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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM11–15–000; Order No. 894]

Bidding by Affiliates in Open Seasons for Pipeline Capacity

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: In this Final Rule, the Federal Energy Regulatory Commission revises its regulations governing interstate natural gas pipelines to prohibit multiple affiliates of the same entity from bidding in an open season for pipeline capacity in which the pipeline may allocate capacity on a *pro rata* basis, unless each affiliate has an independent business reason for submitting a bid. The Commission does not find it necessary to adopt its proposal in the Notice of Proposed Rulemaking that if more than one affiliate of the same entity participates in such an open season, then none of those affiliates may release any capacity obtained in that open season pursuant to a *pro rata* allocation to any affiliate, or otherwise allow any affiliate to obtain the use of the allowed capacity.

DATES: *Effective Date:* This rule will become effective December 23, 2011.

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Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

(Issued November 17, 2011)

1. In this Final Rule, the Commission revises its Part 284 regulations governing interstate natural gas pipelines to prohibit multiple affiliates of the same entity from bidding in an open season for pipeline capacity in which the pipeline may allocate capacity on a *pro rata* basis, unless each affiliate has an independent business reason for submitting a bid. The Commission does not find it necessary to adopt its proposal in the Notice of Proposed Rulemaking [1] that if more than one affiliate of the same entity participates in such an open season, then none of those affiliates may release any capacity obtained in that open season pursuant to a *pro rata* allocation to any affiliate, or otherwise allow any affiliate to obtain the use of the allowed capacity.

I. Background

A. Open Seasons for Pipeline Capacity

2. The Commission's policy under the Natural Gas Act (NGA) [2] is to allocate available interstate pipeline capacity to the shipper that values it the most, up to the maximum rate.[3] In furtherance of this goal, the Commission favors the use of open seasons to allocate capacity and permits but does not require a net present value (NPV) evaluation as a tool for determining the highest valued use.[4]

3. Some pipelines hold open seasons to alert shippers to the availability of capacity on the pipeline and allow the shippers to bid for available capacity. The pipeline's open season process is an open and transparent procedure that is set forth in the pipeline's tariff. The pipeline notifies shippers of the availability of capacity by posting an open season notice on its EBB and/or Web site for the available capacity. During the open season, the Commission requires pipelines to sell all available capacity to shippers willing to pay the pipeline's maximum recourse rate.[5]

[1] *Bidding by Affiliates in Open Seasons for Pipeline Capacity,* 76 FR 20571 (Apr. 13, 2011), FERC Stats. and Regs. ¶ 32,673 (2011) (NOPR).

[2] 15 U.S.C. 717 *et al.* (2006).

[3] *N. Natural Gas Co.,* 108 FERC ¶ 61,044, at P 11 (2004); *Texican N. La. Transport, LLC* v. *Southern Natural Gas Co.,* 129 FERC ¶ 61,270, at P 70 (2009) (Texican I), *order on reh'g,* 132 FERC ¶ 61,167, at P 23, 26 (2010) (*Texican II*).

[4] *Texican II,* 132 FERC ¶ 61,167 at P 26.

[5] *Promotion of a More Efficient Capacity Release Market,* Notice of Proposed Rulemaking, 72 FR 65916 (Nov. 26, 2007), FERC Stats. & Regs. ¶ 32,625, at P 40 (2007) (citing *Tenn. Gas Pipeline Co.,* 91

Continued

4. NPV is a method for awarding capacity from the bids received during the open season.[6] NPV is a standard method of evaluating bids for capacity by using the time value of money to determine the present value of a time series of discounted cash flows.[7] The highest bidder, based on the NPV of the bid, receives the capacity. Factors determining NPV are price, volume of gas, and duration of the contract. The Commission has stated that a ''net present value evaluation * * * allocates capacity to the shipper who will produce the greatest revenue and the least unsubscribed capacity. As such, it is an economically efficient way of allocating capacity and is consistent with Commission policy.'' [8]

5. In the event that there is not sufficient capacity to meet all equal maximum bids, pipelines apply a tiebreaker mechanism. One such mechanism is the *pro rata* allocation methodology. Under a *pro rata* allocation tiebreaker mechanism, in the event that there is not sufficient capacity to meet all qualifying bids, the capacity is allocated *pro rata, i.e.,* based on the ratio of each shipper's respective nomination to all qualifying nominations, applied to the total available capacity.[9]

