UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Capacity Transfers on Intrastate Natural Gas Pipelines	**)))**	**Docket No. RM11-1-000**

COMMENTS OF THE NATURAL GAS SUPPLY ASSOCIATION

The Natural Gas Supply Association ("NGSA") hereby submits comments in response to the Federal Energy Regulatory Commission's ("FERC" or "the Commission") Notice of Inquiry regarding the transfer of capacity on intrastate natural gas pipelines.[1]

NGSA is a trade association which represents integrated and independent companies that produce and market domestic natural gas. Established in 1965, NGSA encourages the use of natural gas within a balanced national energy policy, and promotes the benefits of competitive markets to ensure reliable and efficient transportation and delivery of natural gas and to increase the supply of natural gas to U.S. customers. NGSA members transport natural gas through numerous interstate and intrastate natural gas pipeline systems. NGSA members ship natural gas on hundreds of pipelines throughout the United States and the result of this proceeding will have a significant impact on NGSA.

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[1] *Capacity Transfers on Intrastate Natural Gas Pipelines*, Notice of Inquiry, 133 FERC ¶ 61,065 (2010) ("NOI").

I. COMMUNICATIONS

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II. EXECUTIVE SUMMARY

NGSA appreciates the opportunity to present comments on whether changes are necessary to improve the manner in which shippers can transfer their capacity on Section 311 or Hinshaw pipelines ("intrastates" or "intrastate pipelines"). NGSA understands that the Commission is seeking ways to help shippers more efficiently utilize intrastate pipeline capacity in a manner that reduces the potential for undue discrimination or preference. After careful consideration of the questions raised by the Commission in this proceeding, NGSA believes that increased federal requirements on intrastate systems may, in fact, create unintended consequences such as limiting the availability of interstate service provided by Section 311 and Hinshaw pipelines.

Intrastate pipelines provide a critical link for producers to get their gas into the interstate market and, in most instances, they have the ability to develop transmission projects more quickly than interstate pipelines when needed to connect new supplies pipelines. As Congress recognized in the Natural Gas Policy Act ("NGPA"), there are valid reasons to provide exemptions from certain federal regulations to intrastate pipelines that provide some interstate services.[2] Those distinctions remain valid today.

The flexibility afforded by intrastate systems is particularly important upstream closest to production, where intrastate pipelines play an essential role in getting gas into the interstate market as well as assisting in the processing, treating and blending of gas to make it acceptable for interstate use. In today's booming shale production areas, intrastate pipelines have the ability to quickly react to marketplace developments, and they are often willing to take on higher levels of risk than interstate pipelines -- such as by accepting contracts with producers for shorter time periods than interstate pipelines require. Intrastate pipelines also have the ability to quickly build new systems to connect new production to the grid. We fear that some intrastate pipelines may be more reluctant to develop projects at as rapid a pace if the Commission continues to add mandatory federal regulatory obligations onto the services intrastate pipelines provide. This could have the unfortunate effect of causing gas production from certain areas to be shut in, awaiting needed transportation.

For decades, shippers on Section 311 and Hinshaw pipelines have secured capacity from these intrastate pipelines and often are able to efficiently utilize this

[2] NGPA § 311, 15 U.S.C. § 3371, allows intrastate natural gas pipelines to engage in certain types of interstate transportation without becoming subject to Commission jurisdiction. *See Certain Transportation, Sales, and Assignments by Pipeline Companies not Subject to Commission Jurisdiction Under Section 1(c) of the Natural Gas Act*, Order No. 63, FERC Stats. & Regs. ¶ 30,118, at 30,824-25 (1980). *See also Contract Reporting Requirements of Intrastate Natural Gas Companies, Order on Rehearing*, 133 FERC ¶ 61,216 at P 3 (2010) ("Congress adopted these provisions in order to eliminate the regulatory barriers between the intrastate and interstate markets and to promote the entry of intrastate pipelines into the interstate market").

capacity without a formal, federally-mandated capacity release program. Rather than creating an additional layer of federal regulations, NGSA suggests that the newly implemented transparency requirements for intrastate pipelines under Order Nos. 714, 720 and 735 provide the necessary access to information which shippers may use to assess whether they are being fairly treated. If FERC ensures full compliance with these orders, additional capacity release regulation, which may overly complicate the dual "pipe in a pipe" regulation of Section 311 and Hinshaw pipelines, can be avoided. Therefore, the Commission should focus its efforts on ensuring full compliance with Order Nos. 714, 720 and 735 instead of imposing additional regulations on intrastate pipelines.

