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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM90-7-000; Order No. 537]

18 CFR Parts 157 and 284

Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates

Issued September 20, 1991.

AGENCY: Federal Energy Regulatory Commission (Commission), DOE.

ACTION: Final rule.

SUMMARY: The Commission is issuing a final rule to revise its regulations governing transportation of natural gas by interstate pipelines and intrastate pipelines under section 311 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432, and interstate pipelines under blanket certificates issued under § 284.221 of the regulations, 18 CFR 284.221. The revised regulations adopts an interpretation of the "on behalf of" standard in section 311 of the NGPA which responds to an opinion issued by the U.S. Court of Appeals for the District of Columbia. The rule also revises the regulations' notice and protest provisions applicable to interstate pipelines' transportation activities under blanket certificates.

EFFECTIVE DATE: This final rule will become effective November 4, 1991.

ADDRESSES: All requests for rehearing should refer to Order No. 537, Docket No. RM90–7–001 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Jack O. Kendall, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–1022.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission has made this document available so that all interested persons may inspect or copy its contents during normal business hours in room 3308, 941 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 person computer with a modem by dialing (202) 208–1397. 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 interim rule will be available on CIPS for 30 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 3308, 941 North Capitol Street NE., Washington, DC 20426.

Hadson Gas Systems, Inc., Cascade Natural Gas Corp. v. Northwest Pipeline Corp., et al., and Texas Eastern Transmission Corp.

[Docket Nos. RM90–7–000, GP88–11–002, CP88–286–004, RP88–81–014, RP88–67–033, RP88–175–002]

Issued September 20, 1991.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing a final rule amending the regulations governing transportation by intrastate pipelines and interstate pipelines under section 311 of the Natural Gas Policy Act of 1978 (NGPA) [1] and transportation by interstate pipelines under blanket certificates issued pursuant to § 284.221 of the Commission's regulations.[2]

The final rule adopts an interpretation of the "on behalf of" standard in section 311 of the NGPA which responds to the opinion issued on April 6, 1990, by the United States Court of Appeals for the District of Columbia Circuit in *Associated Gas Distributors* v. *FERC* (*AGD-Hadson*).[3] In *AGD-Hadson* the Court held that the Commission's then effective interpretation was inconsistent with the NGPA and therefore invalid.

This final rule's "on behalf of" interpretation is broader than the interpretation adopted by the interim rule that the Commission issued on August 2, 1990, in response to the *AGD-Hadson* decision.[4] The Commission made that interim rule immediately effective in order to provide a timely response to *AGD-Hadson* and to avoid market disruptions as the result of the uncertainties created by that court decision regarding which section 311 transportation services could continue or commence.

This final rule also revises the regulations' notice and protest provisions applicable to interstate pipelines' transportation activities under part 284 blanket certificates.

These revisions are intended to increase the availability and flexibility of open-access transportation services and to eliminate the current incentive for interstate pipelines to rely on NGPA section 311 transportation authority rather than their blanket certificate transportation authority issued pursuant to section 7(c) of the Natural Gas Act.[5]

II. Public Reporting Burden

This final rule consolidates the reporting requirements in FERC–549 and FERC–549(A), Gas Pipeline Rates: NGPA Title III Transactions, contained in the notice of proposed rulemaking and the interim rule. This consolidation will result in a reduction in the public reporting burden on interstate pipelines by 8,100 hours. This reduction offsets an increase of 405 hours in report filings by interstate pipeline respondents under the blanket certificate regulations that will result due to elimination of the regulatory provisions limiting a blanket certificate transportation service by an interstate pipeline to 120 days if the service is the subject of a protest at the end of the 120-day period. The

[1] 15 U.S.C. 3301–3432.

[2] 18 CFR 284.221.

[3] 899 F. 2d 1250 (D.C. Cir. 1990), *reh'g denied*, No. 88–1856 (D.C. Cir. June 4, 1990). The mandate of the Court was issued on June 18, 1990.

[4] FERC Stats. & Regs., Regs. Preambles, ¶ 30,894 (1990), *amended*, FERC Stats. & Regs., Regs. Preambles, ¶ 30,899 (1990) (order extending conversion period for one month), *reh'g denied*, 53 FERC ¶ 61,141 (1990).

[5] 15 U.S.C. 717–717w.

consolidation of FERC–549 and FERC–549(A) will result in an estimated annual public reporting burden of 13,635 hours for the collection of information. No change in burden is expected under FERC–537, Gas Pipeline Certificates: Construction, Acquisition, and Abandonment. Burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

III. Background

A. The Commission's Implementation of Section 311

Section 311 of the NGPA gives the Commission the authority to authorize, by rule or order, any interstate pipeline to transport gas on behalf of any intrastate pipeline or local distribution company (LDC), and any intrastate pipeline to transport gas on behalf of any interstate pipeline or LDC served by an interstate pipeline.[6]

In *Hadson Gas Systems, Inc. (Hadson),*[7] the Commission determined that an interstate pipeline is transporting natural gas "on behalf of" an intrastate pipeline or LDC whenever the intrastate pipeline or LDC receives "some economic benefit" from the transaction.[8] The Commission also determined that the intrastate pipeline or LDC on whose behalf gas is transported may derive its economic benefit from an agency relationship with a party requesting transportation service from an interstate pipeline. In other words, if the LDC or intrastate pipeline was receiving some compensation or other benefit as a result of its on behalf of agency function, then the statutory mandate was met. The Commission affirmed these clarifications of the "on behalf of" standard in *Cascade Natural Gas Corporation* v. *Northwest Pipeline Corporation, et al.* (*Cascade*)[9] and *Texas Eastern Transmission Corporation (Texas Eastern).*[10]

B. The Court's AGD-Hadson Decision

After reviewing the Commission's orders in *Hadson, Cascade,* and *Texas Eastern,* the Court held in *AGD-Hadson* that the Commission's interpretation of the "on behalf of" standard was invalid. The Court vacated the Commission's orders to the extent they relied on the impermissible interpretation of the "on behalf of" standard. The Court also remanded *Hadson* and *Texas Eastern* for further proceedings consistent the Court's opinion.[11]

In *AGD-Hadson* the Court found that:

> The Commission's interpretation of section 311 allows any transportation of gas by any interstate pipeline anywhere in the country to qualify as transportation 'on behalf of' an intrastate pipeline or LDC, provided only that the shipper is willing to accept a fee in return for lending its name to the transaction.[12]

The Court concluded that the Commission's interpretation would permit virtually any gas transportation arrangement to be structured so as to take place outside the Commission's jurisdiction under section 7 of the NGA.[13] Since the Court found that Congress intended section 311 as a "limited exception to the requirements of section 7," the Court held that the Commission's "some economic benefit" test was unreasonably broad.[14]

The Court also concluded that the Commission's interpretation of section 311 did not bear any relationship to Congress' purpose in enacting section 311, which was to promote integration of the interstate and intrastate gas markets.[15] The Court rejected the argument that this purpose is best served by an interpretation that allowed the biggest universe of transactions to take place.[16]

The Court held that section 311 must be implemented by the Commission in a manner that distinguishes those transportation services which are related to the purpose of integrating the interstate and intrastate gas markets.[17] The Court found that the payment of a fee to an intrastate pipeline or LDC does not, in itself, serve the purpose of integrating interstate and intrastate markets. According to the Court, the intrastate pipeline or LDC must serve some function in the transaction that is related to the fact that it is an intrastate pipeline or an LDC.[18]

The Court found that the Commission could require that the purported "on behalf of" entity (i.e. LDC, interstate or intrastate pipeline) must transport the gas at some point or own the gas for some part of the transaction. However, the Court specifically declined to hold that these are the only transactions which can satisfy section 311. The Court stated that the Commission "could permissibly read the statute to allow other transactions, so long as the 'on behalf of' entity in the transaction is related to the transportation of gas by an interstate pipeline in a way that reflects its status as an intrastate pipeline or LDC." [19]

C. The Commission's Response to the Court's Decision

1. Interim Rule

The Commission's August 2, 1990, interim rule adopted the "safe harbor" interpretation specifically endorsed by the Court in *AGD-Hadson.*[20] Thus, under the interim rule, a transaction has not been authorized to continue under color of section 311 authority unless the "on behalf of" entity either (1) has physical custody of and transports the gas at some point, or (2) holds title to the gas at some point for a purpose related to its identity as a local distribution company or intrastate pipeline.[21] This is the so-called "title or transport" test.

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[6] Section 311(a) of the NGPA reads, in part:

(a) Commission approval of transportation

(1) Interstate Pipelines

(A) In General. The Commission may, by rule or order, authorize any interstate pipeline to transport natural gas *on behalf of—*

(i) Any intrastate pipeline; and

(ii) Any local distribution company.

(2) Intrastate Pipelines

(B) In General. The Commission may, by rule or order, authorize any intrastate pipeline to transport natural gas *on behalf of—*

(i) Any intrastate pipeline; and

(ii) Any local distribution company served by any interstate pipeline.

(Emphasis added)

[7] 44 FERC ¶ 61,082 (1988), *reh'g denied,* 45 FERC ¶ 61,286 (1988).

[8] 44 FERC at p. 61,250.

