

notes that Freeport LNG currently holds a blanket authorization to import LNG from various international sources by vessel in an amount up to the equivalent of 30 Bcf of natural gas.<sup>2</sup> Freeport LNG is requesting this authorization both on its own behalf and as agent for other parties who hold title to the LNG at the time of export. The Application was filed under section 3 of the Natural Gas Act (NGA). Additional details can be found in Freeport LNG's Application, posted on the DOE/FE Web site at: <http://energy.gov/fe/downloads/freeport-lng-development-lp-fe-dkt-no-15-103-lng>. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, August 20, 2015.

**ADDRESSES:**

**Electronic Filing by Email** [fergas@hq.doe.gov](mailto:fergas@hq.doe.gov).

**Regular Mail**

U.S. Department of Energy (FE-34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026-4375.

**Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.)**

U.S. Department of Energy (FE-34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E-042, 1000 Independence Avenue SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Beverly Howard, or Larine Moore, U.S. Department of Energy (FE-34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9387; (202) 586-9478.

Cassandra Bernstein, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586-9793.

**SUPPLEMENTARY INFORMATION:**

<sup>2</sup> *Freeport LNG Development, L.P.*, DOE/FE Order No. 3379, FE Docket No. 13-148-LNG, Order Granting Blanket Authorization to Import Liquefied Natural Gas from Various International Sources by Vessel (Jan. 9, 2014).

**DOE/FE Evaluation**

The Application will be reviewed pursuant to section 3 of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00-002.00N (July 11, 2013) and DOE Redelegation Order No. 00-006.02 (Nov. 17, 2014). In reviewing this LNG export application, DOE will consider domestic need for the gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

**Public Comment Procedures**

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to [fergas@hq.doe.gov](mailto:fergas@hq.doe.gov), with FE Docket No. 15-103-LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Oil and Gas Global Security and Supply at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Oil and Gas Global Supply at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 15-103-LNG. **PLEASE NOTE:** If submitting a filing via email, please include all related documents and attachments (e.g., exhibits) in the original email

correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Division of Natural Gas Regulatory Activities docket room, Room 3E-042, 1000 Independence Avenue, SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: <http://www.fe.doe.gov/programs/gasregulation/index.html>.

Issued in Washington, DC, on July 13, 2015.

**John A. Anderson,**

*Director, Office of Oil and Gas Global Security and Supply, Office of Oil and Natural Gas.*

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**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. PL15-1-001]

**Cost Recovery Mechanisms for Modernization of Natural Gas Facilities; Order Denying Request For Clarification**

Before Commissioners: Norman C. Bay, Chairman; Philip D. Moeller, Cheryl A. LaFleur, Tony Clark, and Colette D. Honorable.

1. On April 16, 2015, the Commission issued a policy statement in the referenced proceeding to provide greater certainty regarding the ability of interstate natural gas pipelines to recover the costs of modernizing their facilities and infrastructure to enhance the efficient and safe operation of their systems.<sup>1</sup> The *Policy Statement* explains the standards the Commission will require interstate natural gas pipelines to satisfy in order to establish simplified mechanisms, such as trackers or surcharges, to recover certain costs associated with replacing old and inefficient compressors and leak-prone pipes and performing other infrastructure improvements and upgrades to enhance the efficient and safe operation of their pipelines. On May 15, 2015, Process Gas Consumers Group (PGC) and the American Forest and Paper Association (AF&PA) (jointly Requesters) filed, pursuant to 18 CFR 385.212 (2014), a joint “Request for Clarification” of the *Policy Statement*.<sup>2</sup> As discussed more fully below, the Commission denies the requested clarifications of the *Policy Statement*.

