b), in any proceeding where an intervenor disputes any material issue resulting in a contested proceeding, no person outside the Commission shall make or knowingly cause to be made to a decisional employee, and no decisional employee shall make or knowingly cause to be made to any person outside the Commission, any off-the-record conversation, except off-the-record communications exempted by § 385.2201(e). Therefore, under the Commission's proposed revisions to § 284.123, when an intervenor disputes any material issue in the filings by intrastate pipelines the rules governing off-the-record conversations in § 385.2201 would be applicable.

15. The Commission is also adding procedures to further streamline the processing of these filings. The Director of the Office of Energy Market Regulation or his designee is required pursuant to paragraph (g)(2) to reject within seven days of the date of the filing any filing which patently fails to comply with the provisions of §§ 284.123(e) or 284.123(f), without prejudice to the intrastate pipeline's refiling a complete application.

If such filing was required by § 284.123, it must be refiled within fourteen days of the date of the rejection.

16. The protestor may withdraw a protest under proposed paragraph (g)(6) by submitting written notice of withdrawal to the Secretary of the Commission pursuant to § 385.216 of the Commission's regulations and serving a copy on the intrastate pipeline, any intervenors, and any other person who has filed a motion to intervene in the proceeding. If any protest is filed within the time allowed for protests and is subsequently withdrawn under proposed paragraph (g)(6), the filing by the intrastate pipeline would be deemed approved effective upon the later of the day after the deadline for filing protests, if there are no other protests to the filing, or the day after the withdrawal of all protests unless the intrastate pipeline withdraws, amends, or modifies its filing or the filing is rejected in accordance with this paragraph prior to that date.

17. Under proposed paragraphs (g)(10) and (h) an intrastate pipeline may file to withdraw its filing prior to Commission action. Because § 284.123(b)(2)(i) permits an intrastate pipeline to commence collecting a proposed rate subject to refund upon making its filing, the pipeline must state in its withdrawal motion that any amounts collected subject to refund in excess of the rates authorized by the Commission will be refunded with interest, and that it will file a refund report. The refunds must be made within sixty days of the date the withdrawal motion becomes effective. A filing that is withdrawn will not fulfill the requirements under proposed paragraph (g)(8) for approval of a filing.

B. Periodic Rate Review of the Rates and Charges of Intrastate Pipelines

18. The Commission has a policy of requiring a review of the rates of both section 311 and Hinshaw pipelines every five years. While the periodic rate review requirement is not part of the Commission's existing regulations, the Commission has consistently imposed that requirement in its orders approving each rate filing by an intrastate pipeline. The proposed optional notice procedures provide for approval of the filing without a Commission order. Therefore, the Commission proposes in § 284.123(g)(9) to require that a NGPA section 311 intrastate pipeline whose rates are deemed approved under the optional notice procedures file an application for rate approval under § 284.123 on or before the date five years following the date it filed the application for approval of the rates pursuant to § 284.123(g). Similarly, a Hinshaw pipeline whose rates are deemed approved under § 284.123(g) would be required to file either (1) cost and throughput data sufficient to allow the Commission to determine whether any change to the pipeline's rates should be ordered pursuant to section 5 of the Natural Gas Act or (2) a petition for rate approval pursuant to § 284.123, on or before the date five years following the date it filed the application for approval of rates pursuant to § 284.123(g).¹¹

¹¹ The courts have held that the Commission cannot require interstate pipelines subject to its NGA jurisdiction to make new rate filings under NGA section 4. *Public Service Commission of New York v. FERC*, 866 F.2d 487 (D.C. Cir. 1989). *Consumers Energy Co. v. FERC*, 226 F.3d 777 (6th Cir. 2000). Because the Commission regulates interstate services performed by Hinshaw pipelines under the NGA, the Commission gives them the option of filing a cost and revenue study every five years, instead of a new petition for rate approval. *Consumers Energy Co.*, 94 FERC ¶ 61,287 (2001).

19. Under the Commission's proposal, the periodic rate review in our regulations would only be applicable when intrastate pipelines file under these proposed procedures in § 284.123(g). Therefore, the overall regulatory burden for the proposed procedures is less than current procedures for rate approval.

C. Withdrawal Procedures

20. The Commission proposes in § 284.123(h) to codify the procedures for section 311 and Hinshaw pipelines to withdraw any filing under § 284.123 in its entirety prior to its approval, including filings made under the existing procedures in § 284.123.

