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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 250

[Docket No. RM87-5-008; Order No. 497-C]

Inquiry into Alleged Anticompetitive Practices
Related to Marketing Affiliates of Interstate Pipelines

Order Extending Sunset Date and Amending Final Rule

(Issued December 20, 1991)

AGENCY: Federal Energy Regulatory Commission

ACTION: Final rule; order extending sunset date and amending final rule

SUMMARY: The Commission issued a final rule in Order No. 497 (53 Fed. Reg. 22,139 (June 14, 1988)), FERC Stats. and Regs.

¶ 30,820, on June 1, 1988, adopting standards of conduct and reporting requirements to govern the relationship between interstate pipelines and their gas marketing affiliates. Order No. 497-A (54 Fed. Reg. 52,781 (December 22, 1989)), FERC Stats. and Regs. ¶ 30,868 (December 15, 1989), denied in part and granted in part rehearing of Order No. 497 and extended the final rule's reporting requirements for an additional year, from December 31, 1989, to December 31, 1990. Order No. 497-B (55 Fed. Reg. 53,291 (December 28, 1990)), FERC Stats. and Regs. ¶ 30,908 (December 13, 1990), extended the final rule's reporting requirements for an additional year, from December 31, 1990, to December 31, 1991.

This order extends the final rule's reporting requirements for an additional year, from December 31, 1991, to December 31, 1992. In addition, this order amends the final rule to reduce

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the number of paper printouts of the FERC Form No. 592 information that pipelines are required to file.

EFFECTIVE DATE: In order to prevent a gap in the rule's reporting requirements, the extension of the sunset provision for the rule's reporting requirements is effective January 1, 1992. The amendment to the final rule is also effective January 1, 1992. However, since the record in this case has been filed with the United States 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 and the amendment to the final rule are subject to leave of court.

FOR FURTHER INFORMATION CONTACT: David Faerberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington D.C. 20426, (202) 208-1275.

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 3308, 941 North Capitol Street, N.E., Washington, D.C. 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

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with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's contractor, La Dorn Systems Corporation, also located in Room 3308, 941 North Capitol Street, N.E., Washington, D.C. 20426.

UNITED STATES OF AMERICA
 FEDERAL ENERGY REGULATORY COMMISSION

18 CFR 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)
) Docket No. RM87-5-008
)
)

ORDER NO. 497-C

ORDER EXTENDING SUNSET DATE AND AMENDING FINAL RULE

(Issued December 20, 1991)

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, 1991, until December 31, 1992. The Commission is also amending the final rule to reduce the number of paper printouts of the FERC Form No. 592 information that pipelines are required to file.

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 clarifies the reporting requirements of FERC Form No. 592 and extends the sunset provision for an additional year, from

¹/ Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, 53 Fed. Reg. 22,139 (June 14, 1988), FERC Stats. & Regs. ¶ 30,820 (June 1, 1988); Order No. 497-A, 54 Fed. Reg. 52,781 (Dec. 22, 1989), FERC Stats. & Regs. ¶ 30,868 (Dec. 15, 1989); Order No. 497-B, 55 Fed. Reg. 53,291 (December 28, 1990), FERC Stats. & Regs. 30,908 (Dec. 13, 1990).

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December 31, 1991, to December 31, 1992. Clarification of the reporting requirements will reduce or eliminate the filing of unnecessary duplicative information. The Office of Management and Budget approved the reporting requirements in the final rule on August 18, 1988. This approval is effective until December 31, 1991.

The current annual reporting burden for collection of information is estimated to be 5,996 hours for FERC Form No. 592 (1902-0157). The industry burden is based on an estimated average of 10.60 hours per filing for the 55 respondents to complete 660 filings of FERC Form No. 592. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and obtaining the data needed, and completing and reviewing the collection of information.

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

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.

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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 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.

4/ Northern Natural Gas Co., 20 FERC ¶ 61,040 (1982); Mountain Fuel Resources, Inc., 36 FERC ¶ 61,150 (1986); ANR Pipeline Co., 35 FERC ¶ 61,400 (1986); Independent Petroleum Association of Mountain States v. Panhandle Eastern Pipe Line Co., 36 FERC ¶ 61,282 (1986); Southern Natural Gas Co., 36 FERC ¶ 61,275 (1986); Texas Gas Transmission Corp., 36 FERC ¶ 61,274 (1986); Arkla Exploration Co., 37 FERC ¶ 61,011 (1986); Southern Natural Gas Co., 36 FERC ¶ 61,401 (1986); Tenneco Oil Co., et al., 36 FERC ¶ 61,399 (1986).

