NYMEX rules stipulate that reporting levels set by the exchange for its own reporting system are adjusted in tandem with changes in the Commission's reporting levels unless the President of the exchange determines otherwise.[2] The exchange stated that the current 200 contract level for crude oil futures was an appropriate level to support the exchange's surveillance activities, in particular for financial surveillance, and to monitor the delivery process. In view of this, NYMEX indicated that it would exercise its discretion to maintain the 200 contract level in crude oil futures for its reporting system if the Commission adopted as final the proposed amendments to Rule 15.03. NYMEX further opined that adoption of the proposed amendments by the Commission may require persons to complete duel sets of records for reporting.

Commodity exchanges which maintain futures large trader systems similar to the Commission's sometimes exercise independent discretion in setting reporting levels that appear tailored to their individual market surveillance programs. Certain exchanges also use their large-trader reports for other purposes, such as financial surveillance. At present, one exchange has set reporting levels in certain markets lower than the Commission's levels, while another exchange has set some reporting levels higher than the Commission's. Exchanges' individual determinations to collect more, or in some cases fewer, reports than the Commission appears reasonable in light of differences in the characteristics of some contract markets and different purposes underlying the data collection efforts. Moreover, FCMs and firms which are members of these exchanges have not expressed any compelling reasons to require that exchange and Commission reporting levels be set at the same levels in all cases. Given these current practices, the Commission believes that when it has identified circumstances such as those that exist in crude oil futures, where the Commission can accomplish its purposes with fewer reports from the industry, it is obliged to raise the reporting level. In view of this, the Commission has determined to adopt its rule amendments as proposed.

### The Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") [3] requires that agencies, in proposing rules, consider the impact of those rules on small businesses. These amendments affect large traders, futures commission merchants and other similar entities such as foreign brokers and foreign traders. The Commission has defined "small entities" as used by the Commission in evaluating the impact of its rule in accordance with the RFA. 47 FR 18618 through 18621 (April 30, 1982).

In that statement, the Commission concluded that large traders and futures commission merchants are not considered to be small entities for purposes of the RFA. Similarly, foreign brokers and foreign traders report only if carrying or holding reportable, *i.e.*, large positions. Nonetheless, the Commission invited comments from any firm which believed that these rules would have a significant economic impact upon its operations. No comments were received concerning this matter.

### Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (Act), 44 U.S.C. 3501 *et. seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act the Commission previously submitted rules associated with this information collection requirement to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with this rule on September 14, 1988 and assigned OMB control number 3038–0009 to the collection. The Commission has determined that this final rule does not affect the burden approved by OMB at that time. The OMB approved burden is as follows:

| | |
|---|---|
| Average burden hours per response | .1492 |
| Number of Respondents | 4,133 |
| Frequency of response | (1) |

1 Daily and weekly.

Copies of the OMB approved information collection package associated with this rule may be obtained from Gary Waxman, Office of Management and Budget, Paperwork Reduction Project (3038–0009), Washington, DC 20503, (202) 395–7340.

### List of Subjects in 17 CFR Part 15

Brokers and large traders, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission is amending Part 15 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

## PART 15—REPORTS—GENERAL PROVISIONS

3. The authority citation for Part 15 continues to read as follows:

**Authority:** 7 U.S.C. 2, 4, 6, 6a (a)-(d), 6f, 6g, 6i, 6k, 6m, 6n, 7, 9, 12a, 19 and 21; 5 U.S.C 552, and 552(b), unless otherwise noted.

4. Section 15.03 is revised to read as follows:

**§ 15.03 Quantities fixed for reporting.**

The quantities for the purpose of reports filed with Parts 17 and 18 of this chapter are as follows:

| Commodity | Quantity |
|---|---|
| Wheat (bushels) | 500,000 |
| Corn (bushels) | 500,000 |
| Soybeans (bushels) | 500,000 |
| Oats (bushels) | 300,000 |
| Cotton (bales) | 5,000 |
| Soybean oil (contracts) | 150 |
| Soybean meal (contracts) | 150 |
| Live cattle (contracts) | 100 |
| Feeder cattle (contracts) | 50 |
| Hogs (contracts) | 50 |
| Sugar No. 11 (contracts) | 200 |
| Sugar No. 14 (contracts) | 100 |
| Cocoa (contracts) | 50 |
| Copper (contracts) | 100 |
| Gold (contracts) | 200 |
| Silver bullion (contracts) | 150 |
| Platinum (contracts) | 50 |
| No. 2 Heating oil (contracts) | 150 |
| Crude oil (contracts) | 250 |
| Unleaded gasoline (contracts) | 100 |
| Long-term U.S. Treasury bonds (contracts) | 500 |
| GNMA (contracts) | 100 |
| Three-month (13-week) U.S. Treasury bills (contracts) | 100 |
| Long-term U.S. Treasury notes (contracts) | 300 |
| Three-month Eurodollar time deposit rates (contracts) | 400 |
| Foreign currencies (contracts) | 200 |
| Standard and Poor's 500 stock price index (contracts) | 300 |
| New York Stock Exchange composite index (contracts) | 50 |
| Amex Major Market Index—maxi (contracts) | 50 |
| Municipal bonds (contracts) | 50 |
| Value Line Average Index (contracts) | 50 |
| All other commodities (contracts) | 25 |

Issued in Washington, DC on December 13, 1988, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 88–29091 Filed 12–16–88; 8:45 am]

BILLING CODE 6351-01-M

[2] NYMEX Rule 9.34(B).

[3] 5 U.S.C. 801 et. seq.

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 2**

**[Docket No. RM87-34-000; Order No. 500-F]**

## Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Order Extending Date for Filing Final Tariff Sheets Under Alternative Passthrough Mechanism

Issued December 13, 1988.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Statement of Policy; Order Extending Date for Filing Final Tariff Sheets under Alternative Passthrough Mechanism.

**SUMMARY:** In Order No. 500 (52 FR 30,334 (Aug. 14, 1987)), the Federal Energy Regulatory Commission (Commission) set a deadline of December 31, 1988, for the filing of tariff sheets to recover take-or-pay buyout and buydown costs under the alternative passthrough mechanism described in that order. In this order, the Commission is extending the deadline to March 31, 1989. The Commission believes the short extension is necessary and reasonable to permit pipelines and producers to bring their settlement negotiations to an orderly conclusion.

**DATES:** This order is effective December 9, 1988. (5 U.S.C. 553(d)(2) (1982)). An extension of time for filing tariff sheets is granted to and including March 31, 1989.

**FOR FURTHER INFORMATION CONTACT:** Richard O. Howe, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Phone: (202) 357-8274.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

### Order Extending Date for Filing Final Tariff Sheets Under Alternative Passthrough Mechanism

In Order No. 500, 52 FR 30,334 (Aug. 14, 1987), the Commission set a deadline of December 31, 1988, for the filing of final tariff sheets including all take-or-pay buyout and buydown costs eligible for recovery under the alternative passthrough mechanism described therein. Several pipelines in various rate case dockets, as well as the Interstate Natural Gas Association of America (INGAA), have requested extensions of the December 31, 1988 deadline.

The pipelines assert that an extension is necessary to provide them a reasonable opportunity to complete negotiations with natural gas producers and to prevent forced settlements detrimental to themselves and consumers.

The Natural Gas Supply Association, an organization of producers, supports an extension of the deadline date. Amoco Production Company, United Distribution Companies, and, jointly, the Process Gas Consumers Group, the American Iron and Steel Institute, and the Association of Businesses Advocating Tariff Equity have filed opposing the extension on the ground that an extension would delay the prompt resolution of the take-or-pay problem to the detriment of the entire industry.

While the Commission continues to believe that the take-or-pay deterrent to competitive natural gas markets must be eliminated as quickly as possible, the Commission has concluded that, on balance, a short extension of the deadline date is necessary and reasonable to permit pipelines and producers to bring to an orderly conclusion their settlement negotiations. The Commission does not believe that such an extension will prejudice the interests of any segment of the industry. Accordingly, the Commission will extend the deadline date to March 31, 1989.

In addition, for contracts that are in litigation on March 31, 1989, the Commission will permit a pipeline to file by that date to include in its tariffs language permitting the pipeline to pursue the litigation to its natural end (of judgment and final appeal or settlement) and then to file to recover eligible costs resulting from these contracts under the equitable sharing mechanism.[1] The eligible costs do not include punitive damages or penalties.

**List of Subjects in 18 CFR Part 2**

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 2, Chapter I, Title 18, Code of Federal Regulations as set forth below.

By the Commission.

**Lois D. Cashell,**
*Secretary.*

## PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for Part 2 continues to read as follows:

**Authority:** Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. No. 12009, 3 CFR 1978 Comp., p. 142; Federal Power Act, 16 U.S.C. 792-825r (1982); Natural Gas Act, 15 U.S.C. 717-717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982); Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601-2645 (1982); National Environmental Policy Act of 1969, 16 U.S.C. 4321-4370a (1982).

**§ 2.104 [Amended]**

2. In § 2.104, paragraph (c)(1), the words "December 31, 1988" are removed and the words "March 31, 1989" are inserted in their place.

[FR Doc. 88-29035 Filed 12-16-88; 8:45 am]

BILLING CODE 6717-01-M

[1] In other words, a pipeline must file by March 31, 1989 tariff language to be eligible to use this provision. *See* El Paso Natural Gas Co., 43 FERC ¶ 61,576 (1988) and Trunkline Gas Co., 44 FERC ¶ 61,407 (1988).

18 CFR Part 284

[Docket Nos. RM88-14-001 and RM88-15-000; Order No. 509]

**Interpretation of, and Regulations Under, Section 5 of the Outer Continental Shelf Lands Act (OCSLA) Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the Outer Continental Shelf**

Issued December 9, 1988.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is amending its regulations to implement section 5 of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1334 (1982). In addition, the Commission also revises its interpretative rule on section 5 of the OCSLA (Interpretation of section 5 of the Outer Continental Shelf Lands Act, Order No. 491, 53 FR 14922 (Apr. 26, 1988), 43 FERC Reports ¶ 61,006 (Apr. 1, 1988). The final rule provides every jurisdictional interstate natural gas pipeline that transports gas on or across the Outer Continental Shelf (OCS) with a blanket certificate authorizing and requiring nondiscriminatory transportation of national gas on behalf of others, and requires every OCS pipeline to file tariffs to implement that blanket certificate authorization. The service performed under the blanket certificate includes both firm and interruptible transportation service and OCS pipelines must, pursuant to the blanket certificate and section 5 of the OCSLA, provide open and nondiscriminatory access for both owner and nonowner shippers. The final rule requires all OCS pipelines to file new rates, but maintains their current rates in effect until the new rates (and, at the same time, the blanket certificates) become effective.

**EFFECTIVE DATE:** This rule will become effective February 17, 1989.

**FOR FURTHER INFORMATION CONTACT:** Roger E. Smith, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

## I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations to implement section 5 of the Outer Continental Shelf Lands Act (OCSLA).[1] In addition, the Commission also revises its interpretative rule on section 5 of the OCSLA.[2] The final rule provides every jurisdictional interstate natural gas pipeline that transports gas on or across the Outer Continental Shelf (OCS) with a blanket certificate authorizing and requiring nondiscriminatory transportation of natural gas on behalf of others, and requires every OCS pipeline to file tariffs to implement that blanket certificate authorization. The service performed under the blanket certificate includes both firm and interruptible transportation service and OCS pipelines must, pursuant to the blanket certificate and section 5 of the OCSLA, provide open and nondiscriminatory access for both owner and nonowner shippers. The final rule requires all OCS pipelines to file new rates, but maintains their current rates in effect until new rates (and, at the same time, the blanket certificates) become effective.

## II. Background

On April 1, 1988, the Commission issued two orders concerning the OCSLA. The first order (Order No. 491) contained the Commission's interpretation of section 5 of the OCSLA.[3] The second order was a notice of proposed rulemaking (NOPR) that proposed regulations to implement section 5 of the OCSLA.[4]

Section 5(e) of the OCSLA authorizes the Secretary of the Interior to grant rights-of-way through the submerged lands of the Outer Continental Shelf (OCS) for pipelines to transport oil, natural gas, sulphur, or other minerals prescribed by the Secretary. Section 5(e) also gives the Commission certain responsibilities on the OCS by providing that every right-of-way on the OCS be granted:

> upon the express condition that oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas, produced from submerged lands or Outer Continental Shelf lands in the vicinity of the pipelines in such proportionate amounts as the Federal Energy Regulatory Commission, in consultation with the Secretary of Energy, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste.[5]

In addition, section 5(f)(1) of the OCSLA provides that every permit, license, easement, right-of-way or other grant of authority for the transportation by pipeline on or across the OCS of oil or natural gas must require that the pipeline be operated in accordance with certain competitive principles. Section 5(f)(1) provides that:

> Except as provided in paragraph (2) every permit, license, easement, right-of-way or other grant of authority for the transportation by pipeline on or across the Outer Continental Shelf of oil or gas shall require that the pipeline be operated in accordance with the following competitive principles:
>
> (A) The pipeline must provide open and nondiscriminatory access to both owner and nonowner shippers.
>
> (B) Upon the specific request of one or more owner or non-owner shippers able to provide a guaranteed level of throughput, and on the condition that the shipper or shippers requesting such expansion shall be responsible for bearing their proportionate share of the costs and risks related thereto, the Federal Energy Regulatory Commission may, upon finding, after a full hearing with due notice thereof to the interested parties, that such expansion is within technological limits and economic feasibility, order a subsequent expansion of throughput capacity of any pipeline for which the permit, license, easement, right-of-way, or other grant of

[1] 43 U.S.C. 1334 (1982).

[2] Interpretation of Section 5 of the Outer Continental Shelf Lands Act (OCSLA), Order No. 491, 53 FR 14922 (Apr. 26, 1988), 43 FERC Reports ¶ 61,006 (Apr. 1, 1988).

[3] *Id.*

[4] Regulations under Section 5 of the Outer Continental Shelf Lands Act (OCSLA) Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the Outer Continental Shelf, 53 FR 14923 (Apr. 26, 1988), IV FERC Stats. & Regs. ¶ 32,459 (Apr. 1, 1988).

[5] 43 U.S.C. 1334(e) (1982).

authority is approved or issued after the date of enactment of this subparagraph. This subparagraph shall not apply to any such grant of authority approved or issued for the Gulf of Mexico or the Santa Barbara Channel.

Section 5(f)(1) was added to the OCSLA in 1978 as part of the Outer Continental Shelf Lands Act Amendments of 1978 (OCSLAA).[6] The Conference Report on the OCSLAA states that:

The agreed-to subsection (f) provides for open and non-discriminatory access to apply to all pipelines and is a reaffirmation and strengthening of subsection 5(e) which provides for the transport or purchase of all OCS oil and gas "without discrimination".[7]

Section 5(f)(1)(A) provides that an OCS pipeline must provide open and nondiscriminatory access to both owner and nonowner shippers. This requirement is in addition to the express condition in section 5(e) of the OCSLA that OCS pipelines must transport or purchase OCS gas "without discrimination."

Section 5(f)(1)(B) of the OCSLA provides, under very narrow circumstances, for the expansion of pipeline capacity on the OCS upon the specific request of one or more owner or nonowner shippers. Before the Commission can order an expansion of throughput capacity the requesting shipper must agree to be responsible for bearing a proportionate share of the costs and risks related to the expansion and the Commission must, after a full hearing with due notice to the interested parties, find that the expansion is within technological limits and economic feasibility. Moreover, the last sentence of section 5(f)(1)(B) exempts the vast majority of OCS pipelines from the requirement by providing that the subparagraph does not apply to any grant of authority in the Gulf of Mexico or the Santa Barbara Channel.