Currently, the practice would require a request to withdraw a filing to be filed under the Commission's general rules of practice and procedure. Because § 284.123(b)(2)(i) permits an intrastate pipeline to commence collecting a proposed rate subject to refund upon making its filing, proposed § 284.123(h)(1) would require the pipeline to acknowledge that any amounts collected subject to refund in excess of the rates authorized the Commission will be refunded with interest and a refund report will be filed. The refunds must be made within sixty days of the date the withdrawal motion becomes effective. A shipper will have 15 days to respond to the pipeline's filing. Section 284.123(h)(2) would make the pipeline's withdrawal of its filing effective at the end of 15 days from the date of filing the withdrawal motion, if no opposition to the motion is filed within that period and the Commission does not issue an order disallowing the motion. This proposal would add regulatory certainty as to the Commission's treatment of withdrawal filings, and ensure that the pipeline will know its obligations if it withdraws a filing.

III. Information Collection Statement

21. The Paperwork Reduction Act (PRA)¹² requires each federal agency to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons or contained in a rule of general applicability.¹³ The OMB's regulations implementing the PRA require approval of certain information collection requirements imposed by agency rules.¹⁴ Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of an agency rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

22. The Commission is submitting these proposed reporting and recordkeeping requirements to OMB for its review and approval. The Commission solicits comments on the proposed modifications, the accuracy of burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden.

23. The Commission's estimates of the average annual public reporting burden imposed on the section 311 and Hinshaw intrastate pipelines of making filings for rate

¹² 44 U.S.C. 3501-3520.

¹³ OMB's regulations at 5 CFR 1320.3(c)(4)(i) require that "[a]ny recordkeeping, reporting, or disclosure requirement contained in a rule of general applicability is deemed to involve ten or more persons."

¹⁴ 5 CFR 1320.

approval under § 284.123 will not change, except for an estimated burden of only 12 hours per year for the new withdrawal filing requirements as a result of the proposed rule in Docket No. RM12-17-000. Following is a table showing the existing burden estimate, a relabeling to reflect the new filing option, and the additional withdrawal procedures specifically tailored for intrastate pipelines.

FERC-549 (OMB Control No. 1902-0086)	Number of Respondents (a)	Burden Hours Per Respondent Per Year (1 filing/year) (b)	Total Annual Burden Hours (a X b)
<i>Existing Inventory:</i>			
Rates and Charges for Intrastate Pipelines (18 CFR 284.123(b) and (e))	67	12	804
<i>Proposed in NOPR in RM12-17:</i>			
Rates and Charges for Intrastate Pipelines (18 CFR 284.123(b), (e) and (g))	67	12	804
Withdrawal of Filing prior to Approval (18 CFR 284.123(h))	1	12	12
FERC-549 Total (Proposed)	67	12	816

Information Collection Costs: The Commission has reviewed the burdens imposed by this rulemaking. The Commission's review found that the proposed changes will not affect the burden on section 311 intrastate and Hinshaw pipelines of making an initial filing seeking approval of proposed rates or operating conditions pursuant to § 284.123. The preparation effort or the substance of a filing made pursuant to § 284.123(g) would be the same as for a filing made pursuant to existing §§ 284.123(b) and/or 284.123(e).

24. The Commission is also proposing a new withdrawal procedure for filings made prior to their approval to reflect the unique nature of the intrastate pipeline regulations that allow a pipeline to file for a rate change and begin charging the new rates prior to Commission approval. The proposed new § 284.123(h) regulation will reflect the regulatory process that addresses that unique rate implementation issue. The Commission believes it would add certainty to any intrastate pipeline making a withdrawal filing.

25. The proposed changes will primarily affect the post-filing process and cost. The changes will reduce overall cost and delay for stakeholders; however that post-filing burden is beyond the scope of requirements of the Paperwork Reduction Act. The new optional procedures will provide both intrastate pipelines and their shippers greater regulatory certainty and a simpler process without any change in the upfront burden of preparing and making a filing.

TITLE: FERC-549, NGPA Title III Transactions and NGA Blanket Certificate Transactions (OMB Control No. 1902-0086).

ACTION: Proposed revisions.

RESPONDENTS: Section 311 Intrastate and Hinshaw Natural Gas Pipelines.

FREQUENCY OF RESPONSES: At least once every five years.

NEED FOR INFORMATION: The Commission proposes adding a new optional notice procedure in § 284.123(g) which section 311 intrastate and Hinshaw pipelines could use when making a filing seeking approval of proposed rates or operating conditions pursuant to § 284.123. As proposed, an intrastate pipeline may choose to file using the current

procedures pursuant to §§ 284.123(b) and 284.123(e), or may elect to file pursuant to the new procedure. Section 284.123(g) provides a shortened period for final approval of the proposed rates and operating conditions and authorization if no protest is filed within the time allowed and a reconciliation period of 30 days from the deadline for protests to resolve contested filings without the need for a Commission order on the pipeline's rate proposal.