[9] 44 FERC ¶ 61,081 (1988), *reh'g denied in relevant part,* 45 FERC ¶ 61,287 (1988).

[10] 44 FERC ¶ 61,080 (1988), *reh'g denied,* 45 FERC ¶ 61,285 (1988).

[11] Since the NGPA section 311 transportation at issue in *Cascade* had ceased, the Court found that the material issue in that proceeding was moot. Therefore, while the Court vacated the *Cascade* order to the extent it relied on an impermissible interpretation of the "on behalf of" standard, the Court did not remand *Cascade* for further proceedings.

[12] 899 F.2d at 1260. The Court noted that section 311 also enables the Commission to authorize intrastate pipelines to transport gas on behalf of interstate pipelines and LDCs served by interstate pipelines. *Id.* at 1261, n. 8. The Court limited its review to the transportation by interstate pipelines under section 311 because transportation by intrastate pipelines was not involved in the issues raised on appeal. However, the deficiencies found by the Court regarding the Commission's interpretation of the "on behalf of" requirement presumably apply as well to section 311 transportation by intrastate pipelines.

[13] *Id.* at 1260.

[14] *Id.* at 1261.

[15] *Id.* at 1262–1263.

[16] *Id.*

[17] *Id.* at 1263.

[18] *Id.* According to the Court, when the purported "on behalf of" entity's participation is unrelated to the fact that it is an intrastate pipeline or LDC, "[a]ll it does is receive money, and anyone could do that." *Id.*

[19] *Id.* at 1264.

[20] *Id.* at 1264.

[21] As an additional "safe harbor" mechanism to prevent market disruption, the interim rule also included procedures for the non-discriminatory conversion of existing section 311 transportation services to blanket certificate authorization.

The Commission explained that it intended to expand this "on behalf of" interpretation as soon as it was able to ascertain additional transactions that would clearly satisfy the Court's concerns over the scope of the section 311. However, the Commission made the interim rule's "safe harbor" interpretation effective immediately on issuance in view of the need to respond to the Court's *AGD-Hadson* decision in a timely manner and to avoid disruption of gas supply arrangements as the result of uncertainties created by the Court's decision as to whether existing gas transportation services under section 311 could continue and whether needed new services could commence.

2. Notice of Proposed Rulemaking

The Commission's Notice of Proposed Rulemaking (NOPR), issued on the same day as the interim rule, proposed the same "safe harbor" interpretation adopted by the interim rule. However, the NOPR requested specific suggestions on how the proposed interpretation of the "on behalf of" standard might be expanded to authorize additional transactions under section 311 while satisfying the Court's decision. The NOPR also proposed to make any interpretation adopted by this final rule applicable as well to transactions in which intrastate pipelines are transporting gas in interstate commerce under section 311.

The NOPR also requested comments on a proposal to substitute notification procedures like those for section 311 transportation services for the notice and protest provisions that currently apply to transportation services by interstate pipelines under their part 284 blanket certificates.

Forty-seven parties filed initial comments on the NOPR and sixteen parties filed reply comments.[22]

IV. Response to Comments

A. "On Behalf of" Interpretation

In addition to inviting comments on whether it would be appropriate in a final rule to adopt the interim rule's "safe harbor" interpretation requiring that the "on behalf of" entity transport or hold title to gas at some point, the NOPR requested comments on several specific possible expansions of the interim rule's "safe harbor" interpretation. The NOPR asked whether it would be appropriate for the Commission:

(1) To expand the interim rule's interpretation to encompass transactions in which a shipper causes transportation volumes to be delivered to an interstate pipeline, and an LDC or intrastate pipeline takes receipt or is contractually entitled to take receipt of some portion of the gas volumes from the interstate pipeline;

(2) To authorize section 311 transportation service by an interstate pipeline for any customer of an LDC or intrastate pipeline, so long as the LDC or intrastate pipeline does not oppose the service;

(3) To authorize transportation by an interstate pipeline under section 311, so long as an intrastate pipeline or LDC derives any significant direct or indirect benefit, including economic benefit other than an agent's fee, from the transaction;

(4) To make section 311 authority available when an interstate pipeline's transportation would facilitate an intrastate pipeline's release of gas with respect to which it has take-or-pay obligations; or

(5) To make section 311 authority available whenever transportation service by an interstate pipeline would increase its throughput and thereby benefit all of its customers, including LDCs, by spreading service costs over more units of service in future rate cases.

In addition to these specific suggestions, the NOPR invited comment on other possible means of expanding the interim rule's "transport or hold title" test.

Forty-four of the 47 parties commenting on the NOPR addressed the "on behalf of" interpretation.[23]

Commenters that believe the interim rule's "transport or hold title" test is too broad. Four commenters believe the interim rule's "safe harbor" interpretation, although much narrower than the previously effective interpretation, is still too expansive. Specifically, Miami Valley Counsel, Germantown, and Dayton-Montgomery are concerned that the "transport or hold title" interpretation will lead to the construction of more major pipeline construction projects under section 311 without adequate prior review and opportunity for comment. Willcox City states the interim rule's "safe harbor" interpretation will permit inappropriate transportation services under section 311 because the Commission has not explained when an LDC is holding title to gas for a purpose related to its status and functions as an LDC.

Commission response. The Commission believes that the interim rule's "safe harbor" interpretation clearly limits section 311 transportation services to transactions of the type intended by Congress, and that it therefore would be inappropriate to further narrow the "on behalf of" interpretation for the purpose of preventing interstate pipelines from undertaking relatively large-scale construction projects under section 311. Further, interested parties have had the opportunity to state and support their views in Docket No. RM90–1–000 regarding the need for Commission oversight in section 311 construction projects. The Commission's final rule in that docket addresses these comments and issues relating to the construction of gas facilities generally and is being issued simultaneously with this final rule.

The Commission also does not believe it is necessary to further restrict the interim rule's "on behalf of" test because its "hold title" prong is too vague to prevent inappropriate transactions from going forward under color of section 311. In any instance where any person can support an allegation that a designated "on behalf of" entity is not holding title to gas for a purpose related to its identity as an LDC, intrastate pipeline, or interstate pipeline, as applicable, that person may file a complaint with the Commission. However, in view of the Commission's discussion below regarding transactions where holding title will not qualify an "on behalf of" entity, the Commission believes attempts to abuse the "hold title" test will be infrequent.

Commenters that support adoption of the interim rule's "transport or hold title" test in the final rule. Nineteen commenting parties support adoption of the interim rule's "safe harbor" interpretation in the final rule without expansion.[24] These parties believe the suggested expansions would produce uncertainty, new court challenges and would be outside the scope of section 311 as defined by the Court in *AGD-Hadson.*

Commission response. The Commission agrees that, except for the expansions of the 311 test discussed below, the NOPR's suggestions for expanding the "on behalf of" interpretation have not been demonstrated to clearly satisfy the *AGD-Hadson* Court's criteria for qualifying section 311 services.

General commenters supporting expansion of the "transport or hold title" test. Twenty-one commenters request expansion of the interim rule's

[22] The commenters are listed in the appendix to this order. The abbreviation used in this order for each commenter is also listed in the appendix.

[23] Tennessee, Oklahoma, and Peoples did not address the issue of the "on behalf of" interpretation.

[24] See comments by ACD, APGA, Cascade, CNG, El Paso, Michcon, Mississippi Valley, State Consumers Advocate, UDC, Iowa Illinois, the NYPSC, Northwest, Northern Illinois, American Paper Institute, EGMI, Cal PUC, SoCal, Texas Gas, and Transok, Inc.

"safe harbor" interpretation of the section 311's "on behalf of" standard.[25] Some commenters emphasize that the *AGD-Hadson* Court merely offered the "transport or hold title" requirement as an option for Commission consideration and did not mandate an interpretation as restrictive as the interim rule's "safe harbor" test.[26] Most of these commenters argue that the Commission should not focus on the traditional functions of intrastate pipelines and LDCs, since Congress would have intended section 311 to encompass the additional roles that LDCs and intrastate pipelines can play in bringing about integration of the interstate and intrastate gas markets.[27]

ANR, INGAA, Transco, LILCO, and JMC Fuel support all of the NOPR's suggestions for expansion of the interim rule's "safe harbor" interpretation, because they all would (1) facilitate the movement of gas supplies between the intrastate and interstate gas markets and (2) provide some form of direct or indirect benefit to LDCs and intrastate pipelines. However, these commenters do not explain how LDCs and intrastate pipelines would satisfy the Court's holding that they must perform functions traditionally associated with their identities as intrastate pipelines or LDCs.

ANR believes that the final rule should authorize section 311 transportation service by an interstate pipeline whenever the transportation can be viewed as furthering the integration of the intrastate and interstate gas markets, regardless of whether there is any benefit to an LDC or intrastate pipeline.

The Cal PUC, SoCal, Texas Gas and Transok, Inc. support expansion of the interim rule's "safe harbor" interpretation only so far as any such expansion is consistent with the *AGD-Hadson* decision. SoCal emphasizes that, in order to be consistent with *AGD-Hadson*, any expansion should be subject to the condition that an LDC or intrastate pipeline does not oppose any section 311 transportation service that would result in gas deliveries to a customer in its service area.