Where there is a basis to question whether a pipeline no longer meets the requirements to continue to perform service as a Section 311 or Hinshaw pipeline and requires greater regulation on par with interstate pipelines, the Commission should examine those specific pipelines to determine if they are more appropriately regulated under the Natural Gas Act ("NGA") rather than attempting to change the full regulatory landscape that is currently in place for all intrastate pipelines.

III. RESPONSES TO QUESTIONS POSED IN THE NOTICE OF INQUIRY

Producers of natural gas heavily rely on intrastate pipelines to get their product to market and could be significantly impacted by changes to the regulation of Section 311 and Hinshaw interstate services. While still working toward a more comprehensive understanding of the impact that changes to the regulation of interstate services provided by intrastate pipelines may have on the overall natural gas market, NGSA is pleased to provide the following responses to the questions posed by the Commission in this NOI.

1. The requests for rehearing in *APS/Sequent* suggest that marketers and others holding firm interstate capacity on section 311 and Hinshaw pipelines are using buy/sell transactions to allow others to make use of their capacity.
    a. Are buy/sell transactions commonly used in connection with service on section 311 and Hinshaw pipelines or are such transactions relatively rare?
    b. Are such transactions more commonly used with respect to storage capacity as in *APS/Sequent* or are they used with respect to all types of services?

NGSA does not have information that details how frequently buy/sell transactions are used on intrastate pipelines since individual shippers make their own determinations regarding the manner in which they utilize their capacity. However, a survey of intrastate pipeline Standards of Operating Conditions ("SOCs") shows that at least a third of these pipelines provide their shippers the option of holding title to the gas being shipped or having "good right to receive or deliver" the gas. These contractual commitments permit shippers to transport gas on behalf of other parties and, as a result, those shippers would not need to use buy/sell transactions to make more efficient use of their firm or interruptible pipeline capacity.

On those intrastate pipelines that do not impose a "good right to deliver" requirement but instead, require shippers to have title to the gas, one can assume that buy/sell transactions are used on a rather routine basis by shippers that would like to make the most efficient use of unneeded firm capacity. However, buy/sell transactions would only need to be used in those instances in which firm interstate service is tied to reservation charges.

c. Have such transactions provided for more efficient use of firm capacity on section 311 and Hinshaw pipelines?

Yes. The lack of intrastate shipper requests for changes to the regulations applied to section 311 and Hinshaw pipelines is a good indicator that shippers are generally satisfied that they can efficiently and effectively make use of their firm interstate capacity when needed. It should be noted that only about half of intrastate pipelines even offer firm transportation services and even fewer intrastate pipelines provide "firm" service in the sense that shippers are required to pay reservation fees. In those instances where reservation charges are assessed, shippers should be entitled to sub-lease their firm interstate capacity in some fashion, either through buy/sell transactions or some other means by which capacity can be remarketed.

Shippers need to be able to transfer capacity to ensure pipeline capacity is efficiently utilized. Because some intrastate shippers must rely on buy/sell transactions to efficiently transfer their firm capacity, we believe it is essential that shippers on intrastate pipelines continue to have such mechanisms available.

2. Are there any experiences or concerns of undue discrimination or preference or loss of market transparency related to the buy/sell transactions which have occurred on section 311 and Hinshaw pipelines?

