

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Revisions to Forms, Statements, and)	
Reporting Requirements for Natural)	Docket No. RM07-9-000
Gas Pipelines)	

**NOTICE OF INTERVENTION AND COMMENTS OF
THE MICHIGAN PUBLIC SERVICE COMMISSION**

In accordance with the September 20, 2007 Notice of Proposed Rulemaking (“NOPR”) issued by the Federal Energy Regulatory Commission (“Commission” or “FERC”), as published in the Federal Register on September 27, 2007,¹ the Michigan Public Service Commission (“Michigan PSC”) hereby provides its notice of intervention and comments on the NOPR.

I. INTRODUCTION AND EXECUTIVE SUMMARY

The Michigan PSC applauds the Commission for undertaking to improve the financial forms filed by natural gas pipelines, and, in general, the Michigan PSC strongly supports the additions to the forms proposed in the NOPR. The proposals contained in the NOPR, if implemented, would meaningfully enhance the ability of the Commission, state commissions and customers to assess the reasonableness of pipelines’ existing rates outside the context of general rate proceedings under section 4 of the Natural Gas Act (“NGA”).² The increased amount of information² could also provide a more complete basis for a complaint under section 5 of the NGA,³ if such a complaint were warranted. From the perspective of a state commission with an obligation to protect the interests of retail natural gas consumers, these are significant improvements. Moreover, the NOPR

¹ 72 Fed. Reg. 54,860 (September 27, 2007).

² 15 U.S.C. § 717c.

³ 15 U.S.C. § 717d.

generally strikes an appropriate balance by providing the public with information necessary to evaluate the reasonableness of jurisdictional rates while avoiding undue burdens on natural gas companies.

Against this backdrop of general support for the NOPR, the Michigan PSC submits these comments to: (1) address two issues (alleged shifting of the burden of proof under section 5 and good cause requirement for untimely submission of financial forms) that the Michigan PSC views as important to the overall success of the enhancements proposed in the NOPR; and (2) propose the inclusion of certain additional information in the financial forms beyond that identified in the NOPR. Specifically, the Michigan PSC proposes the following:

- The Commission should reject any argument that requiring additional detailed financial and operational data in the financial forms as proposed in the NOPR would improperly shift the burden of proof established under section 5 of the NGA.
- The Commission should implement its proposal to adopt a “good cause” requirement for requested waivers of the filing deadlines for required reports.
- The Commission should require pipelines to provide contract demand information in the Forms 2 and 2-A.
- The Commission should revise the proposed reporting requirements for regulatory assets and liabilities such that filers would be required to report the asserted basis for recording a regulatory asset or liability, including, but not limited to, any regulatory approval to record the item.
- The Commission should require additional information with respect to contributions for pensions and post-retirement benefits other than pensions (“PBOP”).
- The Commission should require pipelines to identify costs and revenues associated with trackers.

II. NOTICE OF INTERVENTION

The Michigan PSC is an agency of the State of Michigan, created by 1939 Pub. Acts 3, Mich. Comp. Laws Ann. § 460.1 *et seq.* As the Michigan regulatory agency having jurisdiction and authority to control and regulate rates, charges, and conditions of service for the retail sale of natural gas in the State, the Michigan PSC is a “state commission” as defined in 15 U.S.C. § 717a(8) and 18 C.F.R. § 1.101(k) (2007). Accordingly, the Michigan PSC hereby provides its notice of intervention pursuant to 18 C.F.R. § 385.214(a)(2) (2007).

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III. COMMENTS

A. The Commission Should Reject Any Argument That Requiring More Information In The Gas Pipeline Financial Forms Improperly Shifts The Burden Of Proof Under Section 5 Of The NGA

In the NOPR, the Commission “acknowledge[s]” the concerns expressed by the Interstate Natural Gas Association of America (“INGAA”) “that an expanded Form 2 could blur the distinction between sections 4 and 5 [of the NGA], and shift the burden of proof established under section 5.”⁴ Although the Commission expresses skepticism regarding this argument, it nonetheless specifically invites commenters to address the issue further.⁵