Section 5(f)(2) of the OCSLA gives the Commission the authority to exempt a pipeline or class of pipelines from any of the requirements in section 5(f)(1) if the pipeline feeds into a facility where oil and gas are first collected or a facility where oil and gas are first separated, dehydrated or otherwise processed. Section 5(f)(3) requires the Secretary of Energy and the Commission to consult with, and give due consideration to the views of, the Attorney General on specific conditions to be included in permit, license, easement, right-of-way, or grant of authority in order to ensure that the pipelines operate in accordance with the competitive principles in section 5(f)(1). In preparing such views, the Attorney General is also required to consult with the Federal Trade Commission. Finally, section 5(f)(4) of the OCSLA provides that nothing in subsection (f) shall be deemed to limit, abridge, or modify any authority of the United States under any other provision of law with respect to pipelines operating on the OCS.

In Order No. 491 the Commission indicated that the statutory requirements of the OCSLA were similar to the statutory requirements of the Natural Gas Act (NGA) and concluded that the condition of nondiscriminatory access (open access) placed on the transportation program established in Order Nos. 436 and 500 [8] satisfied, in substantial measure, the nondiscriminatory access requirements in sections 5(e) and 5(f)(1)(A) of the OCSLA.[9] However, in Order No. 491 the Commission viewed the enactment of the specific open access requirement in section 5(f)(1)(A) to require something more than the open access conditions established in Order Nos. 436 and 500 under the Natural Gas Act (NGA).[10] Consequently, the Commission proposed to implement sections 5(e) and 5(f)(1)(A) of the OCSLA by requiring OCS pipelines to offer transportation to all who seek it on a pro rata basis.

On the same day the Commission issued Order No. 491, it also issued the NOPR that proposed regulations to implement its interpretation of sections 5(e) and 5(f) of the OCSLA.[11] The NOPR proposed to require that all jurisdictional interstate natural gas pipelines transporting gas on or across the OCS obtain a blanket certificate under Part 284 of the Commission's regulations authorizing the transportation of natural gas on behalf of others on an open and nondiscriminatory basis. The transportation service was to include firm and interruptible transportation on behalf of owner and nonowner shippers of OCS gas. The Commission also proposed to grant an OCS pipeline a temporary blanket certificate pending the pipeline's application for a permanent blanket certificate. In addition, the Commission proposed regulations that would allow OCS pipelines to establish interim rates for transportation services pending the issuance of the permanent blanket certificate.

The Commission received 13 requests for rehearing of Order No. 491.[12] On June 1, 1988, the Commission issued an order which granted the rehearing requests solely for the purpose of further consideration.[13] The Commission indicated that it would address the issues raised in the rehearing requests on Order No. 491 when it reviewed the comments received on the NOPR.

The Commission received comments from 41 commenters on the NOPR. Commenters included several pipeline companies, producers, distributors, trade associations and industrial end users, as well as the U.S. Departments of Justice, Energy and the Interior.[14] In addition, Indicated Producers filed supplemental comments on Order No. 491 when they filed their comments on the NOPR. Two commenters filed reply comments in response to Indicated Producers' supplemental comments.[15] The Commission has considered all of these comments in issuing the final rule.

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[6] Pub. L. No. 95-372, 92 Stat. 632 (Sept. 18, 1978).

[7] H.R. Conf. Rep. No. 1474, 95th Cong., 2d Sess. 37, *reprinted in* 1978 U.S. Code Cong. & Admin. News 1674, 1686

[8] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 436, 50 FR 42408 (Oct. 18, 1985), FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,665 (1985), *modified*, Order No. 436-A, 50 FR 52217 (Dec. 23, 1985), FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,675 (1985), *modified further*, Order No. 436-B, 51 FR 6398 (Feb. 24, 1986), III FERC Stats. & Regs. ¶ 30,688, *reh'g denied*, Order No. 436-C, 34 FERC ¶ 61,404, *reh'g denied*, Order No. 436-D, 34 FERC ¶ 61,405, *reconsideration denied*, Order No. 436-E, 34 FERC ¶ 61,403 (1986), *vacated and remanded sub nom.* Associated Gas Distributors v. FERC, 824 F.2d 981 (D.C. Cir. 1987). On August 7, 1987, the Commission issued Order No. 500, which promulgated interim regulations in response to the Court's remand. Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 500, 52 FR 30334 (Aug. 14, 1987), III FERC Stats. & Regs. ¶ 30,761, *extension granted*, Order No. 500-A, 52 FR 39507 (Oct. 22, 1987), III FERC Stats. & Regs. ¶ 30,770, *modified*, Order No. 500-B, 52 FR 39630 (Oct. 23, 1987), III FERC Stats. & Regs. ¶ 30,772, *modified further*, Order No. 500-C, 52 FR 48986 (Dec. 29, 1987), III FERC Stats. & Regs. ¶ 30,786, and Order No. 500-D, 53 FR 8439 (Mar. 15, 1988), III FERC Stats. & Regs. ¶ 30,800 (Mar. 8, 1988) *reh'g denied*, Order No. 500-E, 43 FERC ¶ 61,234 (May 6, 1988).

[9] Order No. 491 slip op. at 14, 43 FERC at 61,031 (Apr. 1, 1988).

[10] 15 U.S.C. 717-717w (1982).

[11] *See supra* note 4.

[12] ANR Pipeline Co.; Black Marlin Pipeline Co.; Enron Interstate Pipelines; High Island Offshore System and Interstate Natural Gas Association of America; Natural Gas Pipeline Company of America; Northern Illinois Gas Co.; Producer Associations; Stingray Pipeline Co. and Trunkline Gas Co.; Tarpon Transmission Co.; Tennessee Gas Pipeline Co.; Texas Eastern Transmission Corp.; Transcontinental Gas Pipe Line Corp.; and United Gas Pipe Line Co. and Sea Robin Pipeline Co.

[13] 53 FR 20835 (June 7, 1988).

[14] See Appendix A for a list of the commenters.

[15] *See* Joint Response of High Island Offshore System and Interstate Natural Gas Association, and Response of Texas Eastern Transmission Corporation to Indicated Producers supplemental comments.

## III. Discussion

### *A. Public Reporting Burden*

Except for the specific information collection burdens discussed below, this rule does not change existing Commission regulations governing interstate pipelines that provide transportation services under Part 284, Subpart G of the Commission's regulations. The rule does, however, extend the requirements of Part 284, Subpart G to a new set of interstate pipelines (*i.e.*, OCS pipelines) in the sense that every OCS pipeline is issued a blanket transportation certificate under Part 284, Subpart G of the Commission's regulations. In addition, every OCS pipeline must have a transportation rate schedule on file that conforms to § 284.7 and to § 284.8(d) for firm service and to § 284.9(d) for interruptible service. These requirements are necessary for the Commission to implement sections (5)(e) and (5)(f) of the OCSLA.

The information collection burden of filing appropriate rates schedules is estimated to be 240 hours per response. The frequency of response is one response per year for the first year, and less frequently thereafter. The number of respondents is estimated to be 43.[16] All respondents will be interstate natural gas pipelines that hold a certificate under section 7 of the NGA authorizing the construction and operation of facilities on the OCS.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Mike Miller (202) 357–9205); and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. (Attention: Desk Officer for the Federal Energy Regulatory Commission).

### *B. Pro Rata Allocation of Capacity*

Virtually all of the comments received by the Commission concern the Commission's proposal to implement section 5 of the OCSLA by requiring pro rata allocation of capacity on the OCS. In general, pro rata allocation of capacity is favored by producers and is opposed by pipelines and distributors. Most of the commenters who oppose pro rata allocation of capacity have two central arguments. First, they assert that mandatory pro rata allocation of capacity would make all OCS pipelines common carriers and that the legislative history of the OCSLA conclusively demonstrates that Congress did not intend that OCS pipelines be common carriers. Second, commenters specified several technical and operational problems in imposing a mandatory pro rata allocation scheme on all OCS pipelines.

The Commission believes that it has the legal authority under the OCSLA to require pro rata allocation of capacity. However, the commenters have identified many significant technical and operational problems associated with generically requiring pro rata allocation for all OCS pipelines. A generic pro rata allocation scheme could result in pro rata reductions of committed capacity that would disrupt a variety of existing transportation arrangements. Many of these arrangements are of long standing; various producers, pipelines, and ultimate customers rely on them. The Commission, as a matter of policy, is reluctant to disrupt ongoing transportation arrangements. Rather, our purpose is to remove impediments to access.

Accordingly, based on the record before us, the Commission has concluded that it can and should implement the nondiscriminatory access mandate in section 5 of the OCSLA without generically imposing, by rule, a pro rata allocation scheme on all OCS pipelines. We believe that it may well be possible to remedy the problems of access on the OCS through less sweeping regulatory actions, as discussed below. If, however, access problems on the OCS continue to exist as OCS pipelines implement the requirements of this rule, the Commission will not hesitate to consider pro rata allocation of capacity on a case-specific basis, taking into account the specific factual context in which such problems arise.

### *C. OSCLA Open Access Requirements*

In this final rule, the Commission implements sections 5(e) and 5(f) of the OSCLA by issuing to every OCS pipeline an NGA section 7 blanket transportation certificate under Subpart G of Part 284 of the Commission's regulations.[17] Moreover, the Commission is requiring, pursuant to section 5 of the NGA, every OCS pipeline to file tariffs implementing their blanket certificates. The OCS pipelines to whom blanket certificates are issued by this order, and who are required to file implementing tariffs, are listed in Appendix B.[18]

Under the NGA and Order Nos. 436 and 500, onshore pipelines are not required to become "open access" transporters of gas. If, however, an onshore pipeline performs self-implementing transportation service under section 311 of the Natural Gas Policy Act (NGPA) or blanket certificate service under section 7 of the NGA, it must offer such service on a nondiscriminatory basis. Under Order Nos. 436 and 500, the option of offering self-implementing transportation service under NGPA section 311 or blanket certificate service under NGA section 7 is voluntary with the pipeline.

In contrast, section 5(f)(1)(A) of the OCSLA contains a specific statutory mandate that all pipelines that transport gas on or across the OCS must provide open and nondiscriminatory access to both owner and nonowner shippers. This requirement is in addition to the requirement in section 5(e) of the OCSLA that OCS pipelines must transport or purchase OCS gas "without discrimination." [19] While the

[16] Some off-shore systems are not certificated as single entities but are jointly owned by several pipelines, each with their own certificates. Consequently, some pipeline companies that own discrete portions of several offshore systems have been counted more than once in computing the total number of likely respondents. *See infra* note 26 and accompanying text; *see also* Appendix B and OCS pipel ne systems numbered 22–28.

[17] Subpart G of Part 284 was adopted in Order Nos. 436 and 500. Order Nos. 436 and 500 established a blanket certificate and abandonment program which permits interstate pipelines to obtain a one-time certificate of public convenience and necessity that authorizes certain transportation of natural gas in interstate commerce and permission and approval to abandon such service, which would otherwise require separate certificate or abandonment authority in each instance. Under the authorizations issued herein, OCS pipelines are authorized to transport natural gas and abandon certain service on a self-implementing basis without further authorization by the Commission. *See* 18 CFR 284.223(a) (1988). For other service, which may potentially require more scrutiny and opportunity for public participation, this authorization is subject to the notice procedure specified in § 157.205 of the Commission's regulations. *See* 18 CFR 284.223(b). Persons having a potential interest in such transactions are on notice to monitor the Federal Register. Once a deadline established under § 157.205(d) passes without a protest being filed, the proposed activity is authorized under this order without further action by the Commission.

[18] The Commission recognizes that a number of the OCS pipelines listed in Appendix B already hold Part 284, Subpart G blanket certificates. Such certificates are nevertheless issued to those pipelines by this final rule because, *inter alia*, of the additional certificate and abandonment authority (with respect to reallocation of firm capacity) conferred in the blanket certificates issued to OCS pipelines.

[19] Aside from arguing pro rata allocation, the commenters do not focus on what the open access requirement in section 5(f)(1)(A) of the OCSLA added to the preexisting requirement in section 5(e) of the OCSLA to transport gas without discrimination. Several commenters alleged various infirmities with respect to the Commission's

Continued

Commission has decided against generically imposing pro rata allocation of capacity on OCS pipelines, it cannot implement section 5 of the OCSLA as if the adoption of section 5(f)(1)(A) in 1978 added nothing to the general nondiscrimination provision in section 5(e).

As stated in both Order No. 491 and the NOPR, the Commission believes the condition of nondiscriminatory access placed on the transportation program established in Order No. 436 and 500 satisfies, in large measure, the open access requirement in section 5(f)(1)(A) of the OCSLA. However, unlike onshore pipelines, OCS pipelines cannot voluntarily choose to not participate in the open access program; Congress, through the OCSLA, has made open access a prerequisite to doing business on the OCS. Consequently, the Commission implements the open access mandate of the OCSLA by finding, pursuant to section 7 of the NGA, that the public convenience and necessity require issuing every OCS pipeline a blanket transportation certificate under Subpart G of Part 284 of its regulations, and by issuing such certificates.

Accordingly, § 157.20(a) of the Commission's regulations will not be applied to OCS pipelines. Section 157.20(a) contains conditions regarding the acceptance of certificates by interstate pipelines. An opportunity for OCS pipelines to decline to accept blanket transportation certificates would be inconsistent with the open access provision in section 5(f)(1)(A) of the OCSLA and would defeat the purpose of the final rule. The certificates are effective on the date upon which their implementing rates become effective (discussed below), and can be abandoned only after explicit Commission approval is sought and is granted under section 7(b) of the NGA.

As a general rule, the Commission's policy is not to issue new individual transportation certificates if the transportation in question can be performed under the blanket certificate. In most cases, the authority conferred by the blanket certificate makes certificates for individual transactions unnecessary.[20] The Commission also emphasizes that this rule does not modify or revoke any existing certificates of public convenience and necessity that were issued prior to the effective date of this rule; such certificates remain in effect, and service under them cannot be abandoned except pursuant to the terms of those certificates, pursuant to applicable Commission regulations, or pursuant to specific applications for abandonement.[21]

In addition to issuing every OCS pipeline a blanket transportation certificate under Part 284, Subpart G of the Commission's regulations, the Commission is requiring all OCS pipelines to take the following steps in order to implement an OCS open access program. First, all OCS pipelines are required to conduct an open season for firm transportation capacity with respect to (1) presently uncommitted firm capacity, if any, and (2) firm capacity that existing shippers may be willing to relinquish (to the extent that another shipper is willing to assume the obligations of firm service). Second, OCS pipelines who do not currently hold blanket certificates must also conduct an open season for interruptible capacity. Finally, thereafter, all OCS pipelines must provide a mechanism through which existing shippers can voluntarily relinquish all or a part of their firm transportation capacity rights if present or potential shippers want to use that capacity. Each of these requirements is discussed more fully below.

1. Open Season For Firm Transportation

An OCS pipeline must conduct an open season to facilitate the voluntary reallocation of firm transportation capacity. The only firm capacity that is subject to the open season is uncommitted firm capacity and voluntarily relinquished firm capacity. Prior to conducting its open season, the pipeline must poll its existing firm shippers to determine whether any existing shipper wants to voluntarily relinquish all or part of its firm capacity entitlements. If any existing firm shipper voluntarily requests that part or all of its firm capacity be reallocated, or if an OCS pipeline has any uncommitted firm capacity, then the OCS pipeline must invite existing and potential shippers to submit requests for the available firm capacity.

The open season for firm capacity must be commenced no later than March 1, 1989. The pipeline must provide reasonable notice of the open season and the open season must be for a time period of no less than 10 days and no more than 30 days. If the requests for firm capacity exceed the firm capacity available for reallocation, the OCS pipeline will allocate to each requesting shipper a pro rata share of the available capacity. If the available firm capacity exceeds the request and if part of the available firm capacity is capacity that one or more existing shippers wants to relinquish, each shipper wanting to relinquish firm capacity will be allowed to satisfy the requests on a pro rata basis. In other words, the only portion of an existing firm shipper's capacity that will be released is that portion for which another shipper is prepared to take on the obligations of the firm service agreement.

The Commission recognizes that some OCS pipelines may be configured in such a manner that problems may arise if firm capacity is reallocated exactly according to the particular requests of the shippers concerned without regard to the particular points of entry and exit of their respective quantities of gas. Therefore, in making all of the above determinations, the OCS pipeline shall take into account the capacity available at particular receipt and delivery points specified by the requesting and relinquishing shippers. There is no requirement under this rule for the OCS pipeline to disrupt ongoing transportation for existing shippers using firm capacity.

