DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–024; Order No. 587–R]

Standards for Business Practices of Interstate Natural Gas Pipelines

March 12, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations governing standards for conducting business practices with interstate natural gas pipelines. The Commission is incorporating by reference the most recent version of the standards, Version 1.6, promulgated July 31, 2002, by the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board (NAESB) and the WGQ standards governing partial day recalls (recommendations R02002 and R02002–2), adopted October 31, 2002. These standards can be obtained from NAESB at 1100 Louisiana, Suite 3625, Houston TX 77002, 713–356–0060, *http://www.naesb.org.*

DATES: The rule will become effective April 21, 2003. Pipelines must file tariff sheets to reflect the changed standards by May 1, 2003, with an effective date of July 1, 2003.

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SUPPLEMENTARY INFORMATION:

1. The Federal Energy Regulatory Commission (Commission) is amending § 284.12 of its open access regulations governing standards for conducting business practices and electronic communications with interstate natural gas pipelines. The Commission is adopting the most recent version, Version 1.6, of the consensus standards promulgated by the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board (NAESB), and the WGQ standards governing partial day recalls. This rule will benefit the public by adopting the most recent and up-to-date standards governing business practices and electronic communication and by providing shippers with enhanced flexibility to recall released capacity.

Background

2. Since 1996, in the Order No. 587 series,[1] the Commission has adopted regulations to standardize the business practices and communication methodologies of interstate pipelines in order to create a more integrated and efficient pipeline grid. In this series of orders, the Commission incorporated by reference consensus standards developed by the WGQ (formerly the Gas Industry Standards Board or GISB), a private consensus standards developer composed of members from all segments of the natural gas industry. The WGQ is an accredited standards organization under the auspices of the American National Standards Institute (ANSI).

3. On October 7, 2002, the WGQ filed with the Commission a report informing the Commission that it had adopted a new version of its standards, Version 1.6. The WGQ reports that while Version 1.5 contained many of the standards designed to support Order No. 637,[2] Version 1.6 includes additional standards that support Order No. 637. It states: ''development of standards to support FERC Order No. 637 was given the highest priority by all NAESB subcommittees and task forces.'' The WGQ further reports that the surety assessment performed by the Sandia National Laboratories on the GISB EDM (Electronic Delivery Mechanism) standards was accepted by GISB and forwarded to the EDM Subcommittee for review and development of standards in October 2000. It states that some of the Sandia recommendations were implemented in Version 1.5, and the remainder were implemented in Version 1.6. Finally, the WGQ reports that work continues on requests for both new and revised business practices, information requirements, code value assignments, technical implementation and mapping or interpretations.

4. In Order No. 587–N,[3] the Commission adopted a regulation requiring that pipelines permit releasing shippers to recall released capacity and renominate that recalled capacity at any of the nomination opportunities provided by the pipelines. The Commission established a two-phased implementation for this regulation. In the first phase, the Commission established an interim schedule under which releasing shippers could recall capacity, as long as the recall did not involve a partial or flowing day recall (a recall of scheduled gas after the gas begins to flow). Pipelines implemented the first phase as of July 1, 2002. In the second phase, the Commission asked the WGQ within six months to develop standards dealing with the operational details of permitting partial or flowing day recalls, in particular the method by which capacity would be allocated between releasing and replacement shippers. The Commission established October 1, 2002, as the date by which the WGQ and other industry members should submit a report and further provided for reply comments to be filed by October 15, 2002.

5. On October 2, 2002, the WGQ filed a report stating that its Executive Committee had adopted standards governing partial or flowing day recalls in Recommendations R02002 and R02002–2. The WGQ membership ratified these standards on October 31, 2002.

6. On November 29, 2002, the Commission issued a Notice of Proposed Rulemaking (NOPR)[4] that proposed to adopt Version 1.6 of the WGQ standards and the partial or

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), FERC Stats. & Regs. Regulations Preambles (July 1996–December 2000) ¶ 31,038 (Jul. 17, 1996), Order No. 587–B, 62 FR 5521 (Feb. 6, 1997), FERC Stats. & Regs. Regulations Preambles (July 1996–December 2000) ¶ 31,046 (Jan. 30, 1997), Order No. 587–C, 62 FR 10684 (Mar. 10, 1997), FERC Stats. & Regs. Regulations Preambles (July 1996–December 2000) ¶ 31,050 (Mar. 4, 1997), Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), FERC Stats. & Regs. Regulations Preambles (July 1996–December 2000) ¶ 31,062 (Apr. 16, 1998), Order No. 587–H, 63 FR 39509 (July 23, 1998), FERC Stats. & Regs. Regulations Preambles (July 1996–December 2000) ¶ 31,063 (July 15, 1998); Order No. 587–I, 63 FR 53565 (Oct. 6, 1998), FERC Stats. & Regs. Regulations Preambles (July 1996–December 2000) ¶ 31,067 (Sept. 29, 1998), Order No. 587–K, 64 FR 17276 (Apr. 9, 1999), FERC Stats. & Regs. Regulations Preambles (July 1996–December 2000) ¶ 31,072 (Apr. 2, 1999); Order No. 587–M, 65 FR 77285 (Dec. 11, 2000), FERC Stats. & Regs. Regulations Preambles (July 1996–December 2000) ¶ 31,114 (Dec. 11, 2000); Order No. 587–N, 67 FR 11906 (Mar. 18, 2002), III FERC Stats. & Regs. Regulations Preambles ¶ 31,125 (Mar. 11, 2002), Order No. 587–O, 67 FR 30788 (May 8, 2002), III FERC Stats. & Regs. Regulations Preambles ¶ 31,129 (May 1, 2002).