To prevent undue discrimination or loss of market transparency, the Commission should focus its efforts on ensuring that the transparency requirements that are already in place for intrastate pipelines are effectively applied instead of seeking to end buy/sells on intrastate pipelines. Importantly, the Commission has already taken action to make the intrastate market more transparent. For example, Order No. 720 required major non-interstate pipelines to post their daily flow data on their electronic bulletin boards ("EBBs") beginning in October 2010. Also, in March 2010, new quarterly requirements were imposed in Order No. 735, which requires Section 311 and Hinshaw pipelines to report transactional details including the pipeline's shippers, volumes, rates and other contract information beginning April 2011 on an updated Form No. 549. Given these recently-imposed federal transparency requirements, instead of seeking to ensure market transparency through imposing a new formalized program for the transfer of capacity, NGSA urges the Commission to ensure that the transparency requirements already in place are observed so that the information intrastate pipelines are required to post is available to shippers and intrastate pipeline SOCs are readily available for inspection by shippers as well as the Commission.[3]

Although there is always the possibility that a preference may be unduly provided on either intrastate or interstate pipelines with respect to capacity transfers, most shippers are primarily concerned with the overall utilization of capacity. While parties may want to buy unused firm capacity from a shipper, it is

[3] In fact, in a cursory analysis of the availability of intrastate pipelines' SOCs (intrastate tariff provisions and rates), we found that more than half of the statements had not yet been approved by FERC and posted as effective and many were not posted at all on the Commission's website.

not discriminatory, under current rules, for shippers to choose not to release capacity.

Lastly, if a shipper believes an intrastate pipeline has provided a preference to another shipper or its affiliate, that shipper can seek relief by contacting FERC's enforcement hotline or asking the Commission to initiate a formal investigation.

3. Could buy/sell transactions be allowed without risk of undue discrimination or preference or loss of market transparency?

Yes. Absent shippers urging FERC to change the manner in which section 311 and Hinshaw pipelines are regulated, one could reasonably assume that most market participants are negotiating acceptable terms when conducting buy/sell transactions.

a. Section 311 and Hinshaw pipelines generally include in their statements of operating conditions a requirement that shippers possess title to the gas being stored or transported. Is application of the shipper-must-have-title rule sufficient to minimize concerns about undue discrimination and transparency, since it ensures that the capacity holder has an interest in the gas being transported?

Many Section 311 and Hinshaw pipelines require shippers to either possess title to the gas shipped or have "good right to deliver" provisions in which the shipper has a contractual arrangement allowing it to deliver gas for others. Under shipper-must-have-title as well as "good right to deliver" provisions, a shipper has a contractual obligation and a vested interest in the gas they are shipping. In most instances, these types of provisions are imposed by state authorities to ensure delivery to end-use customers, which are often subject to priority end-use requirements. Given that intrastate pipelines must already comply with state regulations and priority use requirements, imposing standardized, federal shipper-must-have-title regulations on all intrastates may unnecessarily create confusing and often conflicting requirements that are difficult, if not impossible, for intrastate pipelines to manage.

4. When the Commission grandfathered existing buy/sell transactions at the time of Order No. 636, the Commission required participants in those transactions to notify the interstate pipeline of them, and the Commission required the pipeline, for informational purposes, to post notice of the transactions on its electronic bulletin board. Would a similar reporting requirement for participants in buy/sell transactions to notify the relevant section 311 and Hinshaw pipelines and for those pipelines to post notice of them reasonably mitigate concerns related to undue discrimination or preference or loss of market transparency?

Rather than imposing additional posting requirements for intrastate pipelines, the Commission should ensure that intrastate pipelines adhere to the current posting and reporting requirements in Order Nos. 720 and 735. Moreover, we ask the Commission to timely approve intrastate pipelines' SOCs and ensure that each is promptly posted in an accessible format on FERC's website to ensure that all shippers can easily access this information.

There may be instances of undue discrimination that occur in the intrastate pipeline market, just as there are instances at times in the interstate market. However, there are no prevalent problems on intrastate pipelines related to buy/sell transactions that we believe could be eliminated by imposing a new buy/sell prohibition or additional posting requirements.

5. In *ANR*, the U.S. Court of Appeals for the District of Columbia Circuit held that the Commission must provide a reasonable justification for excluding section 311 pipelines from requirements imposed on interstate pipelines, where such regulatory differences may place the interstate pipelines at a competitive disadvantage. Would allowing buy/sell transactions on section 311 and Hinshaw pipelines, but not on interstate natural gas pipelines, cause any competitive disadvantage to interstate pipelines?