Finally, in the event that an OCS pipeline has uncommitted firm capacity available, it may, if it so chooses, assign part or all of that capacity to shippers requesting capacity before it reallocates the capacity of shippers who seek to relinquish capacity.

2. Open Season for Interruptible Transportation

Concurrent with the open season for firm capacity (and if it does not currently hold a blanket certificate), an OCS pipeline must conduct an open season for interruptible capacity. Prior to conducting its open season, the pipeline may poll its existing interruptible shippers to determine their existing interruptible transportation requirements. The pipeline must provide for reasonable notice of the open season, and the open season must be for a time period of no less than 10 days

implementation of the language in section 5(e) of the OCSLA. In addition, several commenters made arguments with respect to section 5(f)(1)(B) of the OCSLA, which deals with expansion of pipeline capacity (*e.g.*, that Congress could not have intended pro rata allocation of existing capacity because it created a section for expansion of offshore capacity, or that the exemption in section 5(f)(1)(B) for pipelines in the Gulf of Mexico and the Santa Barbara Channel demonstrates that Congress did not intend to make OCS pipelines common carriers).

[20] *See* Tennessee Gas Transmission Co., 43 FERC ¶ 61,042 (1988), *reh'g denied*, 44 FERC ¶ 61,094 (1988).

[21] The one exception is the provision for abandonment of firm service pursuant to the reallocation of firm service discussed below, when existing shippers voluntarily agree to relinquish capacity to new shippers who desire it. *See* discussion, *infra*, in sections III.C.1 and III.C.3 of this preamble.

and no more than 30 days. We omit the requirement of an interruptible open season for OCS pipelines that currently hold blanket certificates because such pipelines are already providing nondiscriminatory interruptible transportation.

After the open season has been conducted, the OCS pipeline may allocate interruptible capacity using any nondiscriminatory means that is acceptable for on-shore blanket certificate transportation. In making that allocation, the OCS pipeline must give priority to interruptible transportation authorized under existing [22] individual certificates (provided that the transportation rates paid by the shippers receiving such service are no lower than the rates paid or to be paid by other interruptible shippers),[23] so as to avoid disrupting on-going certificated service.[24] The mechanism for allocating and scheduling capacity would be specified in the pipeline's tariffs, in the same manner as all other Part 284 blanket transportation certificates.[25]

3. Voluntary Reallocation of Firm Transportation Capacity

At any time after an OCS pipeline has conducted the open season for firm transportation capacity, if a potential firm shipper requests firm transportation service from the OCS pipeline, or if an existing firm shipper requests additional firm capacity, the pipeline must, within 10 days, provide the shipper with a list of all persons who hold firm capacity rights on the pipeline and the capacity they hold. The requesting shipper may then contact the existing shippers to ascertain whether any of them want to relinquish any firm capacity. If a requesting shipper finds an existing shipper who is willing to relinquish some portion of its firm capacity, the OCS pipeline must implement that reallocation.[26]

The blanket certificates issued to OCS pipelines under this rule provide both the authority under section 7(b) of the NGA to abandon service to the existing firm shipper and the certificate authority under section 7(c) of the NGA to provide service for the new firm shipper.[27] Thus, an OCS blanket transportation certificate differs from a typical Part 284 blanket certificate in that it contains additional abandonment authority. Typically, Part 284 blanket certificates provide abandonment authority only for those services that are performed under the blanket certificate itself. This means that pipelines must still seek individual abandonment authority for services authorized prior to the issuance of the blanket certificate. However, with respect to the voluntary reallocation of firm capacity, the Commission is providing OCS pipelines with the authority to abandon services not performed under the blanket certificate. Therefore, if an existing shipper wishes to relinquish a portion of its firm capacity rights as part of a reallocation of capacity to another shipper, the blanket certificate provides the OCS pipeline with the authority to abandon that service even though the service was performed under an individual certificate.

After an OCS pipeline has conducted the open seasons discussed above and has established a mechanism for the ongoing, voluntary reallocation of firm capacity, it may allocate interruptible transportation capacity pursuant to the same Part 284 requirements as apply on-shore. With respect to firm capacity, an OCS pipeline is required to reallocate firm capacity to shippers who desire it, but only to the extent that existing shippers desire to relinquish such capacity. Shippers who wish to relinquish firm capacity have a right to do so, to the extent that other shippers or potential shippers want to obtain that capacity. As noted above, the blanket certificates provide full certificate and abandonment authority to implement such reallocations of firm service without need for further case-specific Commission approval.

While the final rule does not mandate pro rata allocation, OCS pipelines may adopt a pro rata allocation scheme in their tariffs for either firm or interruptible transportation, or both, if they so desire. Any such pro rata allocation scheme must be consistent with the standards and considerations set forth in the OCSLA (*e.g.*, with respect to conservation). Absent such a tariff provision, the final rule adopted herein does not require any firm shipper to relinquish any firm capacity.

In this regard, the OCS pipeline must specify in its transportation rate schedule what method it will use to reallocate firm capacity in the future, after the open season for firm capacity has been concluded. Any nondiscriminatory method may be used. For example, the OCS pipeline may wish to maintain a list of shippers requesting firm capacity, and reallocate firm capacity on a first-come, first-served basis as it becomes available. Or, an OCS pipeline may prefer to reallocate such capacity on a pro rata basis, if and when two or more shippers seek to obtain such capacity at the time that it becomes available.

OCS pipelines are defined as all interstate natural gas pipelines that hold NGA section 7(c) certificates that authorize the construction and operation of facilities on the OCS. Defining an OCS pipeline in this manner assures that this rule will apply to all NGA jurisdictional pipelines that operate on the OCS. If the existing certificate that triggers the application of this rule is held by more than one pipeline company, each pipeline company is provided with a Part 284 blanket transportation certificate.

In this regard, we note that some OCS pipelines are structured in such a manner that several interstate pipelines own undivided shares of the OCS pipeline. In those instances, the blanket certificate is issued to the OCS pipeline, and the open season and reallocation schemes would be conducted by the OCS pipeline itself, as a single entity with a single open season conducted in its own name. On the other hand, some OCS pipelines are structured in such a

[22] Certificates that are in effect on the date that the final rule becomes effective.

[23] Existing interruptible shippers who are paying a lower rate must be afforded an opportunity to continue receiving service by agreeing to pay a matching rate.

[24] The Commission perceives no justification for disparities in the rates paid for interruptible transportation service (even if, as discussed below, there may be a historical justification for such disparity in rates for firm service). Hence, the Commission perceives no justification for according priority of interruptible capacity allocation for ongoing interruptible service unless that service is being performed at rates no lower than the rates paid by other interruptible shippers.

[25] *See, e.g., Colorado Interstate Gas Company*, 42 FERC ¶ 61,380 at 62,124–62,125 (1988); *Northern Border Pipeline Company*, 39 FERC ¶ 61,104 at 61,346, 61,349–61,350 (1987); *Natural Gas Pipeline Company of America*, 39 FERC ¶ 61,153, at 61,595 (1987); and Order No. 436–A, FERC Stats. & Regs. [Regulations Preambles 1982–1985] at 31,685–686. As with the allocation of interruptible capacity, an OCS pipeline may use any curtailment scheme that is acceptable for Part 284 blanket transportation service.

[26] The OCS pipeline itself should be indifferent to the substitution because its total contract demand will remain unchanged. Again, if the OCS pipeline has uncommitted firm capacity available, it may, if it so chooses, assign part or all of that uncommitted capacity to the shipper or shippers who desire such capacity before it reallocates the firm capacity of existing shippers. Presumably, such assignment of the OCS pipeline's own uncommitted firm capacity would occur as soon as a new shipper inquired about obtaining new capacity, and before it had occasion to contact existing shippers. Indeed, the blanket certificate itself requires the OCS pipeline to provide transportation on a nondiscriminatory basis to all who request it to the full extent of its available capacity (including firm capacity).

[27] In this regard, we note that both the abandonment of the old firm service obligation and the certificate authority for the new firm service obligation are "permanent", *i.e.*, for an unlimited term. The firm capacity could, of course, be reallocated again in a future transaction pursuant to the regulations. But the relinquishing shipper retains no claim on the capacity, nor does he have any continuing obligations to the pipeline.

manner that the interstate pipeline owners of the OCS pipeline own, control and utilize defined finite portions of the OCS pipeline's capacity. In those instances, separate blanket certificates are issued to each individual interstate pipeline owner of the OCS pipeline, and each of those interstate pipeline owners of the OCS pipeline may wish to conduct separate open seasons (and subsequent reallocations) with respect to that portion of the OCS pipeline's capacity that each owner controls and utilizes.[28]

*D. Rate Requirements*

Under this final rule, all OCS pipelines are subject to Subpart G of Part 284 of the Commission's regulations. This means OCS pipelines are also subject to Subpart A of Part 284.[29] Under Subpart A, a pipeline must have rates that comply with §§ 284.7, 284.8(d) and 284.9(d) of the Commission's regulations.

If an OCS pipeline does not have a transportation rate schedule on file with the Commission that conforms to § 284.7, to § 284.8(d) for firm service and to § 284.9(d) for interruptible service, new § 284.305(b) requires the pipeline to file conforming rate schedules by March 1, 1989, to be effective no later than April 1, 1989. The Commission recognizes, however, that it may wish to suspend those rates for more than a nominal period. If the Commission does not permit those rates to become effective on or before April 1, 1989, the OCS pipeline is required to use its existing rates until the Commission permits the § 284.305(b) rates to become effective. In that event, the blanket certificate would become effective on the date on which the § 284.305(b) rates would be have gone into effect if they had not been suspended.

Every OCS pipeline filing rates under § 284.305(b) is required to file rates supported by an annual cost and revenue study. An OCS pipeline does not have to file a cost and revenue study if it has a pending rate proceeding under § 154.63, 154.38 or 154.303(e) of the Commission's regulations.[30] If the OCS pipeline has a pending rate proceeding, the pipeline may use the base period data from the pending proceeding, so long as the base period ends within 12 months from the date the rates were filed under § 284.305(b).

In its comments, ANR Pipeline Company (ANR) argues that to require transportation rates that conform to § 284.7, to § 284.8(d) for firm service and to § 284.9(d) for interruptible service is illegal because the requirement sets aside existing, approved transportation rates without a hearing or the necessary findings under the NGA. We disagree. As discussed above, in order to implement the open and nondiscriminatory access requirement of the OCSLA the Commission is requiring that all OCS pipelines have a Part 284, Subpart G blanket certificate. All Part 284, Subpart G blanket certificates must be implemented by rates that conform to the general conditions and the rate designs authorized in Subpart A of Part 284.

In addition, as discussed in the NOPR, the rate provisions of this rule are established in accordance with section 5 of the NGA. Section 5 of the NGA requires that if, after a hearing, the Commission finds a rate unjust and unreasonable it shall determine the just and reasonable rate. For the reasons discussed above, the Commission finds that if an OCS pipeline's current rates do not conform to the requirements of §§ 284.7, 284.8(d) and 284.9(d) of the Commission's regulations as well as the regulations in new § 284.305, such rates are unjust and unreasonable. This finding is based, first, on our determination herein that Part 284, Subpart G blanket certificates are required to satisfy the equal access requirements of the OCSLA; and, secondly, on our determinations in Order Nos. 436 and 500 that rates inconsistent with §§ 284.7, 284.8(d) and 284.9(d) are unjust and unreasonable in the context of transportation performed pursuant to such blanket certificates. As discussed in the NOPR, the notice and comment procedures of this rulemaking satisfy the hearing requirement in section 5 of the NGA.[31]

The Commission also finds that it is unduly discriminatory to subject existing shippers on OCS pipelines to a different transportation rate than the rate charged to new shippers on the same pipeline. Such a circumstance could arise in the context of the voluntary reallocation requirements of this rule if the firm transportation rights relinquished by an existing shipper were authorized under a presently existing individual certificate. The new shipper would be subject to Part 284 rates while existing shippers would be subject to Part 154 rates.[32] In order to remedy this inconsistency in rate treatment for comparable service, the rule adopted herein requires that once an OCS pipeline has filed rates that conform to Part 284 of the Commission's regulations and the Commission has made those rates effective, these rates will apply to *all* transportation service performed by the OCS pipeline.[33] The Commission is establishing this requirement under section 5 of the NGA.

The OCSLA obligates OCS pipelines to transport natural gas on an open and nondiscriminatory basis. The blanket certificates issued by this rule are the means the Commission has chosen to implement that requirement and authorize OCS pipelines to provide new open-access transportation service for OCS shippers. Thus, any transportation rate charged by an OCS pipeline that does not reflect this new service will result in different rate treatment for similarly situated customers. Such discriminatory rates are unjust and unreasonable under section 5 of the NGA. This finding with respect to the existing rates of an OCS pipeline becomes effective at the time an OCS pipeline provides the new transportation service required by this rule.

However, the Commission has recognized that individually tailored certificate authority and rate treatment may well be appropriate as a basis for determining the term for depreciation of facilities or for allocating their costs to particular beneficiaries of transportation through such facilities.[34] The Commission recognizes that such factors may pertain to OCS pipelines as well, particularly with respect to historical aspects of the financing, construction and initial operation of certain OCS pipelines. The Commission's purpose is to synchronize the transportation rates of an OCS pipeline under circumstances in which there is no valid basis for charging different rates to similarly situated customers. An OCS pipeline will, however, be permitted to use its current transportation rates for transportation services performed pursuant to existing individually issued certificates if the OCS pipeline demonstrates that such rates are

[28] *See* Appendix B, which lists in parenthesis the individual interstate pipeline owners of certain OCS pipelines.

[29] *See* 18 CFR 284.221(c), which provides that any blanket certificate issued under Subpart G is subject to the conditions of Subpart A of Part 284.

[30] *See* new 18 CFR 284.305(c) (1988).

[31] *See* Wisconsin Gas Co. v. FERC, 770 F.2d 1144 (D.C. Cir. 1985), *cert. denied*, 1065 S. Ct. 1969 (1986).

[32] This example assumes that the existing shippers do not relinquish all their firm transportation rights.

[33] *See* new 18 CFR 284.305(e) (1988).

[34] *See, e.g.*, Tennessee Gas Pipeline Company, 40 FERC ¶ 61,088 (1987); Tennessee Gas Pipeline Company, 41 FERC ¶ 61,375 (1987); *cf.* Transcontinental Gas Pipe Line Corporation, 40 FERC ¶ 61,185 (1987); Transcontinental Gas Pipe Line Corporation, 41 FERC ¶ 61,031 (1987), *reh'g denied*, 42 FERC ¶ 61,279 (1988).

necessary and the maintenance of different rates would not be unduly discriminatory. Under these circumstances, the current rates are just and reasonable.

OCS pipelines who want to continue to charge their current rates for existing individually certificated service should refile those rates, and the justification for them, at the same time that they file their Part 284 rates to implement the service to be provided under the blanket certificates issued herein. The current rates for service under existing individual certificates will remain in effect until they are superseded. This procedure will enable OCS pipelines to continue to provide transportation under their existing cetificates, pursuant to their current rates, without interruption, from the date of issuance of this rule until such time as the current rates have been superseded. In the event that an OCS pipeline refiles its current rates, the current rates will remain in effect (for transportation authorized under existing individual certificates) until such time as the Commission has determined the justness and reasonableness of those rates on a case specific basis.

In this regard, the final rule deletes the provision in the NOPR for interim rates. Interim rates are unnecessary because: (1) The blanket certificates issued herein do not become effective until the date on which Part 284 rates to implement those certificates have become effective (or would have become effective if they had not been suspended); and (2) the current rates for existing individually certificated service remain in effect without interruption until the date on which they are superseded by the effectiveness of new rates for that service.