Commission response. The Commission's success in achieving open-access, market responsive gas services has been due largely to section 311 transportation services. Therefore, the Commission agrees, as it stated in the interim rule and NOPR, that section 311's "on behalf of" standard should be interpreted as broadly as possible, consistent with the legislative intent and purpose of section 311.

However, the Court has spoken in *AGD-Hadson* regarding Congress' intentions in enacting section 311. The Court specifically held that the Commission may not adopt an interpretation of that section simply because it would increase the number of transactions that may take place under section 311 authority. The Commission may not expand section 311 beyond the parameters delineated by the Court, as suggested by some commenters, based on the Commission's or the commenters' beliefs as to what additional transactions Congress might authorize if it were adopting section 311 today. If Congress amends the statute—as is currently being considered—then the Commission will revisit this issue. The Commission does believe, however, that the title or transport test can be expanded and still pass muster under the *Hadson* opinion. As discussed below, we have determined that an interstate pipeline's transportation of gas supplies should qualify under section 311, if the shipper/customer is either located in an LDC's service area or physically capable of receiving gas supplies directly from an intrastate pipeline, and that LDC or intrastate pipeline certifies that the interstate pipeline's transportation service is on its behalf. In such instances, the final rule provides for section 311 transportation authority, regardless of whether the LDC or intrastate pipeline takes title to the gas or transports it at any point.[28]

We believe section 311 service under all of the above circumstances is fully consistent with the Court's findings regarding the legislative intent of section 311, since the services will promote integration of the intrastate and interstate gas markets, and the gas customers will be in the service areas of designated "on behalf of" entities that support the transactions. Further, we believe an interstate pipeline should be able to rely on section 311 authority to transport gas for a customer that is located in the service area of a certifying LDC, even if the LDC currently has no facilities that make direct gas deliveries to that customer. This conclusion is based in part on the Commission's recognition that states' regulations frequently impose obligations on LDCs to provide service to new customers in their service areas.

However, intrastate pipelines are not subject to the same service obligations as LDCs. Therefore, we will only authorize an interstate pipeline to provide section 311 transportation service gas for a customer in the operating area of a certifying but non-transporting, non-title holding intrastate pipeline when facilities already exist for the direct delivery of gas by that intrastate pipeline to that customer.

This limitation is necessary to ensure that interstate pipelines do not rely on section 311 authority to transport gas on behalf of intrastate pipelines when they are engaging in marketing activities or other functions that are not traditional intrastate pipeline functions. In these instances, interstate pipelines will have to rely on their blanket certificate authority under the NGA to provide transportation service. This result is consistent with the *AGD-Hadson* Court's finding that Congress intended section 311 as a "limited exception to the requirements of section 7 (of the Natural Gas Act)".[29]

Application of the final rule to intrastate pipelines. Section 311(a)(2) provides that transportation under that section by an intrastate pipeline must be on behalf of an interstate pipeline or an LDC served by an interstate pipeline. Both the Texas Intrastates and Houston Pipeline Co. request that any final rule authorize section 311 transportation by intrastate pipelines in certain circumstances where there is no participation by an interstate pipeline or LDC served by an interstate pipeline.

Specifically, the Texas Intrastates and Houston Pipeline Co. believe the final rule should ensure that an intrastate pipeline will be able to rely on section 311 authority, even when no interstate pipeline or LDC is involved at any point, to transport gas gathered in an adjacent state or Federal waters to an end-user in the intrastate pipeline's state.

These commenters also request that the Commission clarify in any final rule

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[25] Arkla, Entrade, Indicated Shippers, INGAA, Transco, IPAA, JMC Fuel, LILCO, Tejas Power Corp., UGP, VHC Gas, Williams Gas, Texas Intrastates, Houston Pipeline Co., ANR, A.P.Green Industries, Enron, Panhandle Eastern, Process Gas, Williams Natural, and Natural.

[26] INGAA, Transco, LILCO, Tejas Power Corp., and UGP.

[27] In effect, these comments invite the Commission to disagree with the *Hadson* opinion. This we decline to do.

[28] The necessary certifications would be by intrastate pipelines and LDCs to interstate pipelines. While the "on behalf of" entity must make the certification, either the "on behalf of" entity or the shipper may submit the certification to the pipeline that will be rendering the section 311 transportation service.

We will not require that these certifications be filed with the Commission. However, when a pipeline is providing a transportation service, and the designated "on behalf of" entity needs to provide a certification because it is not transporting or holding title, the pipeline should obtain the certification before commencing service. If the issue arises whether the pipeline's service qualifies under the section 311 regulations, the pipeline must be able to provide the certification upon request.

[29] 899 F.2d at 1261.

that an intrastate pipeline will still be able to rely on section 311 authority to exchange gas with an interstate pipeline or LDC served by an interstate pipeline. They state that clarification of such section 311 authority for intrastate pipelines is necessary to avoid the construction of unnecessary, duplicative gas transportation facilities.

Commission response. Even though the *AGD-Hadson* Court's review of section 311 was limited to interstate pipelines' activities, its reasoning is equally applicable to transactions where intrastate pipelines are providing transportation services under section 311. Therefore, the final rule also amends the regulations governing section 311 transportation services by intrastate pipelines.

As discussed above, we are expanding the interim rule's "transport or hold" interpretation to authorize section 311 transportation services by interstate pipelines for end-users in the service areas of non-transporting, non-title holding intrastate pipelines and LDCs that certify that the interstate pipeline's transportation service is on their behalf. We are not adopting a similar provision for intrastate pipelines, since it would be of little practical effect. An intrastate pipeline only needs section 311 authority to transport gas if it is moving in interstate commerce. Except in the very limited instances described by the commenters—*i.e.*, gas gathered in an adjacent state or adjacent Federal waters—if gas is moving in interstate commerce, it usually is being transported by an interstate pipeline or an LDC at some point, either before or after it is in the intrastate pipeline s system.

While only a relatively small portion of intrastate pipelines' services may involve transportation to end-users in their own states of gas received from gatherers in adjacent states or Federal waters, they enable parties to make efficient gas delivery arrangements in such circumstances. We also recognize, however, that intrastate pipelines might no longer be willing to provide these services if doing so would cause them to become fully subject to the Commission's jurisdiction under the Natural Gas Act. Further, although these services by intrastate pipelines clearly promote section 311's purpose of eliminating artificial restraints on the movement of gas supplies between interstate and intrastate gas markets, the services cannot be deemed to be on behalf of an interstate pipeline or LDC, if no interstate pipeline or LDC is participating in the supply arrangement in a way that reflects its identity as such.

In view of these considerations, the final rule adopts a new § 284.227 to provide limited-jurisdiction, blanket certificate authority under the Natural Gas Act for intrastate pipelines to deliver directly to end users in their own states gas received by the intrastate pipelines from gatherers that gathered the gas in adjacent Federal waters or onshore or offshore in an adjacent state. This blanket certificate authority will be available for new services and the continuation of existing services. While these services will no longer be under section 311 of the NGPA, and therefore will not have to satisfy the "on behalf of" requirement, new § 284.227 will provide that the blanket certificate authority for the services is subject to intrastate pipelines' continued compliance with all other conditions of subpart C of part 284, including its rate conditions, non-discrimination condition, and reporting requirements.

If an intrastate pipeline is providing a transportation service described in paragraph (a) of new § 284.227 as of February 1, 1992, and the service is not a qualifying section 311 service, the intrastate pipeline's blanket certificate will issue and become effective on that date. If an intrastate pipeline is not providing such a transportation service as of February 1, 1992, the blanket certificate will issue and become effective on the date that the intrastate pipeline commences such a service that is not a qualifying section 311 service.

As discussed below, this final rule is authorizing the continuation of all services commenced prior to August 2, 1990 (the issuance date of the NOPR) in reliance on the Commission's then effective regulations until February 1, 1992. If an intrastate pipeline continues any non-qualifying section 311 service described in new § 284.227 after that date, the intrastate pipeline shall be deemed to have accepted a blanket certificate under § 284.227. An intrastate also will be deemed to have accepted a blanket certificate if it commences such a service after the effective date of this rule.

The initial report filing requirements of § 284.126(a) of subpart C will apply to any blanket services that are new services commenced under new § 284.227. For any new blanket service that is an extension of a service that was originally commenced under section 311 under subpart C, an intrastate pipeline will be subject to the subsequent report filing requirement in § 284.116(b).[30] In each report on a section 311 service converted to blanket service, an intrastate pipeline will be required to identify the ST docket number in which the initial report was filed when the service was commenced under section 311.

New § 284.227 provides pregranted authority for an intrastate pipeline to abandon a transportation service under its blanket certificate issued under that section upon the expiration of the contract for that service.

New § 284.227 states that an intrastate pipeline's acceptance of a blanket certificate under that section will not subject the intrastate pipeline to the Commission's jurisdiction under the Natural Gas Act except to the extent necessary to ensure that services provided by the intrastate pipeline under Docket No. RM90–7–000, *et al.* the blanket certificate comply with the terms and conditions of the certificate.