B. The NOPR

6. On April 7, 2011, the Commission issued the NOPR, in which it proposed to add a new section 284.15 to its regulations prohibiting multiple affiliates of the same entity from bidding in an open season for pipeline capacity conducted by any interstate pipeline providing service under subparts B and G of Part 284 of the Commission's regulations in which the pipeline may allocate capacity on a *pro rata* basis, unless each affiliate has an independent business reason for submitting a bid. The Commission also proposed that if more than one affiliate of the same entity participates in such an open season, then none of those affiliates may release any capacity obtained in that open season pursuant to a *pro rata* allocation to any affiliate, or otherwise allow any affiliate to obtain the use of the allowed capacity. The Commission proposed that, for purposes of the new regulation, the term ''affiliate'' be defined as provided in section 358.3(a)(1) and (3) of the Commission's existing regulations.[10]

7. The Commission explained that some entities had developed and applied a strategy of bidding with multiple affiliates in open seasons for available capacity in order to defeat the *pro rata* allocation tiebreaker mechanism and obtain a greater share of the available capacity than a single bidder could have acquired by itself.[11] The Commission further explained that, where the available capacity is finite, the price is capped by the pipeline's maximum tariff rate, and the tiebreaker is a *pro rata* allocation, shippers can obtain more capacity than they would be able to obtain themselves by bidding multiple affiliates to defeat the *pro rata* allocation mechanism.[12] The Commission stated that each affiliate with a maximum NPV bid could then release the capacity to a single affiliate or otherwise allow its affiliate effectively to obtain the use of the allocated capacity.[13] The Commission concluded that such gaming of the *pro rata* allocation mechanism has a chilling effect on competition and permits entities that apply a multiple affiliate bidding strategy inappropriately to gain a disproportionate share of available capacity by denying a fair distribution to all maximum rate bidders.[14]

C. Comments

8. Comments on the NOPR were due on May 31, 2011. Twelve parties filed comments.[15] In general, commenters support the Commission's efforts to prevent anticompetitive gaming of the *pro rata* allocation methodology. However, many commenters request that the Commission modify or clarify the proposal in various ways. We discuss the comments below in the context of reviewing each aspect of this Final Rule.

II. Need for the Rule

A. The NOPR

9. In the NOPR, the Commission explained that it has come to its attention that some entities have developed and applied a strategy of bidding with multiple affiliates in open seasons for available capacity in order to defeat the *pro rata* allocation tiebreaker mechanism and obtain a greater share of the available capacity than a single bidder could acquire by itself.[16] The Commission stated that such gaming of the *pro rata* allocation mechanism has a chilling effect on competition and permits entities that apply a multiple affiliate bidding strategy inappropriately to gain a disproportionate share of available capacity by denying a fair distribution to all maximum rate bidders. The Commission also recognized that multiple affiliate bidding behavior frustrates the Commission's policy of allocating capacity to the shipper that values it the most. Finally, the Commission stated that the proposed rule would provide clear notice to parties of prohibited behavior.

B. Comments

10. CPC contends that the proposed prohibition on multiple affiliate bidding is unnecessary because the Commission has clearly articulated its policy and there is an enforcement mechanism in place to ensure compliance. CPC explains that if multiple affiliates are awarded capacity to the detriment of a third party, that third party may contact the Commission's enforcement staff. All other commenters support adoption of a regulation clarifying the Commission's rules concerning affiliate participation

FERC ¶ 61,053 (2000), *reh'g denied,* 94 FERC ¶ 61,097 (2001), *petitions for review denied sub nom., Process Gas Consumers Group* v. *FERC,* 292 F.3d 831, 837 (DC Cir. 2002)).

[6] NPV is not the only method a pipeline could use. Another is the ''first come-first served'' approach, where the first shipper to submit a qualifying bid receives the capacity.

[7] *Saltville Gas Storage Co., L.L.C.,* 128 FERC ¶ 61,257, at P 2 n.3 (2009).

[8] *Tenn. Gas Pipeline Co.,* 76 FERC ¶ 61,101, at 61,522 (1996), *order on reh'g,* 79 FERC ¶ 61,297 (1997), *order on reh'g,* 82 FERC ¶ 61,008 (1998), *remanded sub nom. Process Gas Consumers Group* v. *FERC,* 177 F.3d 995 (DC Cir. 1999), *order on compliance,* 91 FERC ¶ 61,333 (2000), *order on remand,* 91 FERC ¶ 61,053 (2000), *reh'g denied,* 94 FERC ¶ 61,097 (2001), *petitions for review denied sub nom. Process Gas Consumers Group* v. *FERC,* 292 F.3d 831, 837 (DC Cir. 2002).