### *E. Comment Analysis*

The overwhelming percentage of the comments filed in this rulemaking center on the effects of generically requiring pro rata allocation of capacity for all OCS pipelines. By not requiring pro rata allocation of capacity, the Commission has responded to, or rendered moot, the vast majority of the comments it received. While OCS pipelines are free to establish a pro rata scheme in their tariffs, subject to the Commission's right to determine proportionate amounts under section 5(e) of the OCSLA, they are not required to do so. OCS pipelines may allocate capacity using any means that the Commission has determined to be acceptable on-shore.

As noted above, the Commission may well require pro rata allocation of capacity on a case-specific basis if and when such regulatory action is necessary and appropriate. However, in light of our determination not to mandate pro rata allocation in the final rule adopted herein, we will not address in this order the extensive comments on the Commission's legal authority to do so. Such analysis would serve no useful purpose in the context of the final rule adopted herein, and would be premature in the context of any future actions the Commission may take. Resolution of these legal issues is best deferred to a future proceeding, involving a specific proposal (if one occurs) to impose a pro rata allocation scheme on a specific pipeline, when the legal issues are framed in the context of a factual record on the nature of the problems identified and the remedies proposed to cure those problems.

#### 1. On-shore/Off-shore Allocation Schemes

Commenters raised several questions concerning how an off-shore pro rata allocation scheme would operate if on-shore capacity was allocated using a first-come, first-served method. As noted above, the Commission is not requiring pro rata allocation to capacity; this eliminates the issues raised regarding the interface between on-shore and off-shore allocation methods.[35]

To the extent that this rule requires open seasons for firm and interruptible transportation on the OCS, these open seasons may result in an allocation of capacity that is different from the allocation of capacity of an on-shore pipeline that connects with the OCS pipeline. However, this is no different from the situation of shippers who must arrange to move gas through several on-shore pipelines; there is no guarantee that sufficient capacity will be available on each pipeline. Off-shore shippers, like on-shore shippers, are responsible for making their own arrangements to obtain transportation capacity from the wellhead to the burner tip. Furthermore, the Commission has not approved tariffs that tie the availability of upstream pipeline capacity to transportation on a downstream system.

#### 2. OCSLA Jurisdiction

Commenters also questioned the extent of the Commission's jurisdiction under the OCSLA. As the Commission stated in the NOPR, the OCS does not include lands covered by nontidal waters within the boundaries of each of the respective states and lands covered by tidal waters up to three miles off the coast line of each state.[36] The Commission also noted in its interpretation of the OCSLA, that it was only implementing the OCSLA with respect to jurisdictional pipelines under the NGA. The Commission believes that allowing OCS pipelines to allocate capacity using any method that is acceptable on-shore will reduce the chance for jurisdictional problems to arise that can frustrate the Commission's implementation of the OCSLA. If problems do arise with respect to either the movement of OCS gas (1) through state waters, or (2) through gathering or producer-owned facilities on the OCS, the Commission possesses ample ancillary authority under the OCSLA to ensure that the statutory requirements of the OCSLA are not thwarted.

#### 3. Definition of an OCS Pipeline

In the NOPR, the Commission proposed to define an OCS pipeline to include facilities from any point on the OCS to the first delivery point on-shore where alternate transportation is, or could be, available.[37]

Several commenters are concerned about the proposed definition.[38] For example, Tennessee Gas Pipeline Company (Tennessee) contends that the proposed definition could result in an unwarranted extension of pro rata transportation well into the on-shore facilities of a pipeline that owns OCS facilities. National Fuel Gas Supply Corporation (National) and Sun Exploration and Production Company (Sun) read the proposed definition as potentially embracing all the on-shore facilities of a pipeline that owns both on-shore and off-shore facilities. This is not the Commission's intent and it has amended the definition of an OCS pipeline in this final rule.

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[35] In this regard, with respect to a single pipeline that extends from the OCS to numerous points on-shore, we note that the final rule adopted herein does not apply to the on-shore portion of the pipeline (*i.e.*, the portion of an off-shore pipeline that extends beyond the on-shore interconnection, as defined in § 284.302(b)).

[36] Section 2(a) of the OCSLA defines the Outer Continental Shelf to mean "all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 1301 of this title and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control." 43 U.S.C. 1301(a) (1982); *See also* 43 U.S.C. 1301(a) (1982), which defines the term "lands beneath navigable waters."

[37] *See* proposed § 284.302(b), IV FERC Stats. & Regs. ¶ 32,459 at 32,210.

[38] *See, e.g.*, comments of Tennessee Gas Pipeline Company on the NOPR at 16–17; joint comments of Stingray Pipeline Company and Trunkline Gas Company at 9–10; comments of ANR at 5; comments of Texas Gas Transmission Corporation on the NOPR at 6, 21–22; comments of National Fuel Gas Supply Corportion at 6; comments of Sun Exploration and Production Company at 4–5; comments of Indicated Producers at 34–36; and comments of Pelto Oil Company at 10–11.

New § 284.302(b) defines "OCS pipeline" in such a manner as to include within its scope all of the OCS pipeline's facilities that are used or necessary to transport OCS gas from the OCS to the first point of interconnection on the shoreward side of the OCS. The first point of interconnection may be with a gas conditioning or processing plant, another pipeline,[39] a distributor, or an end user. In other words, "OCS pipeline" is defined to include all of the OCS pipeline's facilities that fall within the scope of the Commission's jurisdiction under section 7 of the NGA, and that are used or necessary to transport OCS gas off of the OCS to the first point of interconnection with some other entity that receives the gas from the OCS pipeline.[40]

This definition is necessary to ensure that the gas will be transported on an open access basis, not only across the OCS *per se*, but from the OCS to at least some point off the OCS where the gas is capable of exiting from the OCS pipeline. Any narrower definition would nullify the rule (and the OCSLA open access provisions it is designed to implement), because the fundamental purpose of both the OCSLA and this rule is to ensure open access transportation of OCS gas to someplace other than another part of the OCS.

It follows from this definition that the requirements of the rule adopted herein do *not* apply to the facilities of jurisdictional interstate pipelines beyond the first point of interconnection after the pipeline leaves the OCS. Thus, a single interstate pipeline may well have some jurisdictional facilities that fall within the scope of this rule and other jurisdictional facilities that do not.

We recognize that the first point of interconnection may have insufficient capacity to receive all of the gas transported by the OCS pipeline on the OCS. Indeed, the capacity at interconnection points may vary on a seasonal basis. This, however, is the same problem that can occur at the interconnection points of two on-shore pipelines. We do not construe the OCSLA as mandating open access transportation to any and all destinations on-shore (however distant they may be from the OCS); rather, we construe the OCSLA to require only open access transportation to at least some point on-shore.

[39] Such other pipeline may be either jurisdictional or non-jurisdictional (including, *e.g.*, a Hinshaw pipeline or an intrastate pipeline).

[40] Appendix B identifies the shoreward terminus of all currently certificated OCS pipelines.

### 4. Consultation with and Consideration of the Views of the Attorney General

To ensure that OCS pipelines comply with the competitive principles in sections 5(f)(1) and 5(f)(3) of the OCSLA requires the Commission (and the Secretary of Energy) to consult with the Attorney General on the specific conditions to be included in any permit, license, easement, right-of-way or grant of authority on the OCS.[41] Section 5(f)(3) also requires that the Attorney General consult with the Federal Trade Commission (FTC) in preparing his views.

The Commission requested the views of both the Secretary of Energy and the Attorney General on its interpretative rule (Order No. 491) and the NOPR. The Commission also sent copies of Order No. 491 and the NOPR to the Secretary of the Interior and the FTC.[42] The Secretary of Energy and the Attorney General responded to the request and the Commission has considered their comments in issuing this final rule. The approach taken by the Commission in this final rule is fully consistent with the views of both the Secretary of Energy and the Attorney General. The Secretary of Energy states that:

> While the OCSLA certainly permits the adoption of a reasonable "pro-rata" allocation system, we see no requirement in the statute for any particular form of capacity allocation. In fact, the conference report indicates a reasonable allocation system should consider a variety of things, including conservation, prevention of waste, and competition. There is no mandatory system prescribed, however, to achieve these objectives. (Citations omitted.) As a policy matter, allocation by the market place is preferable to a regulatorily imposed rationing scheme.

The Attorney General's comments are to the same effect:

> The Department supports the FERC's proposal to require OCS pipelines to obtain blanket certificates with an open access requirement.
>
> The open access requirement will ensure nondiscriminatory access as required by the OCSLA, 43 U.S.C. 1334(f)(1)(A), and the blanket certificate, which will enable the pipelines to provide transportation without having to obtain the FERC's approval for individual transactions, will give offshore gas producers flexible access to transportation to onshore purchasers.
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>
> While the FERC's authority to determine what "proportionate amounts" of gas must be transported is broad enough to allow the FERC to require proration, it does not necessarily mean that proration is required by section 5(e) in all cases. To the contrary, the debate on section 5(f), which was added in 1978, indicates that both proration and first-come, first-served were considered to be possible means of allocation under the statute. *See, e.g.*, 123 Cong. Rec. S. 23,257 (July 15, 1977) (statements of Sen. McClure and Sen. Johnston). The Department thus believes the FERC's authority is broad enough to require proration of capacity on OCS pipelines, but such an allocation system is not compelled by the statute.

[41] 43 U.S.C. 1334(f)(3) (1982).

[42] The Commission received responses to its request from the Secretary of Energy, the Attorney General and the Secretary of the Interior. The Commission also received a copy of the letter the FTC sent to the Attorney General. Copies of all these letters are attached as Appendix C of this rule. Appendix C is not being published in the **Federal Register**, but is contained in copies of the order available through the Commission Public Reference Room (Room 1000).

The Attorney General maintains that the Commission may consider various capacity allocation methods, including the first-come, first-served method used by many on-shore pipelines. The Attorney General believes that the Commission should take into account both the costs of shutting in OCS gas production and the costs of altering contracts between OCS pipelines and current shippers. In addition, the Attorney General states that the Commission may find that proration is necessary to ensure the transportation of casinghead gas that is produced along with oil. The Attorney General concludes that "the Department believes that in most cases blanket certification and the first-come, first-served allocation method currently used by other open access pipelines (or other efficient methods of allocation that may be developed for open access pipelines in the future) will adequately fulfill the requirements of the OCSLA."

The final rule adopted by the Commission herein is fully consistent with the suggestions of the Attorney General and the Secretary of Energy. The Commission is providing every OCS pipeline with a Part 284 blanket certificate and is allowing any allocation scheme that is acceptable for open access transportation on-shore to be used on the OCS. In addition, the Commission agrees with the Secretary of Energy and the Attorney General that it has the authority to require prorationing under the OCSLA, and the Commission is reserving its right to do so on a case-specific basis.

### 5. Requests for Rehearing of the Interpretative Rule

In this order, upon consideration of the requests for rehearing of Order No. 491, the Commission has revised its interpretation of section 5 of the OCSLA.

The Commission noted in Order No. 491 that section 5(e) of the OCSLA requires OCS pipelines to transport gas "without discrimination" and that section 5(f)(1)(A) requires OCS pipelines to "provide open and nondiscriminatory access" to both owner and nonowner shippers of OCS gas. The Commission stated that the conditions of nondiscriminatory access in the transportation program established in Order Nos. 436 and 500 satisfy the nondiscriminatory access requirements in both sections 5(e) and 5(f)(1)(A) of the OCSLA. As discussed above, the Commission reaffirms that determination here.

In Order No. 491, however, the Commission went beyond this interpretation by also interpreting the statutory language in section 5(e) of the OCSLA to require generic pro rata allocation of capacity by all OCS pipelines. Several commenters objected to Order No. 491 on the basis that section 5(e) of the OCSLA does not mandate any particular proportionate allocation of capacity, such as a pro rata allocation. In addition, several commenters argued that the Commission failed to consider the hearing requirement in section 5(e) and that any determination of "proportionate amounts" must take into account the statutory goals of conservation and the prevention of waste.[43]

In proposing a general requirement of pro rata allocation, the Commission also stated in both Order No. 491 and the NOPR that the first-come, first-served method of allocating capacity was not sufficient to implement the OCSLA's open access requirement. Several commenters questioned how a pro rata scheme on the OCS would be reconciled with first-come, first-served allocation onshore.

These concerns have all been rendered moot. The final rule does not require pro rata allocation of capacity and allows OCS pipelines to allocate capacity using any nondiscriminatory means that is acceptable for on-shore blanket certificate transportation, including first-come, first-served allocation. Also, by deferring determinations of pro rata allocation to case-specific inquiries (if and when such inquiries are warranted), the Commission will be able to take into account the statutory goals of conservation and the prevention of waste within the context of a particular set of facts analyzed in a hearing under section 5(e) of the OCSLA. As noted above, discussion of the Commission's legal authority to impose pro rata allocation of capacity on a case-specific basis would be premature in the context of the rule adopted herein, because the rule itself does not impose such allocation. Nevertheless, to the extent that the Commission's discussion and determinations herein are inconsistent with the interpretation of the OCSLA set forth in Order No. 491, the interpretative rule issued therein is revised accordingly, to be consistent with this order.

6. Response to Specific Comments

In issuing this final rule, the Commission has adopted a number of commenters' suggestions. For example, Tennessee Gas Pipeline Company (Tennessee) maintains that any capacity constraints on the OCS, if they exist, do not necessitate pro rata transportation. Tennessee than states that

> assuming *arguendo* that the Commission has the power to require transportation it should consider mandatory open-access transportation by OCS pipelines on a first-come, first-serve basis or other procedure that *preserves the rights of existing customers.*
>
> Once OCS pipelines are open for first-come, first-serve transportation, there should be ample space available to transport gas from all connectable sources without any special pro rata transportation requirements for the OCS.[44]

The Commission's final rule is consistent with Tennessee's suggestions.

Peoples Gas Light Coke Company and North Shore Gas Company (Peoples Gas) support the Commission's efforts to ensure open and nondiscriminatory access to all persons requesting offshore transportation.[45] However, Peoples Gas opposes a generic requirement of pro rata allocation because it would jeopardize the reliability of existing firm pipeline sales service. Under a generic pro rata scheme, pipelines could lose portions of their OCS supply at any time, which could lead to curtailments of existing pipeline customers. Peoples Gas also maintains that despite having to curtail its customers, a purchasing pipeline could become subject to increased take-or-pay liability for failing to take OCS supplies that could be reduced under a general pro rata scheme. In addition, Peoples Gas alleges that as a result of such a scheme local distribution companies (LDCs) would not be able to rely on OCS gas to serve their peak day needs.

Peoples Gas recommends that the Commission not require pro rata allocation for firm capacity, but adopt instead provisions under which existing customers are periodically polled for the purpose of identifying unused capacity. Peoples Gas suggests that customers with unutilized capacity could be offered contract demand reductions and could voluntarily give up capacity to accommodate new firm service. The Commission agrees with Peoples Gas and has adopted a similar approach.

Enron suggests that nondiscriminatory self-implementing transportation on OCS facilities can be achieved through a more narrowly drawn alternative than one proposed in the NOPR. Enron submits that any final rule,

> could instead require OCS pipelines to apply for a blanket transportation certificate under proposed Subpart K itself which would be applicable only to the OCS pipeline's OCS facilities as defined in Subpart K. A pipeline holding a Subpart K blanket transportation certificate could be made subject to the relevant provisions of Subpart A with regard to open, nondiscriminatory firm and interruptible transportation and unbundled rates on the pipeline's OCS facilities only.[46]

While Enron goes on to suggest that the contract demand conversion provisions of Part 284, Subpart A are not relevant to OCS transportation and that a pipeline's acceptance of the blanket certificate should remain a voluntary choice, the Commission's final rule adopts a central element of Enron's suggestion, *i.e.*, that the Commission could require every OCS pipeline to obtain a blanket transportation certificate that applies only to the pipeline's OCS facilities.

