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58 FERC ¶ 61,367

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

[18 C.F.R. Part 250]

Before Commissioners: Martin L. Allday, Chairman;
Charles A. Trabandt, Elizabeth Anne Moler,
Jerry J. Langdon and Branko Terzic.

Inquiry into Alleged Anti-competitive Practices Related to Marketing Affiliates of Interstate Pipelines)
) Lockett No. RM87-5-006
)

ORDER NO. 497-B

ORDER EXTENDING SUNSET DATE

(Issued December 13, 1990)

I. INTRODUCTION

The Federal Energy Regulatory Commission (Commission) is extending the sunset date of Order No. 497's 1/ reporting requirements for an additional year, from December 31, 1990 until December 31, 1991.

II. PUBLIC REPORTING BURDEN

This order does not change the reporting burden in the final rule, as revised in Order No. 497-A, that already is in effect. The order extends these reporting requirements and the sunset provision for an additional year, from December 31, 1990 to December 31, 1991. The Office of Management and Budget approved the reporting requirements in the final rule on August 18, 1988.

¹ Inquiry into Alleged Anticompetitive Practices of Marketing Affiliates of Interstate Pipelines, 53 Fed. Reg. 22,139 (June 14, 1988), III FERC Stats. & Regs., ¶ 30,820 (June 1, 1988); Order No. 497-A, 54 Fed. Reg. 52,781 (Dec. 22, 1989); III FERC Stats. & Regs. ¶ 30,868 (1989).

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This approval is effective until March 31, 1991.

III. BACKGROUND

The Commission issued a final rule in this proceeding on June 1, 1988, ^{2/} which was the result of a lengthy rulemaking proceeding begun in response to petitions for rulemaking ^{3/} and several cases that had raised the issue of potential abuse in the relationship between interstate natural gas pipelines and their marketing or brokering affiliates. ^{4/} The final rule in Order No. 497 adopted standards of conduct and reporting requirements intended to prevent preferential treatment of an affiliated marketer by an interstate pipeline in the provision of transportation services. ^{5/} The final rule also adopted a sunset provision of December 31, 1989, for the reporting

^{2/} Id.

^{3/} Petitions of Hadson Gas Systems, Inc. in Docket No. RM86-19-000, Minnesota Department of Public Service in Docket No. RM87-1-000, and Shell Gas Trading Co. in Docket No. RM87-2-000.

^{4/} Northern Natural Gas Co., Docket No. RP82-71-001, et al., 20 FERC ¶ 61,040 (1982); Mountain Fuel Resources, Inc., Docket No. RP86-87-001, 36 FERC ¶ 61,150 (1986); ANR Pipeline Co., Docket No. RP86-105-000, 35 FERC ¶ 61,400 (1986); Independent Petroleum Association of Mountain States v. Panhandle Eastern Pipeline Co., Docket No. CP86-584-000, 36 FERC ¶ 61,282 (1986); Southern Natural Gas Co., Docket No. CP86-277-001, et al., 36 FERC ¶ 61,275 (1986); Texas Gas Transmission Corp., Docket No. CP86-349-001, 36 FERC ¶ 61,274 (1986); Arkla Exploration Co., Docket No. CI86-376-000, et al., 37 FERC ¶ 61,011 (1986); Southern Natural Gas Co., Docket No. CI86-371-000, et al., 36 FERC ¶ 61,401 (1986); Tenneco Oil Co., et al., Docket No. CI86-254-000, et al., 36 FERC ¶ 61,399 (1986).

^{5/} 53 Fed. Reg. 22,139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988).

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requirements and specifically reserved the Commission's option of extending the date should the Commission decide there was a need to do so.

On December 15, 1989, the Commission issued Order No. 497-A which granted partial rehearing of Order No. 497 and clarified certain provisions of the final rule. ^{6/} Order No. 497-A also extended the final rule's reporting requirements for an additional year, from December 31, 1989 to December 31, 1990, and stated that the Commission would examine the need to further extend the rule's reporting requirements prior to their sunset date of December 31, 1990. ^{7/}

Several pipelines and local distribution companies filed with the United States Court of Appeals for the D.C. Circuit for judicial review of the Order No. 497 marketing affiliate rule, and the case is pending before that court in Tenneco Gas v. FERC, No. 89-1768. Consequently, the Commission's action in this proceeding is subject to leave of the court.

IV. DISCUSSION

Order No. 497 has two basic elements: (1) the establishment of Standards of Conduct intended to assure that pipelines do not use the essential facility in a discriminatory manner to the competitive advantage of their affiliates, and

(2) the requirement that pipelines record and report the

^{6/} 54 Fed. Reg. 52,781 (Dec. 22, 1989); 111 FERC Stats. & Regs. ¶ 30,868 (1989).

^{7/} OMB has granted an extension of its approval to collect this information until March 31, 1991.

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essential terms of transactions with or to the benefit of affiliates in order to allow verification of compliance with the Standards of Conduct.