[2] Regulation of Short-Term Natural Gas Transportation Services, Order No. 637, 65 FR 10156 (Feb. 25, 2000), FERC Stats. & Regs. Regulations Preambles (July 1996–December 2000) ¶ 31,091 (Feb. 9, 2000).

[3] Order No. 587–N, 67 FR 11906 (Mar. 18, 2002), III FERC Stats. & Regs. Regulations Preambles ¶ 31,125 (Mar. 11, 2002).

[4] Standards For Business Practices Of Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking (NOPR), 67 FR 72870 (Dec. 9, 2002), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,566 (Nov. 29, 2002).

flowing day recall standards. Five comments[5] and one reply comment[6] were filed. The comments generally support adoption of the standards, although some comments raise questions about the timing of implementation.

Discussion

7. The Commission is incorporating by reference Version 1.6 of the WGQ's consensus standards and the standards adopted for partial day recalls.[7] Pipelines will be required to file tariff sheets to reflect the changed standards by May 1, 2003, with an effective date of July 1, 2003, which is the first day of the month following 90 days after the issuance of this rule.

8. The adoption of Version 1.6 of the WGQ standards[8] will help continue the process of implementing Order No. 637 and will update and improve the current standards.[9] Adoption of the partial day recall standards[10] will provide shippers with enhanced flexibility to recall capacity, while ensuring that replacement shippers receive notice sufficient to allow them to reschedule their capacity. The partial day recall standards also address the method for determining how capacity will be allocated among releasing and replacement shippers when capacity is recalled during the gas day. Among the most notable of these standards are: A revision to the capacity release timeline to permit prearranged non-biddable releases on non-Business as well as Business days (Standard 5.3.2); a revision to the Commission's interim timeline for recall transactions to permit recalls at any of the four nomination opportunities, while still providing sufficient notice to replacement shippers to enable them to reschedule their capacity (Standard 5.3.z1); the adoption of procedures governing notice to replacement shippers (Standards 5.3.z2 through 5.3.z4); and the use of elapsed prorata capacity as the allocation method for flowing day recalls, unless a different method is necessary to reflect the nature of the pipeline's tariff, services, or operational characteristics (Standard 5.3.z13).[11]

9. The WGQ approved the standards under its consensus procedures.[12] As the Commission found in Order No. 587, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In § 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTT&AA), Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like the WGQ, as means to carry out policy objectives or activities.[13]

10. The comments addressing various aspects of the standards will be addressed below.

A. Implementation Date

11. The Commission had proposed that pipelines implement the new standards three months after issuance of a final rule. INGAA, Duke, Dominion, and Williston maintain that the Commission should establish the implementation date on the first day of the month, 90 days after the issuance of the rule. First-of-the-month implementation, they maintain, will provide for a more efficient transition for accounting and nomination systems and avoids middle-of-the-month billing period changes. The Commission agrees, and is requiring implementation on the first of the month, following 90 days after issuance of this final rule.

B. Implementation Date for Partial Day Recall Standards

12. INGAA, Duke, and Williston argue that the Commission should delay implementation of the partial day recall standards until these standards are formally adopted in Version 1.7 of the WGQ standards. INGAA, Duke, and Williston all maintain that the standards already adopted are not complete, citing to certain examples of using elapsed prorated capacity that have not yet been approved by the NAESB membership. They argue that the Commission should not adopt these standards until they are complete. These three commenters also raise procedural issues with respect to adoption of the standards. INGAA maintains that the partial day recall standards are not numbered and could confuse pipeline customers who rely on the NAESB standards numbering system and implementation guide. Duke and Williston argue that without officially assigned numbers, pipelines will not be able to incorporate the standards by reference in their tariffs. Williston maintains that since the partial day recall standards are not published, parties who are not members of NAESB will not be able to obtain copies.

13. KeySpan opposes any delay in implementing the partial day recall standards. It argues procedural problems, such as the absence of officially assigned numbers, should not deprive shippers of the benefits of using partial day recalls. It further argues that all NAESB standards evolve over time, and that is not a justification for delaying implementation of these standards.