Enron also suggests that currently contracted-for and utilized capacity on OCS facilities be left undisturbed and that the Commission could provide for a pro rata allocation scheme for: (1) Currently available, unutilized capacity on existing OCS facilities; (2) released capacity which becomes available in the future on existing OCS facilities; (3) new capacity on existing OCS facilities that becomes available through system expansion; and (4) newly constructed

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[43] Section 5(e) of the OCSLA provides, pertinent part: Rights-of-way through submerged lands of the Outer Continental Shelf, whether or not such lands are included in a lease maintained or issues pursuant to this Act, may be granted by the Secretary * * * upon the express condition that oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas produced from the submerged lands or Outer Continental Shelf lands in the vicinity of the pipelines in such proportionate amounts as the Federal Energy Regulatory Commission, in consultation with the Secretary of Energy, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste.

[44] *See* Comments of Tennessee on the NOPR at 9–10.

[45] *See* comments of Peoples Gas on the NOPR at 30.

[46] *See* comments of Enron on the NOPR at 28.

OCS facilities. The final rule is consistent with Enron's suggestions in that contracted-for capacity on the OCS is left undisturbed. In addition, the required open seasons and the voluntary reallocation provisions of the rule provide for allocation of currently available capacity and of capacity released in the future.

The Indicated Producers recommend that the Commission generically grant blanket certificates for the transportation of OCS gas without requiring pipeline-specific certificate applications and approvals.[47] The Indicated Producers urge the Commission to

grant OCS pipelines whatever blanket transportation authority they need to fulfill their obligations under the OCSLA on a generic basis in this rulemaking. The Commissioin may issue blanket transportation authority under section 7 of the Natural Gas Act in a generic rulemaking proceeding.[48]

The Joint Producers make a similar recommendation that the Commission grant uniform blanket certificates for the transportation of OCS gas without case-by-case application requirements.[49] The Commission has adopted these suggestions in the final rule.

Indiana Public Service Company (Northern Indiana) indicates that its primary concern with Order No. 491 and the NOPR is the generic pro rata allocation requirement for firm and interruptible transportation service. With regard to the requirement that OCS pipelines provide open access transportation under blanket certificates, Northern Indiana states,

Northern Indiana does not oppose this remedy, and, in fact, considers this an appropriate and measured response to the problem, so long as it is imposed in the same manner on the OCS as onshore. The availability of open access transportation would ensure that uncontracted for capacity would be available on a firm basis and that unused firm capacity could be used for interruptible transportation on a first-come, first-served basis.[50]

Northern Indiana concludes,

Because of the problems attendant with the Commission's pro rata allocation plan, it should limit its rulemaking to requiring OCS pipelines to obtain blanket certificates. That act alone should be sufficient to prevent the shutting-in of OCS supplies. To the extent that solution ultimately proves inadequate, the Commission can then seek to impose further remedies which are within its legal authority under section 5 of the Outer Continental Shelf Lands Act.[51]

The Commission has adopted Northern Indiana's suggested approach in this final rule.

Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia) suggest that a mechanism be employed whereby existing capacity holders are given an opportunity to reduce their capacity entitlements (together with pregranted abandonment authority) before capacity is prorationed.[52] The Commission has adopted Columbia's suggestions. The final rule does not mandate pro rata allocation; provides for the voluntary reallocation of firm capacity by existing shippers if there is another shipper that desires that capacity; and provides that the blanket certificates issued by the rule include the abandonment authority necessary to implement reallocation of firm capacity among shippers.

Texas Eastern Transmission Corporation (Texas Eastern) suggests that the Commission clarify that the blanket certificates only apply to service performed through OCS facilities.[53] The Commission agrees with Texas Eastern and has done so.[54]

a. *Certificate issues.* Texas Eastern contends that the requirement in the NOPR that an OCS pipeline must have a blanket transportation certificate under Part 284, Subpart G is beyond the scope of the Commission's authority under the NGA. ANR Pipeline Company (ANR) argues that the Commission is illegally, retroactively conditioning existing certificates that authorize the construction and operation of facilities on the OCS to require a blanket transportation certificate. For the reasons discussed above, the Commission disagrees. The Commission has determined that, in order to implement the nondiscriminatory access requirement of section 5 of the OCSLA, OCS pipelines must hold blanket transportation certificates. The Commission is implementing that OCSLA mandate through issuance of blanket certificates under the NGA.

Numerous commenters objected to the Commission's determination to prohibit OCS pipelines from applying for and receiving individual certificates under section 7(c) of the NGA.[55] Tennessee contends that the constantly changing terms and conditions of service under a blanket certificate provide no substitute for the security of long-term service under section 7(c) of the NGA. Enron Interstate Pipelines (Enron) assert that prohibiting an OCS pipeline from applying for an individual section 7(c) certificate for any transaction that could be performed under the Subpart G blanket certificate will result in interstate pipelines' being unwilling to invest in the construction or expansion of OCS facilities. Enron states that pipelines historically have entered into long-term firm transportation arrangements under section 7(c) to guarantee an opportunity to earn a return on the pipeline's investment in OCS facilities. Enron maintains that blanket transportation service without regard to the term of service requested means that an OCS pipeline cannot be assured of the revenues to justify its investment in OCS facilities.

As adopted, the final rule does not prohibit applications for individual certificates, especially for the construction and operation of new facilities.[56] We also note that the final rule does not require a generic pro rata allocation scheme. Thus, the final rule does not preclude or inhibit present or future long term contracts for firm capacity. With respect to applications for certificate authority to construct and operate new pipeline facilities on the OCS, applicants may propose whatever financial and operational arrangements they wish; such applications will be considered on their merits, on a case-by-case basis, recognizing that whatever certificate authority is issued will necessarily involve the blanket certificate adopted by this rule.

Enron also contends that the individual section 7(c) application process was envisioned by the drafters of the OCSLA amendments. Section 603 of the OCSLAA [57] directed the

[47] *See* comments of Indicated Producers on the NOPR at 12–17.

[48] *Id.* at 3.

[49] *See* comments of Joint Producers on the NOPR at 6, 9–17.

[50] *See* comments of Northern Indiana at 4.

[51] *Id.* at 9. *See also* comments of Petrochemical Energy Group on the NOPR at 2.

[52] *See* Comments of Columbia on the NOPR at 9.

[53] *See* comments of Texas Eastern on the NOPR at 21.

[54] *See* new 18 CFR 284.303.

[55] *See, e.g.*, comments of Stingray on the NOPR at 8; comments of Tennessee Gas Pipeline Company at 21–22; comments of Texas Eastern Transmission Corporation at 22–23; and comments of Enron Interstate Pipelines at 34–35.

[56] If applicants seek individual certificates for OCS transportation based on a particular rate treatment they allege to be more appropriate under the peculiar circumstances of the transportation proposed to be performed, the Commission will consider the applications on a case-by-case basis in the same manner as the Commission has done for on-shore service proposed by blanket certificate holders. *See, e.g.*, Overthrust Pipeline Company, 44 FERC ¶ 61,077 (1988); Trailblazer Pipeline Company, 39 FERC ¶ 61,103 (1987), *reh'g denied and certificate vacated*, 43 FERC ¶ 61,103 (1988); and Northern Border Pipeline Company, 39 FERC 61,104 (1987). *See also supra* note 33 and accompanying text.

[57] *Supra* note 6 and accompanying text.

Commission to promulgate a statement of general policy concerning the transportation of natural gas owned by an LDC from an OCS lease to the service area of the LDC. The purpose of section 603 is to encourage interstate transportation of OCS gas "produced from a lease * * * owned, in whole or in part, by a local distribution company, from such lease to the service area of such local distribution company." [58] Enron views section 603 of the OCSLA as evidence that the OCSLA amendments could not have intended that a blanket certificate would be the only way to achieve nondiscriminatory transportation.

In 1980, the Commission issued Order No. 92,[59] which implemented section 603 of the OCSLAA. By that order, the Commission stated its policy regarding access to OCS pipelines by LDCs holding OCS leases.[60] The policy established a framework for pipelines to acquire transportation authorization. Although the blanket transportation certificates issued to OCS pipelines by this rule were not in existence at the time the Commission issued Order No. 92, the goals of that order and OCSLAA section 603 are furthered by the requirements of this rule in that the open access requirements of the blanket certificates issued under the rule will afford distributors significant opportunities to obtain transportation of their gas.

Natural Gas Pipeline Company (Natural) requests clarification on the following points. First, would an on-shore pipeline that already has a Subpart G blanket certificate and that has OCS facilities be required to file for another Subpart G blanket certificate? Second, would a pipeline with both on-shore and off-shore facilities be able to file for a Subpart G blanket certificate that is only applicable off-shore? As discussed above, the Commission's final rule issues Subpart G blanket certificates to all OCS pipelines, including pipelines that currently hold blanket certificates (because the certificates issued herein contain abandonment authority, and open season and reallocation provisions, not contained in the other Part 284, Subpart G blanket certificates). The blanket certificates issued by this rule only apply to a pipeline's facilities on the OCS (to the first interconnection point off the OCS).

Natural asks whether this policy (of according separate treatment of OCS facilities) is inconsistent with previous Commission holdings, citing *Natural Gas Pipeline Company of America-Texoma.*[61] In that order, Natural asked the Commission for a waiver of Order No. 436 so that it could provide transportation services under Order No. 436 on a discrete segment of its system without subjecting the rest of its system to the requirements of Order No. 436. The Commission denied Natural's petition, stating that in issuing Order No. 436 it had contemplated that pipelines would file blanket certificate applications for their entire systems. The Commission's OCSLA Policy is not inconsistent with its prior holding. If a pipeline holds a Part 284 blanket certificate issued pursuant to an application, that authorization applies to its entire system, including any OCS facilities that the pipeline may have. The blanket certificates issued by this rule, however, only govern pipeline facilities on the OCS, and are mandated by the OCSLA. The OCSLA mandate does not apply on-shore.

The Interstate Natural Gas Association of America (INGAA) alleges that by limiting the right of pipelines to choose whether to apply for certificate authority (and once having received such authority, whether to accept it) the Commission violates section 5(f)(4) of the OCSLA.[62] Section 5(f) (4) states that "[n]othing in this subsection shall be deemed to limit, abridge, or modify any authority of the United States under any other provision of law with respect to pipelines on or across the outer Continental Shelf." While the Commission is eliminating, for OCS pipelines, the choice that interstate pipelines have on-shore whether to accept a blanket certificate, such a provision does not limit the authority of the United States under the NGA or any other provision of law.

b. *Rate issues.* Texas Gas Transmission Corporation (Texas Gas) states that it includes all offshore capital costs and operation and maintenance expenses in its systemwide rate base and cost of service and, therefore, these costs are considered in the design of system transportation rates.[63] Texas Gas points out that others (HIOS, ANR, etc.) segment these costs and develop separate rates based on each segment. Texas Gas questions whether there will be "mini rate cases" for each transportation segment and wonders whether it will be required to remove costs from its systemwide rate structure and develop separate rates. The Commission believes that these questions are best addressed on a case-by-case basis in the context of specific facts. The Commission will make these determinations based on the supporting data for the OCS pipeline's proposed rates.

Tarpon Transmission Company (Tarpon) indicates that the requirement that a pipeline submit an annual cost and revenue study is not explicitly limited to those pipelines filling new rate schedules under new § 284.305(b).[64] The Commission agrees with Tarpon that this limitation was intended and therefore the Commission adopts Tarpon's suggested language change. New § 284.305(c) requires the study only if a rate schedule is required to be filed by § 284.305(b).

c. *CD conversion requirements.* Enron contends that subjecting OCS pipelines to Subpart A of Part 284 makes an OCS pipeline's entire system, not just the pipeline's OCS facilities, subject to open access under Order No. 500.[65] In addition, Enron states that under § 284.10 of the Commission's regulations, any interstate pipeline that accepts a Subpart G blanket transportation certificate is deemed to have a agreed to offer its firm sales customers the option to convert their firm sales entitlements under any eligible firm sales service agreement to an equal amount of firm transportation service. Enron argues that the Commission has continually justified the contract demand (CD) conversion provisions of § 284.10 based on the voluntary nature of the Order Nos. 436 and 500 transportation program. Enron concludes that ownership of an OCS facility by an interstate pipeline would negate the fundamental characteristic of the Order Nos. 436 and 500 (*i.e.*, that the program is voluntary) and therefore would negate the Commission's justification for the CD conversion provision.

As discussed above, the blanket transportation certificates issued by this rule only apply to an OCS pipeline's OCS facilities (to the first point of interconnection off the OCS). The CD conversion provisions of § 284.10 apply to OCS pipelines in the same manner as they apply to pipelines on-shore. The

[58] 43 U.S.C. 1862(a) (1982).

[59] Statement of Policy on Distributor Access to Outer Continental Shelf Gas, Order No. 92, 45 FR 49247 (July 24, 1980); FERC Stats. & Regs. [Regulations Preambles 1977–1981] ¶ 30,173 (July 15, 1980).

[60] *See* 18 CFR Part 284, Subpart H (1988).

[61] 35 FERC ¶ 61,260 (1986).

[62] *See* comments of INGAA on the NOPR at 5.

[63] *See* comments of Texas Gas at 24.

[64] *See* comments of Tarpon on the NOPR at 4 and 5.

[65] *See* comments of Enron on the NOPR at 5 and 24–28.

purpose of those provisions, as explained in Order No. 436, is to ensure that firm sales customers have equal access to transportation capacity.[66] We construe such access to be part of the OCSLA mandate implemented herein. Thus, OCS pipelines are required to comply with § 284.10. That requirement, however, extends only to the OCS portion of a pipeline. If a pipeline operates only on the OCS, then § 284.10 clearly applies. If a pipeline operates facilities both off-shore and on-shore, and if the only Part 284, Subpart G certificate it holds is the one issued by this rule,[67] then § 284.10 applies only with respect to sales of gas that occur off-shore, and not to sales of gas on-shore; in other words, § 284.10 would not apply to sales from the on-shore facilities.

As a practical matter, only one OCS pipeline, Sea Robin Pipeline Co., makes sales of gas from off-shore facilities. (While there are other pipelines who have OCS facilities and who also sell gas, those pipelines also have facilities on-shore, and all of the sales are made on-shore; as explained above, such sales fall outside the scope of the rule adopted herein.) Sea Robin recently accepted a Part 284 blanket certificate. Thus, the issue of the relationship between voluntary acceptance of a blanket certificate and CD conversion rights is effectively moot.

d. *Definitions.* National Fuel Gas Supply Corporation (National) and Sun Exploration and Production Company (Sun) read the definition of an OCS pipeline proposed in the NOPR as potentially embracing all the on-shore facilities of a pipeline that owns both on-shore and off-shore facilities. This is not the Commission's intent and, as discussed above, it has amended the definition of an OCS pipeline in this final rule.

The Indicated Producers ask the Commission to include in its definition of an OCS pipeline all transmission facilities downstream from any point on the OCS to the on-shore point where a shipper has access to facilities that are subject to Order No. 436. The Indicated Producers also request that the definition include the first point on-shore where transportation is genuinely available.[68] The Commission declines to adopt the Indicated Producers' suggestions because they could result in the open access provisions of this rule extending far beyond the first interconnection point off the OCS.

Pelto Oil Company (Pelto) asks the Commission to clarify the phrase "in the vicinity" of the pipeline used in section 5(e) of the OCSLA.[69] That matter, however, is beyond the scope of this rulemaking, and is best addressed on a case-specific basis if and when the question arises.

e. *Scope of OCSLA jurisdiction.* Some producers express concern that the Commission's rule will apply to nonjurisdictional facilities under the NGA. For example, McMoran Oil & Gas Company (McMoran) and Ensearch Exploration, Inc. (Ensearch) both express concern over gathering facilities on the OCS.[70] McMoran is concerned that an OCS pipeline's control of nonjurisdictional gathering facilities could be used to block access to its jurisdictional facilities and thereby evade the open access mandate of the OCSLA. McMoran believes that the enforcement of the open access requirements of the OCSLA should not turn on the classification of a particular segment of an OCS pipeline's transportation system. McMoran wants the Commission to reaffirm that the obligation to provide open access transportation is not limited to jurisdictional facilities but extends to nonjurisdictional gathering lines that operate as an integral part of the OCS pipeline's system.