[9] An alternative tiebreaker mechanism for multiple maximum bids is to award the capacity to the earliest applicant. The Commission has stated that ''no single tiebreaker method is definitely better than other methods; each system has advantages and disadvantages * * *. So long as its method is reasonable [a pipeline] may choose any method it wishes for inclusion as the default tiebreaker in its tariff.'' *Trailblazer Pipeline Co.,* 103 FERC ¶ 61,225, at 61,869 (2003), *order on reh'g and compliance filing,* 108 FERC ¶ 61,049, at 61,305 (2004).

[10] 18 CFR 358.3(a)(1), (3) (2010). Section 358.3(a)(1) provides that an affiliate of a specified entity is ''another person that controls, is controlled by or is under common control with, the specified entity. An affiliate includes a division of the specified entity that operates as a functional unit.'' Section 358.3(a)(3) defines the term ''control.''

[11] NOPR, FERC Stats. & Regs. ¶ 32,673 at P 6.

[12] *Id.*

[13] *Id.* P 7.

[14] *Id.*

[15] Comments were filed by American Gas Association (AGA); Capital Power Corporation (Capital Power); Southern Company Services, Inc. (SCS); DTE Energy Company (DTE Energy); Process Gas Consumers Group (PGC); Atmos Energy Marketing, LLC (AEM); American Public Gas Association (APGA); Natural Gas Supply Association (NGSA); Interstate Natural Gas Association of America (INGAA); National Energy Marketers Association (NEM); Sequent Energy Management, L.P. (Sequent); and Seminole Energy Services, LLC (Seminole).

[16] NOPR at P 6–8 (citing *Tenaska Marketing Ventures, et al.,* 126 FERC ¶ 61,040 (2009) (order approving stipulations and agreements). *See also Trailblazer Pipeline Co.,* 101 FERC ¶ 61,405 (2002), *order on technical conference and denying reh'g,* 103 FERC ¶ 61,225 (2003), *order on reh'g and compliance filing,* 108 FERC ¶ 61,049 (2004)).

in open seasons for pipeline capacity, although most commenters request modifications to the specific regulation proposed in the NOPR.

C. Commission Determination

11. In the Commission's view, amendments to our existing regulations are necessary to prevent an entity from using multiple affiliates to secure a larger allocation of capacity than it could acquire by itself. Under conditions where the available capacity is limited and the value of the capacity is high, shippers are strongly motivated to obtain as much of that valuable capacity as possible in order to take advantage of the opportunity for profit. Where the available capacity is finite, the price is capped by the pipeline's maximum tariff rate, and the tiebreaker is a *pro rata* allocation, shippers can obtain more capacity than they would be able to obtain by themselves by bidding multiple affiliates to defeat the *pro rata* allocation mechanism. Such gaming of the *pro rata* allocation mechanism has the effect of harming entities that submit only one bid, and by extension, harming their customers, and has a chilling effect on competition.

12. While the Commission has recently addressed the issue of multiple affiliate bidding, the Commission believes that further regulatory action is necessary. In the Commission's view, amendments to the existing regulations are needed to provide clear notice to parties participating in open seasons for interstate pipeline capacity that multiple affiliate bidding is prohibited, unless a participating affiliate has its own independent business reason for submitting a bid. Clarification of the prohibited behavior should facilitate compliance with the prohibition. Entities may contact the Commission's enforcement staff in the case of a possible violation.

III. Prohibition on Multiple Affiliate Bidding in Open Seasons for Pipeline Capacity

A. The NOPR

13. In the NOPR, the Commission proposed to revise its regulations governing interstate natural gas pipelines to prohibit multiple affiliates of the same entity from bidding in an open season for pipeline capacity in which the pipeline may allocate capacity on a *pro rata* basis, unless each affiliate has an independent business reason for submitting a bid. The Commission stated that this proposed rule is designed to ensure that an entity cannot use multiple affiliates solely to secure a larger allocation of capacity than it could acquire by itself.[17] The Commission explained that multiple affiliate bidding lessens competition because other bidders not engaging in similar conduct will receive less capacity—not because such bidders value the capacity any less, but because they bid only through the unit of the company intending to use the capacity or because they did not have multiple affiliates.[18]

14. The Commission recognized that not all multiple affiliate bidding is used to defeat a *pro rata* allocation mechanism, and that in some cases, affiliates may have independent business reasons for submitting their bids.[19] However, the Commission stated that it is impossible to describe in advance every situation that demonstrates an independent business reason.[20] Therefore, the Commission provided two scenarios designed to be illustrative of situations in which a business unit uses awarded capacity to serve its own customers or otherwise acts consistently with its business plan, interests, and obligations.[21] The Commission further stated that indications that a company is not acting independently would be if the business unit is used by its parent or affiliate in a way that differs from its usual business operations, is used to perform transactions that an affiliate or parent could not, or is acting as an ''alter ego'' of an affiliate or parent.