The Commission should reject any argument that the level of reporting detail proposed in the NOPR (or expanded as the Michigan PSC proposes herein) would improperly shift the burden of proof under section 5 of the NGA by requiring pipelines to justify their existing rates outside the context of a section 4 rate case. The NGA specifically gives the Commission the authority to require periodic reporting as necessary or appropriate for purposes of administering the NGA.⁶ The Commission’s financial forms provide objective historical information regarding pipeline operations; such data cannot, in and of itself, affect the allocation of evidentiary burdens under the NGA. As the Commission observes, the information provided in the forms will not affect existing rates or change any rates on file.⁷ A party filing a complaint would still have the burden to show why the information in the FERC financial forms supported a conclusion that a

⁴ NOPR at P 28.

⁵ NOPR at P 28.

⁶ 15 U.S.C. § 717g.

⁷ NOPR at P 28.

pipeline's existing rates are unjust and unreasonable. Accordingly, the Commission should not retreat from any of the proposals in the NOPR based on the meritless contention that additional reporting obligations proposed in the NOPR would contravene the allocation of evidentiary burdens under the NGA.⁸

B. The Commission Should Adopt Its Proposal To Apply A “Good Cause” Requirement To Requests For Waivers Of Deadlines To File The Financial Forms

Historically, the Commission has routinely granted pipelines extensions of time to file their required financial reports. In the NOPR, the Commission indicates that it will implement a stricter regime under which a pipeline seeking an extension of time in which to file a required report will have to demonstrate “good cause.”⁹ The Michigan PSC endorses this proposal. As the Commission explains in the NOPR, its financial forms provide information that “the Commission needs to carry out its responsibilities under the [NGA] to ensure that rates are just and reasonable, and to provide pipeline customers, state commissions, and the public the information they need to assess the justness and reasonableness of pipeline rates.”¹⁰ Since relief is only available prospectively under a section 5 complaint, any delay in the filing of the financial forms could directly delay relief to customers being charged unjust and unreasonable rates should it be determined that information in a pipeline's financial forms shows a complaint is justified. Given the importance of the information in the financial forms, it is inappropriate and prejudicial to

⁸ The Michigan PSC does not think that there is *any* point at which requiring the submission of objective financial and operational data would effectively shift the burden of proof under the NGA. The Commission has made clear that, even when a pipeline is required to file a full cost and revenue study that includes the information required for a rate change filing, the burden of proof remains on the Commission or other parties challenging existing rates under section 5 of the NGA. *See, e.g., Maritimes and Northeast Pipeline, L.L.C.*, 100 FERC ¶ 61,066 (2002). In any event, the expanded informational reporting requirements proposed in the NOPR certainly do not cross any such line.

⁹ NOPR at P 66.

¹⁰ NOPR at P 1.

the public interest to deprive the Commission and consumers of this information through unwarranted filing extensions.

Although the issue of whether “good cause” for an extension exists in a given case will depend on the specific facts and circumstances, general assertions regarding the press of other business or inability to complete the forms by the deadline should not be deemed “good cause” for an extension. In this regard, the Commission’s current regulations already give pipelines until April 18th to file their Forms 2 and 2-A for the previous year.¹¹ As the Commission has observed, pipelines should institute policies and procedures to ensure that the Commission’s annual and quarterly financial report forms are filed by the dates prescribed in the regulations.¹²

C. The Commission Should Require Pipelines To Report Contract Demand Information In Forms 2 And 2-A

Currently, the Form 2 gas operating revenue (Account 489) reporting requirements obligate pipelines to report revenues and volumes transported by rate schedule. In developing an analysis of whether a pipeline’s existing rates are providing an excessive return, however, it would be extremely valuable to know a pipeline’s actual *contract demand* – particularly under the Commission’s straight fixed variable rate design which recovers all fixed costs through reservation charges. In its comments on the Notice of Inquiry (“NOI”),¹³ the Public Service Commission of New York (“PSCNY”) urged the Commission to require pipelines to report contract demand at the beginning and

¹¹ See 18 C.F.R. §§ 260.1(b)(2) and 260.2(b)(2) (2007).