Ensearch requests that, if the Commission extends the obligation to provide open access transportation to nonjurisdictional gathering lines operated as an integral part of an OCS pipeline's system, the Commission not apply the same open access requirements through a rulemaking to producer-operated gathering facilities. Ensearch believes that application of the open access requirement to producer-operated gathering facilities is best handled on a case-by-case basis.[71]

The Commission stated in Order No. 491 that its interpretation of the OCSLA only extended to interstate natural gas pipelines subject to the NGA; the same is true of this final rule. The Commission agrees with McMoran that all pipelines on the OCS have a duty to provide open and nondiscriminatory access to transportation services. If the Commission receives complaints regarding gathering facilities it will, on a case-specific basis, use its ancillary authority, its authority under sections 4 and 5 of the NGA,[72] and its authority under section 5 of the OCSLA, as appropriate under the circumstances presented.

f. *Order No. 500 crediting mechanism.* Several producer groups urge the Commission not to apply the Order No. 500 take-or-pay crediting mechanism to open access transportation of OCS gas.[73] The Joint Producers state that by requiring OCS pipelines to provide transportation service under a Part 284 blanket certificate the Commission, at least implicitly, proposes to require producers to offer Order No. 500 take-or-pay credits to the OCS pipelines in order to obtain open access transportation rights under section 5 of the OCSLA.[74] The Joint Producers allege that such a requirement is inconsistent with sections 5(e) and 5(f) of the OCSLA because it would force producers to give the OCS pipelines significant economic concessions to obtain their statutorily-mandated OCSLA transportation rights. The Joint Producers note that the Commission, in Order No. 500–C, recognized the unique production requirements for casinghead gas and took steps to prevent the reduction of casinghead production (*i.e.*, the Commission refused to extend take-or-pay credits to include casinghead gas). The Joint Producers maintain that similar action is justified for all natural gas produced on the OCS.[75]

McMoran Oil & Gas Company (McMoran) states that the blanket certificate would be subject to the conditions of Subpart A of Part 284, and that § 284.8(f) and § 284.9(f) authorize pipelines to condition eligibility for

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[66] *See* Order No. 436, FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,665, 31,496–31,497 and 31,518–31,533 (1985) and Order No. 436–A, FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,675, 31,640–31,642, 31,657 and 31,661–31,669 (1985).

[67] If a pipeline has both on-shore and off-shore facilities, and holds a Part 284, Subpart G certificate pursuant to an application for one, then § 284.10 clearly applies to its entire system.

[68] *See* comments of the Indicated Producers at 35.

[69] *See* comments of Pelto at 10.

[70] *See* comments of McMoran on the NOPR at 3, 15–17; and comments of Ensearch on the NOPR at 1–6. In addition, Apache Corporation expresses concern that the Commission may change its policy with respect to gathering lines under the NGA; *see* comments of Apache on the NOPR at 6–7. The Commission's policy with respect to gathering under the NGA is beyond the scope of this rule.

[71] *See* comments of Ensearch on the NOPR at 6.

[72] *See, e.g.*, Northern Natural Gas Company, Division of Enron Corp., 43 FERC ¶ 61,473 (1988) and 44 FERC ¶ 61,384 (1988).

[73] *See* comments of the Indicated Producers on the NOPR at 24–33; comments of the Joint Producers on the NOPR at 35–37; comments on McMoran Oil & Gas Company on the NOPR at 4–15; comments of Pelto Oil Company at 7–9; and comments of Natural Gas Supply Association at 5–7.

[74] The crediting mechanism is discussed in Order No. 500, III FERC Stats. & Regs. ¶ 30,761 at 30,779–30,792 (1987). The crediting mechanism was modified in Order No. 500–B, III FERC Stats. & Regs. ¶ 30,772.

[75] Several other commenters discussed the appropriateness of a priority for casinghead gas in any allocation scheme. *See, e.g.*, comments of Sun Exploration and Production Company (Sun) at 4 and comments of the Joint Producers at 3, 21–27.

transportation service on the producer's offering the pipeline credits against its take-or-pay liability to the producer. McMoran also states that the Order No. 500 crediting mechanism was established in response to the remand by the U.S. Court of Appeals in *Associated Gas Distributors v. FERC, supra,* and that in Order No. 436 the Commission was acting in the context of a voluntary regulatory program adopted pursuant to the Commission's discretionary authority under the NGA and the NGPA. McMoran asserts that open access transportation under the OCSLA is different in that it is mandated by statute and that shippers' rights to open access transportation exist independently of any Commission interpretation of the Act.

The Indicated Producers contend that the Order No. 500 crediting mechanism would result in conditional access to OCSLA section 5 transportation. The Indicated Producers assert that there is no statutory basis for such a condition and that Congress never intended for open access transportation on the OCS to be conditioned on a producer's willingness to relinquish certain rights. In addition, the Indicated Producers argue that application of the Order No. 500 crediting mechanism would conflict with the open and nondiscriminatory access condition contained in pipeline right-of-way permits issued by the Department of the Interior. The Indicated Producers allege that to allow OCS pipelines to refuse transportation service to producers unwilling to offer take-or-pay credits would violate the right-of-way permits.

Natural Gas Supply Association (NGSA) agrees with the Indicated Producers and states that if the Order No. 500 crediting mechanism was applied under the OCSLA, it would violate the anti-discrimination provisions in sections 5(e) and 5(f) and would create an irreconcilable conflict with the terms and conditions in the right-of-way permits and easements issued to OCS pipelines by the Department of the Interior.

In Order Nos. 436 and 500, the Commission fully considered both casinghead gas and the producer crediting mechanism. Furthermore, blanket certificates issued under those orders already apply to off-shore gas to the extent that the certificate holder has off-shore pipeline facilities. We perceive no reason to reconsider here the carefully balanced mechanisms adopted in those orders. Thus, casinghead gas will be treated in the same manner under the rule adopted herein as it is treated in the regulations adopted by Order Nos. 436 and 500, for the reasons stated in those orders.[76] There is no priority of capacity allocation for casinghead gas off-shore, just as there is no priority of capacity for such gas on-shore. The treatment of casinghead gas for crediting purposes, as set forth in Order No. 500, continues to apply. In the event that application of those rules raises an issue of potential damage to off-shore wells, the Commission will consider the matter on a case-by-case basis, in the context of the specific facts alleged, pursuant to the standards set forth in section 5 of the OCSLA.

g. *Rationale for rules.* Several commenters assert that the Commission's rationale for implementing the OCSLA was flawed.[77] These commenters contend that the complaints the Commission received about access to available capacity on the OCS were directed to the Commission's policy against capacity brokering on the OCS and that the Commission's proposed rule in Docket No. RM88-13-000 is the appropriate forum in which to address these complaints. We need not discuss here whether those complaints might be appropriately considered in Docket No. RM88-13-000. The Commission has the authority to adopt regulations to implement the OCSLA, and for the reasons discussed above it has determined that there is a need to do so by adopting the final rule.

### IV. Environmental Review

This rule proposes regulations to implement the Commission's responsibilities under section 5 of the OCSLA. The Commission is providing interstate pipelines operating on the OCS with blanket certificates under section 7(c) of the NGA. These certificates involve the transportation of gas and do not authorize the construction of any facilities. The Commission has already determined that actions involving the transportation of natural gas under NGA section 7(c) are not actions that have significant environmental effect.[78] The Commission, therefore, is not preparing an environmental impact statement for this rule.

[76] *See, e.g.,* Order No. 500-C, III FERC Stats. & Regs. ¶ 30,786 at 30,957-30,958 (1987).

[77] *See, e.g.,* Comments of the High Island Offshore System on the NOPR at 5-7; comments of Texas Gas Transmission Corporation at 15-19; comments of Apache Corporation at 3-4; and comments of Union Carbide Corporation at 10-12.

[78] See 18 CFR 380.4(a)(2) *as added by* Order No. 486, 53 FR 47897 (Dec. 17, 1987), III FERC Stats. & Regs. ¶ 30,783 (1987).

### V. Regulatory Flexibility Act

The Regulatory Flexibility Act (PFA)[79] requires a rule to contain an analysis of the impact the rulemaking would have on small entities.[80] The RFA is intended to ensure careful and informed agency consideration of the rules that significantly affect small entities and to encourage consideration of alternative approaches to minimize harm to, or burdens on, small entities. This rule applies to jurisdictional natural gas companies whose services or facilities are regulated under NGA or the NGPA. Most of these companies are too large to fall within RFA's definition of a small entity and therefore this rule will not have a "significant economic impact on a substantial number of small entities."

The rule may have a significant impact on those entities who are not providing transportation services on the OCS but who are either producing or shipping OCS gas. Even if these entities may be considered small entities under the RFA, the impact the rule would have would be a beneficial one. Producers or shippers of OCS gas would be given better access to transportation service on the OCS. The Commission does not believe the term "significant economic impact on a substantial number of small entities" as used in the RFA was intended to include regulations that have a beneficial, rather than a negative, impact on small entities.

### VI. Paperwork Reduction Act

The Paperwork Reduction Act (PFA)[81] and the Office of Management and Budget's (OMB) regulations[82] require that OMB approve certain information collection requirements imposed by agency rule. The information collection provisions in this final rule will be submitted to OMB for its approval.

The Commission promulgated the information collection provisions of this rule in order to comply with its statutory responsibilities under sections 5(e) and 5(f) of the OCSLA. Under section 5(e) of the OCSLA, the Commission has the responsibility to ensure that oil and gas pipelines transport and purchase gas produced on the OCS in such proportionate amounts as the Commission determines to be reasonable. Section 5(f) of the OCSLA requires OCS pipelines to provide open and nondiscriminatory access to both owner and nonowner shippers. In order

[79] 5 U.S.C. 601-612 (1982).

[80] 5 U.S.C. 603 (1982).

[81] 44 U.S.C. 3501-3520 (1982).

[82] 5 CFR 1320-13 (1988).

to implement sections 5(e) and 5(f) of the OCSLA, the Commission is issuing every OCS pipeline a blanket transportation certificate under Part 284, Subpart G of its regulations. In addition, OCS pipelines must have a transportation rate schedule on file that conforms to § 284.7, and to § 284.8(d) for firm service and to § 284.9(b) for interruptible service.

The information collection burden imposed on an OCS pipeline of filing an appropriate rate schedule is estimated to be 240 hours per response. The frequency of response is estimated to be one per year for the first year; thereafter, filing are discretionary on the part of the pipeline. The number of likely respondents is 43.[83] Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 [Attention: Mike Miller, Office of Information Resources Management (202) 357-9205]. Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulation Commission).

### VII. Effective Date

This rule will become effective February 17, 1989.

### List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recording requirements.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission. Commissioner Trabandt concurred with a separate statement attached.

**Lois D. Cashell,**

*Secretary.*

## PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1987 AND RELATED AUTHORITIES

1. The authority citation for Part 284 is revised to read as follows:

**Authority:** Natural Gas Act, U.S.C. 717-717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982); Outer Continental Shelf Lands Act of 1953, 43 U.S.C. 1331-1356 (1982) as amended; Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. In Part 284, a new Subpart K consisting of §§ 284.301 through 284. 306 is added to read as follows:

**Subpart K—Transportation of Natural Gas on the Outer Continental Shelf by Interstate Natural Gas Pipelines on Behalf of Others**

Sec.



## Subpart K—Transportation of Natural Gas on the Outer Continental Shelf by Interstate Natural Gas Pipelines on Behalf of Others

### § 284.301 Applicability.

This subpart implements section 5 of the Outer Continental Shelf Land Act (OCSLA) and applies to any jurisdictional interstate natural gas pipeline that holds a certificate under section 7 of the Natural Gas Act (NGA) authorizing the construction and operation of facilities on the Outer Continental Shelf (OCS).

### § 284.302 Definitions.

For the purposes of this subpart, the term:

(a) "Outer Continental Shelf" (OCS) has the same meaning as found in section 2(a) of the OCSLA (43 U.S.C. 1331(a)); and

(b) "OCS pipeline" means an interstate natural gas pipeline that holds a certificate under section 7 of the NGA authorizing the construction and operation of facilities on the OCS, and includes all of the OCS pipeline's facilities that fall within the scope of the Commission's jurisdiction under section 7 of the NGA to the full extent that such facilities are used or necessary to transport natural gas from the OCS to the first point of interconnection on the shoreward side of the OCS where it delivers natural gas to either:

(1) A natural gas conditioning or processing facility, or

(2) Another pipeline, or

(3) A distributor or end user of natural gas.

### § 284.303 OCS blanket certificates.

(a) Every OCS pipeline (as that term is defined in § 284.302(b)) is issued a blanket certificate authorizing the transportation of natural gas on or across the OCS on behalf of others under Subpart G of this Part. This certificate becomes effective on the date that the OCS pipeline's rates under § 284.305 become effective. However, if the Commission does not permit rates filed pursuant to § 284.305(b) to become effective on or before April 1, 1989, the certificate becomes effective on the date on which the rates filed pursuant to § 284.305(b) would have gone into effect if they had not been suspended.

(b) OCS pipelines must provide open and nondiscriminatory access to the transportation service provided under paragraph (a) of this section.

(c) The certificate issued under paragraph (a) of this section provides an OCS pipeline with the authorization to:

(1) Transport natural gas under section 7(c) of the NGA,

(2) Abandon transportation services that are performed under the blanket certificate, and

(3) Abandon firm transportation services to implement a reallocation of firm capacity under §§ 284.304(a) and 284.304(c) of this part.

(d) The certificate and abandonment authority conferred by this section is conditioned upon the OCS pipeline's compliance with § 157.20(e) of this chapter.

(e) A blanket certificate issued under this section does not authorize the construction of new facilities on the OCS.

### § 284.304 Allocation of firm and interruptible capacity on the OCS.

(a) *Open season for firm transportation.* Not later than March 1, 1989, all OCS pipeline must poll all of their existing firm shippers to ascertain whether any of them want to relinquish any or all of their firm transportation capacity.

(1) If an OCS pipeline has either uncommitted firm transportation capacity or firm transportation capacity that an existing shipper wants to relinquish, it must afford all existing and potential shippers an opportunity to request the available firm capacity.

(2) The OCS pipeline must provide reasonable notice of the open season.

(3) The open season can be for no less than 10 days and no more than 30 days.

(4)(i) If the requests for firm capacity exceed the firm capacity that is available, the OCS pipeline must allocate to each requesting shipper a pro rata share of the available firm capacity.

(ii) If the available firm capacity exceeds the requests for such capacity, and if the available firm capacity includes capacity that one or more existing shippers wants to relinquish, each shipper relinquishing capacity must be allowed to satisfy the requests for firm capacity on a pro rata basis. To the extent that the OCS pipeline itself has uncommitted firm capacity available, it may assign that

[83] *See supra* note 16 and accompanying text.

uncommitted capacity to the new shipper(s) before reallocating the capacity of existing shippers.

(iii) In reallocating firm capacity under paragraph (a)(4)(i) or (a)(4)(ii) of this section, the OCS pipeline must take into account the capacity available at the particular receipt and delivery points specified by both the shippers requesting firm capacity and the shippers voluntarily relinquishing firm capacity.

(b) *Open season for interruptible capacity.* (1) No later than March 1, 1989, all OCS pipelines must commence an open season for interruptible transportation.

(2) The OCS pipeline must provide reasonable notice of the open season.

(3) The open season can be for no less than 10 days and no more than 30 days.

(4) The requirements of paragraph (b) of this section do not apply to any OCS pipeline that has accepted a blanket transportation certificate under Subpart G of this part prior to February 17, 1989.

(5) In establishing an initial priority for interruptible transportation, OCS pipelines shall give priority to transportation currently (as of February 17, 1989) authorized under existing individual certificates (provided that such transportation will be performed at transportation rates no lower than the transportation rates paid or to be paid by other interruptible shippers).

(c) *Voluntary reallocation of firm capacity.* (1) If an OCS pipeline receives a request for firm transportation at any time after it has conducted the open season described in paragraph (a) of this section, it must, within 10 days of receiving the request, provide the requesting shipper with a list of all firm shippers under contract with the pipeline.

