

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Revision of Regulations to Require Reporting of
Damage to Natural Gas Pipeline Facilities

Docket No. RM06-18-001

ORDER NO. 682-A

ORDER DENYING REHEARING

(Issued March 8, 2007)

1. On August 23, 2006, the Commission issued Order No. 682,¹ amending section 260.9 of its regulations² to require jurisdictional natural gas companies to report damage to natural gas facilities resulting from a natural disaster or terrorist activity when the damage results in a reduction of pipeline throughput or deliverability through the damaged facilities. The American Gas Association (AGA)³ filed a timely request for rehearing of the order. For the reasons explained herein, the Commission is denying AGA's rehearing request.

Background

2. Following the severe and widespread damage to natural gas production and transportation facilities from Hurricanes Katrina and Rita in the summer of 2005, the

¹ *Revision of Regulations to Require Reporting of Damage to Natural Gas Pipeline Facilities*, Order No. 682, FERC Stats. & Regs. ¶ 31,227 (2006).

² 18 CFR § 260.9 (2006).

³ AGA represents 197 utility companies engaged in local distribution of natural gas.

Commission found it necessary to reevaluate its regulations concerning reporting of damages to jurisdictional natural gas pipeline and storage facilities. At that time, the Commission's regulations required natural gas companies to report any serious interruptions of service to customers involving facilities operated under certificate authority granted by the Commission under the Natural Gas Act.⁴ However, companies were not required to report damage to natural gas pipeline facilities if service interruptions were avoided by rerouting gas through other facilities or by means of other delivery arrangements. Therefore, the Commission's existing reporting requirements were not adequate to ensure timely receipt of information regarding damage to specific pipeline facilities that could threaten the integrity and stability of the nation's natural gas delivery infrastructure.

3. The Commission issued its June 9, 2006 Notice of Proposed Rulemaking (NOPR) in this proceeding⁵ to expand the reporting requirements in section 260.9 of the regulations to ensure the Commission's receipt of vital information concerning the physical condition of natural gas facilities affecting the operation of the pipeline grid.⁶ After reviewing the comments on the NOPR,⁷ the Commission issued its August 23,

⁴ 15 U.S.C. § 717-717z (2006).

⁵ 71 FR 35226 (June 19, 2006); FERC Stats. & Regs. ¶ 32,604, 115 FERC ¶ 61,305 (2006).

⁶ Comments in response to the NOPR were filed by AGA, American Public Gas Association, Boardwalk Pipeline Partners, LP, Duke Energy Gas Transmission, LLC, Interstate Natural Gas Association of America, National Fuel Gas Distribution Corporation, NiSource Inc., Paiute Pipeline Company, and Williston Basin Interstate Pipeline Company.

⁷ Most commenters supported the proposed rule. However several commenters, primarily those representing the interstate pipeline industry, were concerned about potential reporting burden. They pointed out that whereas the discussion in the body of the NOPR focused on serious damage to gas facilities as the result of natural disasters and terrorist activity, the overly broad language in the proposed regulatory text would require companies also to report minor damage from any cause. In response to these comments, the Commission narrowed the definition of "damage" in the final regulations to clarify that companies are not required to report trivial damage from routine or unimportant occurrences, and minor damage from occasional third-party activity or routine maintenance.

2006 Final Rule amending section 260.9(a) to require that natural gas companies report at the earliest feasible time (i) damage to natural gas facilities from a hurricane or other natural disaster or terrorist activity that results in loss of or reduction in pipeline throughput or storage deliverability, and (ii) when the damaged facilities' pipeline throughput or storage deliverability has been fully restored. Such reports must be made, regardless of whether service interruptions were avoided by rerouting gas supplies or other means.

4. As revised, section 260.9(b) requires that a report of service interruption or damage to natural gas facilities state:

- (1) The location of the service interruption or damage to natural gas pipeline or storage facilities;
- (2) The nature of any damage to pipeline or storage facilities;
- (3) Specific identification of the facilities damaged;
- (4) The time the service interruption or damage to the facilities occurred;
- (5) The customers affected by the service interruption or damage to the facilities;
- (6) Emergency actions taken to maintain service; and
- (7) Company contact and telephone number.

5. Amended section 260.9 also states that companies should report damage to a company's jurisdictional natural gas facilities by reason other than a natural disaster or terrorist activity when, in the company's judgment, such damage creates the potential for serious delivery problems on its own system or the pipeline grid.

6. Revised section 260.9(b) establishes an e-mail address (pipelineoutage@ferc.gov) for companies to report damage to facilities and/or service interruptions as required by section 260.9. Alternatively, section 260.9 provides that companies may submit reports by facsimile transmission to the Director of the Division of Pipeline Certificates within the Commission's Office of Energy Projects (FAX number (202) 208-2853).

7. Since reports submitted pursuant to section 260.9 are not required with respect to particular Commission proceedings, section 260.9 does not require or provide for such reports to be made in accordance with the formal filing procedures in Part 385, subpart T of the Commission's Rules of Practice and Procedures.⁸ Thus, a company's submission of

⁸ 18 CFR § 385.2001 *et seq.* (2006).

a report pursuant to section 260.9 does not generate a docket number, and a section 260.9 report is not entered into the record of any Commission proceeding.