As discussed above, the Texas Intrastates and Houston Pipeline Co. request clarification that any final rule will permit continued reliance by intrastate pipelines on section 311 authority to engage in exchanges of gas with interstate pipelines and LDCs. We will clarify that an intrastate pipeline's exchange of gas with an interstate pipeline or LDC served by an interstate pipeline is eligible section 311 transportation service by the intrastate pipeline if the interstate pipeline or LDC satisfies one of the final rule's applicable criteria for qualifying as an "on behalf of" entry. Thus, an intrastate pipeline may still be able to perform its part of an exchange under section 311 if the interstate pipeline or LDC that is the exchange partner either will transport the gas that it receives in the exchange at some point or hold title at some point to the exchange gas it receives for a purpose related to its status as an interstate pipeline or LDC.

Off-system sales by LDCs and intrastate pipelines. In the NOPR, the Commission concluded that sales of gas by an LDC outside its service area are not related to its traditional functions as an LDC.[31] Some commenters believe this limitation on section 311 unnecessarily undermines LDCs' ability to make off-system sales to dispose of surplus gas supplies.[32] LILCO also

[30] Section 284.126(b) requires an intrastate pipeline to file a subsequent report for any section 311 transportation service whenever there is a material change to the service.

[31] See NOPR, IV FERC Stats. & Regs., Proposed Regs., ¶ 32,476, at p. 32,446, n. 33 (1990).

[32] Arkla, Indicated Shippers, JMC Fuel, LILCO, Transco, and Process Gas.

believes this service area limitation will inhibit the efficient allocation of capacity on the interstate pipelines that have been authorized to broker their capacity.

LILCO, Indicated Shippers, APGA, and Process Gas argue that a pipeline should have section 311 authority to provide any transportation service that aids an LDC or intrastate pipeline in managing gas supplies that the LDC or intrastate pipeline is contractually committed to purchase for its system supply.

Commission response. The Commission recognizes that there may be some benefits that result from LDCs' and intrastate pipelines' off-system sales of gas and contractual releases of gas supplies. However, if the LDC or intrastate pipeline did not originally purchase or contract for a particular volume of gas for use as system supply, the sale or contractual release of the gas is not a function of the entity's status as an LDC or intrastate pipeline.

An LDC or intrastate pipeline can claim that any gas supplies were originally purchased or contracted for with the intent of using them for system supply. Since the Commission would have no reasonable means of determining whether such a claim was true, authorizing section 311 service by interstate pipelines based solely on an LDC's or intrastate pipeline's sale or contractual release of gas would permit transactions outside the scope of section 311 as defined and limited by the Court in *AGD–Hadson.*

Moreover, this limitation on section 311 service should not be a significant additional obstacle to any LDC's or intrastate pipeline's contractually releasing unneeded gas supplies or making off-system sales of surplus gas that it has never received into its facilities. Regardless of whether the LDC or intrastate pipeline originally purchased or contracted for the gas with the intention of using it for system supply, the LDC or intrastate pipeline may arrange for an interstate pipeline to transport the gas under blanket certificate authority. Again, this result is consistent with the *AGD–Hadson* Court's finding that Congress intended section 311 as a limited exception to the requirements of section 7 of the Natural Gas Act.

How soon the LDC or intrastate pipeline may start receiving transportation service will not be affected by it's requesting blanket service instead of section 311 service, since each interstate pipeline's first-come, first-served and other tariff provisions apply equally to section 311 and blanket transportation services. Further, the final rule's substitution of the section 311 notification requirement for the blanket regulations' current notice and protest procedures, as discussed below, eliminates the only remaining meaningful difference in the way the regulations treat section 311 service and blanket services.

Non-transporting intrastate pipelines' sales of non-local gas. American Paper Institute and Indicated Shippers object to the Commission's conclusion in the NOPR that a non-transporting intrastate pipeline is not holding title to gas for a purpose related to its status as an intrastate pipeline if the gas was not produced in its service area. These commenters believe an interstate pipeline should be able to transport gas under section 311 "on behalf of" a non-transporting intrastate pipeline that holds title to the gas at some point, regardless of the source of the gas.

Commission response. The Commission is denying the requested clarification. As explained in the NOPR, *AGD-Hadson* requires that an "on behalf of" entity's role in a section 311 transaction be related to its status as an intrastate pipeline.[33] The Commission recognizes that an intrastate pipeline's traditional functions may include instances where the intrastate pipeline purchases and sells gas produced in its operating area but never transports any of the gas. However, we do not believe that traditional intrastate pipeline functions include instances where an intrastate pipeline purchases gas produced outside its operating area and resells the gas without also transporting the gas at some point. The Commission believes that, in these instances the intrastate pipeline is acting as a gas marketer, not as an intrastate pipeline.

The comments have not suggested any delineable circumstances under which a non-transporting intrastate's purchase and sale of non-local gas production generally can be viewed as related to its traditional intrastate pipeline functions. Therefore, the Commission affirms its conclusion that transportation service by an interstate pipeline is not brought within the scope of section 311 by reason of a non-transporting intrastate pipeline holding title to gas that was not produced in its operating area.

Aggregation of volumes. As discussed above, the NOPR requested comments on the specific suggestion to expand the interim rule's interpretation to encompass all volumes transported by an interstate pipeline for a shipper in a particular transaction, if an LDC or intrastate pipeline takes receipt or is contractually entitled to take receipt of some portion of the gas volumes from the interstate pipeline. Panhandle Eastern, Indicated Shippers, Natural, Transok, Inc., and VHC Gas support this proposed expansion. El Paso and Tejas Power Corp. indicate that they would support the expansion in transactions where the LDC or intrastate pipeline actually takes some portion of the aggregated volumes. AGD believes this proposed expansion would be inconsistent with *AGD–Hadson.* AGD also believes this aggregation test would be unworkable and force the Commission into endless line drawing.

Commission response. The Commission has determined that it is not feasible to expand the "on behalf of" interpretation to authorize section 311 transportation of all of a shipper's gas on the basis of an LDC's or intrastate pipeline's being contractually entitled to take some portion of the gas. Such an expansion would create difficult monitoring problems. It also would permit circumvention of the legislative intent of section 311, since it would allow gas to be transported under section 311 even though the gas would not be delivered to a customer in the service or operating area of the LDC or intrastate pipeline designated as the "on behalf of" entity. Further, the *AGD–Hadson* Court has held that the Commission may not authorize transactions under section 311 based on its conclusion that they would promote gas movement between interstate and intrastate markets, if the "on behalf of" entities will be not performing functions related to their being LDCs and intrastate pipelines.

Request for Commission procedures for determining whether a transaction qualifies under section 311. Enron, Williams Natural, ANR, Indicated Shippers, INGAA, and Transco all recommend that the Commission adopt specific procedures for addressing requests for clarification, interpretation, and declaratory order regarding whether a certain transaction qualifies under section 311. INGAA's and Transco's suggested procedures would require that notices of all such requests be published and that the Commission schedule an order addressing any such request for the first agenda meeting following the end of the notice.

The Commission is denying these requests for additional procedures for addressing requests that raise the issue of whether a particular transaction qualifies under section 311. Additional procedures are not necessary, since any person already may file a request for a declaratory order or clarification by the

[33] NOPR at p. 32,446.

Commission or an interpretation by the General Counsel. Also, while some limited clarification may be necessary in the short-term regarding qualifying section 311 transportation services, the Commission does not anticipate any long-term need for additional procedures for addressing such requests.

Certification of section 311 facilities. Transco suggests the Commission grandfather all existing section 311 facilities which are affected by the revised rule, including those already under construction at the time the interim rule was issued. Alternatively, Transco requests that the Commission clarify that any section 311 facilities may be converted to section 7(c) facilities under Part 157's automatic and prior notice blanket construction procedures. Entrade suggests the Commission issue a rule granting section 7(c) operational authority to all uncertificated facilities constructed under section 311, subject to the condition that pipelines file complete certificate applications for such facilities within 90 days.

Commission response. The Commission does not believe that it would be appropriate to grandfather all existing uncertificated section 311 facilities, as requested by Transco and Entrade, by issuing certificate authority in this final rule for all section 311 facilities. Although Entrade suggests that such certification could be made subject to the condition that pipelines subsequently file timely certificate applications, the Commission still does not believe that it would be appropriate to grant certification in this rule for all existing section 311 facilities.

Since issuance of the interim rule in this proceeding, the Commission has been able to issue orders in a timely manner addressing the applications that pipelines have filed requesting certificates for facilities constructed under section 311.[34] Further, preparing these orders has convinced the Commission that, in some instances, determinations regarding whether particular facilities are required by the public convenience and necessity must be reached on a case-by-case basis.

However, the Commission also recognizes that many section 311 facilities would have been eligible under the automatic or prior notice provisions for construction by interstate pipelines under their part 157 blanket certificates. Moreover, the construction of pipelines' facilities under section 311 has been subject to the environmental conditions of section 157.206(d), just as they would have been if the pipelines had constructed them under their blanket certificates.

In view of these considerations, the Commission is granting Transco's alternative request for clarification that interstate pipelines may obtain NGA certification for qualifying section 311 facilities under part 157's automatic and prior notice blanket construction procedures. Thus, if an interstate pipeline has constructed facilities under section 311 and those facilities would be eligible for construction under the blanket regulations' automatic procedures, the pipeline may obtain NGA certification for the facilities by satisfying the reporting requirements for blanket construction under the automatic provisions. If an interstate pipeline has constructed facilities under section 311 and those facilities would be eligible for construction under the blanket regulations' prior notice procedures, the pipeline may seek NGA certification for the facilities under the procedures for blanket construction activities that are subject to prior notice.[35]

Intrastate pipelines' ongoing section 311 transactions. Houston Pipeline Co. requests that the Commission grandfather intrastate pipelines' ongoing section 311 transportation services that do not qualify under the final rule. Houston Pipeline Co. requests that these non-qualifying transactions be grandfathered for three months from the date of issuance of the final rule.

