

131 FERC ¶ 61,019
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Emergency Natural Gas Sale, Transportation and
Exchange Transactions

Docket No. RM10-3-000

ORDER ON PETITION FOR CLARIFICATION
OR, ALTERNATIVELY, RULEMAKING

(Issued April 15, 2010)

1. On October 27, 2009, the Natural Gas Supply Association (NGSA) filed a petition requesting that the Commission clarify or, alternatively, modify certain of its regulations in Part 284, Subpart I (18 C.F.R. §§ 284.261 through 284.271) entitled “Emergency Natural Gas Sale, Transportation, and Exchange Transactions.” Specifically, NGSA requests that the Commission clarify or, alternatively, modify its regulations so that first sellers of natural gas and marketers making sales of natural gas that are not first sales are not required to file with the Commission the emergency natural gas transactional reports described in section 284.270.¹ For the reasons discussed below, we grant NGSA’s request for clarification.

¹ The term “first sale” is defined in Section 2(21)(A) of the Natural Gas Policy Act of 1978 (NGPA). In essence, all sales in the chain from the producer to the ultimate consumer are first sales until the gas is purchased by an interstate pipeline, intrastate pipeline, or local distribution company (LDC). However, once such a sale is executed and the gas is in the possession of a pipeline, LDC, or retail customer, the chain is broken, and no subsequent sale, whether the sale is by the pipeline, or LDC, or by a subsequent purchaser of gas that has passed through the hands of a pipeline or LDC, can qualify under the general rule as a first sale of natural gas. *See Amendments to Blanket Sales Certificates*, Order No. 644, 107 FERC ¶ 61,174, at P 23 (2004).

I. Background

2. Subpart I of the Commission's regulations governs emergency natural gas sale, transportation, and exchange transactions (including the construction and operation of necessary facilities) and provides for the exemption of a person who engages in an emergency natural gas transaction in interstate commerce from the certificate requirements of section 7 of the NGA.² These regulations implement NGA section 7(c)(1)(B) which provides for an exemption from the certificate requirements of the statute for "temporary acts or operations for which the issuance of a certificate will not be required in the public interest."

3. Section 284.262 of the regulations defines emergencies as including four situations:

(1) Any situation in which an actual or expected shortage of gas supply or capacity would require an interstate pipeline company, intrastate pipeline, local distribution company, or Hinshaw pipeline to curtail deliveries of gas or provide less than the projected level of service to any pipeline customer, including any situation in which additional supplies or capacity are necessary to ensure a pipeline's contracted level of service to a customer. . . . or

(2) A sudden unanticipated loss of natural gas supply or capacity;
or

(3) An anticipated loss of natural gas supply or capacity due to a foreseeable facility outage resulting from a landslide or riverbed erosion or other natural forces beyond the participant's control . . .
[or]

² Subpart I was originally adopted in 1986 in Order No. 449, *Emergency Natural Gas Sale, Transportation, and Exchange Transactions*, FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,693 (1986). In 1999, the definition of an emergency under the regulations was revised to recognize that interstate pipelines were primarily transporters and not merchants of gas. *Revision of Existing Regulations Under Part 157 and Related Sections of the Commission Regulations Under the Natural Gas Act*, Order No. 603, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,073 (1999).

(4) A situation in which the participant, in good faith, determines that immediate action is required for protection of life or health or for maintenance of physical property.

4. The reporting requirements associated with emergency natural gas transactions are set forth in section 284.270. Sections 284.270(a), (b), and (c) require a report be made within 48 hours after deliveries commence for emergency gas sales, transportation, or exchange transactions, respectively. The data required to be reported for each transaction includes, among other things, the specific nature and duration of the emergency; the date the transaction began; the amount of gas to be purchased, transported, or exchanged on a daily basis; and the identity of any participants involved in the transaction. Section 284.270(d) requires the filing of a termination report within 30 days after the emergency natural gas transaction ends. This report requires much of the same data required in the initial 48-hour report, as well as any corrections to the initial report or a statement that it is correct.

II. Petition for Clarification/Rulemaking

5. NGSA emphasizes that the natural gas industry, as well as the Commission's regulation of the industry, has changed since the emergency natural gas transaction reports were adopted in 1986. NGSA notes that wellhead prices of natural gas were deregulated in 1989,³ and since that time Commission regulation of first sellers is minimal. It also notes that interstate pipelines no longer provide a general merchant function and interstate pipelines and marketers currently sell natural gas for resale in interstate commerce under blanket certificates provided by the Commission's regulations (18 C.F.R. §§ 284.402 and 284.284). Given these fundamental changes, NGSA states that confusion exists regarding what is required and who is required to file the transactional reports required in section 284.270. Given the potential penalties associated with non-compliance, NGSA asserts that clarity involving the obligations associated with these rules is critical. Additionally, NGSA maintains that much of the information subject to collection under section 284.270 is currently available to the Commission from other sources.