14. The Commission will not delay implementation of the partial day recall standards. NAESB developed these standards as a result of the Commission's March 12, 2002, determination in Order No. 587–N that permitting such recalls is necessary to improve the capacity release marketplace by providing releasing shippers with the flexibility to structure capacity release transactions that best fit their business needs, by providing greater incentives for releasing shippers to release capacity, and by fostering greater competition for pipeline capacity by creating parity between scheduling of capacity release transactions and pipeline interruptible

[5] Those filing comments are: American Gas Association (AGA), Dominion Resources, Inc. (Dominion), Duke Energy Gas Transmission Corporation (Duke), Interstate Natural Gas Association of America (INGAA), Williston Basin Interstate Pipeline Company (Williston).

[6] The reply comment was filed by KeySpan Delivery Companies.

[7] Pursuant to the regulations regarding incorporation by reference, copies of Version 1.6 and the partial day recall standards are available from NAESB. 5 U.S.C. 552(a)(1); 1 CFR 51 (2001).

[8] In Version 1.6, the WGQ made the following changes to its standards. It revised Standards 1.3.63, 4.3.4, 4.3.6, 4.3.8, 4.3.10, 4.3.15, 4.3.21, 4.3.23, 4.3.61, 4.3.70, and 4.3.83, and Data Sets 1.4.6, 5.4.1 through 5.4.4, 5.4.7, 5.4.8, 5.4.9, 5.4.13, 5.4.14, 5.4.15, 5.4.18, and 5.4.19. It added Principle 4.1.39, Standard 4.3.88, and Data Sets 5.4.20, 5.4.21, and 5.4.22. It deleted Principles 4.1.1 and 4.1.11.

[9] The Commission also is incorporating by reference Standards 2.3.29 and 2.3.30 (dealing with operational balancing agreements and imbalance netting and trading, respectively) which in previous versions, the Commission had not incorporated because the standards conflicted with the Commission's regulations in these areas. 18 CFR 284.12(b)(2)(i)&(ii). The WGQ has amended these standards so they no longer conflict with the Commission regulations.

[10] In the partial day recall standards, the WGQ made the following changes to its standards. It revised Standards 5.3.2, 5.3.7, 5.3.41, and 5.3.42, and Data Sets 1.4.4, 5.4.1, 5.4.3, 5.4.4, 5.4.7, and 5.4.9. It added Principles 5.1.z1, 5.1.z2, and 5.1.z3, Definition 5.2.z1, and Standards 5.3.z1 through 5.3.z15. It deleted Standard 5.3.6.

[11] Elapsed prorata capacity means the portion of the capacity that would have theoretically been available for use prior to the effective time of the intraday recall based on a cumulative uniform hourly use of the capacity. Definition 5.2.z1.

[12] This process first requires a super-majority vote of 17 out of 25 members of the WGQ's Executive Committee with support from at least two members from each of the five industry segments—interstate pipelines, local distribution companies, gas producers, end-users, and services (including marketers and computer service providers). For final approval, 67% of the WGQ's general membership must ratify the standards.

[13] Pub L. 104–113, § 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

service.[14] The standards already adopted by the WGQ constitute an integrated, consistent, and reasonably complete set of standards governing partial day recalls. Like other standards, these standards too may be improved over time, but the potential for such improvement need not delay implementation and deprive shippers of the immediate benefits of using these standards. Waiting to approve these standards until the Commission incorporates Version 1.7 of the standards could result in unnecessarily deferring the benefits of these standards for upwards of a year. Moreover, if the WGQ's membership does approve the examples of elapsed prorated capacity, pipelines can rely on these examples in administering the standards.

15. The Commission also finds no procedural reason to delay adoption of the standards. The set of adopted standards are readily identified by their Recommendation numbers (R02002 and R02002–2), are available from NAESB, and are posted on the Final Actions portion of NAESB's Web site.[15] Each of the new standards is also identified by a discrete number using a ''z'' as a placeholder, such as 3.3.z2. Pipelines can therefore incorporate these standards by reference by identifying the number of the standard and indicating that it was adopted by Recommendation R02002 or R02002–2, as appropriate.

C. Capacity Release Timeline (Standard 5.3.2)

16. Standard 5.3.2 establishes the timeline applicable to capacity release transactions. In Version 1.6 of the standards, Standard 5.3.2 would provide that all capacity release transactions take place on a ''Business Day.'' However, in the partial day recall standards (R02002), the WGQ revised this standard so that pre-arranged capacity release transactions could take place on any day; only biddable transactions would be limited to Business Days.

17. Dominion (supported by KeySpan) contends that, despite this change, Standard 5.3.2 is overly restrictive because biddable releases (those of more than 31 days or at discounts) still cannot be conducted on weekends or holidays. It argues that shippers that need capacity on those days will be forced to buy from the pipeline. It further argues that pipelines have the resources to process capacity release transactions on weekends and holidays.