Commission response. The Commission determined in its interim rule in this proceeding that it was necessary to permit the short-term continuation of interstate pipelines' non-qualifying services in order to provide time for parties to make alternative supply arrangements and thereby avoid the hardships that would be created if supply arrangements were terminated abruptly. This also applies to intrastate pipelines' ongoing transportation services.

While the interim rule did not amend the regulations governing section 311 transportation by intrastate pipelines, the Commission stated in the interim rule that the Court's findings in *AGD-Hadson* are equally applicable to intrastate pipelines' transportation services. Therefore, intrastate pipelines have been on notice since August 2, 1990, the date of issuance of the interim rule, that they could commence new transportation services with assurance of section 311 authorization only if they also adhered to the interim rule's "on behalf of" interpretation.

Nevertheless to avoid the possibility of any hardship, the final rule grants Houston Pipeline Co.'s request, in part, by adopting a new paragraph (e) to § 284.122 of Subpart C of the regulations to permit intrastate pipelines' transportation services that commenced prior to August 2, 1990, but which do not qualify under the final rule's "on behalf of" interpretation, to continue until the end of the third full calendar month following the issuance of this final rule.

Request for clarification regarding pipeline tariff provisions. Texas Gas states that its tariff provisions require shippers receiving section 311 or blanket certificate service to have title to the gas while it is being transported by Texas Gas. However, Texas Gas explains that the shipper often is not the "on behalf of" entity, or Texas Gas may not know if the shipper and the "on behalf of" entity are the same party. Further, Texas Gas's tariff does not require a shipper to certify that the "on behalf of" entity for a section 311 transportation service being provided by Texas Gas either has or will transport the gas at some point or hold title to the gas for a purpose related to its status as an LDC or intrastate pipeline. In view of these limitations, Texas Gas seeks clarification as to how it should handle requests for section 311 service.

Commission response. An interstate pipeline must ensure that its existing and new services under section 311 qualify under that section and the Commission's regulations. Therefore, an interstate pipeline should require, as a condition of services, that every shipper provide appropriate certification including sufficient information to verify that each of its section 311 transportation services qualifies under this final rule's regulations.

The Commission recognizes that some interstate pipelines' tariffs may not clearly provide for them to require that shippers provide the necessary information to validate their section 311 services. Therefore, the final rule adopts a new paragraph (e) to § 284.102 to require that an interstate pipeline obtain from its shippers certifications including sufficient information to verify that their services qualify under section 311. New § 284.102(e) also directs each interstate

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[34] See, *e.g.*, Arkla Energy Resources, 54 FERC ¶ 61,033 (1991); Colorado Interstate Gas Company, 54 FERC ¶ 61,196 (1991).

[35] We note that concurrent with the issuance of this final rule, we also are issuing a final rule in Docket No. RM90-1-000 Which, *inter alia*, amends the regulations to increase the dollar ceilings for blanket certificate construction under both the automatic and prior notice procedures. These increased dollar ceilings are applicable in determining whether an interstate pipeline may obtain NGA certification for a section 311 facility under the blanket regulations' automatic or prior notice procedures.

pipeline to file, within 60 days of the effective date of this final rule, any new or revised tariff provisions that may be necessary to clarify that the pipeline may require such certifications. Finally, new § 284.102(e) provides that an interstate pipeline must have received a certification by the "on behalf of" entity (rather than the shipper, if the shipper is not also the "on behalf of" entity) before commencing section 311 transportation service, if the service is to be provided under new § 284.102(d)(3) on behalf of a certifying but non-transporting, non-title holding LDC or intrastate pipeline.

B. Amendments to Blanket Certificate Regulations

Proposed Amendments

The NOPR also requested comments on proposed modifications to the blanket certificate regulations. These regulations currently limit interstate pipelines' blanket certificate transportation services to 120 days if the service is protested by any party. The NOPR proposed to amend the blanket certificate transportation regulations to operate similarly to the regulations in subpart B of part 284 governing section 311 transportation services. Thus, if any party filed a complaint regarding an interstate pipeline's commencement of a blanket transportation service, the interstate pipeline would be able to continue the service without interruption until the Commission issued an order requiring that the transportation service cease.

The NOPR also proposed to eliminate the current requirement that notice of a blanket transportation service be published in the **Federal Register** and replace this requirement with a notification requirement like that in subpart B for service under section 311 of the NGPA. Thus, under the proposed regulations, a pipeline that would be providing transportation service to a customer located in a LDC's service area would be required to give prior written notice only to the LDC and its regulatory agency.

Discussion of Comments

Commenters supporting the proposals. Twenty-two of the commenting parties support the Commission's proposal to revise the prior notice and protest procedures in section 7. [36] Most of them agree with the Commission that the revisions will alleviate unnecessary burdens caused by the current notice and protest requirements on the Commission, pipelines, and shippers. They also believe the proposal should be adopted to eliminate the present inappropriate incentive for parties to gas supply arrangements to rely on section 311 authority rather than section 7 blanket authority.

ANR, INGAA, and Indicated Shippers believe the current notice and protest procedures for blanket transportation services are unnecessary because the Natural Gas Act's notice and hearing requirements already have been fulfilled in the Commission's proceeding in which interstate pipelines' part 284 blanket certificate applications were granted. They emphasize that section 7(c) of the Natural Gas Act does not require new notice and hearing every time a certificate holder proceeds to act under its certificate. UGP notes that, regardless of the Commission's reliance heretofore on notice and procedures for blanket transportation services, such procedures are not required by the NGA. UGP and Tennessee state that, since experience has proven that the current notice and protest procedures are unnecessary, the Commission has the authority to change the procedures. UGP and Tennessee also note that the Commission stated in Order No. 436 that it would modify or eliminate the procedures if justified by experience.

Commenters opposing the proposals. Nine commenters oppose the proposed revision.[37] Most argue that the proposal is contrary to the public interest and in conflict with Order No. 436. They further contend that the Commission's assertion of administrative burden is unsubstantiated and inadequate justification for depriving interested parties of notice and opportunity to be heard.[38] AGD, Mississippi Valley, APGA, and Willcox City believe that, rather than substituting the section 311 notification requirement for the blanket regulations' notice and procedures, the blanket regulations' provisions should be substituted for the section 311 provisions.

Peoples, Oklahoma, and AGD believe that the current notice and protest procedures for blanket transportation services are necessary to satisfy to the NGA's notice and hearing requirements. If the section 311 notification requirement is substituted for the blanket regulations' notice and protest procedures, these commenters request conditions to ensure that interstate pipelines give such notifications to affected LDCs and state commissions in a timely manner and to require that pipelines' notifications, as well as their reports to the Commission, describe any affiliated relationships, list receipt and delivery points, and state the term of the contract and whether the service is firm or interruptible.

The NYPSC is opposed to eliminating the current notice and protest procedures for blanket transportation services. However, the NYPSC recommends shortening the protest period from 45 days to 30 days for protests based on non-environmental grounds, so that the Commission may act on protests before the 120-day automatic authorization transportation period ends.

Commission response. Contrary to arguments by some commenters, the Commission is not required to make every individual blanket transportation service subject to notice and protest procedures like those of the current regulations in order to satisfy the notice and hearing requirements of section 7(c) of the NGA. This rulemaking proceeding satisfies those statutory requirements.

Further, the majority of the commenters agree with the Commission's conclusion that the current procedures create an non-market incentive for parties to gas supply arrangements to rely on section 311 authority rather than section 7 blanket authority. The majority of the commenters also support the Commission's conclusion in the NOPR that the blanket regulations' current notice and protest procedures are creating unnecessary burdens on the Commission, pipelines, and shippers.[39]

[36] American Paper Institute, ANR, Arkla, Cal PUC, CNG, El Paso, EGMI, Enron, Indicated Shippers, INGAA, Natural, Northern Illinois, Northwest, Panhandle Eastern, Process Gas, SoCal, Tennessee, Texas Gas, Transco, UGP, VHC Gas, and Williams Natural.

[37] APGA, AGD, Cascade, NYPSC, Mississippi Valley, Oklahoma, Peoples, UDC, and Willcox City.

[38] AGD, Mississippi Valley, APGA, Cascade, Oklahoma, Peoples, and UDC.

[39] When an interstate pipeline's application under the blanket regulations' prior notice procedures is converted to a case-specific application by reason of an unwithdrawn protest, the interstate pipeline is required to submit to the Commission the difference between the prior notice filing fee and the filing fee for section case-specific applications. See Order 433, Fees Applicable to Natural Gas Pipelines, FERC Stats. & Regs., Regs. Preambles, ¶ 30,662, at n.5.