The Commission is extending the reporting requirements of Order Nos. 497 and 497-A for an additional year from December 31, 1990 to December 31, 1991, because several issues regarding Order Nos. 497 and 497-A are pending. These issues include those raised in the protests of filings made by pipelines in response to issuance of Order No. 497, the applicability of the Standards of Conduct to discount sales programs, as well as the appeal to the U.S. Court of Appeals for the District of Columbia Circuit. With these issues pending, it would be premature to let the reporting requirements lapse at the end of this year.

The Commission also believes that the potential for discriminatory behavior by pipelines in favor of their marketing affiliates continues to exist. The Commission believes that reporting has a deterrent effect in that it sensitizes the participants in a transaction that at some time in the future the Commission may call upon them to explain how the transaction complies with the Standards of Conduct. In addition, reporting is an invaluable enforcement tool when deterrence is not successful because data regarding transactions can be analyzed to verify whether a particular prohibited practice has occurred. Therefore, allowing the reporting requirements to lapse at this time would hamper the Commission's ability to enforce those standards. Continuation of these requirements will assist the

public and Commission staff in monitoring potential abuses. ^{8/}

For all of the foregoing reasons, the Commission is extending the reporting requirements of Order Nos. 497 and 497-A for an additional year from December 31, 1990 to December 31, 1991. Because the Commission cannot now determine the need to continue the reporting requirements subsequent to December 31, 1991, the Commission will again examine the need to extend the rule's reporting requirements prior to the new sunset date. This should enable the Commission to resolve some of the issues discussed above. In addition, by that time we should have the benefits of the court's review of Order Nos. 497 and 497-A.

V. INFORMATION COLLECTION

The Office of Management and Budget's (OMB) regulations ^{9/} require that OMB approve certain information collection requirements imposed by agency rule. The Commission is notifying OMB that it is extending the sunset provision for Order No. 497 and submitting the information collection provisions in this notice for its approval.

^{8/} For example, the Commission has answered numerous expressions of concern over potential affiliate abuse by making certain services, e.g., capacity brokering and storage service, also subject to Order No. 497's reporting requirements. See, e.g., Transcontinental Gas Pipe Line Corp., 52 FERC ¶ 61,277 (1990); U-T Offshore System, 53 FERC ¶ 61,124 (1990); High Island Offshore System, 53 FERC ¶ 61,126 (1990); and Natural Gas Pipeline Co. of America, 50 FERC ¶ 61,385 (1990).

^{9/} 5 C.F.R. § 1320.13 (1989).

Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426 (Attention: Michael Miller at (202) 208-1415). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, D.C. 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VI. ADMINISTRATIVE FINDINGS AND EFFECTIVE DATE

The Administrative Procedure Act (APA), pursuant to section 553(d), generally requires a rule to be effective not less than 30 days after publication in the Federal Register unless good cause is found to shorten the time period. The sunset date for the reporting requirements will expire before the APA's 30 day publication requirement has been fulfilled thus causing a gap in the reporting requirements. Therefore, in order to prevent a gap in the rule's reporting requirements, this order's extension of the sunset provision for the rule's reporting requirements, from December 31, 1990 to December 31, 1991, is effective January 1, 1991. However, since the record in this case has been filed with the U.S. Court of Appeals for the District of Columbia Circuit, the court has exclusive jurisdiction over the matter pursuant to section 19(b) of the Natural Gas Act. Therefore, the extension of the sunset provision for the reporting requirements is subject to leave of court.

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List of Subjects in 18 C.F.R. Part 250

Natural gas .
Reporting and recordkeeping requirements

In consideration of the foregoing, the Commission, subject to leave of the court, amends Part 250, Chapter I, Title 18 Code of Federal Regulations as set forth below.

By the Commission.

(S E A L)



Linwood A. Watson, Jr.,
Acting Secretary.

PART 250 -- FORMS

1. The authority citation for Part 250 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101-7352; E.O. No. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Act, 15 U.S.C. 717-717w; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432.

2. In § 250.16, paragraphs (a)(3), (c)(1), (c)(2) introductory text and (d)(1) are revised to read as follows:

§ 250.16 Format of compliance plan for transportation services and affiliate transactions.

(a) Who must comply.

* * * * *

(3) Maintain all information required under this section from the time the information is received until December 31, 1991.

* * * * *

(c) What to maintain.

(1) An interstate pipeline must maintain the information in paragraph (b)(2) of this section for all requests for transportation services made by nonaffiliated shippers or in which a nonaffiliated shipper is involved from the time the information is received until December 31, 1991.

(3) The information required to be maintained by this section will be available from September 12, 1988 until December 31, 1992 to:

* * * * *

(d) When to file.

(1) The information in paragraph (b)(1) of this section and entries in the log specified in paragraph (b)(2) of this section relating to transportation requests for which transportation has commenced 30 days or more previously, which have been denied, or which have been pending for more than six months, must be filed initially with the Commission by September 19, 1988, and thereafter as required by paragraphs (d)(2) and (d)(4) until December 31, 1991. This requirement applies to transportation service that commenced or transportation requests that were denied after July 14, 1988, or that were pending for six months or more on July 14, 1988.

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