(2) If the requesting shipper finds an existing firm shipper that wants to voluntarily relinquish all or a portion of its firm capacity, the OCS pipeline must reallocate that firm capacity. In the event that more than one shipper wants to acquire that firm capacity, the reallocation may be conducted on either a first-come, first-served basis, a pro rata basis, or any other nondiscriminatory method that is consistent with the OCS pipeline's transportation rate schedule on file with the Commission. If the OCS pipeline has uncommitted firm capacity available, it may assign part or all of that capacity before reallocating the capacity of existing shippers.

(3) The blanket certificate issued under § 284.303(a) provides an OCS pipeline with the authority under section 7(b) of the NGA to abandon service with respect to the shipper voluntarily relinquishing firm capacity, even if the service was authorized prior to the issuance of the blanket certificate under § 284.303(a).

**§ 284.305 Transportation rates.**

(a) Except to the extent explicitly authorized by the Commission on a case-by-case basis pursuant to § 284.305(d)(2), the transportation rate for transportation of gas on the OCS by an OCS pipeline must be the rate in a transportation rate schedule on file with the Commission that conforms to § 284.7, and to either § 284.8(d) for firm service or to § 284.9(d) for interruptible service.

(b) If an OCS pipeline does not have a transportation rate schedule on file with the Commission that conforms to § 284.7, to § 284.8(d) for firm service and to § 284.9(d) for interruptible service, the OCS pipeline must file conforming rate schedules by March 1, 1989, to be effective no later than April 1, 1989. The OCS pipeline must use it current rates until the Commission permits the rates filed pursuant to this paragraph to become effective.

(c) The rate schedules filed by a pipeline under paragraph (b) of this section must be supported by an annual cost and revenue study in the form required by § 154.303(e) of this chapter. If a pipeline has a pending rate proceeding under § 154.63, 154.38 or 154.303(e) of this chapter, it does not have to submit an annual cost and revenue study and may use the base period data from the proceeding so long as the base period ended within 12 months of the filing of the rates required in paragraph (b) of this section.

(d)(1) Except as provided in paragraph (d)(2) of this section, the rates filed under paragraph (b) of this section apply to all transportation services offered by an OCS pipeline.

(2) With respect to transportation performed pursuant to certificates other than Part 284 blanket transportation certificates, an OCS pipeline may restate its current rates for those transactions if it demonstrates to the Commission that such rates are not unjust, unreasonable, or unduly discriminatory. If an OCS pipeline wants to use its current rates for transportation, it should refile those rates by March 1, 1989, to be effective no later than April 1, 1989.

(e) By March 1, 1989, to be effective no later than April 1, 1989, all OCS pipelines must file tariff provisions setting forth the method by which firm transportation capacity will be reallocated under § 284.304(c) in the event that two or more shippers seek to obtain the firm capacity that one or more shippers offer to relinquish.

(f) All rates for transportation on or across the OCS that are in effect prior to February 17, 1989 remain in effect until the date upon which the rates filed pursuant to §§ 284.305 (b) and/or (d) (whichever supersede the existing rates) become effective.

## Appendix A—List of Commenters

Note.—This appendix will not be published in the Code of Federal Regulations.

1. American Gas Association
2. Amoco Production Company, *et al.*
3. ANR Pipeline Company
4. Apache Corporation
5. Arco Oil & Gas Company
6. Associated Gas Distributors
7. Chemical Manufacturers Association, *et al.*
8. Citizens Energy Corporation *et al.*
9. Columbia Gas Transmission Corporation, *et al.*
10. Consolidated Gas Transmission Corporation
11. Elizabethtown Gas Company
12. Enron Interstate Pipelines
13. Ensearch Exploration, Inc.
14. Fertilizer Institute
15. High Island Offshore System
16. Indiana Public Service Company
17. Indicated Producers
18. Interstate Natural Gas Association of America
19. McMoran Oil & Gas Company
20. Meridian Oil, Inc.
21. National Fuel Gas Supply Corporation
22. National Steel Corporation
23. Natural Gas Pipeline Company of America
24. Natural Gas Supply Association
25. Northern Illinois Gas Company
26. Pacific Offshore Pipeline Company, *et al.*
27. Pelto Oil Company
28. Meridian Oil, Inc.
29. Peoples Gas Light and Coke Company & North Shore Gas Company
30. Petrochemical Energy Corporation
31. Producer Associations, *et al.*
32. Southern Natural Gas Company
33. Stingray Pipeline Company *et al.*
34. Sun Exploration and Production Company
35. Tarpon Gas Marketing Ltd., *et al.*
36. Tennessee Gas Pipeline Company
37. Texas Eastern Transmission Corporation
38. Texas Gas Transmission Corporation
39. Transcontinental Gas Pipe Line Corporation
40. Union Carbide Corporation
41. United Gas Pipe Line Company & Sea Robin Pipe Line Company

## Appendix B—OCS Pipelines to Whom Part 284 Blanket Transportation Certificates are Issued by this Order

Note: This appendix will not be published in the Code of Federal Regulations.

*OCS Pipeline and Shoreward Terminus*

1. Blue Dolphin Pipeline Co.
   Onshore terminus at Dow Chemical Co., Freeport, Texas
2. Columbia Gulf Transmission Co.
   Offshore termini of numerous segments, Offshore, Louisiana. *See also* Nos. 23, 25 and 27, below

3. Sabine Pipe Line Co.
   Offshore termini at West Cameron 547 South Addition, West Cameron 529 South Addition, and South Timbalier 147, Offshore, Louisiana
4. Seagull Interstate Corp.
   Offshore termini at Galveston 213 and Matagorda 526, Offshore, Texas
5. Superior Offshore Pipeline Co.
   Offshore terminus at Lowry Gas Plant, Cameron Parish, Louisiana
6. Tarpon Transmission Co.
   Offshore terminus at Shipshoal 274, Offshore, Louisiana
7. Sea Robin Pipeline Co.
   Onshore terminus at Erath, Louisiana
8. Stingray Pipeline Co.
   Offshore terminus at West Cameron 148, Offshore, Louisiana
9. Texas Sea Rim Pipe Line, Inc.
   Onshore terminus at Texas Sea Rim Sabine Pass, Separation Plant, Jefferson County, Texas
10. Bayou Interstate Pipeline System
   Offshore terminus at West Cameron 289, Offshore, Louisiana
11. Black Marlin Pipeline Co.
   Onshore terminus at Union Carbide plant, Texas City, Texas
12. Chandeleur Pipe Line Co.
   Onshore terminus at Pascagoula, Mississippi
13. Florida Gas Transmission Co. (FGT)
   Interconnection with FGT Kain Lateral, Matagorda County, Texas. *See also* Nos. 24, 26, and 28, below
14. Freeport Interstate Pipeline Co.
   Onshore terminus at interconnection with Freeport Intrastate Pipeline on Grand Isle, Jefferson Parish, Louisiana
15. Gasdel Pipeline System, Inc. (Gasdel)
   Offshore termini of 11 small offshore pipelines, Offshore, Louisiana and Texas. *See also* No. 22, below
16. High Island Offshore System
   Offshore terminus at interconnection with UTOS, West Cameron 167, Offshore, Louisiana
17. Pacific Interstate Offshore Co.
   Onshore terminus at metering station at interconnection with Pacific Lighting Service Co. pipeline, Ventura County, California
18. Pacific Offshore Pipeline Co.
   Onshore terminus at gas treating plant, Santa Barbara County, California
19. Pelican Interstate Gas System
   Onshore terminus at Mobil plant, Cameron Parish, Louisiana
20. Point Arguello Natural Gas Line Co.
   Onshore terminus at Chevron Hermosa plant, Santa Barbara County, California
21. U-T Offshore System (UTOS)
   Onshore terminus at Johnson's Bayou/Cameron Meadows plant complex, Cameron Parish, Louisiana
22. Padre Island Pipeline System (Transcontinental Gas Pipe Line Co. [Transco]; and Gasdel) [1]
   Onshore terminus at dehydration plant near interconnection with Transco's main line, Brooks County, Texas
23. Central Texas Gathering System (Transco; Northern Natural Gas Co. [Northern]; Southern Natural Gas Co. [Southern]; ANR Pipeline Co. [ANR]; Columbia Gulf Transmission Co. [Columbia Gulf]; and Tennessee Gas Pipeline Co. [Tennessee]) [1]
   Onshore terminus at Markham plant, Matagorda County, Texas
24. Matagorda Offshore Pipeline System (Northern; Southern; and FGT) [1]
   Onshore terminus at liquid separation facility and interconnection with Houston Power and Light Co. pipeline, Tivoli, Refugio County, Texas
25. East Cameron 23 Lateral (Columbia Gulf; and Southern) [1]
   Onshore terminus at Amoco South Pecan Lake plant, Cameron Parish, Louisiana
26. Sabine Pass Lateral (Tennessee; and FGT) [1]
   Onshore terminus at Johnson's Bayou, Cameron Parish, Louisiana
27. Blue Water System (Tennessee; and Columbia Gulf) [1]
   Onshore termini at Pecan Island plant, Vermilion Parish, Louisiana (West leg), and Tenneco Oil Cocodrie plant, Terrebonne Parish, Louisiana (East leg)
28. Southern Pass Cognac Line (Southern; Northern; FGT; ANR; and Transco) [1]
   Onshore terminus at interconnection with Southern's Romere Pass pipeline, Plaquemines Parish, Louisiana

[1] The blanket certificates are issued to the individual interstate pipeline owners listed in parentheses.

**Trabandt, Commissioner,** *Concurring*

I concur in this Final Rule with several observations and reservations for further review on rehearing.

*Background*

In my concurring opinion to the Notice of Proposed Rulemaking (NOPR) in this docket, I expressed serious concern that, among other things, the proposed rule was not an effective solution to the real world problem at that time of some shut-in OCS gas resulting from Commission decisions in certain Order No. 436 blanket certificate cases, as documented in correspondence from the Natural Gas Supply Association (NGSA) and Interstate Natural Gas Association of America (INGAA) attached to my concurring opinion. The NGSA and INGAA letters focused on the problem then occurring on joint venture pipelines such as HIOS, U-TOS, Stingray, Trailblazer, Tarpon and others, and was commonly referred to as "third party transportation." According to the letters, the so-called third party transportation problem occurred when a pipeline participating in one of those joint venture pipelines sought to utilize its unused firm capacity in the joint venture pipeline to transport gas for third parties, but was prevented from doing so by the Commission because the activity would be inconsistent with then-current Commission policy prohibiting the brokering of capacity under Part 284 blanket certificate authority.

The prohibited third party transportation would have provided a means for producers to get gas to market that otherwise might, and, in some cases involving Sun and Chevron, for example, already was, shut-in for lack of other available transportation, because the demand for system supply of the interstate pipeline had declined dramatically. Such third party transportation also would provide pipelines with a means to transport released gas for take-or-pay credits and would provide customer access to additional supplies, thus maximizing the efficient use of the joint venture pipelines and reducing transportation costs on a per Mcf basis. Consequently, NGSA and INGAA urged the Commission to act immediately and simply to permit interstate pipelines to allocate capacity controlled on joint venture pipelines to shippers under existing 7(c) certificates and applicable contracts. My tentative conclusion was that the NOPR would not solve immediately or effectively that problem.

Conversely, there did not appear to be any documented real world problem for which the proposed rule was necessary or appropriate as a solution. The NOPR referred briefly and rather obliquely to the shutting-in of gas discussed above (which was the direct result of the Commission action to prohibit generally third party transportation in the Order No. 436 cases) and cited a 1985 request for an OCS rulemaking by the Chemical Manufacturers Assocation. That petition preceded the issuance of Order No. 436 and the emergence of non-discriminatory open access transportation under Part No. 284 and resulting blanket certificates. Rather than that stated, obscure justification and rationale, there was a strong undercurrent that the real motivation for the Order No. 436/500 blanket certificate approach in the OCS NOPR last spring was the desire to use the OCS problem/issue as a "target of opportunity" or excuse to impose on a mandatory basis the blanket certificate requirement, using the OCSLA as a springboard to reach that result. This attempt occurred at a time when interstate pipelines were still strongly resisting blanket certificates, rather than as a completely good faith effort by the Commission to solve the real world, "third party transportation" capacity reallocation problem.

Mandatory imposition of blanket certificates on the OCS would be a precedent of sorts and would demonstrate the disposition of the Commission to impose blanket certificates under any other nondiscriminatory theory. Also, there was the distinct suggestion that the solution to that real world problem was being held "hostage" as the pretext for such mandatory imposition of the blanket certificates on the OCS. The motivation for the NOPR last March is not the issue at this point, but I would hope that the Commission today will give all due consideration to what is the policy direction and regulatory objective for this Final Rule.

More generally, as I understand the current state of affairs on the OCS today, there is virtually no significant transportation access problem and there is no current threat of shut-in gas. In short, gas is moving as necessary from the OCS ashore without any substantial difficulty under the existing arrangements. Also, eight of the OCS pipelines already have blanket certificates and almost all the interstate pipelines with firm capacity allocations on the joint venture pipelines have blanket certificates. Therefore, the current mix of transportation services under blanket certificates and section 7(c) certificates appears to be adequate, even if not optimal under a uniform OCS-wide blanket certificate program.

At the same time, there is some continued enthusiasm on the part of producers and shippers for moving carefully toward a more uniform, non-discriminatory access program, provided that there is no interruption of existing transportation arrangements. That is of considerable importance to many producers, because a large majority of OCS gas purchase contracts have been renegotiated as part of take-or-pay settlements. Interstate pipelines obtained more market responsive prices and take-or-pay relief in exchange for resolution of Order No. 500 credit mechanism requirements, more assured transportation access and services for producers, in addition to other features of the settlements. This Final Rule should not be allowed to have the effect of disrupting those settlement transportation arrangements, denying producers the benefits of the transportation and crediting benefits, or precipitating the necessity of a new round of "conditioned access" negotiations. I am not persuaded that the Final Rule would satisfy that test.

After review of the public comments and requests for rehearing filed in these dockets, and the current state of affairs on the OCS today, I am not completely persuaded that there is a satisfactory rationale and justification to support mandatory imposition of an Order No. 436/500 blanket certificate on all OCS pipelines. I also continue to believe that there is serious potential for uncertainty and disruption with regard to OCS pipeline services, as well as an endless line of clarification and waiver requests, under the Final Rule as adopted. Consequently, I have identified two options: one substantive and one procedural, for our further consideration in these dockets.

*Substantive Option*

As I discussed above, I believe the threshold issue in this rulemaking is the nature of the problem we are trying to solve and the resulting regulatory objective. There is absolutely no doubt that the problem or "crisis" which spurred the initial action in these dockets was the shut-in of OCS gas resulting directly from the Commission's rejection in Order No. 436 cases of requests to authorize downstream onshore pipelines holding firm capacity on upstream OCS pipelines to reallocate capacity. A more detailed explanation is set forth in my concurring opinion to the NOPR and the attached letters from NGSA and INGAA.

The Natural Gas Pipeline of America Order No. 436 case is a primary example of the problem. There the Commission rejected proposals for reallocation authority because of concerns related to capacity brokering and the capacity brokering NOPR then under discussion. Some pipelines, such as Natural, claimed authority for reallocation under their separate certificate authority and proceeded to reallocate despite the rejection of specific authority in the Order No. 436 case. The Commission did not challenge such legal claims, or the associated reallocations, which have apparently proceeded apace since last spring. To that extent, there is a serious question today if, in fact, there is a remaining reallocation problem in the real world that needs to be fixed. In any event, I believe it is quite clear in the record of comments on the NOPR and rehearing petitions for the interpretive rule that mandatory imposition of Order No. 436/500 blanket certificates is not justified to address the initial reallocation problem. The Final Rule totally ignores this threshold issue, largely because there is no persuasive response. (See page 60 of the Slip Opinion.)

If, however, the Commission is persuaded that action must be taken to address the reallocation problem at this point in time, there is a much more narrow and focused approach of providing authority for reallocation of firm capacity on OCS pipelines. A simplified and streamlined mechanism will accomplish that regulatory objective without all of the potential legal, policy and operational problems of the mandatory blanket approach.