No. The manner in which a shipper chooses to make use of its firm pipeline capacity, whether through buy/sell transactions or capacity release mechanisms, should not in any way impact a pipeline's primary market for selling firm capacity. Therefore, we do not see how allowing buy/sell transactions to continue on some intrastate pipelines could result in a competitive disadvantage to interstate pipelines.

The Commission must be cautious when considering the application of the same regulatory framework to intrastate pipelines that is applied to interstates. Two distinct regulatory frameworks have evolved to address the operational, physical and jurisdictional differences between interstate and intrastate pipelines. Congress adopted special provisions for intrastate pipelines to operate in the interstate market under narrow circumstances. Section 311 pipelines can only transport natural gas "on behalf of" interstate pipelines or local distribution companies served by interstate pipelines to qualify for exemption from the Commission's full jurisdiction under the NGA. Similarly, Hinshaw pipelines are only exempted from certain provisions of the Commission's jurisdiction under the NGA as long as they: 1) limit their transportation of gas in interstate commerce by receiving natural gas at or within the boundary of a state, 2) transport only gas that is consumed within that state, and 3) are regulated by a state commission. Congress found Hinshaw pipelines to be primarily of local concern and more appropriately regulated by state agencies. With these Congressionally-imposed limitations on the extent to which Section 311 and Hinshaw pipelines can provide interstate service, there is not sufficient basis to further extend federal regulation into this area in a manner that may complicate and disincent those pipelines from continuing to offer interstate services.

6. Consistent with the NGPA's goal of encouraging intrastate pipelines to provide interstate service, the Commission has not imposed on intrastate pipelines all of the Part 284 requirements imposed on interstate pipelines. Would extending the buy/sell prohibition to service on section 311 and Hinshaw pipelines deter intrastate pipelines from participating in the interstate market? If so, explain what burdens such a prohibition places on section 311 and Hinshaw pipelines that would make them less likely to offer interstate service.

Yes, extending the buy/sell prohibition to service on Section 311 and Hinshaw pipelines would likely deter intrastate pipelines from participating in the interstate market. The Congressional intent in the NGPA was to avoid developing dual intra- and interstate gas markets by lightly regulating Section 311s and Hinshaw pipelines because this lighter regulation encourages intrastate pipelines to actively participate in the national integrated pipeline grid. The inverse is also true: heavier federal regulation of intrastates is likely to cause reduced intrastate participation in the integrated national market, and could therefore eliminate options for shippers' essential transportation services.

Prohibiting buy/sell transactions on intrastate pipelines represents an additional regulatory requirement and adds a federal compliance risk. Thus, adding a buy/sell prohibition on intrastates would provide a negative incentive to intrastate pipelines discouraging them from offering interstate service.[4] Moreover, newly imposed federal requirements are likely to be duplicative of state regulation of intrastate pipelines.

While exiting the interstate market may appear to be an empty threat by intrastate pipelines, that is simply not the case. Many intrastate pipelines were constructed to primarily serve their LDC customers. Therefore, given their priority obligations to the LDC markets, some intrastate pipelines may not be capable of both providing firm interstate service subject to increased compliance requirements and guaranteeing that transportation over their priority end-use obligations. Since producers heavily rely on intrastate pipelines to provide take-away capacity over shorter distances in the fast-developing shale gas fields to get gas into the interstate market, removal of interstate service options on intrastate pipelines would adversely impact producers' businesses.

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[4] In fact, The Commission has previously explained that applying the same regulations to intrastate pipelines as are applied to interstates is burdensome. *See, e.g. EPGT Texas Pipeline*, 99 FERC at 62,252 ("The Commission has determined that requiring intrastate pipelines to comply with all the requirements applicable to interstate pipelines could make it unduly burdensome to participate in interstate markets, contrary to the intent of the NGPA.").

7. Should the Commission reexamine its decision not to require section 311 and Hinshaw pipelines to offer capacity release in light of market changes since the issuance of Order No. 636 in 1992 and the success of the interstate capacity release program?