## I. Background

### A. Policy Statement

2. The *Policy Statement* established a process to allow interstate natural gas pipelines to seek to recover certain capital expenditures made to modernize system infrastructure through a surcharge mechanism, subject to conditions intended to ensure that the resulting rates are just and reasonable and protect natural gas consumers from excessive costs. Recognizing that historically the Commission has required interstate natural gas pipelines to design their transportation rates based on projected units of service, the Commission found in the *Policy Statement* that recent governmental safety and environmental initiatives have raised the probability that interstate natural gas pipelines will soon face increased costs to enhance the safety and reliability of their systems. The Commission issued the *Policy Statement* in an effort to address these

potential costs and to ensure that existing Commission ratemaking policies do not unnecessarily inhibit interstate natural gas pipelines’ ability to expedite needed or required upgrades and improvements, such as replacing old and inefficient compressors and leak-prone pipelines. The *Policy Statement* adopted five guiding standards a pipeline would have to satisfy for the Commission to approve a proposed modernization cost tracker or surcharge. Those criteria are (1) Review of Existing Base Rates; (2) Defined Eligible Costs; (3) Avoidance of Cost Shifting; (4) Periodic Review of the Surcharge and Base Rates; and (5) Shipper Support.

3. The *Policy Statement* addressed how the Commission would apply those standards, and noted that “the *Policy Statement* will be most effective and efficient if designed according to flexible parameters that will allow for accommodation of the particular circumstances of each pipeline’s circumstances. Maintaining a transparent policy with flexible standards will best allow pipelines and their customers to negotiate just and reasonable, and potentially mutually agreeable, cost recovery mechanisms to address the individual safety, reliability, regulatory compliance and other infrastructure issues facing that pipeline.”<sup>3</sup> The Commission also stated that “while we are imposing specific conditions on the approval of any proposed modernization cost tracker, leaving the parameters of those conditions reasonably flexible will be more productive in addressing needed and required system upgrades in a timely manner. Further, consistent with this approach, the Commission will be able to evaluate any proposals in the context of the specific facts relevant to the particular pipeline system at issue.”<sup>4</sup>

### B. Request for Clarification

4. In the Request for Clarification, the Requesters seek what they assert is “clarification” of six points related to the *Policy Statement*. Specifically they request the Commission clarify (1) that pipelines must provide actual cost and revenue information, based on twelve months of operation, including the type of data required in section 154.312 of the Commission’s regulations, to justify its existing rates under standard 1; (2) the party responsible for paying modernization surcharges in existing capacity release arrangements; (3) the formal procedures for conducting the

collaborative process to ensure all stakeholders are invited and included in meetings; (4) that the Commission intends the pipeline to work with each shipper sector in the collaborative process; (5) that if a pipeline has over-collected through a surcharge or tracker such that its rates are later found unjust and unreasonable the pipeline must pay refunds calculated from the date a protest or complaint was filed; and (6) that pipelines may not seek to implement a modernization tracker or surcharge until the October 1, 2015 effective date of the *Policy Statement*.

5. On June 1, INGAA and Tenaska filed answers to the request for clarification. INGAA asserts the clarification request raises issues that were addressed by the *Policy Statement* and attempts to impose added burdens and restrictions not required by the *Policy Statement*, and as such should be rejected as an impermissible request for rehearing.<sup>5</sup> INGAA further states that even if the requests can be considered requests for clarification, they are unnecessary because contrary to the assertion of Requesters, the *Policy Statement*’s resolution of the issues raised is clear. Tenaska urges the Commission to reject the request for clarification of the cost responsibility for modernization charges in the capacity release context, stating that to do so would preemptively resolve a bilateral contract issue against replacement shippers. NGSAs makes similar comments, stating that the issue of cost responsibility for modernization surcharges is one for the parties to the contracts, and that a generic determination by the Commission will inhibit contract negotiations.

6. As discussed more fully below, the Commission denies the requests for clarification and declines to adopt the suggested formal procedures.

## II. Discussion

7. The Commission issued the *Policy Statement* in order to provide guidance to the industry as to how the Commission will evaluate proposals by interstate natural gas pipelines for the recovery of infrastructure modernization costs. As we stated in the *Policy Statement*, the Commission intends the standards a pipeline must satisfy to implement a modernization cost tracker “to be sufficiently flexible so as not to require any specific form of compliance but to allow pipelines and their customers to reach reasonable accommodations based on the specific

<sup>1</sup> *Cost Recovery Mechanisms for Modernization of Natural Gas Facilities*, 151 FERC ¶ 61,047 (2015) (*Policy Statement*).