Request for Rehearing

8. On rehearing, AGA reiterates its request in its comments on the NOPR that the Commission require companies to post their reports pursuant to section 260.9 on their internet websites. AGA states that members of the natural gas industry have a need for timely access to the information in these reports, particularly information regarding damage to facilities that affect throughput capability, because problems with the pipeline grid can influence prices of natural gas commodity sales and transportation transactions. Since companies do not file their section 260.9 reports in specific dockets, AGA points out that there is currently no mechanism by which members of the public can “eSubscribe” to these reports.

9. AGA emphasizes that the Commission has taken steps in the past decade to increase transparency in natural gas markets in order to ensure that natural gas is bought, sold, transported, and traded on the basis of as much public information as possible regarding pipeline operations. AGA cites the amendment of the NGA by the Energy Policy Act of 2005 to add a new NGA section 23 directing the Commission to facilitate price transparency in markets for the sale or transportation of natural gas in interstate commerce. AGA also emphasizes the Commission's issuance of Order No. 637 requiring pipeline companies to electronically post Operational Flow Orders (OFOs) as soon as possible.⁹ In addition, AGA cites section 284.12(b) (2)(iv) of the Commission's regulations requiring pipelines to take all reasonable actions to minimize the issuance and adverse impacts of OFOs and other measures taken in response to operational events on their systems, and to post clear standards in their tariffs for when such measures will begin and end and provide timely information to enable shippers to minimize the adverse impacts of these measures.¹⁰

10. The Commission is denying AGA's request that the Commission revise Order No. 682's final regulations on rehearing to require that natural gas companies post the reports required by section 260.9 on their internet websites. As emphasized by the Commission in this proceeding, it was the unfolding of events following Hurricanes Katrina and Rita that led to the Commission's recognition that existing reporting requirements were not adequate to ensure timely receipt of information regarding damage to specific pipeline

⁹ Order No. 637, FERC Stats. & Regs. ¶ 31,091 at 33,470 (2000).

¹⁰ 18 CFR § 284.12(b)(2)(iv) (2006).

facilities that could threaten the integrity and stability of the nation's natural gas delivery infrastructure. Because the cumulative impacts of damages from a widespread event such as a hurricane may significantly strain the pipeline infrastructure, the Commission concluded that it needed information on the status of all affected facilities, including those experiencing minimal damage, so that the Commission would be in a better position to help identify possible paths for rerouting gas around damaged facilities.¹¹ The Commission sought to expedite this rulemaking proceeding in an effort to have the expanded reporting requirements in effect before another natural disaster or a terrorist event occurred.¹²

11. At the same time, the Commission wanted to ensure that it did not unnecessarily burden the industry. Therefore, as AGA notes in its rehearing request, the Commission made a commitment in the Final Rule to work with the Department of Transportation's Office of Pipeline Safety to identify ways to minimize duplicative reporting requirements.¹³ The Commission has already undertaken consultation with DOT/Pipeline Safety regarding the possible development of a unified reporting system to meet the needs of the Commission, DOT/Pipeline Safety, and other federal agencies and reduce the reporting burden on natural gas pipeline companies. At the end of this collaborative effort, the Commission anticipates the need for further rulemaking proceedings to again revise the reporting requirements in section 260.9 of the regulations. Therefore, the Commission believes it would be premature to implement AGA's request for electronic posting of companies' section 260.9 reports at this time, prior to completion of the Commission's broader effort in this area. Granting AGA's request at this time might well result in unnecessary burden on respondents, particularly since section 284.12(a) of the regulations incorporates by reference the electronic communication standards promulgated by the North American Energy Standards Board (NAESB) and adoption of AGA's requested internet posting requirement could therefore necessitate, as acknowledged by AGA, further action by NAESB to amend the relevant posting standards.

12. Although AGA is correct that the Commission has endeavored to increase transparency in the natural gas markets, the purpose of such efforts is to ensure that market forces are not distorted by anticompetitive practices. The information in companies' section 260.9 reports relates to damage to facilities and service interruptions

¹¹ Order No. 682 at P. 20.

¹² *Id.* at P. 19.

beyond the respondents' control. Further, the need for requiring companies to post publicly the information in their section 260.9 reports on their internet websites is not clear in view of the existing requirement in section 284.12(b)(3)(vi) of the regulations, cited by AGA, that pipeline companies electronically post critical period notices, including OFOs affecting shippers' rights to have their gas enter or exit the pipeline grid at particular points. As AGA also acknowledges, section 284.12(b)(2)(iv) of the regulations requires pipelines to provide shippers with timely information to minimize the adverse impacts of such measures.

13. The Commission acknowledges AGA's assertion that the information in companies' section 260.9 reports could be useful to market participants because damage to facilities and/or service interruptions can influence gas prices. However, in considering whether to require companies to post information from their section 260.9 reports on their websites, the Commission must also weigh the additional burden on natural gas companies against the benefit to their customers. The Commission will give further consideration to this matter while it continues its consultations with DOT/Pipeline Safety in the effort to minimize duplicative reporting requirements. In the interim, the Commission encourages companies to electronically post information from their section 260.9 reports to the extent they believe appropriate and useful to their shippers.

The Commission orders:

The American Gas Association's request for rehearing, filed on September 22, 2006, is denied.

By the Commission.

(S E A L)

Philis J. Posey,
Acting Secretary.