No, the Commission should not require Section 311 and Hinshaw pipelines to offer capacity release. Layering federal capacity release obligations on top of state requirements will only add to the complexity of dual state and federal regulation of intrastate pipelines. The capacity release program implemented by Order No. 636 provided the foundation for a successful secondary market for interstate pipeline capacity. However, there are fundamental distinctions between the interstate and intrastate pipeline systems that make it difficult, or at least not worthwhile, to impose the same set of regulations on both types of pipelines. While the Commission established the capacity release program concurrently with the unbundling of the transportation and merchant functions on interstate pipelines, most intrastate pipelines continue to provide bundled (supply and transportation) utility service to their intrastate customers. Bundling of commodity sales and transportation service is an essential requirement for intrastate pipelines' to meet their state obligations to serve end-users. Given these state obligations, intrastate pipelines may not always be capable of offering interstate firm service with capacity release as unbundled interstate pipelines while fulfilling state obligations to provide bundled service to intrastate customers such as LDCs.

8. Does the absence of a transparent method for shippers on section 311 and Hinshaw pipelines to reassign their capacity interfere with the Commission's goal of fostering an efficient national pipeline grid in which buyers and sellers of natural gas have the maximum ability to reach one another?

No. The absence of a capacity release program on intrastate pipelines does not frustrate the efficient operation of the national pipeline grid. In fact, intrastate pipelines play a central role in ensuring that gas is delivered to the interstate market and the quality of the gas entering the interstate market matches interstate pipelines' requirements.

The Commission's capacity release program deserves much credit for creating greater transparency and a new secondary market for buyers and sellers that use interstate natural gas pipelines. Yet, over the past twenty years, the natural gas industry has evolved, with numerous trading platforms, asset managers and other sophisticated electronic means by which buyers and sellers can achieve efficiencies. While capacity release is still one of those options and serves as a backstop to protect shippers from market power abuses on interstate pipelines, there are other options available to shippers in today's market to connect buyers and sellers in an efficient manner.

Moreover, many intrastate pipelines do not offer firm capacity with reservation charges and therefore, shippers on those systems would not need a capacity release-type mechanism given that all of their interstate service is provided on an interruptible basis. In fact, an examination of intrastate pipeline SOCs reveals that slightly less than half of all intrastate pipelines do not offer firm service. Thus, those shippers have no need for capacity release programs.

a. Would requiring some or all section 311 and Hinshaw pipelines to offer capacity release provide sufficient benefits to the market as a whole to outweigh any costs incurred as a result of such a requirement?

No. As stated above, shippers on intrastate pipelines that do not offer firm service have no need for a capacity release mechanism. On systems that do offer firm service, we would assume that shippers would have alerted the Commission to their desire for capacity release if they saw that measurable benefits could be gained from such programs.

Imposing additional requirements and compliance costs on intrastate pipelines could unintentionally lead to several adverse consequences for the natural gas industry. For instance, it is likely that the increased regulatory burden coupled with the dual state/federal overlap could deter some intrastate pipelines from continuing to participate in the interstate market. Treating intrastate pipelines as interstate pipelines by imposing capacity release programs could slow down the building of needed infrastructure to connect new supplies, such as new sources of shale gas. NGSA members have found that interstate pipelines require much more lead time to develop facilities to link new fields to the national grid. By contrast, intrastate pipelines are willing to take on much more risk to quickly build new systems in order to connect new production to the interstate grid. If additional complexities are added to their regulations, intrastate pipelines may be more hesitant to take on these risks and producers would be left without transportation options.

Moreover, treating intrastate pipelines in the same manner as interstate pipelines is inconsistent with the Congressional intent outlined in the NGPA which specifically provided exceptions for these pipelines from full federal regulation in an effort to encourage their participation in the interstate market. To now penalize Section 311 and Hinshaw pipelines for relying on this expressly carved-out legislative exemption would be clearly contrary to Congressional intent.

b. Does exempting section 311 and Hinshaw pipelines from offering capacity release give them a competitive advantage over interstate pipelines?