26. In 18 CFR 284.123(h), the Commission also proposes to implement new regulations with respect to withdrawal of a filing prior to approval. The regulations provide more details about the rights and obligations of the intrastate pipeline and its shippers. These procedures would lessen regulatory costs, provide increased regulatory certainty, and result in an improved framework in which to achieve settlement of contested cases.

INTERNAL REVIEW: The Commission has reviewed the proposed changes and has determined that the changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements.

27. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, e-mail: DataClearance@ferc.gov, Phone: (202) 502-8663, fax: (202) 273-0873]. Comments on

the requirements of this rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by e-mail to OMB at oir_submission@omb.eop.gov. Please reference OMB Control No. 1902-0086, FERC-549, and Docket No. RM12-17 in your submission.

IV. Environmental Analysis

28. 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.¹⁵ The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.¹⁶ 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.¹⁷ Therefore an environmental review is unnecessary and has not been prepared in this rulemaking.

¹⁵ *Regulations Implementing National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (1987).

¹⁶ 18 CFR 380.4.

¹⁷ See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5) and 380.4(a)(27).

V. Regulatory Flexibility Act

29. The Regulatory Flexibility Act of 1980 (RFA)¹⁸ generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The Commission identified two small entities as respondents to the requirements in the proposed rule.¹⁹ As explained above, the Commission estimates that the proposed § 284.123(g) regulations will serve as a substitute for filings currently done pursuant to §§ 284.123(b) and (e), and § 284.123(h) provides regulatory certainty if a pipeline decides to withdraw its filing. The Commission estimates that intrastate pipelines will experience little if any change in regulatory burden associated with making their filings, and pipelines will be able to avoid certain costs and delays post-filing due to the new streamlined process. Accordingly, the Commission certifies that this rule will not have a significant impact on a substantial number of small entities and no regulatory flexibility analysis is required.

VI. Comment Procedures

30. 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

¹⁸ 5 U.S.C. 601-612.

¹⁹ The U. S. Small Business Administration's (SBA) Table of Small Business Size Standards is found in 13 CFR 121.201. SBA's updated version of the size standards (effective March 26, 2012, and available at http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf) defines a natural gas pipeline (contained in Subsector 486, Pipeline Transportation) as "small" when it has average annual receipts of \$25,500,000 or less.

[INSERT DATE 30 days after publication in the FEDERAL REGISTER]].

Comments must refer to Docket No. RM12-17-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

31. 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.

32. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

33. 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.

VII. Document Availability

34. 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 the Commission's Home Page (<http://www.ferc.gov>) and in the Commission'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.

35. From the Commission'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.

36. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's 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

Continental shelf

Natural gas

Reporting and recordkeeping requirement

By direction of the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 284, Chapter I, Title 18, *Code of Federal Regulations*, 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. 717-717z, 3301-3432; 42 U.S.C. 7101-7352; 43 U.S.C. 1331-1356.

2. Section 284.123 is amended to read as follows:
§284.123 Rates and charges

(g) Election of Notice Procedures.

(1) *Applicability.* An intrastate pipeline filing for approval of rates, a statement of operating conditions, and any amendments or modifications thereto pursuant to § 284.123 may use the notice procedures in this paragraph. Any intrastate pipeline electing to use these notice procedures for a filing must clearly state its election to use these procedures on the first page of its filing. Such filing is approved and the rates deemed fair and equitable and not in excess of the amount that an interstate pipeline would be permitted to charge for similar transportation service if the requirements paragraph (g)(8) have been fulfilled.

(2) *Rejection of filing.* The Director of the Office of Energy Market Regulation or his designee shall reject within 7 days of the date of filing a request which patently fails to comply with the provisions of paragraphs (e) or (f) of this section, without prejudice to the intrastate pipeline's refile a complete application. If such filing was required by this section, that filing must be refiled within 14 days of the date of the rejection.

(3) *Publication of notice of filing.* The Secretary of the Commission shall issue a notice of the filing within 10 days of the date of the filing, which will then be published in the FEDERAL REGISTER. The notice shall designate a deadline for filing interventions, initial comments, final comments, and protests to the filing. The deadline for interventions and initial comments shall be 14 days after the date of the filing. The deadline for final comments and protests shall be 60 days after the date of the filing or such other date established by the Secretary of the Commission.