<sup>2</sup> On June 1, 2015, the Interstate Natural Gas Association of America (INGAA) and Tenaska Marketing Ventures (Tenaska) filed answers to the request for clarification, and on June 2, 2015, the Kansas Corporation Commission filed in support of the clarification request. On June 9, AF&PA and PGC separately filed replies to INGAA and Tenaska. On June 11, 2015, the Natural Gas Supply Association (NGSA) filed an answer to the request for clarification and comments on INGAA’s answer. On June 24, 2015, Tenaska filed an answer to AF&PA and PGC.

<sup>3</sup> *Policy Statement*, 151 FERC ¶ 61,047 at P 40.

<sup>4</sup> *Id.*

<sup>5</sup> INGAA Answer at 2 (citing *Natural Gas Supply Ass’n, et al.*, 137 FERC ¶ 61,051, at P 30 (2011)).

circumstances of their systems.”<sup>6</sup> The Commission will evaluate any proposal for such a surcharge on an individual, case-by-case basis, at which time interested parties will have the opportunity to raise any issues or concerns. The requested clarifications are antithetical to that approach, and accordingly, as discussed below, the Commission denies the requested clarifications.

#### A. Collaborative Process

8. The *Policy Statement* requires pipelines to work collaboratively with shippers and other interested parties to seek support for any proposed cost modernization surcharge. As part of this collaborative process, the Commission stated that, before submitting a modernization cost recovery proposal to the Commission, a pipeline should meet with its customers and other interested parties to seek resolution of as many issues as possible.

9. The Requesters ask the Commission to “clarify” the “formal procedures” for conducting the collaborative process required by the *Policy Statement* before the pipeline files its proposal with the Commission, asserting that because the *Policy Statement* does not require a filing to commence such a process, there is no clear way for all shippers to know when a pipeline is initiating the process, or to ensure that the process is fair and transparent. Requesters state that the Commission should require the involvement of Commission settlement judges, mediators or technical staff to ensure shippers’ rights are protected during the collaborative process.<sup>7</sup> Requesters also request clarification that the Commission intends the pipeline to work with “each shipper sector” during the collaborative process. Requesters assert that while the Commission stated it was not requiring a specific percentage of shipper support to approve a potential modernization cost tracker, it did not address “whether the pipeline is required to seek shipper support from a broad spectrum of shipper sectors . . . or whether it can just strike a deal with a subset of its customers.”<sup>8</sup>

10. The Commission denies clarification and declines to adopt formal procedures or specified rules for the pre-filing collaborative process required for a modernization cost tracker. The *Policy Statement* makes clear the Commission’s expectation that a pipeline work with all of its customers

during the collaborative process<sup>9</sup> that would precede a Natural Gas Act (NGA) section 4 filing.<sup>10</sup> We decline to adopt formal procedures for this collaboration, however, as it is the Commission’s intention that the process be an informal process for parties to share information and negotiate absent Commission involvement. The *Policy Statement* clearly states that during this process, a pipeline should share with its customers the results of its review of its systems to determine what system upgrades and improvements are necessary, be responsive to requests for specific cost and revenue data to determine whether existing rates are just and reasonable, and provide parties the opportunity to comment on draft tariff language for the proposed modernization cost mechanism.<sup>11</sup>