5/ 53 Fed. Reg. 22,139 (June 14, 1988), FERC Stats. & Regs. ¶ 30,820 (June 1, 1988).

6/ 54 Fed. Reg. 52,781 (Dec. 22, 1989), FERC Stats. & Regs. ¶ 30,868 (Dec. 15, 1989).

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On December 13, 1990, the Commission issued Order No. 497-B ^{1/} which extended the sunset date of Order No. 497's reporting requirements for an additional year, from December 31, 1990 until December 31, 1991, because several issues regarding Order Nos. 497 and 497-A were pending. These issues included 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.

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

^{1/} 55 Fed. Reg. 53,291 (Dec. 28, 1990), FERC Stats. & Regs. ¶ 30,908 (Dec. 13, 1990).

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standards of conduct.

The Commission is extending the reporting requirements of Order Nos. 497 and 497-A for an additional year from December 31, 1991, to December 31, 1992, because certain issues regarding Order Nos. 497 and 497-A are still pending and a new issue has arisen. The issues still pending are the applicability of the standards of conduct to discount sales programs and the appeal to the U.S. Court of Appeals for the District of Columbia Circuit. The new issue that has arisen is the proposal in the recent Notice of Proposed Rulemaking (NOPR) in Docket No. RM91-11-000 8/ to require pipelines to comply with Order No. 497's standards of conduct and reporting requirements by considering their unbundled sales operating employees as an operational unit which is the functional equivalent of a marketing affiliate. With these issues before the Commission, it would be premature to let the reporting requirements lapse at the end of this year. 9/

8/ In Re Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Docket No. RM91-11-000, 56 Fed. Reg. 38,372 (Aug. 13, 1991), FERC Stats. & Regs. ¶ 32,480 (July 31, 1991).

9/ On November 27, 1991, the Independent Gas Marketers Coalition (IGMC) filed a petition for extension of Order No. 497's reporting requirements. IGMC stated that the reporting requirements serve an important role in assuring that the gains made in reducing discriminatory practices of pipelines in favor of their marketing affiliates are not lost. On December 11, 1991, Indicated Producers filed an answer in support of IGMC's petition and Enron Interstate Pipelines filed an answer in opposition to IGMC's petition.

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The Commission also continues to believe, as it did at the time it issued Order No. 497-B, that the potential for discriminatory behavior by pipelines in favor of their marketing affiliates continues to exist. The Commission still believes that reporting has a deterrent effect because participants in a transaction are aware 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 important enforcement tool when deterrence is not successful because data regarding transactions is one of various sources of information that is needed 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.

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, 1991 to December 31, 1992. This additional time should enable the Commission to resolve some of the issues discussed above. Because the Commission cannot now determine the need to continue the reporting requirements subsequent to December 31, 1992, the Commission will again examine the need to extend the rule's reporting requirements prior to the new sunset date. By that

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time we should also have the benefit of the court's review of Order Nos. 497 and 497-A.

The Commission is also amending the final rule to reduce the number of paper printouts of the FERC Form No. 592 information that pipelines are required to file. Currently, pipelines are required to file FERC Form No. 592 on magnetic tape or computer disk and three paper printouts of the information contained on the magnetic tape or computer disk. The paper printouts are sometimes voluminous. The Commission has determined that the number of paper printouts of the FERC Form No. 592 information can be reduced. Accordingly, the Commission is amending the final rule to require pipelines to file only one paper printout of all the information required by FERC Form No. 592.

The Commission is also clarifying certain elements of the reporting requirements to eliminate the filing of certain unnecessary information. Experience has shown that the data filed by some pipelines can be substantially reduced while still complying with the filing requirements. The following clarifications should help reduce the amount of unnecessary duplicative information filed each month.

Filing requirements are set forth in section 250.16 of the Commission's regulations. ^{10/} Pipelines are required to file transportation log information "relating to transportation requests for which transportation has commenced 30 days or more previously, which have been denied, or which have been pending

^{10/} 18 C.F.R. § 250.16 (1991).