(4) *Protests.*

- (i) Any person or the Commission's staff may file a protest prior to the deadline for protests. Copies of the protest must be served on the Secretary of the Commission and the intrastate pipeline.
- (ii) Protests shall be filed with the Commission in the form required by Part 385 of this Chapter including a detailed statement of the protestor's interest in the filing and the specific reasons and rationale for the objection and whether the protestor seeks to be an intervenor.

- (5) *Effect of protest.* If a protest is filed in accordance with paragraph (g)(4) of this section, then the intrastate pipeline, the person who filed the protest, any intervenors, and staff shall have 30 days from the deadline for filing protests established by the Secretary of the Commission in accordance with paragraph (g)(3) of this section, to resolve the protest, and to file a withdrawal of the protest pursuant to paragraph (g)(6) of this section. Informal settlement conferences may be convened by the Director of the Office of Energy Market Regulation or his designee during this 30 day period. If a protest is not withdrawn or dismissed by end of that 30 day period, the filing shall not be deemed approved pursuant to this paragraph. Within 60 days from the deadline for filing protests established by the Secretary of the Commission in accordance with paragraph (g)(3) of this section the Commission will establish procedures to resolve the proceeding.
- (6) *Withdrawal of protests.* The protestor may withdraw a protest by submitting written notice of withdrawal to the Secretary of the Commission pursuant to § 385.216 and serving a copy on the intrastate pipeline, any intervenors, and any person who has filed a motion to intervene in the proceeding.
- (7) *Amendments or modifications to tariff record prior to approval.* An intrastate pipeline may file to amend or modify a tariff record contained in the initial filing pursuant to the procedures under paragraph (g) which has not yet been approved pursuant to paragraph (g)(8). Such filing will toll the

notice period established in paragraph (g)(3) of this section and the Secretary of the Commission will issue a notice establishing new deadlines for comments and protests for the entire filing pursuant to paragraph (g)(3).

(8) *Final Approval.*

- (i) If no protest is filed within the time allowed by the Secretary of the Commission under paragraph (g)(3), the filing by the intrastate pipeline is approved, effective on the day after time expires for filing protests unless, during that time, the intrastate pipeline withdraws, amends, or modifies its filing or the filing is rejected pursuant to this paragraph.
- (ii) If any protest is filed within the time allowed by the Secretary of the Commission under paragraph (g)(3) and is subsequently withdrawn before the end of the 30-day reconciliation period provided by paragraph (g)(5) of this section, the filing by the intrastate pipeline is approved effective upon the later of the day after the deadline for filing protests, if there are no other protests to the filing, or the day after the withdrawal of all protests unless the intrastate pipeline withdraws, amends, or modifies its filing or the filing is rejected, prior to that date.

(9) *Periodic rate review.* Rates of pipelines approved by the Commission pursuant to this paragraph are required to be periodically reviewed. Any intrastate pipeline with rates so approved must file an application for rate

approval under § 284.123 of this chapter on or before the date five years following the date it filed the application for authorization of rates pursuant to this paragraph. Any Hinshaw pipeline that has been granted a blanket certificate under § 284.224 of this chapter and with rates approved pursuant to this paragraph must on or before the date five years following the date it filed the application for authorization of the rates pursuant to this paragraph either file (1) cost, throughput, revenue and other data, in the form specified in § 154.313 to allow the Commission to determine whether any change in rates is required pursuant to 5 of the Natural Gas Act or (2) an application for rate authorization pursuant to § 284.123.

(10) *Withdrawal of filing prior to approval.* A pipeline may, pursuant to paragraph (h) of this section, withdraw in its entirety a filing made pursuant to paragraph (g) of this section that has not been approved by filing a withdrawal motion with the Commission. A filing that is withdrawn will not fulfill the requirements under paragraph (g)(8) of this section.

(h) *Withdrawal of filing.* A pipeline may withdraw in its entirety a filing pursuant to § 284.123 that has not been approved by filing a withdrawal motion with the Commission.

(1) The withdrawal motion must state that any amounts collected subject to refund in excess of the rates authorized the Commission will be refunded with interest calculated and a refund report filed with the Commission in

accordance with § 154.501 of this chapter. The refunds must be made within 60 days of the date the withdrawal motion becomes effective.

- (2) The withdrawal motion will become effective, and the filing will be deemed withdrawn at the end of 15 days from the date of filing of the withdrawal motion, if no order disallowing the motion is issued within that period. If an answer in opposition is filed within the 15 day period, the withdrawal is not effective until an order accepting the withdrawal is issued.