11. With respect to concerns that customers may not be aware of, or be made aware of, the initiation of the collaborative process to implement a modernization cost tracker, a pipeline will have to make an NGA section 4 filing to implement any cost modernization surcharge. That filing will be noticed the same as any other NGA section 4 filing at the Commission, and will provide all interested persons the opportunity to intervene in the proceeding and to protest. Consistent with NGA section 4, the burden in that instance will be on the pipeline to demonstrate that its proposal is just and reasonable, and as we stated, the Commission will decide upon appropriate procedures to address protests based upon the specific circumstances of each proposal. Thus, in order to implement a proposed modernization cost tracker in an efficient manner and without unnecessary delay, it is in the proposing pipeline’s best interest to resolve as many outstanding issues as possible through the collaborative process prior to filing a modernization cost recovery mechanism proposal.<sup>12</sup> As noted in the *Policy Statement*, the intent is to “provide pipelines and their customers wide latitude to reach agreements

incorporating remedies for a variety of system safety, reliability and/or efficiency issues.”<sup>13</sup> Adoption of formal procedures as suggested by the Requesters would thwart rather than facilitate this intent and the collaborative process.

#### B. Existing Rate Justification

12. The *Policy Statement* states that “any pipeline seeking a modernization cost recovery tracker must demonstrate that its current base rates to which the surcharge would be added are just and reasonable. This is necessary to ensure that the overall rate produced by the addition of the surcharge to the base rate is just and reasonable, and does not reflect any cost over-recoveries that may have been occurring under the preexisting base rates.”<sup>14</sup>

13. Requesters assert that the *Policy Statement* does not identify the data that pipelines must provide under the Commission’s regulations to show that the rates are just and reasonable, and whether a cost and revenue study would need to include the information in the form required by section 154.312 or 154.313 of the Commission’s regulations. Requesters state the Commission should clarify that the pipeline must provide its most recent 12-months of actual costs and revenues, and the information required under the more inclusive section 154.312, prior to engaging in any collaborative process with its shippers.<sup>15</sup>

14. The Commission denies clarification. In the *Policy Statement*, we declined to adopt suggestions that we require an NGA general section 4 rate proceeding as the only means to satisfy the standard that existing rates are just and reasonable. As we noted, the “type of rate review necessary to determine whether a pipeline’s existing rates are just and reasonable is likely to vary from pipeline to pipeline . . . therefore, we remain open to considering alternative approaches for a pipeline to justify its existing rates.”<sup>16</sup> As that statement implies, the Commission determined neither to require a specific method by which the pipeline must show its existing rates are just and reasonable, nor to proscribe the specific data or form that the data must take if a pipeline chooses to justify its existing rates by a method other than a general NGA section 4 rate case.

15. As we made clear in the *Policy Statement*, a pipeline seeking a

<sup>9</sup> *Policy Statement*, 151 FERC ¶ 61,047 at P 93 (“As part of this collaborative process, pipelines should meet with their customers and other interested parties to seek resolution of as many issues as possible before submitting a modernization cost recovery proposal to the Commission.”)

<sup>10</sup> 15 U.S.C. 717c (2006).

<sup>11</sup> *Id.*

<sup>12</sup> In fact, INGAA recognizes in its answer (at 5) that “excluding specific shippers or shipper sectors from the collaborative process . . . would not be in pipelines’ best interests because any shippers or shipper groups that were excluded from the process would surely contest any agreement reached by the other parties.”

<sup>13</sup> *Policy Statement*, 151 FERC ¶ 61,047 at P 94.

<sup>14</sup> *Id.* P 51.

<sup>15</sup> Request for Clarification at 1–5.

<sup>16</sup> *Policy Statement*, 151 FERC ¶ 61,047 at P 52.

<sup>6</sup> *Policy Statement*, 151 FERC ¶ 61,047 at P 3.

<sup>7</sup> Request for Clarification at 6–8.