6. NGSA further states that Order No. 449 provides no indication that the Commission expected a natural gas marketer or first seller to report an emergency natural gas transaction. Rather, petitioners state that pipelines and local distribution companies had historically been the affected parties in these types of emergency situations. Additionally, NGSA states that neither first sellers nor marketers generally possess first-

³ *Citing* Natural Gas Wellhead Decontrol Act of 1989, Pub. L. No. 101-60, 103 Stat. 157 (1989).

hand knowledge concerning much of the information to be reported under the regulations, making it virtually impossible to obtain this information from the involved parties and to report that information in a 48-hour timeframe.

7. In view of these considerations, NGSAs requests that the Commission clarify that first sellers of natural gas and marketers making sales of natural gas that are not first sales are not required to file the emergency transaction reports described in section 284.270 of the regulations. If the Commission declines to grant the requested clarification, NGSAs requests that the Commission modify the reporting requirements associated with emergency natural gas transactions to exempt first sellers and marketers making sales of natural gas that are not first sales from the reporting requirements. In support, NGSAs reiterates arguments similar to those set forth above.

III. Commission Determination

8. As explained above, the Commission's regulations in Subpart I provide a temporary exemption from NGA certificate requirements to a person who engages in an emergency natural gas transaction in interstate commerce. Section 284.270 sets forth the transactional reporting requirements that apply to an emergency natural gas transaction that is conducted pursuant to this subpart. As discussed in more detail below, if a person does not rely on the authority of Subpart I to make a particular sale, transportation or exchange transaction, the transactional reporting requirements of Subpart I do not apply.⁴

9. As NGSAs notes in its petition, major changes to the natural gas industry have been implemented by Congress and the Commission since adoption of the emergency transaction regulations in Subpart. I. These changes have eliminated the need to rely on the emergency transaction regulations in certain circumstances. As relevant here, the Wellhead Decontrol Act of 1989⁵ completed the phased deregulation of "first sales" of natural gas in 1993. In essence, that act removed all gas commodity sales from the Commission's NGA jurisdiction, except sales for resale of domestic gas by pipelines, LDCs, or their affiliates. In Order No. 636,⁶ the Commission required interstate pipelines

⁴ Because this order effects no substantive change in the Commission regulations, the Commission finds that public notice and comment is not required by the Administrative Procedures Act, 5 U.S.C. § 553(b)(3)(A) (2006).

⁵ Pub. L. No. 101-60 (1989); 15 U.S.C. 3431(b)(1)(A) (2006).

⁶ *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 30,939 (1992).

to separate, or “unbundle,” their sales of gas from their transportation service, and to provide comparable transportation service to all shippers whether they purchase gas from the pipeline or another gas seller. Based on these requirements, the Commission found that the unbundled gas commodity market is competitive and the Commission authorized market-based rates for sales by interstate pipelines that remain within its NGA jurisdiction.⁷ In connection with this finding, the Commission also adopted section 284.402 of its regulations to provide blanket marketing certificates for all sellers that are not interstate pipelines to make jurisdictional gas sales for resale at negotiated rates. Section 284.402 provides for such blanket certificates to be issued by operation of that regulation, with no requirement for a person to file an application seeking such authorization.⁸

10. Because first sales are no longer subject to the Commission’s regulation under the NGA and non-interstate pipelines can make sales for resale in interstate commerce on a self implementing basis pursuant to blanket marketing certificates under section 284.402, there is currently no need to rely on the emergency regulations for authority to make these sales transactions. For these reasons, we grant NGS’s request and clarify that the transactional reporting requirements set forth in Subpart I related to emergency natural gas transactions do not apply to the sellers of gas in these situations. Indeed, no participant in an arrangement to address an emergency situation is subject to the transactional reporting requirements in Subpart I unless it is relying on the emergency regulations for authority to make a sale, transportation, or exchange of natural gas in interstate commerce subject to the NGA.⁹

⁷ In Order No. 636, the Commission adopted section 284.284 which authorized interstate pipelines to make unbundled sales in interstate commerce under blanket certificates. Following Order No. 636, almost all interstate pipelines chose not to provide any sales service.

⁸ Section 284.402 of the Commission’s regulations was originally adopted by Order No. 547 as part of the Order No. 636 restructuring of the natural gas industry. *Regulations Governing Blanket Marketer Sales Certificate*, Order No. 547, FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 30,957 (1992).

⁹ In addition to the blanket marketing certificates, the Commission has adopted a number of programs authorizing certain transportation transactions, including exchanges, on a self implementing basis subject to conditions. Thus, in many emergency situations, all of the participants may be able to provide their service under other authorizations under other parts of the Commission’s regulations, subject to those regulations’ reporting requirements. *See, e.g.*, Part 284, Subpart B (setting forth the conditions for transportation services by interstate pipelines under section 311 of the NGPA); Part 284,

(continued...)

The Commission orders:

(A) NGSAs petition for clarification is granted as discussed in the body of this order;

(B) NGSAs petition for rulemaking is dismissed as moot.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Subpart C (setting forth the conditions for transportation services by intrastate pipelines under section 311 of the NGPA); Part 284, Subpart G, section 284.221 (providing for issuance of blanket certificates authorizing transportation services by interstate pipelines under the NGA; and Part 284, Subpart G, section 284.224, (providing for issuance of limited-jurisdiction blanket certificates authorizing transportation services by LDCs under the NGA).