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more than six months," at the end of the month following the month any changes occurred. Additionally discount information is required to be filed within 15 days of the close of the pipeline's billing period. ^{11/} The contents of the transportation log are listed in section 250.16(b)(2), which describes FERC Form No. 592 as:

[C]onsisting of a log that contains the following information on all requests for transportation service made by affiliated marketers or in which an affiliated marketer is involved for transportation that would be conducted pursuant to Subparts B, G, H, or K of Part 284[.] (Emphasis added.)

Some pipelines have interpreted these requirements to mean that they must file all of the log data for all of their affiliated transactions, pending and operational, even when there has been a change only in some elements of one transaction. This has resulted in the filing of duplicative information, which is already on file with the Commission.

This was clearly not the Commission's intent. Monthly filings need only include information: (1) on those individual affiliate-related transactions which have not previously been reported; (2) those elements of the transaction which have changed; and (3) specifically required discount information. For instance, unnecessary information is being filed when a pipeline files its entire affiliate transportation log each month, rather than filing only those contracts/requests which are new or amended. Another example is where the pipeline has discounted

^{11/} 18 C.F.R. § 250.16(d)(4) (1991).

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service under an affiliate-related contract with multiple receipt and delivery points. In these instances, the pipeline should file discount information, as required by section 250.16(d)(4)(ii), ^{12/} for only those point-to-point combinations served at a discount. There is no need to report all of the other points as well. Only the information which relates to the discount "requested, offered, or provided" need be reported.

These clarifications should significantly reduce the amount of information being filed by pipelines subject to the rule. In addition, several minor technical changes are necessary to facilitate the electronic reporting of information about "evergreen" contracts. The instructions to FERC Form No. 592 will be modified to reflect these clarifications and minor technical changes.

V. INFORMATION COLLECTION STATEMENT

The Office of Management and Budget's (OMB) regulations ^{13/} require that OMB approve certain information collection requirements imposed by agency rule. The information collection requirements in this final rule are contained in FERC Form No. 592 "Marketing Affiliates of Interstate Pipelines." 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.

Interested persons can obtain information on the information

^{12/} 18 CFR § 250.16(d)(4)(ii) (1991).

^{13/} 5 CFR § 1320.14 (1991).

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collection provisions by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, N.E. Washington, D.C. 20426 (Attention: Michael Miller, Information Policy and Standards Branch, (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

Section 553(b) of the Administrative Procedure Act (APA) 14/ specifies that notice and comment for rulemaking are not required when the "agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." The Commission finds that notice and comment are unnecessary since the Commission is merely amending the rule to reduce the number of paper printouts of the FERC Form No. 592 information that pipelines are required to file.

Section 553(d) of the APA 15/ 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.

14/ 5 U.S.C. § 553(b) (1988).

15/ 5 U.S.C. § 553(d) (1988).

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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, 1991, to December 31, 1992, is effective January 1, 1992. 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. ^{16/} Therefore, the extension of the sunset provision for the reporting requirements is subject to leave of court.

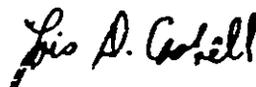
List of Subjects in 18 C.F.R. Part 250

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)



Lois D. Cashell,
Secretary.

^{16/} 15 U.S.C. § 717r (1988).

PART 250 -- POPMS

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

Authority: 42 U.S.C. 7101-7352; E.O. No. 12009, 3 CFR, 1978 Comp., p. 142; 15 U.S.C. 717-717w; 15 U.S.C. 3301-3432.

2. In § 250.16, paragraphs (a)(3), (c)(1), (c)(2) introductory text, (d)(1) and (e)(2) 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, 1992.

* * * * *

(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, 1992.

(2) The information required to be maintained by this section will be available from September 12, 1988 until December 31, 1993 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, 1992. 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.

* * * * *

(e) How to file.

* * * * *

(2) The magnetic tape or computer disk must be accompanied by one paper printout of all the FERC Form No. 592 information submitted on the magnetic tape or computer disk. The format for the paper printout can be obtained at the Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol Street NE., Washington, DC 20426.

* * * * *