B. Comments

15. Parties generally support the Commission's proposed prohibition on multiple affiliate bidding. These parties agree that the Commission's proposal should provide clarity to its policies and help to prevent anticompetitive gaming of the *pro rata* allocation methodology.

16. Certain parties express concerns over the scope and specific elements of the proposed prohibition. CPC argues that the prohibition is not reasonably tailored to meet the Commission's goals because the rule would affect virtually every open season, whether or not capacity is constrained or whether or not any other prospective shipper is denied access to capacity. Some parties assert that the Commission should provide more detailed, objective criteria as to what constitutes an ''independent business reason'' that would allow affiliated entities to bid on constrained capacity, or create safe harbors or a bright-line test for what constitutes an ''independent business reason.'' For example, NGSA suggests that criteria might include whether the prospective affiliated shippers each had separate contracts to purchase or supply gas; whether the capacity was bid for in conjunction with a distinct retail provider obligation, internal use, or specific new supply project; or whether affiliates bidding operate out of different geographic locations or countries.

17. AGA argues that the proposed rule would burden participation in pipeline open seasons because every market participant with affiliates would be required to document an independent business reason each time it bids. AGA states that the potential number of affiliates could be expansive, and that in many cases a market participant would have no way of knowing whether some of its affiliates intended to or did submit a bid in the same pipeline season. AGA suggests that the Commission modify proposed section 284.15(a) to focus narrowly on the conduct that is considered manipulative by prohibiting participation in an open season ''for the purpose of obtaining a larger allocation of capacity for one affiliate than that affiliate could acquire for itself,'' and not tying the prohibition to the absence of an independent business reason for participation in the open season.

18. AGA further requests clarification that entities that operate in multiple jurisdictions either as affiliated entities or a single corporate entity with multiple operative divisions may submit multiple bids on behalf of two or more affiliates or divisions where each affiliate or division has its own need for the capacity. SCS requests clarification that its practice of acting as agent for its affiliates by submitting one bid for the total capacity needed by its affiliates would not trigger the proposed prohibition on multiple affiliate bidding. INGAA requests that the Commission clarify that pipelines are not required to determine whether open season bidders or releasing shippers are affiliated or whether bidders have independent business reasons for their bids.

19. APGA suggests that, if affiliates of the same entity participate in an open season for pipeline capacity, each be required to identify itself as such in its bid and that any award of open season

[17] *Id.* P 14.

[18] *Id.* P 9.

[19] *Id.* P 11.

[20] *Id.* P 13.

[21] ''For example, a marketing arm of an energy company may bid to secure capacity for its wholesale customers and a retail operation of the same company may bid to secure capacity to serve its retail customers, and each would have an independent business reason for its bid. Or a marketing company may have two or more affiliates operating in different geographic areas, thus serving distinct markets all of which may be served by transportation on the same pipeline. When affiliates bid in such cases, other bidders are not unduly harmed, undue discrimination is not practiced, and Commission policy is not violated.'' *Id.* P 11.

capacity likewise note that fact. APGA asserts that an affiliation between entities may not be self-evident from the name of the entity, and this would put the public on notice that the rule is applicable and must be satisfied.

20. Finally, DTE Energy argues that the Commission should exempt traditional gas and electric utilities from the definition of ''affiliate'' used in the NOPR, as state public service commission review of these utilities' activities provides sufficient protection against manipulative practices.

C. Commission Determination

21. In this Final Rule, the Commission adopts section 284.15(a) as proposed in the NOPR. The Commission finds that it is appropriate to prohibit multiple affiliates of the same entity from participating in an open season for pipeline capacity in which the pipeline may allocate capacity on a *pro rata* basis, unless each affiliate has an independent business reason for submitting a bid. This prohibition will help to prevent shippers from using multiple affiliates to defeat the *pro rata* allocation tiebreaker mechanism and obtain a greater share of available capacity than a single bidder could acquire by itself.