¹² See *Transwestern Pipeline Co., LLC*, Docket No. AC07-179-000 (June 27, 2007) (unpublished letter order).

¹³ *Assessment of Information Requirements for FERC Financial Forms*, FERC Stats. & Regs. ¶ 35,554 (2007), 72 Fed. Reg. 8,316 (February 26, 2007).

the end of the report year in the Form 2.¹⁴ Although the Commission acknowledges the PSCNY's proposal,¹⁵ the Commission neither adopts the proposal nor provides a reason for not requiring pipelines to provide this information. The Michigan PSC urges the Commission to revisit this issue and require contract demand data to be reported in the Forms 2 and 2-A.

D. The Commission Should Require Pipelines To Report The Asserted Basis For Recording A Regulatory Asset Or Liability

The Commission proposes to add a footnote to Forms 2 and 2-A that would “identify the regulatory approval” to record/refund a regulatory asset/liability.¹⁶ However, pipelines may not obtain “regulatory approval” to record a regulatory asset/liability, since the relevant regulations merely require that the deferred amounts are probable to be recovered/refunded in the future.¹⁷ Accordingly, the Michigan PSC suggests that the Commission modify its proposal to require pipelines to report the asserted basis for recording a regulatory asset or liability, including, but not limited to, any regulatory approval to record the item. This minor change to the NOPR would provide greater transparency regarding the basis for regulatory assets and liabilities on the books of natural gas companies.

E. The Commission Should Require More Detailed Information On Pension And PBOP Contributions

With respect to pension and PBOP costs, the Commission is proposing to require filers “to disclose the amount of cost recognized in the filer’s financial statements for

¹⁴ See PSCNY NOI Comments at 9-10.

¹⁵ NOPR at P 16.

¹⁶ NOPR at P 54.

¹⁷ See 18 C.F.R. Part 201, Acct. 182.3 (2007).

each plan for the period presented and the basis for determining the filer's share of the total plan costs."¹⁸ The Commission also proposes to add a schedule that would require the pipeline to break out pension, PBOP and other post-retirement benefit costs separately within Account 926 (Employee Pensions and Benefits). These additional reporting requirements would provide improved transparency regarding pension and PBOP costs. Although this information will be useful, the public would benefit from additional reporting on these costs.

Generally, the levels of a pipeline's pension and PBOP contributions are determined by independent actuaries on an annual basis. While the recommended contribution calculated by the actuaries may be the "cost recognized in the filer's financial statements,"¹⁹ this is not always the case. Accordingly, the Michigan PSC proposes that the Commission require pipelines to specifically report the recommended/required contributions to pension and PBOP funds identified by the pipelines' actuaries and reconcile any differences between these recommended contribution amounts and the cost recognized on the pipelines' financial statements. Pipelines should also be required to reconcile any difference between the actuary's recommended contribution and the amounts reported in Account 926.

F. The Commission Should Require Pipelines To Include Details On Tracker Costs And Revenues In The Financial Forms

In analyzing whether a pipeline's existing rates remain just and reasonable, it is useful to have a clear understanding of which revenues are derived through tracker mechanisms (*e.g.*, fuel and loss recovery), and the costs that are recovered through such

¹⁸ NOPR at P 58.

¹⁹ NOPR at P 58.

mechanisms. The information in the Form 2, however, does not make it easy to line up tracked costs with tracker revenues. In its comments on the NOI, the PSCNY recommended that the Form 2 separately identify costs and revenues associated with trackers to facilitate a cost-of-service analysis.²⁰ Again, the Commission acknowledged the PSCNY's proposal, but offered no reason for declining to adopt it.²¹ The Michigan PSC agrees that details on tracker costs and revenues would be useful for performing cost-of-service analyses of pipelines, and recommends that, in any final rule in this proceeding, the Commission require such information to be clearly and separately stated.

IV. CONCLUSION

The Michigan PSC hereby provides its notice of intervention and asks that the Commission consider the instant comments in acting on the NOPR.

Respectfully submitted,

**THE MICHIGAN PUBLIC SERVICE
COMMISSION**

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and

²⁰ PSCNY NOI Comments at 10-11.

²¹ NOPR at P 16.

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