18. The industry segments have reached consensus agreement on the timeline for conducting capacity release transactions, and the Commission will not modify this agreement based on the comments of two parties. What the Commission said in Order No. 587 regarding the need for unanimity on standards is equally applicable here:

> While these standards represent a broad consensus of the industry, the Commission recognizes that not every standard commands universal support. In a democratic society, unanimity on matters of common concern is neither expected nor necessary. Standardization, by definition, requires accommodation of varying interests and needs, and rarely can there be a perfect standard satisfactory to all.[16]

Moreover, there is a reasonable basis for the industry to conclude that bidding should take place on Business Days, and not on weekends and holidays. This requirement limits the need for additional pipeline personnel to process released transactions on a weekend. But, more importantly, the WGQ could reasonably find that requiring bidding during the business week would better ensure that all members of the industry have a reasonable opportunity to bid on capacity release postings. Posting long-term pre-arranged releases for bidding on a weekend, for instance, could limit the scrutiny of such releases and the ability of other shippers to offer competitive bids.

19. While Dominion recognizes that shippers are able to enter into short-term pre-arranged releases (not subject to bidding) on weekends and holidays, it maintains that shippers seeking longer-term releases subject to bidding (more than 31 days, but less than one year, at less than maximum rates) will not be able to obtain released capacity on weekends and holidays, but will be forced to rely on capacity from the pipeline for those days.

20. The standards do not preclude shippers from acquiring released capacity on weekends or holidays. Under the standards, shippers needing capacity on weekends or holidays can acquire released capacity by entering into pre-arranged, short-term capacity release transactions on a weekend.[17] If the releasing shipper and replacement shipper seek a longer term transaction that is subject to bidding (as Dominion posits), they can enter into a pre-arranged releases to cover the weekend or holiday and then post the longer-term release on the next business day, so other shippers have an opportunity to bid for that capacity. The standards therefore do not make shippers dependent on obtaining pipeline capacity for weekends and holidays, while at the same time they ensure that long-term biddable transactions will be posted on business days when all shippers will have an opportunity to bid for the capacity.

D. Mechanisms for Allocating Partial Day Release Quantities

21. Standard 5.3.z13 (R02002) states:

> In the event of an intra-day capacity recall, the Transportation Service Provider (TSP) should determine the allocation of capacity between the Releasing Shipper and the Replacement Shipper(s) based upon the Elapsed Prorata Capacity (EPC). Variations to the use of EPC may be necessary to reflect the nature of the TSP's tariff, services, and/or operational characteristics.

In the NOPR, the Commission also proposed that the determination of reservation charges and credits and the potential liability for contract overruns should follow the allocation of capacity. The Commission stated that ''it sees no reason in this instance for pipelines to propose individual allocation methodologies.'' [18]

22. Duke seeks clarification that the Commission's statement that it saw is no reason for pipelines to propose individual allocation methodologies will not preclude pipelines from following standard 5.3.z13 and proposing variations to the use of Elapsed Prorata Capacity when necessary to reflect the nature of the pipeline's tariff, services, and/or operational characteristics. Duke claims that the Elapsed Prorata Capacity does not fully address the needs of its pipelines.

23. As permitted by Standard 5.3.z13, pipelines may propose variations to the use of Elapsed Prorata Capacity to allocate capacity among releasing and replacement shippers after a recall if they can provide justification that such deviations are necessary to reflect specific services or operational characteristics on their systems and do not unduly limit the rights of

[14] Order No. 587–N, at P 21.

[15] *http://www.naesb.org/Final.htm.*

[16] Order No. 587, 61 FR, at 39057, FERC Stats. & Regs. Regulations Preambles (July 1996–December 2000) ¶ 31,038, at 30,059.

[17] Data the Commission has downloaded from pipeline Web sites show that 90% of all capacity releases are pre-arranged deals. *See e.g., http://www.ferc.gov/gas/pl02–4/RawDataAboveCaps.xls* (93% of above cap deals March 25, 2000 are pre-arranged); Secondary Market Transactions on Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking, 61 FR 41046 (Aug. 7, 1996), FERC Stats. & Regs. Proposed Regulations (1988–1998) ¶ 32,520, at 33,252–53) (July 31, 1996) (92% of transactions from 5/1/95–5/31/96 are pre-arranged).

[18] NOPR, at P 12.

shippers.[19] However, as the Commission stated in the NOPR, once such an allocation methodology is approved for each pipeline, the determination of reservation charges and credits and the potential liability for contract overruns should follow the allocation of capacity.

E. Provision of Contract Information on Releases

24. Standard 5.3.z1 (R02002) requires a releasing shipper recalling capacity to provide notice of recall to the pipeline and the first replacement shipper.[20] Dominion contends that for biddable transactions,[21] the releasing shipper will not have the information necessary to notify the first replacement shipper, and requests that the pipeline provide such contact information on the pipeline's Internet Web site.

25. While the current standards require pipelines to post the winning bidder's name and company code when they post capacity awards (Standard 5.4.3), it does not require the posting of contact information. The Commission agrees that for biddable deals subject to recall, pipelines need to make available to the releasing shipper information sufficient to enable it to contact the replacement shipper in the event of a capacity recall.

