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Federal Energy Regulatory Commission

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FERC's Continued Focus on Transparency in Natural Gas Transportation Services

Continuing with its focus on increasing transparency in natural gas transportation activities, on July 16, 2009, as supplemented on August 26, 2009, the Federal Energy Regulatory Commission (“FERC”) issued a Notice of Proposed Rulemaking (“NOPR”) seeking comments on proposed contract reporting requirements that would apply to intrastate pipelines providing interstate services pursuant to section 311 of the Natural Gas Policy Act (“NGPA”) and Hinshaw pipelines providing interstate services subject to FERC’s jurisdiction. In the NOPR, FERC proposed to require intrastate and Hinshaw pipelines, defined below, to file quarterly reports of all transportation and storage transactions. The reports would be submitted electronically and would be publicly available on the FERC Web site.

The proposed requirements are another step in FERC’s push to promote greater transparency and improved competition in the wholesale natural gas and natural gas transportation markets. This push has been characterized by an expansion of the requirements applicable to non-interstate pipelines (*i.e.*, traditionally non-jurisdictional pipelines and transportation and storage service providers), which stems from FERC’s recognition that interstate and intrastate pipelines operate seamlessly and that information regarding intrastate activities may be required to provide FERC with the broad view of the markets it needs. Prior FERC actions in this direction include Order Nos. 704 and 720, discussed in prior issues of *Association Highlights*.

Transportation Services under Section 311 of the NGPA and Transportation by Hinshaw Pipelines

Intrastate pipelines are generally exempt from FERC’s traditional jurisdiction under the Natural Gas Act (“NGA”), but they cannot provide interstate transportation service or transport natural gas that was in interstate commerce. Under section 311 of the NGPA, however, FERC may authorize intrastate pipelines to transport

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natural gas “on behalf of” interstate pipelines or local distribution companies (natural gas utilities) served by interstate pipelines. The statute also exempts transportation services authorized under NGPA section 311 from the full jurisdiction of FERC under the NGA.

Also generally exempt from FERC’s jurisdiction under the NGA are those pipelines which transport gas in interstate commerce if they receive natural gas at or within the boundary of a state, all the gas is consumed within that state, and 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 section 1(c). Hinshaw pipelines, which are not intrastate pipelines, may nonetheless apply to FERC for certificates authorizing them to transport natural gas in interstate commerce in the same manner as intrastate pipelines may do under NGPA section 311.

The Proposed Reporting Requirements

The reporting requirements applicable to NGPA section 311 intrastate pipelines and Hinshaw pipelines are less stringent than those applicable to interstate pipelines. In September 2008, an interstate storage provider, SG Resources Mississippi, LLC (“SGRM”), filed a request for waiver of certain FERC requirements regarding the posting of rates and charges for firm and interruptible transactions. SGRM claimed that the disclosure of this information provided customers and competitors, including intrastate storage providers operating under NGPA section 311, an unfair competitive advantage. Intrastate storage providers and Hinshaw pipelines providing storage service are only subject to semi-annual reporting requirements, and often such reports are filed with a request for confidential treatment. FERC denied the request for waiver, but issued a Notice of Inquiry (“NOI”) in November 2008, requesting comments from the industry on whether it should impose additional reporting requirements on NGPA section 311 intrastate pipelines and on Hinshaw pipelines. In the NOI, FERC sought to explore (1) whether the disparate reporting requirements for interstate and NGPA section 311 and Hinshaw pipelines have an adverse competitive effect on the interstate pipelines, and (2) if so, whether the Commission should modify the posting requirements for section 311 intrastate pipelines and Hinshaw pipelines to make them more comparable to the posting requirements for interstate pipelines.

Based on the comments received in response to the NOI, FERC is now proposing to revise such requirements to increase market transparency. According to FERC, the proposed revisions do not impose unduly burdensome requirements. FERC stated that the transactional information it would require provides price transparency so customers of the pipeline can make informed purchasing decisions. In addition, it would allow FERC and customers to monitor actual transactions for evidence of possible abuse of market power or undue discrimination.

Specifically, FERC has proposed that reports be filed on a quarterly basis and cover both storage and transportation transactions. The quarterly reports would include information not currently supplied by Hinshaw pipelines or intrastate section 311 pipelines such as rates and the duration for each contract, primary receipt and delivery points, the quantity of natural gas the shipper is entitled to store or deliver, and whether there is an affiliate relationship between the service provider and the customer. In addition, to increase the usefulness of the data, the reports would be filed in a uniform electronic format and posted on the FERC Web site. Finally, the reports would be public.

This article is intended only as a general discussion of these issues. It is not considered to be legal advice. We would be pleased to provide additional details or advice about specific situations. For additional information on this important topic, please feel free to call upon your Dewey & LeBoeuf relationship partner.

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The proposed requirements continue to differ from those imposed on interstate pipelines, which must make daily postings of transactional information on their own Web sites. FERC intends the proposed requirements to balance the need for increased transparency of intrastate and Hinshaw pipeline transactions, while avoiding unduly burdensome requirements that might discourage these pipelines from participating in the interstate market.