<sup>8</sup> Request for Clarification at 9 & n.25 (citing Requester’s February 26, 2015 Joint Reply Comments).

modernization cost surcharge must demonstrate to the Commission that its existing base rates are no higher than a just and reasonable level. Absent such a showing, the Commission would be unable to find that the overall rate produced by the addition of the surcharge to the base rate is just and reasonable. In order to facilitate the review of the pipeline's existing rates, we encouraged pipelines to engage in a full exchange of information with their customers.<sup>17</sup> If that process fails to satisfy interested parties that existing base rates are no higher than a just and reasonable level, then the Commission will establish procedures to resolve any disputed issues of fact raised in the parties' protests to the filing based upon substantial evidence on the record. Such procedures may include, if necessary, a hearing before an Administrative Law Judge.<sup>18</sup> Thus, to the extent a pipeline seeks expedient approval of a modernization cost tracker, the Commission expects that the pipeline will freely share data and the results of its system testing to attempt to resolve as many issues as possible prior to filing for the tracker.

### C. Retroactive Refunds

16. Requesters also state that the Commission should clarify that if a pipeline has over-collected through a surcharge or tracker, such that its rates are later found to be unjust and unreasonable after a protest or complaint proceeding, the pipeline must pay refunds calculated from the date a protest or complaint was filed. They request a requirement that a pipeline seeking a modernization cost surcharge or tracker must agree that, if during the period that the surcharge is in effect, a protest or an NGA section 5 complaint is filed against the pipeline, the pipeline must make refunds retroactive to the date of the protest or complaint.<sup>19</sup> Requesters assert the condition is justified in return for obtaining an exception to the standard NGA section 4 ratemaking principles.

17. The Commission denies the requested clarification.<sup>20</sup> If the

Commission is unable to determine the justness and reasonableness of a proposed modernization cost tracker mechanism within 30 days after its filing pursuant to NGA section 4, the Commission will suspend the filing and it will remain subject to refund until the Commission determines whether it is just and reasonable. Further, once a modernization cost tracker mechanism has been approved, the requirement that such mechanisms include a provision for trueing up cost over and under-recoveries will ensure that the pipeline only recovers eligible costs approved for recovery in the tracker mechanism. Each of the pipeline's periodic filings pursuant to its modernization cost tracker mechanism would include a comparison of the costs approved for recovery during the prior period with the amounts the pipeline actually collected from its shippers during that period.<sup>21</sup> To the extent the pipeline over-recovered or under-recovered those costs during the relevant period, it would adjust the surcharge for the next period up or down so as to either return the over-recovery to its shippers or collect any under-recovery from them. Accordingly, the Commission finds no reason to condition the right to implement a modernization cost tracker mechanism on the pipeline's agreement to forego its NGA section 5 rights against retroactive refunds for amounts recovered pursuant to a modernization cost tracker mechanism that the Commission has approved as just and reasonable under NGA section 4.

### D. Cost Responsibility in Capacity Release Agreements

18. With respect to capacity releases, Requesters state that the *Policy Statement* did not respond to concerns raised by AF&PA that parties to existing capacity release agreements did not contemplate cost responsibility for modernization costs in existing capacity release agreements, and thus the Commission should clarify that such costs should be placed on replacement shippers.<sup>22</sup>

19. In their answers, INGAA and the NGA oppose Requesters' proposal that cost responsibility for any modernization surcharge be placed on replacement shippers. INGAA states that under Commission policy, the

Commission's decision not to adopt a virtually identical condition requested by APGA in its comments on the Proposed Policy Statement. See APGA Initial Comments at 20, *Policy Statement*, 151 FERC ¶ 61,047 at P 86.

<sup>21</sup> The pipeline's customers would have a chance to challenge any of the projected costs included in the periodic filings.

<sup>22</sup> Request for Clarification at 5–6.

releasing shipper remains ultimately liable for any surcharge amount that a replacement shipper does not pay. NGA asserts that given the myriad of current day contracting options, the resolution of contractual matters, particularly where the contract is silent as to surcharge cost responsibility, is best left to the contracting parties. NGA also argues that the Commission should not make a generic determination as to the responsibility for modernization cost surcharges within existing capacity release agreements because doing so would unnecessarily impede the parties' attempts to negotiate and resolve the issue.