F. Standards Relating to Penalties

26. In comments on the WGQ's October 1, 2002, report on partial day recalls, Process Gas Consumers Group claimed that two standards (not included in this proceeding) on which the WGQ was working involved the allocation of penalties between releasing and replacement shippers as a result of partial day recalls, and requested that the Commission find that all penalty standards are beyond the scope of the WGQ. In the NOPR, the Commission stated that it would not rule the development of penalty standards beyond the scope of the WGQ, although the Commission explained that it ''is not asking the WGQ specifically to develop standards for penalties.'' [22] The Commission stated that the development of standards related to penalties can help reduce barriers to multi-pipeline shipments and improve the overall efficiency of the pipeline grid, and it encouraged the WGQ to examine seriously ''any such proposals that hold out the prospect of improving the efficiency of the pipeline grid.'' [23]

27. A number of comments contend that the WGQ should not standardize penalties. AGA, INGAA, Duke, and Dominion generally assert that penalties are rate matters that should not be standardized, and that penalties and terms relating to penalties may need to vary by pipeline to reflect differences between the pipeline's needs and markets. AGA, however, asserts that some standards relating to penalties are within the scope of the WGQ, such as standards governing the allocation of penalties between releasing and replacement shippers.

28. The Commission reiterates that it is not requesting the WGQ to consider or develop standards relating to penalties. But, the Commission also will not categorically determine that any proposal for a standard that relates to penalties is beyond the scope of the WGQ. In the first place, deciding whether a standard is beyond the WGQ's scope is a decision for the WGQ, not the Commission. As AGA notes, the WGQ is already considering standards that arguably relate to penalties, and the Commission sees no reason for it to interfere with the WGQ's determination of what proposals are within its scope. Moreover, the WGQ passed a series of standards that created a more uniform and systematic method for pipelines to receive reimbursement for fuel use,[24] even though such standards bear on the rates charged for fuel. The Commission finds no reason here to prohibit the WGQ from considering similar standards with respect to penalties that will create a more uniform and efficient system for assessing penalties.

G. Incorporation by Reference

29. Dominion takes issue with the Commission's incorporation by reference of the WGQ standards. Dominion asserts that the standards are not reasonably available as required by the **Federal Register**, because they are only available from NAESB after payment of significant fees. It further argues that neither the Commission nor the WGQ have clearly indicated where changes in standards have been made, so that the incorporation by reference does not make clear the conditions on which an entity will be bound. It requests (along with KeySpan) that the Commission direct NAESB to refile Version 1.6, and any future filings, with a redline comparison showing all changes from previous standards.

30. As the Commission has pointed out on several occasions, incorporation by reference is the appropriate, and indeed the required, method for adopting copyrighted standards material.[25] The Freedom of Information Act, and implementing regulations, establish that the proper method of adopting copyright material is to incorporate such material by reference upon approval by the Director of the Federal Register.[26] In fact, § 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTT&AA) instructs federal agencies to use technical standards developed by voluntary consensus standards organizations, like the WGQ,[27] and such standards are to be incorporated by reference.[28] According to the Federal Register regulations, material is eligible for incorporation by reference if such material ''is * * * standards, specifications, * * * substantially reduces the volume of material published in the **Federal Register,** * * * and is reasonably available to and usable by the class of persons affected by the publication.[29]

31. The WGQ standards comply with these requirements: they are standards and specifications, their incorporation by reference is necessary since the standards cannot be reproduced and such incorporation would substantially limit the volume of material in the **Federal Register**, the standards are reasonably available from NAESB, and the standards can be readily used since the standard versions and all the standards are numbered. The Office of the **Federal Register** approved the

[19] *Cf.* Algonquin Gas Transmission Company, 100 FERC ¶ 61,274 (2002), *reh'g denied,* 102 FERC ¶ 61,149 (2003) (rejecting a proposal deviating from the standards when the proposal would have limited shippers' flexibility and was not necessary to protect the pipeline).

[20] The pipeline is also required to notify all replacement shippers affected by the recall one hour after the notification by the releasing shipper.

[21] Dominion recognizes, in any pre-arranged capacity release transaction, the releasing shipper will know the replacement shippers and will be aware of the necessary contact information.

[22] NOPR at P 13.

[23] NOPR at P 13.

[24] Standards 1.3.15–1.3.16 and 1.3.28–1.3.31.

[25] Order No. 587–A, 61 FR 55208, 77 FERC ¶ 61,061, at 61,232 (1996); Order No. 587–K, 64 FR 17277, FERC Stats. & Regs. Regulations Preambles (July 1996–December 2000) ¶ 31,072, at 30,775 (1999).

[26] 5 U.S.C. 552(a)(1) (for the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the **Federal Register** when incorporated by reference therein with the approval of the Director of the Federal Register); 1 CFR 51,7(4). Indeed, the Commission could not reproduce the WGQ standards in violation of the NAESB copyright. *See* 28 U.S.C. 1498 (government not exempt from patent and copyright infringement).