No. Interstate pipelines as well as section 311 and Hinshaw pipelines should be indifferent to the manner in which shippers transfer secondary capacity on their systems, given that their revenues are derived solely from selling their own primary capacity. It may be argued that intrastate pipelines could secure more business on a firm or interruptible basis if, absent capacity release, buyers and sellers are not able to connect in the marketplace. However, as stated above, there are many sophisticated means by which participants in today's market are capable of transacting in the absence of capacity release provisions. Additionally, since about half of intrastate pipelines do not offer firm intrastate service, intrastate pipelines are typically at a much greater risk of full cost recovery vis-à-vis interstate pipelines. Given that interstate pipelines' rates are designed using a Straight Fixed-Variable ("SFV") rate design under which all fixed costs are recovered in their reservation charges, there is only a limited risk of under-collection of revenues due to competition.

9. Should any requirement for section 311 and Hinshaw pipelines to offer capacity release be limited to some category of such pipelines whose services significantly affect interstate markets?

No. We understand that Section 311 and Hinshaw pipelines with significant activities in the interstate market may appear, at first blush, to require the same treatment as interstate pipeline companies. However, when their overall operations are closely considered, it becomes apparent that these intrastate pipelines' operations are fundamentally different from that of interstate pipelines. Without taking a comprehensive look at the purpose and operation of each intrastate pipeline, imposing new federal obligations, such as capacity release, on an entire subset of intrastate pipelines could have unintended consequences including limiting their participation in the interstate market.

Certainly, there may be specific circumstances that would render an individual intrastate system effectively an interstate system. For instance, if a parent company attempts to circumvent federal regulation by carving up a system intended to provide interstate service into separate "intrastate" affiliates, the Commission should, as it has done in the past, take a closer look at that particular system and take action when necessary. In those instances, the Commission has the ability to examine an intrastate pipeline and, if the Commission deems appropriate, to require that pipeline to change its status and become an interstate pipeline. We believe the natural gas market is better served by FERC taking steps to reassess specific pipelines rather than taking the unnecessary step of broadly reclassifying an entire segment of intrastate pipelines as "effectively" interstate pipelines in need of incrementally greater federal regulation.

a. If so, how should that category be defined (e.g., based on size as shown by annual throughput above a certain level, percentage of business that is interstate, or storage providers with market-based rates)?

As stated above, NGSA has concerns with using a single factor, such as the overall volume of interstate service, to make a determination about whether certain federal regulations should be imposed on Section 311 and Hinshaw pipelines. In fact, using a single factor such as the volume of interstate service to determine which intrastate pipelines require increased federal regulation could lead to absurd results. Instead of categorizing intrastate pipelines, the Commission should look at how each individual pipeline is organizationally and operationally structured. In determining whether an intrastate pipeline is operating more like an interstate pipeline, numerous factors must be considered in addition to the level of service provided into the interstate market. Some of these factors include whether the pipeline is:

- Connected to other affiliated companies;
- Operationally integrated with the connecting pipelines;
- Unnecessarily segmented to intentionally circumvent being regulated as a long-haul interstate pipeline;
- Serving the purposes envisioned by Congress for Section 311 or Hinshaw pipelines of facilitating integration of the intrastate market with the interstate market.

Delivering large quantities of gas into the interstate market, especially directly from sources of shale gas, does not suggest that an intrastate pipeline is not performing the Section 311 functions that exempt it from NGA regulation. Rather, the large volumes are simply a consequence of the amount of gas being produced in a given field and the subsequent need to move that gas onto interstate pipelines, which is the intent of NGPA Section 311. With the advent of shale supplies, intrastate pipelines play a critical role by providing much needed capacity to get gas to locations where it can interconnect with the larger national market. If the Commission makes a decision regarding Section 311 or Hinshaw pipeline eligibility for increased regulation based solely on the proportion of an intrastate pipeline's interstate service, this could lead to nearly all larger intrastate pipelines being characterized as interstate pipelines, which is certainly inconsistent with Congressional intent in the NGPA.