20. The Commission denies clarification. Section 284.8(f) of the Commission's regulations<sup>23</sup> provides that, unless otherwise agreed by the pipeline, the contract of the releasing shipper will remain in full force and effect during the release, with the net proceeds from any release to a replacement shipper credited to the releasing shipper's reservation charge. Therefore, to the extent the releasing shipper's service agreement permits the pipeline to recover the surcharge from the releasing shipper, the releasing shipper would remain liable for the surcharge during the term of any temporary release. The replacement shipper's liability for the surcharge would turn on the terms of its release. If the release requires the replacement shipper to pay any portion of the surcharge, those payments would be credited to the releasing shipper. In short, the issue of cost responsibility for modernization costs during the term of a capacity release is a contractual issue between the relevant parties,<sup>24</sup> and that issue cannot be resolved on a generic basis.

### E. Effective Date

21. Finally, Requesters seek clarification that pipelines may not seek to implement a modernization cost tracker through a filing, or even commence the collaborative process, until the October 1, 2015 effective date of the *Policy Statement*.<sup>25</sup> Requesters state that this effective date enforcement would provide the Commission time to proscribe the formal procedures that it requests.

<sup>23</sup> 18 CFR 284.8(f) (2014).

<sup>24</sup> See *Policy Statement*, 151 FERC ¶ 61,047 at P 82, stating that the pipeline's ability to impose a modernization cost surcharge on discounted or negotiated rate shippers is a contractual issue between the pipeline and its discounted or negotiated rate shippers.

<sup>25</sup> Request for Clarification at 11–12.

<sup>17</sup> *Policy Statement*, 151 FERC ¶ 61,047 at P 53.

<sup>18</sup> If the pipeline files a settlement supported by many of its shippers but some contesting parties raise issues that cannot be resolved on the existing record, the Commission may approve the settlement as uncontested for the consenting parties and sever the contesting parties to litigate their issues. This preserves the benefit of the settlement for the consenting parties, while allowing the contesting parties to obtain a litigated result on the merits. *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345, at 62,344–5 (1998), *reh'g*, 87 FERC ¶ 61,110, at 61,446–7 (1999).

<sup>19</sup> Request for Clarification at 10–11.

<sup>20</sup> The Commission notes further that this request is effectively a request for rehearing of the

22. The Commission declines to provide the requested clarification. The Commission has no authority to regulate a pipeline's discussions with its customers or the content of such discussions. Moreover, even if it had the authority, the Commission advocates active discussions between pipelines and their customers, and as we stated in the *Policy Statement*, "[t]he Commission sees no reason for pipelines to wait to make needed improvements to their systems until a regulation is adopted requiring them to do so."<sup>26</sup>

23. Additionally, the Commission lacks the authority to prevent a pipeline from making an NGA section 4 filing to request approval for a modernization cost tracker. As INGAA notes, the *Policy Statement* did not permit pipelines to file for tracker mechanisms for the first time; it announced the Commission's policy for addressing such filings. There is nothing to prevent a pipeline from making a proposal consistent with the Commission's existing policy as set forth in *Columbia Gas Transmission, LLC*,<sup>27</sup> prior to October 1, 2015.<sup>28</sup>

24. Finally, we note that, as with any policy statement, the *Policy Statement* is not a final action of the Commission but an expression of our intent as to how we will evaluate proposals by interstate natural gas pipelines for the recovery of infrastructure modernization costs. As the U.S. Court of Appeals for the District of Columbia Circuit has held, a statement of policy "is not finally determinative of the issues or rights to which it is addressed;" rather, it only "announces the agency's tentative intentions for the future."<sup>29</sup> We will consider each pipeline proposal to implement a modernization cost tracker based on the facts relevant to that particular pipeline and will address any further concerns regarding the *Policy Statement* on a case-by-case basis.

*F. Information Collection Statement*

25. The collection of information discussed in the *Policy Statement* is being submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995<sup>30</sup> and

OMB's implementing regulations.<sup>31</sup> OMB must approve information collection requirements imposed by agency rules.

26. In the *Policy Statement*, the Commission solicited comments from the public on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, recommendations to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The Commission received no comments on those issues.