[27] Pub. L. 104–113, § 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

[28] *See* Federal Participation in the Development and Use of Voluntary Standards, OMB Circular A–119, at 6 (a)(1) (Feb. 10, 1998), *http://www.whitehouse.gov/omb/circulars/a119/a119.html* (''Use'' means incorporation of a standard in whole, in part, or by reference for procurement purposes, and the inclusion of a standard in whole, in part, or by reference in regulation(s)).

[29] 1 CFR 51.7 (a)(2)–(4).

incorporation by reference pursuant to these guidelines.

32. Dominion argues that the WGQ standards should not be found reasonably available, because they are available only to non-members paying ''required, *significant* fees'' (emphasis added). Neither the Freedom of Information Act, nor the regulations, require that standards be available at no charge. In fact, standards incorporated by reference are exempt from the requirement that any agency provide copies of documents according to its fee schedule.[30] Moreover, Dominion's use of the adjective ''significant'' is inappropriate hyperbole. NAESB charges non-members an everyday low price of only $25 to obtain the booklet including all the business practice standards.[31] Computer afficionados can obtain the booklet containing the datasets for an additional $25, and true computerphiles can obtain the SINGLE–CD ROM collection of the entire set of standards, including the Electronic Data Interchange requirements, at the new substantially reduced price of $100.[32] If Dominion truly considers these prices ''significant,'' [33] it can view copies of the standards at the Commission at no charge. Thus, by any stretch of language, the WGQ standards are ''reasonably available to the class of persons affected by the publication.'' [34]

33. Dominion further contends that the WGQ standards do not meet the requirement that the language incorporating the standards be as precise and complete as possible and that each incorporation by reference shall include an identification and subject description of the matter incorporated, in terms as precise and useful as practicable within the limits of reasonable brevity.[35] Dominion maintains that the incorporation by reference does not meet these criteria because the Commission has not sufficiently identified which standards have changed when the WGQ publishes a new edition of the standards. Dominion asserts, for example, that in Version 1.5 of the standards, the WGQ added the term ''Business Day'' to the capacity release standards, but that this significant change was not highlighted by the Commission. Dominion further asserts that the Natural Gas Act requirements go beyond those of the Federal Register because they require the Commission to provide notice of the filing of new rate schedules. Dominion contends that the Commission should not adopt Version 1.6 of the standards until NAESB refiles the standards with ''redlined'' sheets showing all changes from the previous version.

34. The Federal Register regulations do not require the provision of notice of revised or modified standards, only that the incorporation by reference indicate the material to be incorporated with specificity. The regulations provide only that ''the language incorporating a publication by reference shall be as precise and complete as possible;'' and states ''language incorporating a publication by reference is precise and complete if it * * * uses the words ''incorporated by reference;'' * * * states the title, date, edition, author, publisher, and identification number of the publication; * * * informs the user that the incorporated publication is a requirement; * * * makes an official showing that the publication is in fact available by stating where and how copies may be examined and readily obtained with maximum convenience to the user; and * * * refers to 5 U.S.C. 552(a).[36] The Commission regulations comply with these requirements.

35. Further, although not required by the regulations, the Commission endeavors in each NOPR to provide a listing of all the standards that have been revised, added, and deleted.[37] The WGQ too includes in each Standards publication a Version Cross-Reference listing for each standard, the Version in which it was adopted, revised, and interpreted. In the WGQ's filings with the Commission, the WGQ also includes a List of New Standards, Standards Modifications, and Interpretations for the new Version.[38] In fact, with respect to the change to Business Day in Standard 5.3.2 of Version 1.5 about which Dominion complains, the Commission not only included Standard 5.3.2 among the list of standards revised,[39] but specifically referenced the change to ''Business Day'' twice in the text of the Preamble.[40] Thus, Dominion and all other users of the standards have sufficient notice of revisions of changes to the standards.

36. Dominion further argues the Commission's incorporation by reference is at odds with the requirement of the Natural Gas Act to provide notice of filings by natural gas companies. The Commission has the ability to act through notice and comment rulemaking proceedings that comply with the Administrative Procedure Act.[41] Here, the Commission complied with the requirements of the Administrative Procedure Act, the Freedom of Information Act, and the National Technology Transfer and Advancement Act in incorporating the WGQ standards by reference. The listing of added, revised, and deleted standards in the Preamble to the NOPR was sufficient to alert parties to substance of the proposed rule and the subjects and issues involved.[42]

37. The requirement for providing notice of a filing in section 4 of the NGA applies only to filings by natural gas companies, and since NAESB is not a natural gas company, the Commission cannot compel it to file its standards with the Commission or provide a specific form of public notice. However, even if the notice requirement did apply, the statute requires only notice of the filing of new rate schedules, not detailed descriptions of all changes to prior rate schedules or the redlined comparisons requested by Dominion.[43] The Commission's disclosure of the added, modified, or deleted standards is sufficient notice for parties to review the standards. Although the Commission, in addition, often tries to highlight what it thinks are important changes to the

[30] 5 U.S.C. 553(a)(3).