10. Should the Commission adopt the threshold utilized in Order No. 720 to determine which section 311 and Hinshaw pipelines would be required to offer capacity release? (50 million MMBtu measured in average deliveries over the past three years)

No. As stated above, the volume of deliveries alone as a sole measure of whether a pipeline should be regulated as an interstate pipeline would ignore all of the other major distinctions between the operations of these two markets (see answer to 9.a. above). In particular, a volumetric threshold would be inappropriate because it would not take into account the various characteristics of each intrastate pipeline, some of which simply act as upstream transmission laterals feeding into downstream interstate pipeline interconnections. While such systems do not meet the definition of gas gathering systems, neither do they resemble traditional long-line interstate pipelines. As with the Commission's "primary function test" for identifying gathering lines, the Commission should ensure that the threshold to determine intrastate pipeline regulations is not a one-factor, one-size-fits-all test.

11. Should any requirement to offer capacity release be limited to section 311 and Hinshaw pipelines whose business is predominantly interstate?
    a. If so, what standard should be used to determine if such a pipeline's business is predominantly interstate?

No. Unfortunately, there is not a single one-size-fits-all standard by which the Commission can make an accurate determination of whether an intrastate pipeline should be required to offer capacity release. The totality of the pipeline's operations and existing obligations must be considered. Imposing capacity release obligations on some intrastate pipelines based on their size or overall deliveries would constitute undue discrimination against those pipelines that were designed to carry large amounts of gas that is ultimately destined to enter long-line pipelines in the interstate market. Imposing capacity release on intrastate pipelines would create unneeded obstacles or costs to getting natural gas supplies to market at a time when the country needs to ensure that everything is done to ensure that natural gas can play an important role in providing the energy for our nation's future.

12. Would a requirement that section 311 and Hinshaw pipelines offering firm service also offer capacity release discourage such pipelines from offering any firm interstate service?

Yes. From our examination of Section 311 and Hinshaw SOCs, only about half of these pipelines currently offer firm service and those providing firm could easily decide to remove that option if offering firm service acts as a trigger to increased federal requirements. While capacity release has been successful in the interstate market, it is not the only means by which capacity can be effectively transferred between two market participants and on intrastate pipelines, its application may unintentionally create needless complications, as detailed above in these comments.

a. Would this concern be minimized if the requirement to offer capacity release is limited to larger section 311 and Hinshaw pipelines whose services are predominantly interstate?

No. As stated earlier, imposing federal regulatory requirements on intrastate pipelines simply based on the total level of interstate service they provide could result in undue discrimination against these systems. Moreover, there is no one-size-fits-all test that can be applied to intrastate pipelines in order to determine the level of regulation needed. Imposition of increased federal regulations to intrastate pipelines could reduce options available to shippers that need to move gas into the interstate market.

13. If section 311 and Hinshaw pipelines are required to offer capacity release, should the regulations be the same as the capacity release regulations for interstate pipelines set forth in section 284.8 of the Commission's regulations?

NGSA opposes imposing a mandatory capacity release program for the transfer of capacity among intrastate shippers on Section 311 and Hinshaw pipelines. However, intrastate pipelines that would like to provide this service should have the option to design a program that recognizes the distinctions of their individual systems. Given state obligations imposed on intrastate pipelines, such a program may not necessarily replicate the generic capacity release program implemented by interstate pipelines.

a. Would a subset of those regulations be sufficient for purposes of preventing undue discrimination and promoting transparency, while minimizing any burden on the pipelines offering capacity release?

With the new reporting obligations recently required pursuant to Order Nos. 720 and 735, both shippers and the Commission can now more effectively monitor for undue discrimination and other abuses that may occur, such as a pipeline favoring an affiliate. Since these transparency reforms have just been implemented, the Commission should allow the industry time to determine if the information now provided by intrastate pipelines ensures sufficient transparency prior to considering imposing further regulatory requirements, such as a capacity release program, on intrastate pipelines.

IV. CONCLUSION

As stated above, NGSA believes that intrastate pipelines are not in need of additional federally-mandated regulation at this time. Absent requests from shippers on Section 311 and Hinshaw pipelines for needed improvements, the Commission should refrain from "fixing" intrastate pipelines. Imposition of new, burdensome regulations such as capacity release or prohibitions of buy/sells by the Commission could, in fact, unintentionally have adverse repercussions for shippers that rely on intrastate pipelines to bring their gas into the interstate market. The Commission's recent orders increasing transparency on intrastate pipelines should be allowed to function before additional regulatory obligations are considered.

Respectfully Submitted,

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