27. The burden estimates are for implementing the information collection requirements of the *Policy Statement*. The collection of information related to the *Policy Statement* falls under FERC-545 (Gas Pipeline Rates: Rate Change (Non-Formal)).<sup>32</sup> The following estimate of reporting burden is related only to the *Policy Statement*.

28. *Public Reporting Burden*: The estimated annual burden and cost follow.

FERC-545, MODIFICATIONS FROM POLICY STATEMENT IN PL15-1-000

	Number of respondents <sup>33</sup>	Number of responses per respondent	Average burden hours per response	Total annual burden hours	Total annual cost (\$) <sup>34</sup> [rounded]
	(1)	(2)	(3)	(1) × (2) × (3)	
Provide information to shippers for any surcharge proposal, and prepare modernization cost tracker filing <sup>35</sup> .....	3	1	750	2,250	\$147,578
Perform periodic review and provide information to show that both base rates and the surcharge amount remain just and reasonable .....	3	<sup>36</sup> 0.60	350	630	\$42,235

<sup>26</sup> *Policy Statement*, 151 FERC ¶ 61,047 at P 68.  
<sup>27</sup> *Columbia Gas Transmission, LLC*, 142 FERC ¶ 61,062 (2013).

<sup>28</sup> Further, because the Commission declines to adopt the requested formal procedures for the collaborative process there is no need for the suggested delay to allow time for the Commission to develop those procedures.

<sup>29</sup> *Pacific Gas & Electric Co. v. FPC*, 506 F.2d 33, 38 (D.C. Cir. 1974). See *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 75 FERC ¶ 61,024, at 61,076 (citing, *American Gas Ass'n v. FERC*, 888 F.2d 136 (1989); *Interstate Natural Gas Pipeline Rate Design*, 47 FERC ¶ 61,295 (1985), *order on reh'g*, 48 FERC ¶ 61,122, at 61,442 (1989)).

<sup>30</sup> 44 U.S.C. 3507(d) (2012).  
<sup>31</sup> 5 CFR 1320.

<sup>32</sup> The information collection requirements in the *Policy Statement* were included in FERC-545A (OMB Control No.: TBD). The Commission used FERC-545A (a temporary collection number) because another item was pending OMB review under FERC-545, and only one item per OMB Control Number can be pending review at OMB at a time. The submittal to OMB will now be made under FERC-545 (OMB Control No. 1902-0154).

<sup>33</sup> An estimated 165 natural gas pipelines (Part 284 program) may be affected by the *Policy Statement*. Of the 165 pipelines, Commission staff estimates that 3 pipelines may choose to submit an

application for a modernization cost tracker per year.

<sup>34</sup> The hourly wage figures are published by the Bureau of Labor Statistics, U.S. Department of Labor, *National Occupational Employment and Wage Estimates, United States, Occupation Profiles*, May 2014 (available 4/1/2015) at <http://www.bls.gov/oes/home.htm>, and the benefits are calculated using BLS information, at <http://www.bls.gov/news.release/ecec.nr0.htm>.

The average hourly cost (salary plus benefits) to prepare the modernization cost tracker filing is \$65.59. It is the average of the following hourly costs (salary plus benefits): manager (\$77.93, NAICS 11-0000), Computer and mathematical (\$58.17, NAICS 15-0000), Legal (\$129.68, NAICS 23-0000), Office and administrative support (\$39.12, NAICS 43-0000), Accountant and auditor (\$51.04, NAICS 13-2011), Information and record clerk (\$37.45, NAICS 43-4199), Engineer (\$66.74, NAICS 17-2199), Transportation, Storage, and Distribution Manager (\$64.55, NAICS 11-3071).

The average hourly cost (salary plus benefits) to perform the periodic review is \$67.04. It is the average of the following hourly costs (salary plus benefits): manager (\$77.93, NAICS 11-0000), Legal (\$129.68, NAICS 23-0000), Office and administrative support (\$39.12, NAICS 43-0000), Accountant and auditor (\$51.04, NAICS 13-2011), Information and record clerk (\$37.45, NAICS 43-4199).