Chairman Hesse has already agreed in the *Texas Eastern* Order No. 436 case in September to develop quickly just such a mechanism for nondiscriminatory reallocation onshore of firm capacity on an upstream pipeline held by a downstream pipeline. Her commitment is memorialized in the text of that case, and the Commission made clear its intention to grant such authority, while we develop experience in the generic capacity brokering area with an experiment (possibly United's proposal). Here, the reallocation mechanism need only provide for nondiscriminatory reallocation of firm capacity on an upstream OCS pipeline voluntarily relinquished by a downstream onshore pipeline.

For example, the Commission could simply authorize, but not mandate, OCS pipelines to conduct an open season for any excess and voluntarily-relinquished firm capacity on a one time or periodic basis, with a first-come first-serve mechanism for any subsequent reallocation. The rates for firm transportation services would be those established under existing tariffs approved by the Commission. There would be no need to modify, interfere with, or abrogate any existing arrangements. There also would be no need to address interruptible transportation, which is not the problem in any event.

The Order No. 436/500 blanket certificate program would remain voluntary for OCS pipelines under current regulations and the Commission would process OCS pipeline applications for an Order No. 436/500 blanket certificates under current practice in individual certificate and rate cases. There would be no need for any complicated transitional/grandfather mechanism and there would be absolutely zero possibility of disruption of OCS operations or transactions at any time.

*Procedural Option*

I supported the proposal for delayed effectiveness of the Final Rule, as adopted in the current form, to avoid regulatory-induced disruption during the winter hearing season. Nevertheless, the substantive features of the Final Rule have been adopted and the rehearing process does not generally provide the best vehicle for wholesale reconsideration of a major rule. Also, rehearings can be delayed for extended periods of time with little or no practical recourse for the Full Commission, such that the Final Rule could be in effect and implemented without any prior modifications on rehearing, irrespective of the persuasiveness of the rehearing petitions. As a practical matter, the scheduling of rehearing orders remains a prerogative of the Chairman. Consequently, it is most prudent and responsible that a Final Rule be "our best shot", as it were, at a rule which conceivably will be effective for some extended period; *e.g.*, Order No. 500 Interim Rule.

Given the concerns expressed by Members of the Commission about the potential disruption on the OCS caused by the rule, and also the decidedly fundamental change from the proposed rule (*e.g.*, immediate mandatory imposition of blanket certificates on OCS pipelines), it would be quite appropriate to renotice the NOPR with the new proposal for a short 30-day comment period. Comments could be received early next year, and we could make a final decision to be effective in the same general April/May time frame after the winter heating season. The renoticed NOPR could also seek comment on the substantive option described above for purposes of comparison. In any event, the Final Rule next year resulting from a renoticed NOPR would be "our best shot" at solving the real world problem(s), which ostensibly precipitated this exercise in the first instance, on a "fail-safe" basis.

*The Final Rule*

The majority has decided to proceed with the Final Rule in this order, but also to provide sufficient opportunity to get rehearing comments and act on them before the Rule is implemented. Members of the Commission also stated their intention to ensure that there is no interruption of existing transportation services on the OCS, no disruption of current transportation arrangements, and no shut-in of OCS gas. I am reluctantly prepared to concur in that result, but with several concerns about the Final Rule.

First, I seriously doubt whether the Commission will have adequate time to consider rehearing petitions and adopt an order on rehearing prior to the effective date of the rule (February 1, 1989) or the deadline for tariff filings and open season activities (March 1, 1989), and possibly even the latest effective date for tariffs and latest date for service to begin (April 1, 1989). Assuming that an order on rehearing could be developed and scheduled at the earliest possible date, which is subject to the prerogative of the Chairman and beyond the control of the Full Commission, it probably is simply unrealistic to expect action on rehearing by mid-February. Consequently, if reviewing parties conclude that the Commission should adopt the substantive or procedural option, or amend significantly the Final Rule before implementation, a delay in effectiveness and implementation would be necessary and appropriate. Thus, parties filing rehearing petitions may want to request a further delay in the current schedule to prevent premature implementation of this Rule.

The open season for interruptible transportation potentially may create significant problems (Slip Opinion at page 18 of the preamble text and page 69 of the regulatory text (§ 284.304(b)). First, the OCS pipeline is granted complete discretion to use "any non-discriminatory means that is acceptable for onshore blanket certificate transportation" to allocate interruptible capacity (page 18). That could include, among other options, the lottery method approved for the PGT pipeline. In my judgment, the Commission should not allow that discretion, because it is virtually guaranteed to disrupt existing transportation arrangements.

Second, the Commission does not provide unconstrained grandfather treatment for existing interrruptible transportation arrangements under section 7(c) authorizations. That is a significant and unprecedented departure from Order No. 436 and past practice in the voluntary blanket certificate program. Rather, the Final Rule requires the OCS pipeline to give a priority only where there is interruptible transportation that satisfies two criterion. First, the interruptible transportation must be affirmatively authorized under an existing certificate effective on February 1, 1989. Second, the interruptible transportation shippers must pay transportation rates for such service which are "no lower than the rates paid or to be paid by other interruptible shippers." (parenthetical proviso at page 19 and in § 284.304(b) at page 69).

There is no explanation defining what "other interruptible shippers" must be compared, as between shippers on a single pipeline versus all shippers on the OCS. There also is no explanation of what "rates paid or to be paid" must be considered and how they would be identified. Additionally, this is the first time under the Part 284 program that the Commission has sanctioned the consideration of *price* as a factor in the initial allocation of capacity for non-discriminatory access.

The Commission, by comparison, has approved a form of "bump" rule, whereby a shipper *already having capacity allocated to it* can be bumped if it has a discounted rate, another shipper is willing to pay a higher rate up to the maximum, and the original shipper within five days fails to agree to pay that higher rate. (*See, e.g. Natural Gas Pipeline of America*, 39 FERC ¶ 61,153 at 61,595 (1987).) But, prior to this order, the Commission has wisely refused to allow price to be the determining factor. Here, the clearly ambiguous proviso will create a *de facto* conditioned access capability in the OCS pipeline, will probably frustrate any orderly and systematic grandfather treatment of existing interruptible transportation arrangements of various types, and undoubtedly will create a precedent for allocation determined largely or solely by price, such as the auctioning proposal.

The rationale for adoption of this disruptive and potentially punitive proviso provided in Footnote 24, at page 19, falls of its own weight in the face of these countervailing considerations. In my judgment, there is every justification for an unconstrained priority for pre-existing interruptible transportation arrangements, independent of the prevailing rates or subsequent rate requirements. The interruptible transportation open season should have been modeled on the open season for firm transportation (see p. 16 *et seq.*), without any introduction of the unprecedented and unjustified price factor. The analytical bottom line is that the Commission, with the price proviso, has gutted the grandfather protection for existing interruptible transportation as a practical matter.

I also am concerned that the process and procedures for contemporaneous consideration of all the March 1 rate filings by all OCS pipelines for new Part 284 rates or, in the alternative, their existing rates with a justification for waiver of the Part 284 requirements, will create for the Commission, pipelines, and shippers an administrative nightmare. In addition the massive number of filings also will complicate the open season for interruptible transportation under the price proviso discussed above. Certainly, the Commission will be confronted with an OCS tidal wave of Part 284 rates, terms and conditions. Further, I believe thought should be given to the process and procedures for these filings from the perspective of an orderly and non-disruptive transition to blanket certificate operations.

The Commission rejected a number of modifications to the proposed rule requested by producer commenters. Several of these modifications, in my judgment, should have been adopted. First, the Order No. 500 crediting mechanism should not be applied to open access transportation of OCS pipelines for the reasons stated in the producer comments. I find particularly persuasive arguments setting forth the distinction between OCS transportation under the OCSLA and the voluntary transportation program under Order No. 500. (See discussion at page 57 *et seq.*) I agree that applying the crediting mechanism creates conditioned access in violation of the OCSLA, particularly as the Commission has just interpreted that law in these dockets.

Second, the Commission also should have provided a separate priority in some fashion for casinghead gas as sought by several producer commenters. (See discussion at page 57 *et seq.*) According to the comments, casinghead gas constitutes about eleven percent of total OCS gas production in the Gulf of Mexico. The Final Rule, at page 60, concludes that the Commission will consider on a case-by-case basis any issues of potential damage to off-shore wells that may be raised by these rules. In light of the difficulties already obvious in the open season for interruptible transportation, the case-by-case approach in all likelihood will be too little and too late to prevent such potential damage. The better and more responsible approach is to recognize now the particular sensitivity of the OCS wells and to provide an affirmative priority for casinghead gas. The Commission should not provide the *de facto* conditioned access result and case-by-case hollow gesture adopted in the Final Rule.

Next, the Final Rule, at page 34 and at page 67 (section 284.302(b)) addresses the issue raised by producer commenters about the shoreward delivery interconnection. The specific concern about a potential bottleneck control problem remains unresolved, since the new definition addresses physical interconnection, but not assured regulatory access to transportation services. Notwithstanding the legal technicalities of OCSLA jurisdiction proferred as an apologetic excuse by the Commission for not addressing asssured regulatory access, the Commission has created a legal conundrum of some consequence. If Congress can be deemed to have enacted the requirement for open access transportation on the OCS with such forcefulness in the 1978 Amendments to justify mandatory imposition of Part 284 blanket certificates under the Natural Gas Act on unwilling OCS pipelines, how perforce could Congress not have intended that the Commission use its NGA authority to ensure that the OCS gas could be delivered to a customer for sale beyond the first shoreward bottleneck controlled by a pipeline unwilling to provide voluntarily the necessary transportation service, assuming capacity is available.

The Commission confronted an analogous problem in Order No. 451 with regard to natural gas released under the Good Faith Negotiation procedures for sale to a new customer and concluded, correctly in my judgment, that assured transportation as provided there was an absolutely essential feature. I fail to see why the Commission could not fashion a similar provision for OCS gas using its NGA authorities in response to the Congressional mandate in the 1978 amendments. Put another way, if that mandate is legally satisfactory to justify mandatory imposition of Part 284 blanket certificates, it also should suffice for assured onshore delivery of OCSA gas transported ashore under those blanket certificates.

The Final Rule, at page 20, indicates that generally the Commission will no longer issue section 7(c) certificates to authorize transportation services that otherwise could be performed under the blanket certificates imposed here on OCS pipelines. That portion of the Rule would codify the more general practice for processing of section 7(c) applications, which has evolved over the past year in the voluntary Part 284 program. At the same time, however, the Commission staff apparently has refused to process new section 7(c) applications for OCS gas since the issuance of the NOPR in these dockets. As a result, there are pending today a limited number of such applications which are deemed critical by various producers to provide needed transportation ashore for OCS gas. This inaction results in possibly shutting-in the gas while the implementation of the Final Rule is awaited. The Commission should issue at least limited-term certificates for the transport of that gas during this winter and the pendency of operational blanket certificates. There is no justification for further delay.

Some producer commenters recommended that the Commission adopt special balancing and penalty provisions that would better reflect the technical and operational situation on the OCS pipelines, rather than those approved for onshore pipelines. The Final Rule does not address this recommendation directly, but does indicate more generally in several places that the terms and conditions approved in other onshore blanket certificates will be acceptable under the mandatory OCS blanket certificates. The Commission should consider these concerns and recommendations with regard to balancing and penalties, in order to ensure that the mandatory blanket certificates have terms and conditions which are not discriminatory nor unfair to offshore producers.

The Final Rule, at page 23, provides that, where interstate pipeline owners of the OCS pipeline own, control and utilize defined finite portions of the OCS pipelines capacity, separate blanket certificates are issued to each individual interstate pipeline owner. And, each of those interstate owners may conduct separate open seasons and subsequent reallocations for that portion of the OCS pipeline. I am concerned about the impact of separate rates, terms, conditions, and allocation methodologies on portions of a single OCS pipeline, in terms of operations, balancing, penalties, accounting and non-discriminatory access. Such OCS pipelines, and shippers on them, should carefully consider the practical ramifications of such separate, but potentially different, blanket certificates on the same pipeline. For example, should there be a requirement for uniformity, in whole or in part as to certain aspects, as between separate blanket certificates on the same OCS pipeline?

Finally the rate requirements of the Final Rule are established in accordance with section 5 of the NGA and impose an obligation that the rates for all new *and* existing transportation services must conform to the requirements of Part 284, effective at the time an OCS pipeline provides the new transportation service required by this rule. (Pages 25 and 26.) This general requirement is subject to an exception where an individual OCS pipeline can demonstrate that its current transportation rates are necessary, because of the historical factors associated with project financing and other features, and the maintenance of different rates would not be unduly discriminatory. These rate requirements, and the implementation process for them, could potentially present the Commission and interested parties with a complicated and difficult administrative process across the spectrum of OCS pipelines required on March 1, 1989, to make tariff filings for the mandatory blanket certificates. Also, I am not persuaded that the Commission should mandate Part 248 rates on all existing transportation services, subject to the stated case-by-case exception. Interested parties should consider carefully the impact of the Part 284 rates, in terms of both pricing and access impact, and particularly with regard to the interruptible transportation price factor in the mandatory open season for existing interruptible transportation.

*Conclusion*

I am convinced that the substantive option described above will solve any real world OCS problem that may remain today, independent of any gamesmanship associated more generally with broader acceptance of Order No. 436/500 blanket certificates by interstate pipelines, onshore or on the OCS. The procedural option described above would provide a quick opportunity to get additional and current comments on the fundamentally changed proposal in the draft order and also would provide some needed calibration today of the rationale and justification for any action, as well as the substantive option. If, in the end, this turns out to be an exercise largely intended to establish a precedent for mandatory imposition of blanket certificates on interstate pipelines or to simply impose blanket certificates under the rubric of the OCSLA, rather than solve an OCS problem after all, I only hope the Commission Members will acknowledge that result. Finally, if the Commission decides to proceed with implementing the Final Rule, I would recommend strongly that the order be reviewed further and modified as discussed above to minimize the potential confusion and disruption resulting from the wholesale OCS-wide imposition of blanket certificates effective on a date certain *and* the processing at the same time of all resulting OCS pipeline rate cases.

I look forward to discussion of these recommendations, the procedural option, and the substantive option during the rehearing process.

For these reasons, I concur.

Charles A. Trabandt,

*Commissioner.*

[FR Doc. 88-29034 Filed 12-16-88; 8:45 am]

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**18 CFR Part 385**

**[Docket No. RM87-24-001; Order No. 502-A]**

## Procedures for the Assessment of Civil Penalties; Order on Rehearing

Issued: December 13, 1988.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final Rule; Order on Rehearing.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is denying rehearing of Order No. 502, a final rule establishing procedures for the assessment of civil penalties under section 31 of the Federal Power Act. (53 FR 32,035, Aug. 23, 1988.) Four petitions for rehearing were filed in this rulemaking docket. Applicants have failed to raise any new material issues of fact.

**EFFECTIVE DATE:** This order is effective December 13, 1988.

**FOR FURTHER INFORMATION CONTACT:** Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested person an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electric bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

### Order on Rehearing

The Federal Energy Regulatory Commission (Commission) is denying rehearing of Order No. 502, a final rule establishing procedures for the assessment of civil penalties under section 31 of the Federal Power Act (Act), enacted by section 12 of the Electric Consumers Protection Act of 1986 (ECPA).[1]

The Commission issued Order No. 502 on August 17, 1988.[2] Four petitions for rehearing of Order No. 502 were filed, on September 15 and 16, 1988.[3] For the

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[1] Pub. L. No. 99-495, 100 Stat. 1243 (1986) (codified at 16 U.S.C. 823(b) (1982)).

[2] 53 FR 32,035 (Aug. 23, 1988), III FERC Stats. & Regs. ¶ 30,828 (Aug. 17, 1988).

[3] Joint Request for Rehearing of Edison Electric Institute, National Hydropower Association, American Public Power Association, American Paper Institute and National Rural Electric Cooperative Association (EEI); Georgia Power Company (Georgia Power); Orange and Rockland Utilities, Inc. (Orange & Rockland); and Upper Peninsula Power Company (Upper Peninsula).