[31] NAESB Order Form, *http://www.naesb.org/pdf/ordrform.pdf.* (Feb. 13, 2003). If the Commission were to charge its standard rate for copying of $.20/page, the cost for Version 1.6 would be virtually identical to NAESB's charge, $24 for the booklet (120 pages times $.20). 18 CFR 388.109.

[32] The paper-only version of the standards, including the EDI requirements, used to cost $2000. *See* Order No. 587–A, 61 FR, at 55213, 77 FERC, at 61,232.

[33] Although $25 would appear eminently affordable for a company that reported operating revenue of $2.545 billion for the three month period ending September 30, 2002. Dominion Resources, Inc. Form 10–Q (for the quarterly period ended September 30, 2002). *http://www.sec.gov/Archives/edgar/data/715957/000071595702000143/0000715957–02–000143-index.htm.*

[34] Given the class of persons affected by these standards, Dominion's complaint could probably be dismissed under the doctrine of *de minimis* non curat lex.

[35] Dominion cites to 1 CFR 51.6. But this section does not appear in the 2002 edition of the CFR.

[36] 1 CFR 51.9(a)(b).

[37] *See* Notice of Proposed Rulemaking, 67 FR 72870, IV FERC Stats. & Regs. Proposed Regulations ¶ 32.566, at P 8 n.5 (Proposed adoption of Version 1.6).

[38] *See* Report of the North American Energy Standards Board, Docket No. RM96–1 (filed 10/7/2002).

[39] *See* Notice of Proposed Rulemaking, 67 FR 44 (Jan. 2, 2002), IV FERC Stats. & Regs. Proposed Regulations ¶32,557 (Dec. 20, 2001), at P 8 n.7 (Proposed adotion of Version 1.5).

[40] Notice of Proposed Rulemaking, 67 FR 44, IV FERC Stats. & Regs. Proposed Regulations ¶ 32,557, at P 15, 16.

[41] *Wisconsin Gas Co.* v. *FERC,* 770 F.2d 1144, 1167 (DC Cir. 1985).

[42] 5 U.S.C. 553(b)(3).

[43] The requirement to file redlined comparisons, cited by Dominion, is not a statutory requirement under the NGA, but is a Commission regulatory requirement applying only to tariff filings by natural gas companies. 18 CFR 154.201(a). Since NAESB is not a natural gas company and is not making a tariff filing, this regulation would not apply to it, even if the notice requirements of section 4 of the NGA were deemed to apply in this situation.

standards, the Commission cannot, and is not responsible for trying to, anticipate the changes Dominion or other parties may find of particular interest. As the Commission has stated, ''the purpose of the Notice of Filing is to apprise the public of the fact that a filing has been made * * * after that, the burden is upon interested parties to inform themselves of the filing's precise contents.'' [44]

Notice of Use of Voluntary Consensus Standards

38. Office of Management and Budget Circular A–119 (§ 11) (February 10, 1998) provides that when a federal agency issues or revises a regulation containing a standard, the agency should publish a statement in the final rule stating whether the adopted standard is a voluntary consensus standard or a government-unique standard. In this rulemaking, the Commission is incorporating by reference voluntary consensus standards developed by the WGQ.

Information Collection Statement

39. The Office of Management and Budget's (OMB) regulations in 5 CFR 1320.11 require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this 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.

40. The final rule will affect the following existing data collection: FERC–549C ''Standards for Business Practices of Interstate Natural Gas Pipelines'' (OMB Control No. 1902–174). The following burden estimates are related only to this rule and include the costs of complying with Version 1.6 of the WGQ's consensus standards and the standards adopted by the WGQ for partial day recalls. The burden estimates for the FERC–549C data collection are related to implementing the latest version of the business practice standards and related data sets. The costs for this data collection are primarily related to start-up and will not be on-going costs.

Data collection	Number of respondents	Number of respondent per respondent	Hours per response	Total annual hours
FERC–549C	93	1	2,248	209,064

The total annual hours for collection is 209.064 hours.

	FERC–549C
Annualized Capital/Start-up Costs	$11,763,971
Annualized Costs (Operations & Maintenance)	0
Total Annualized Costs	11,763,971

The cost per respondent is $126,494 (rounded off).

41. The Commission sought comments to comply with these requirements. Comments were received from six entities. No comments addressed the reporting burden imposed by these requirements. The substantive issues raised by the commenters are addressed in this preamble.

42. The Commission's regulations adopted in this rule are necessary to further the process begun in Order No. 587 of creating a more efficient and integrated pipeline grid by standardizing the business practices and electronic communication of interstate pipelines. Adoption of these regulations will update the Commission's regulations relating to business practices and communication protocols to conform to the latest version, Version 1.6, of the WGQ's consensus standards and to include the standards adopted by the WGQ for partial day recalls.

43. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The information required in this final rule will help the Commission carry out its responsibilities under the Natural Gas Act and conforms to the Commission's plan for efficient information collection, communication, and management within the natural gas industry.

44. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Chief Information Officer, CI–1, (202) 502–8415, or *michael.miller@ferc.gov*) or the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Energy Regulatory Commission, 725 17th Street, NW., Washington, DC 20503. The Desk Officer can also be reached at (202) 395–7856, or fax: (202) 395–7285.

Environmental Analysis

45. 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.[45] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[46] The actions adopted here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[47] Therefore, an environmental assessment is unnecessary and has not been prepared.

Regulatory Flexibility Act Certification

46. The Regulatory Flexibility Act of 1980 (RFA) [48] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations adopted here impose requirements only on interstate pipelines, which are not small businesses, and, these requirements are, in fact, designed to benefit all customers, including small businesses.

[44] PJM Interconnection L.L.C, 101 FERC ¶ 61,135, P 17 (2002). *See* Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs, FERC Stats. & Regs., Regulations Preambles (Jan. 1991-June 1996) ¶ 31,025, at 31,403 (The purpose of the notice is merely to get the attention of interested parties who may then review the full filing.)

[45] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶30.783 (1987).

[46] 18 CFR 380.4.

[47] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[48] 5 U.S.C. 601–612.

Accordingly, pursuant to 605(b) of the RFA, the Commission hereby certifies that the regulations adopted herein will not have a significant adverse impact on a substantial number of small entities.

Document Availability

47. 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 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

48. From FERC's home page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

49. User assistance is available for FERRIS and the FERC's Web site during normal business hours from FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Implementation Dates and Procedures

50. Pipelines are required to file tariff sheets to reflect the changed standards by May 1, 2003, with an effective date of July 1, 2003. Pipelines incorporating the Version 1.6 standards into their tariffs must include the standard number and Version 1.6. Pipelines incorporating by reference the partial day recall standards must refer to the standard number (*e.g.,* 3.3.z2) and the Recommendation number (R02002 and R02002–2) in which the standard is adopted.

Effective Date

51. These regulations are effective April 21, 2003. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission amends 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. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

2. Section 284.12 is amended by revising paragraphs (a)(1)(i), (ii), (iii), (iv) and (v), to read as follows:

§ 284.12 Standards for pipeline business operations and communications.

(a) * * *

(1) * * *

(i) Nominations Related Standards (Version 1.6, July 31, 2002) and the standards contained in Recommendation R02002 (October 31, 2002);

(ii) Flowing Gas Related Standards (Version 1.6, July 31, 2002);

(iii) Invoicing Related Standards (Version 1.6, July 31, 2002);

(iv) Electronic Delivery Mechanism Related Standards (Version 1.6, July 31, 2002) with the exception of Standard 4.3.4; and

(v) Capacity Release Related Standards (Version 1.6, July 31, 2002), with the exception of Standards 5.3.6 and 5.3.7, and including the standards contained in Recommendations R02002 and R02002–2 (October 31, 2002).

* * * * *

[FR Doc. 03–6702 Filed 3–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 03—11]

RIN 1515–AD25

Compliance With Inflation Adjustment Act

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, (the Act), each Federal agency is required to adjust for inflation any civil monetary penalty covered by the Act that may be assessed in connection with violations of those statutes that the agency administers. While civil monetary penalties assessed by Customs under any provisions of the Tariff Act of 1930 are specifically exempted from the Act, Customs does administer two statutory provisions which provide for the assessment of civil monetary penalties that are covered by the Act. One statute concerns the transportation of passengers between ports or places in the United States; the other concerns the coastwise towing of vessels. The amount of the penalty that may be assessed for violations incurred under those statutes needs to be adjusted for inflation. Accordingly, Customs is amending its regulations in order to adjust the covered penalty amounts for inflation in compliance with the provisions of the Act.

EFFECTIVE DATE: March 21, 2003.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings, (202–572–8750).

SUPPLEMENTARY INFORMATION:

Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (hereinafter, the Act), which is codified at 28 U.S.C. 2461 note, and which was amended in 1996 by the Debt Collection Improvement Act (Pub. L. 104–134, section 31001(s); 110 Stat. 1321–373), provides that each Federal agency must adjust for inflation any civil monetary penalties covered by the Act that are assessed in connection with violations that are incurred under those statutes that the agency administers. To this end, pursuant to the Act, as amended by the Debt Collection Improvement Act, the responsible Federal agency was required, by October 23, 1996, to make an initial inflationary adjustment to any civil monetary penalty covered by the Act; and each agency was then required to make these necessary inflationary adjustments at least once every 4 years thereafter.

The Act expressly exempts from its coverage any penalties that Customs may assess for violations that are incurred under any provision of the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*). However, Customs does administer two statutes that are subject to the Act; and the penalties that Customs may assess for violations of these statutes have not previously been adjusted for inflation as required by the Act.