<sup>35</sup> The pipeline's modernization cost tracker filing is expected to include information to:

Demonstrate that its current rates are just and reasonable and that proposal includes the types of benefits that the Commission found maintained the pipeline's incentives for innovation and efficiency;

Identify each capital investment to be recovered by the surcharge, the facilities to be upgraded or installed by those projects, and an upper limit on the capital costs related to each project to be included in the surcharge, and schedule for completing the projects;

Establish accounting controls and procedures that it will utilize to ensure that only identified eligible costs are included in the tracker;

Include method for periodic review of whether the surcharge and the pipeline's base rates remain just and reasonable; and

State the extent to which any particular project will disrupt primary firm service, explain why it expects it will not be able to continue to provide firm service, and describe what arrangements the pipeline intends to make to mitigate the disruption or provide alternative methods of providing service.

<sup>36</sup> Based on the Columbia case, we estimate that a review may be required every 5 years, triggering the first pipeline reviews to be done in Year 6 (for the pipelines which applied and received approval in Year 1).

29. *Title:* FERC–545, Gas Pipeline Rates: Rate Change (Non-formal).

30. *Action:* Revisions to an information collection.

31. *OMB Control No.:* 1902–0154.

32. *Respondents:* Business or other for profit enterprise (Natural Gas Pipelines).

33. *Frequency of Responses:* Ongoing.

34. *Necessity of Information:* The Commission is establishing a policy to allow interstate natural gas pipelines to seek to recover certain capital expenditures made to modernize system infrastructure through a surcharge mechanism, subject to certain conditions. The information that the pipeline should share with its shippers and submit to the Commission is intended to ensure that the resulting rates are just and reasonable and protect natural gas consumers from excessive costs

35. *Internal Review:* The Commission has reviewed the guidance in the Policy Statement and has determined that the information is necessary. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas pipeline industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

36. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: [DataClearance@ferc.gov](mailto:DataClearance@ferc.gov), phone: (202) 502–8663, fax: (202) 273–0873].

37. Comments filed with OMB, identified by the OMB Control No. 1902–0154 should be sent via email to the Office of Information and Regulatory Affairs: [oir\\_submission@omb.gov](mailto:oir_submission@omb.gov), Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–0710. A copy of the comments should also be sent to the Commission, in Docket No. PL15–1–000. Comments concerning the collection of information and the associated burden estimate should be submitted by August 21, 2015.

*The Commission orders:*

The requests for clarification are denied as discussed above.

By the Commission.

Issued: July 16, 2015.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2015–17949 Filed 7–21–15; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP15–504–000]

#### **Dominion South Carolina Gas, Inc; Notice of Intent To Prepare an Environmental Assessment for the Proposed Columbia to Eastover Project and Request for Comments on Environmental Issues**

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Columbia to Eastover Project involving construction and operation of facilities by Dominion South Carolina Gas, Inc (DCG) in Calhoun, Richland, and Lexington Counties, South Carolina. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before August 17, 2015.

If you sent comments on this project to the Commission before the opening of this docket on May 29, 2015, you will need to file those comments in Docket No. CP15–504–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about

the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

DCG provided landowners with a fact sheet prepared by the FERC entitled “An Interstate Natural Gas Facility On My Land? What Do I Need To Know?” This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site ([www.ferc.gov](http://www.ferc.gov)).

#### **Public Participation**

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or [efiling@ferc.gov](mailto:efiling@ferc.gov). Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's Web site ([www.ferc.gov](http://www.ferc.gov)) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature on the Commission's Web site ([www.ferc.gov](http://www.ferc.gov)) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on “eRegister.” If you are filing a comment on a particular project, please select “Comment on a Filing” as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP15–504–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

#### **Summary of the Proposed Project**

DCG proposes the Columbia to Eastover Project to construct and operate 28 miles of new 8-inch-diameter