As of April 1, 1991, the filing fee for section 7(c) applications is $34,550, while the filing fee for prior notice applications is $590. This difference in fees is necessary to account for the much greater expenditure of Commission resources generally required to process case-specific applications. However, unmeritorious protests to blanket certificate activities unnecessarily cause great increases in the burdens on both the Commission and pipelines. Frequently, protests to pipelines' prior notice filings either contain no specific allegations of undue discrimination or anticompetitive practices or provide no support or inadequate support for such allegations. In some

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As a result of the operation of the current procedures, the Commission has had to issue approximately 150 orders as of April 29, 1991, to waive the 120-day limit on approximately 260 blanket transportation services commenced by interstate pipelines under the automatic authorization provisions of § 284.223(a) of the regulations. Although the 120-day limitation on automatic authorization was originally adopted to prevent the indefinite continuation of successfully protested services, relatively few services have been protested. Therefore, the Commission's burden in issuing orders to waive the 120-day service has resulted almost entirely because pipelines have not filed their blanket service commencement reports in time for transactions to be noticed and the 45-day notice period to run before the end of the 120-day automatic authorization period. However, we realize that it would be difficult for pipelines to file these reports more quickly, in view of the large numbers of transactions that they must report.

In proposing to modify the blanket regulations' notice and protest procedures, the Commission acknowledges that it was influenced by the relatively small number of protests that have been filed against blanket transportation services since issuance of Order No. 436, [40] and the fact that not one of these protested proceedings has resulted in a finding that the pipeline had engaged in unduly discriminatory or anticompetitive practices. It also is material, since LDCs' are the strongest supporters of retaining the current notice and protest procedures, that only 18 of these protested transportation services were protested by LDCs and only ten of those were based on arguments that the Commission should not allow pipelines to bypass service by LDCs.

The other 8 protests by LDCs, as well the remaining 66 protests that have been filed in response to pipelines' prior notices of blanket transportation services, were in the nature of complaints concerning issues relating, for example, to the extent that a gas customer should remain liable for its LDC's costs when the customer switches to direct transportation service from a pipeline; whether a pipeline should condition new transportation services to ensure that capacity will be available to meet its sales customers' future request for conversions to transportation service; and other issues regarding whether a pipeline's practices are inconsistent with the first-come, first-served rule.[41] Complaint proceedings, not prior notice proceedings, are the appropriate forums for addressing objections of these types, where a complainant's concerns relate to a general policy issue and its complaint does not raise any allegations that are limited or apply only to particular transportation services described in a pipeline's prior notice filings.

Further, even if some protested proceedings had resulted in the Commission finding that action was necessary to require termination of the protested blanket transportation services, the relatively small number of protests demonstrates that the burdens created by the current procedures are not justified.

More importantly, however, the current procedures are not necessary to give LDCs and other parties the opportunity to have their objections to blanket transportation services addressed by the Commission in a timely manner. The Commission stated in Order No. 436 that it would modify the blanket regulations' notice and protest procedures if experience under Order No. 436's new transportation regulations demonstrated that the procedures serve no useful function.[42]

It is true that adoption of the proposed amendments will remove the necessity for Commission action within 120-days to prevent the interruption of ongoing gas supply arrangements, regardless of the complexity of the circumstances and issues involved. However, the amendments will not prevent LDCs and other parties from filing complaints against blanket transportation services. Further, the Commission believes that it will be able to act within 60 days on most complaints against blanket transportation services and section 311 transportation services. While the Commission stated in Order No. 436 [43] that LDCs' bypass concerns were an important reason for maintaining the blanket regulations' notice and protest procedures and the 120-day limit on automatic authorization, the Commission has determined in view of all of the above considerations that it is not necessary to maintain the current procedures to ensure adequate protection of the interests of LDCs or any other interested persons.

The Commission notes that in protested blanket service proceedings, it has issued an order addressing the protest before the end of the 120-day automatic authorization period or as soon thereafter as possible. Thus, in practice, the Commission already has been addressing protests to blanket transportation services in the same fashion that it addresses complaints against section 311 transportation services. The Commission believes that it has responded to objections to both types of service in a timely manner. Further, having reviewed the comments in this proceeding, the Commission is convinced that there is good reason for different processing and treatment of complaints against blanket services and section 311 services.

In view of the above considerations, the final rule is adopting the proposal to substitute the section 311 notification requirement for the blanket regulations' current notice and protest procedures for transportation services. We do not agree with the suggestion that insufficient notice will be afforded because the section 311 regulations require only that notification be given to an affected LDC and state agency prior to the commencement of section 311 service to a customer in the LDC's service area. Regulations authorizing construction of delivery facilities both under blanket certificate and section 311 have had and continue to have notification requirements. Therefore, if facilities have already been constructed, the LDC has had the opportunity to protest.

Further, if a sales or delivery tap must be constructed before an interstate pipeline can begin a new service for a customer in an LDC's service area, a pipeline's construction of such delivery facilities under blanket certificate authority will continue to be subject to the prior notice and protest procedures.

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instances, protests have merely stated that the prior notice filing is being protested and that the protester requests conversion of the prior notice filing to a case-specific proceeding.

This final rule removes only blanket transportation services from the scope of the prior notice and protest procedures. However, in view of the above considerations, the Commission intends to begin dismissing deficient protests, since they serve no purpose other than to impede the administrative process and create obstacles to the rendering of gas services that have been determined in previous rulemaking proceedings to warrant a presumption that they are required by the public convenience and necessity. For example, if an intervenor is protesting a prior notice filing for the construction of a sales tap because it will permit bypass, the intervenor must allege more than that fact. It also must raise and support some allegation, such as undue discrimination or unfair competitive practices on the pipeline's part, which, unlike bypass alone, would provide a basis for the Commission to grant the protest.

[40] Eighty-four (1.5 percent) of the approximately 5,409 blanket transportation services commenced since issuance of Order No. 436 have been protested.

[41] *See, e.g.,* Columbia Gulf Transportation Company, 55 FERC ¶ 61,131 (1991).

[42] FERC Stats. & Regs., Regs. Preambles, ¶ 30,665 at p. 31,554 (1985).

[43] *Id.*

Also, in addition to the prior notification that pipelines are required to give to LDCs and state agencies before commencing section 311 transportation service or, as of the effective date of this final rule, blanket transportation service, the regulations being adopted in the Commission's concurrent final rule on construction in Docket No. RM90-1-001 include a new condition that a pipeline may not construct certain gas facilities, including a delivery tap, under either blanket certificate authority or section 311 authority until 6 weeks after it has published notice in a local newspaper of general circulation.

Finally, under this rule, if an LDC will not be participating in a gas supply arrangement for a customer in its service area by either transporting or holding title to the gas at some point, an interstate pipeline will not be able to rely on section 311 authority to transport the gas, unless the LDC certifies that the interstate pipeline's transportation service is on the LDC's behalf.

The Commission does not believe that it is necessary to require, as requested by one commenter, that pipelines' notifications to LDCs and State agencies describe any affiliated relationships, list receipt and delivery points, and state the term of the contract and whether the service is firm or interruptible. The identities of parties, contract term, receipt and delivery points, and the firm or interruptible nature of a service are reflected in the initial report that a pipeline is required to file pursuant to § 284.106(a) and § 284.223(f) of the regulations within thirty days after commencing a section 311 transportation service or a blanket transportation service, respectively. The identities of service agreement parties and the firm or interruptible nature of services are also reflected in the notices of self-implementing part 284 transactions published by the Commission in the **Federal Register**. These procedures demonstrate that LDCs already have access to sufficient information to enable them to determine in a timely manner whether they wish to file complaints against particular transactions. A requirement that this information be provided to LDCs well in advance of pipelines' commencing service would create an advantage for LDCs under the regulations which would be counterproductive to the Commission's goal of promoting competition by ensuring a level playing field.

Request for notice to all LDCs served by pipeline. Cal PUC asserts that a pipeline should be required to give notice of any section 311 or blanket transportation service to every LDC on its system and to every such LDC's state regulatory agency, particularly if the new service is firm service.

Commission response. It is not necessary that a pipeline give notification to every LDC served by its system before commencing section 311 or blanket transportation service for a new customer. A pipeline may not commence any new interruptible or firm transportation service for a customer under part 284 unless that customer is next in line for such service under the pipeline's approved tariff provisions implementing the first-come, first-served rule.

Request for elimination of all notice requirements. Panhandle Eastern objects to the proposed notification requirement on the grounds that a pipeline will not be able to determine whether notification to an LDC and state agency is necessary unless the pipeline first determines whether the shipper will be the ultimate recipient of gas and, if not, who the ultimate recipient will be. INGAA, Northwest, and Transco believe a pipeline should be relieved of any notification requirement if it will be delivering gas directly to an LDC's facilities.

Commission response. The Commission does not believe pipelines will experience any significant burdens due to the requirement that they give prior notification of blanket certificate service to a customer's LDC and that LDC's state regulatory agency. This conclusion is supported by the fact that pipelines have always been subject to this requirement in providing section 311 transportation services. However, the Commission agrees that the requirement of notification to an LDC and its state agency is unnecessary if the pipeline is to deliver gas directly to the LDC. The final rule makes this exception.

V. Environmental Review

Commission regulations require that an Environmental Assessment or an Environmental Impact Statement must be prepared for any Commission action that may have a significant adverse effect on the human environment.[44] The Commission has categorically excluded certain actions from these requirements not having a significant effect on the human environment.[45] The Commission's reinterpretation of section 311 of the NGPA is required to satisfy the Court's decision in *AGD-Hadson.* The amendments to the blanket certificate regulations modifying notice and protest procedures are also necessary to respond to the Court's decision in *AGD-Hadson.*[46]

VI. Information Collection Statement

The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection and recordkeeping requirements imposed by an agency.[47] This final rule consolidates the collections of information contained in FERC-549, Gas Pipeline Rates: NGPA title III Transactions, Revisions to Regulations Governing Transportation under Section 311 of the Natural Gas Policy Act of 1978 (1902-0086) and FERC 549-A, Gas Pipeline Rates: NGPA Title III Transactions RE Interim Rule, Revisions to Regulations Governing Transportation under section 311 of the Natural Gas Policy Act of 1978 (1902-0160). The consolidated information collection requirements are being submitted to OMB for its review. Data Collection under FERC-537, Gas Pipeline Certificates: Construction, Acquisition, and Abandonment (1902-0060), is the same as set forth in the Notice of Proposed Rulemaking. Therefore there will be no change in current burden associated with the reporting requirements in this Final Rule.

Interested persons may obtain information on the requirements of the regulations by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, DC 20426 (Attention: Michael Miller (202) 208-1415). Comments on the requirements of the regulations can be sent to the Office of Information and Regulatory Affairs of OMB.

An estimated 294 respondents will be affected by the final rule. The respondents will consist mostly of natural gas pipeline companies. The public reporting burden with respect to the filing requirements of FERC-549 is estimated to average 2.7 hours per response.

List of Subjects

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

[44] Order No. 486, Regulations Implementing National Environmental Policy Act, 52 FR 47,7897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987), codified at 18 CFR part 380.

[45] 18 CFR 380.4 (1990).

[46] See 18 CFR 380.4(a)(2)(ii) and (a)(27) (1990).

[47] 5 CFR 1320.13.

18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends parts 157 and 284, chapter I, title 18, Code of Federal Regulations, as set forth below, effective November 4, 1991.

By direction of the Commission. Commissioner Trabandt concurred with a separate statement to be issued later.

Lois D. Cashell,

Secretary.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL ACT

1. The authority citation for part 157 is revised to read as follows:

Authority: 15 U.S.C. 717–717w; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142; 15 U.S.C. 3301–3432.

§ 157.205 [Amended]

2. In § 157.205, paragraph (a) introductory text, the words "or § 284.223(b)" and "or by part 284" are deleted, and the word "or" is inserted before the word "157.216(b)".

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

3. The authority citation for part 284 is revised to read as follows:

Authority: 15 U.S.C. 717–717w; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Outer Continental Shelf Lands Act of 1953, 43 U.S.C. 1331–1356; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

4. In § 284.102, paragraphs (d) and (e) are revised to read as follows:

§ 284.102 Transportation by interstate pipelines.

* * * * *

(d) Transportation of natural gas is not on behalf of an intrastate pipeline or local distribution company or authorized under this section unless:

(1) The intrastate pipeline or local distribution company has physical custody of and transports the natural gas at some point; or

(2) The intrastate pipeline or local distribution company holds title to the natural gas at some point, which may occur prior to, during, or after the time that the gas is being transported by the interstate pipeline, for a purpose related to its status and functions as an intrastate pipeline or its status and functions as a local distribution company; or

(3) The gas is delivered at some point to a customer that either is located in a local distribution company's service area or is physically able to receive direct deliveries of gas from an intrastate pipeline, and that local distribution company or intrastate pipeline certifies that it is on its behalf that the interstate pipeline is providing transportation service.

(e) An interstate pipeline shall obtain from it shippers certifications including sufficient information to verify that their services qualify under this section. An interstate pipeline shall file by January 3, 1992, any tariff revisions or additions necessary to clarify that it may require such certifications. Prior to commencing transportation service described in paragraph (d)(3) of this section, an interstate pipeline must receive the certification required from a local distribution company or an intrastate pipeline pursuant to paragraph (d)(3).

5. In § 284.122, paragraph (a) introductory text is revised and new paragraphs (d) and (e) are added to read as follows:

§ 284.122 Transportation by intrastate pipelines.

(a) Subject to paragraphs (d) and (e) of this section, other provisions of this subpart, and the applicable conditions of Subpart A of this part, any intrastate pipeline may, without prior Commission approval, transport natural gas on behalf of: * * *

* * * * *

(d) Transportation of natural gas is not on behalf of an interstate pipeline or local distribution company served by an interstate pipeline or authorized under this section unless:

(1) The interstate pipeline or local distribution company has physical custody of and transports the natural gas at some point; or

(2) The interstate pipeline or local distribution company holds title to the natural gas at some point, which may occur prior to, during, or after the time that the gas is being transported by the intrastate pipeline, for a purpose related to its status and functions as an intrastate pipeline or its status and functions as a local distribution company.

(e) If the transportation service commenced prior to August 2, 1990, and the requirements of paragraph (e) of this section are not satisfied, transportation service is not authorized under this section after January 31, 1992.

6. In § 284.223, paragraph (a) is revised, paragraphs (b) and (c) are removed, paragraphs (d), (e), (f), (g), and (h) are redesignated as paragraphs (b), (c), (d), (e), and (f), redesignated paragraph (d)(1)(vi) is revised and paragraphs (d)(2), (d)(3), and (d)(4) are added to read as follows:

§ 284.223 Transportation by interstate pipelines on behalf of shippers other than interstate pipelines.

(a) Subject to the provisions of this subpart and the conditions of Subpart A of this part, any interstate pipeline issued a certificate under § 284.221 is authorized, without prior notice to or approval by the Commission, to transport natural gas for any duration for any shipper for any end-use by that shipper or any other person.

* * * * *

(d) *Reporting requirements*—(1) *Initial full report.* * * *

(vi) If such transportation is provided to a customer that is located in the service area of a local distribution company and the interstate pipeline will not be delivering the customer's gas to that local distribution company, a statement that the interstate pipeline notified the local distribution company and the local distribution company's appropriate regulatory agency in writing of the proposed transportation prior to commencement.

(2) *Subsequent reports.* (i) An interstate pipeline that files an initial report under paragraph (d)(1) of this section must amend that report to reflect any material change in the pertinent transportation arrangement.

(ii) Any changes in the initial report required by this paragraph must be filed with the Commission within thirty days of the related changed circumstances, and must be signed under oath by a senior official of the company, and consist of an original and five conformed copies.

(3) *Annual report.* Not later than May 1 of each year, each interstate pipeline must file with the Commission an annual report that contains, for each docketed transportation service provided during the preceding calendar year under authority of this section, the following information:

(i) The docket number assigned to the transaction;

(ii) Total volumes transported for the transaction; and

(iii) Total revenues received for the transaction.

(4) *Notification of termination.* Not later than 30 days after the termination of any transportation arrangement under this section, the interstate pipeline

company must file with the Commission an original and five conformed copies of a statement including the following information:

(i) The docket number assigned to the transaction and the date the transaction was terminated;

(ii) The total volumes transported under the arrangement;

(iii) The total revenues received; and

(iv) A statement certifying that the service was provided under the terms and conditions previously reported in this docket.

* * * * *

7. New § 284.227 is added to read as follows:

§ 284.227 Certain transportation by intrastate pipelines.

(a) *Blanket certificate.* A blanket certificate shall issue under this section to any intrastate pipeline that transports and delivers in its state of operation directly to an end user in that state gas received by the intrastate pipeline from a gatherer that gathered the gas in adjacent Federal waters or onshore or offshore in an adjacent state.

(b) *Effective date.* If an intrastate pipeline is providing a transportation service described in paragraph (a) of this section as of February 1, 1992, and the service is not a qualifying service under § 284.122 of subpart C of this part, a blanket certificate shall issue under paragraph (a) of this section and become effective as of February 1, 1992. If an intrastate pipeline is not providing a transportation service described in paragraph (a) of this section as of February 1, 1992 the blanket certificate shall issue and become effective on the date that the intrastate pipeline commences such a service that is not a qualifying service under § 284.122 of subpart C of this part.

(c) *Acceptance of certificate.* An intrastate pipeline shall be deemed to have accepted a blanket certificate under this section if it continues after February 1, 1992, a service described in paragraph (a) of this section that is not a qualifying service under § 284.122 of subpart C or commences such a service after November 4, 1991.

(d) *Conversion report.* The first report filed pursuant to § 284.126 of subpart C by an intrastate pipeline for a service authorized under this section shall state that the service is being provided under this section. If service under this section is an extension of service originally commenced under subpart C of this part, the first required report shall be the subsequent report pursuant to § 284.126(b) of subpart C, which shall identify the ST docket number in which the initial report for the service was filed when the service initially commenced under subpart C.

(e) *Terms and conditions.* An intrastate pipeline's blanket certificate transportation authority under this section is subject to its compliance with all terms and conditions of subpart C of this part, except that service under this section does not have to be on behalf of an interstate pipeline or local distribution company served by an interstate pipeline.

(f) *Pregrant of abandonment.* Abandonment of transportation services, pursuant to section 7(b) of the Natural Gas Act, is authorized upon the expiration of the contractual term of each individual arrangement authorized by a blanket certificate under this section.

(g) *Effect of certificate.* Acceptance of a certificate issued under this section or conduct of activity authorized under this section will not subject the certificate holder to the Natural Gas Act jurisdiction of the Commission except to the extent necessary to enforce the terms and conditions of the certificate.

Appendix to Preamble

Commenters

Docket No. RM90-7-000

American Paper Institute
American Public Gas Assoc. (APGA)[1]
ANR Pipeline and Colorado Interstate Gas Co. (ANR)[1]
A.P. Green Industries
Arkla Pipeline Group (Arkla)
Associated Gas Distributors (AGD)[1]
Association of Texas Intrastate Natural Gas Pipelines (Texas Intrastates)
California State Public Utilities Co. (Cal PUC)
CNG Transmission Corp. (CNG)
Cascade Natural Gas Corp. (Cascade)
Dayton-Montgomery County Park District (Dayton-Montgomery)
El Paso Natural Gas Co. (El Paso)
Enron Gas Marketing, Inc. (EGMI)
Entrade Corp. and PSI Marketing (Entrade)
Germantown City and Germantown Area Concerned Citizens' Association (Germantown)
Houston Pipeline Co.
Indicated Shippers[1]
Independent Petroleum Association of America (IPAA)
Interstate Natural Gas Assoc. of America (INGAA)[1]
Iowa Illinois Gas and Electric Co. (Iowa Illinois)
JMC Fuel, Inc. *et al.* (JMC Fuel)
Long Island Lighting Co. and Virginia Natural Gas, Inc. (LILCO)[1]
Miami Valley Counsel for Native Americans, *et al.* (Miami Valley Counsel)[1]
Michigan Consolidated Gas Co. (Michcon)[1]
Mississippi Valley Gas Co. (Mississippi Valley)
Natural Gas Pipeline Co. of America (Natural)
New York Public Service Commission (NYPSC)
Northern Illinois Gas Co. (Northern Illinois)
Northern Natural Gas, *et al.* (Enron)[1]
Northwest Pipeline Co. (Northwest)
Oklahoma Natural Gas Co. and ONG Transmission Co. (Oklahoma)
Panhandle Eastern Pipeline Co., *et al.* (Panhandle Eastern)
Peoples Natural Gas Co., *et al.* (Peoples)
Process Gas Consumers Group, *et al.* (Process Gas)[1]
Southern California Gas Co. (SoCal)
States Consumer Advocates
Tejas Power Corp.
Texas Gas Transmission Corp. (Texas Gas)
Tennessee Gas Pipeline Corp. (Tennessee)[1]
Transcontinental Gas Pipeline Corp. (Transco)
Transok, Inc.
United Distribution Co. (UDC)[1]
United Gas Pipeline Companies (UGP)[1]
VHC Gas Systems, L.P. (VHC Gas)[1]
Williams Gas Marketing Co. (Williams Gas)
Williams Natural Gas Co. (Williams Natural)
Willcox City, Arizona and Arizona Electric Power Cooperative, Inc. (Willcox City)[1]

[1] Also filed reply comments.

[FR Doc. 91-23898 Filed 10-3-91; 8:45 a.m.]
BILLING CODE 6717-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 200

RIN 3220-AA90

General Administration

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends § 200.8 of its regulations in order to make it clear that the Board has the authority to prevent a Board employee from being compelled to testify in a deposition, trial, or other similar proceeding, concerning information acquired in the course of performing official duties or because of the employee's official capacity, where the provision of such testimony would interfere with the employee's official duties and where the information sought may be obtained by means other than by testimony of the employee.

EFFECTIVE DATE: October 4, 1991.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513, FTS 386-4513, TDD (312) 751-4701, TDD FTS 386-4701.

SUPPLEMENTARY INFORMATION: The Railroad Retirement Board (Board) is charged with the administration of both the Railroad Retirement Act (RRA) (45 U.S.C. 231 *et seq.*) and the Railroad Unemployment Insurance Act (RUIA)

(45 U.S.C. 351 *et seq.*). More and more frequently in recent years, Board employees have been requested or subpoenaed to provide testimony, in a deposition, trial, or other similar proceeding, concerning information acquired in the course of performing official duties or because of the employee's official capacity. This increase has been particularly marked in divorce proceedings after the amendment of section 14 of the RRA (45 U.S.C. 231m) in 1983 to permit certain portions of a railroad retirement annuity to be divided as part of a division of property in such proceeding. The information sought by such subpoenas, particularly an estimate of benefits payable at retirement or the amount of benefits currently being paid or a description of the types of benefits payable under the RRA, can generally be easily furnished in a letter without the necessity of a Board employee taking time from his or her official duties to testify in a proceeding involving non-Federal litigants. See § 295.4(d) of this chapter.

Section 200.8(d) of the Board's regulations sets forth the procedures to be followed when a Board employee receives a subpoena. The Board is amending this section by the inclusion of a policy statement as the new first paragraph of § 200.8(d) in order to make it clear that the Board has the authority to prevent its employees from testifying where the provision of such testimony would interfere with the employee's official duties. The remaining paragraphs are appropriately renumbered.

The Board also is redesignating paragraphs (f), (g) and (h) and adding a new paragraph (f) to § 200.8 which provides for a procedure for requesting the voluntary testimony of a Board employee. Finally, the Board is adding a new paragraph (j) which provides that the Board will request the assistance of the Department of Justice where such assistance is necessary in order to represent the interests of the Board and its employees. This new paragraph simply reflects what has been and currently is the practice of the Board in such matters.

The Board published this rule as a proposed rule on June 24, 1991 (56 FR 28731), inviting comments by July 24, 1991. No comments were received.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. In addition, this rule does not impose any information collections within the meaning of the Paperwork Reduction Act.

List of Subjects in 20 CFR Part 200

Railroad employees, Railroad retirement, Railroad unemployment insurance.

For the reasons set out in the preamble, title 20, chapter II of the Code of Federal Regulations is amended as follows:

PART 200—GENERAL ADMINISTRATION

1. The authority citation for part 200 continues to read as follows:

Authority: 45 U.S.C. 231(b)(5) and 45 U.S.C. 362; § 200.4 also issued under 5 U.S.C. 552; § 200.5 also issued under 5 U.S.C. 552a; § 200.6 also issued under 5 U.S.C. 552b; and § 200.7 also issued under 31 U.S.C. 3717.

2. Section 208.8(b) is amended by adding at the end thereof the following new definition, to read as follows:

§ 200.8 Disclosure of information obtained in the administration of the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

* * * * *

(b) * * *

Testify and testimony. The terms *testify* and *testimony* include both in-person oral statements before a court or a legislative or administrative body and statements made in the form of depositions, interrogatories, declarations, affidavits or other means of formal participation in such proceedings.

* * * * *

§ 200.8 [Amended]

3. Section 200.8 is amended by redesignating paragraphs (d) (1), (2), and (3) as (d) (2), (3), and (4), respectively, and by adding the following new paragraph (d)(1) to read as follows:

* * * * *

(d) *Subpoenas—statement of policy and general rule.* (1) It is the policy of the Board to provide information, data, and records to non-Federal litigants to the same extent and in the same manner that they are available to the general public. The availability of Board employees to testify before state and local courts and administrative and legislative bodies, as well as in Federal court and administrative proceedings which involve non-Federal litigants, concerning information acquired in the course of performing their official duties or because of the employee's official capacity, is governed by the Board's policy of maintaining strict impartiality with respect to private litigants and minimizing the disruption of an employee's official duties. Thus, the Board may refuse to make an employee available for testimony under this paragraph or paragraph (e) or (f) of this section if it determines that the information sought is available other than through testimony and where making such employee available would cause disruption of agency operations. However, this paragraph does not apply to any civil or criminal proceeding where the United States, the Railroad Retirement Board, or any other Federal agency is a party; to Congressional requests or subpoenas for testimony; to consultative services and technical assistance provided by the Board or the agency in carrying out its normal program activities; to employees serving as expert witnesses in connection with professional and consultative services rendered as approved outside activities (in cases where employees are providing such outside services, they must state for the record that the testimony represents their own views and does not necessarily represent the official position of the agency); or to employees making appearances in their private capacity in legal or administrative proceedings that do not relate to the official business of the agency (such as cases arising out of traffic accidents, crimes, domestic relations, etc.) and not involving professional and consultative services as described above.

* * * * *

§ 200.8 [Amended]

4. Section 200.8 is amended by redesignating paragraphs (f), (g), and (h), as (g), (h), and (i) and by adding new paragraph (f) and a new paragraph (j) to read as follows:

* * * * *

(f) *Requests for voluntary testimony.* All requests for testimony by a Board employee in his or her official capacity must be in writing and directed to the Deputy General Counsel. They shall state the nature of the requested testimony, why the information is not available by any other means, and the reasons, if any, why the testimony would be in the interest of the Board or the Federal government.

* * * * *

(j) The Deputy General Counsel or his designee will request the assistance of the Department of Justice where necessary to represent the interests of the agency and its employees under this section.

Dated: September 25, 1991.

By Authority of the Board.

Beatrice Ezerski,

Secretary of the Board.

[FR Doc. 91–23816 Filed 10–3–91; 8:45 am]

BILLING CODE 7905–01–M