22. As recognized in the NOPR, not all multiple affiliate bidding is used to defeat a *pro rata* allocation mechanism. Therefore, section 284.15(a) provides an exception for affiliates that have independent business reasons for submitting their bids. For example, a marketing arm of an energy company may bid to secure capacity for its wholesale customers and a retail operation of the same company may bid to secure capacity to serve its retail customers, and each would have an independent business reason for its bid. Or a marketing company may have two or more affiliates operating in different geographic areas, thus serving distinct markets all of which may be served by transportation on the same pipeline. The prohibition against multiple affiliate bidding in section 284.15(a) is reasonably tailored to the harm the Commission is seeking to prevent, as it only restricts the participation of affiliates that do not have an independent business reason for bidding.

23. Various commenters request further clarification of what constitutes an independent business reason. As the Commission explained in the NOPR, it is impossible to describe in advance every situation that demonstrates an independent business reason. However, our intent in permitting bidding by multiple affiliates where each has its own independent business reason for bidding is to allow each affiliate to acquire capacity which will facilitate or enhance its ability to provide service of value to its own customers or otherwise help accomplish its own business goals. The phrase ''independent business reason'' should be interpreted and applied in specific situations consistent with that intent.

24. The scenarios described in P 22 above illustrate situations where each affiliate or business unit has an independent business reason to participate in an open season, because each is seeking pipeline capacity in order to transport natural gas to its own sales customers. Commenters have suggested various other scenarios in which an affiliate or business unit may use awarded capacity to accomplish its own business objectives and thus have an independent business reason for participating in an open season. For example, an affiliate may use natural gas to operate an industrial plant, refinery, or electric generation facility, and seek pipeline capacity to transport natural gas to that facility.[22] A producer affiliate may be developing a new production field and seek pipeline capacity to transport natural gas produced from that field to market.[23] A marketer affiliate participating in a retail access program may seek pipeline capacity to serve its retail customers in that program.[24] A marketer affiliate may also seek pipeline capacity to transport natural gas to any other type of customer to whom it ordinarily sells natural gas. In all of these scenarios, the affiliate or business unit is seeking pipeline capacity to transport natural gas which it will consume in its own business operations or sell to others as part of its ordinary course of business. In such circumstances, the affiliate may participate in an open season, regardless of whether any other affiliate may participate in the same open season.[25] By contrast, indications that a company is not acting independently would be if the business unit is used by its parent or affiliate in a way that differs from its usual business operations, is used to perform transactions that an affiliate or parent could not, or is acting as an ''alter ego'' of an affiliate or parent.

[22] NGSA at 4; PGC at 3; AGA at 7.

[23] NGSA at 4.

[24] *Id.*

[25] As requested by SCS and AGA, the Commission also clarifies that a group of affiliated electric generators or gas distribution companies operating in different geographic areas may designate a single affiliate as their gas purchasing agent and that affiliate may participate in an open season to obtain pipeline capacity to serve all the affiliates in the group.

25. AGA argues that the proposed rule would burden participation in pipeline open seasons because each market participant would be required to document an independent business reason each time it bids and would have no way of knowing whether some of its affiliates submitted a bid. We disagree. First, the rule requires an affiliate to do no more than any reasonably prudent company would do when considering whether to bid in an open season for pipeline capacity. Before submitting a bid, the affiliate must decide whether and how much of the subject capacity it needs in order to accomplish its own business objectives, and it should maintain some record of the basis for its determination. The rule does not include any specific documentation requirement. Second, each affiliate only need concern itself with whether it, individually, has an independent business reason for bidding. The rule does not require that an entity coordinate with its affiliates to establish how its independent business reason differs from the business reasons of the other affiliates. In fact, not coordinating with affiliates would help to avoid the appearance of multiple affiliate bidding behavior. Similarly, if state public service commission review prevents gas and electric utilities from acquiring gas transportation for purposes not related to serving customers, as DTE Energy asserts, then it should not be burdensome for these entities to establish an independent business purpose. We therefore do not find it necessary to modify proposed section 284.15(a) or the proposed definition of ''affiliate.''

26. We do not find it necessary to require that each affiliate identify itself as such and that any award of open season capacity note the affiliation. In order for multiple affiliates of the same entity to participate in an open season for pipeline capacity in which the pipeline may allocate capacity on a *pro rata* basis, each affiliate must have an independent business reason for submitting a bid. Therefore, consumers should be protected by the rule even if each affiliate is not labeled as such. We also note that each affiliate has the responsibility to ensure that it has an independent business reason for submitting a bid, not the pipeline conducting the open season.

IV. Prohibition on Release of Capacity

A. The NOPR

27. The Commission also proposed that if more than one affiliate of the same entity participates in such an open season, then none of those affiliates may

release any capacity obtained in that open season pursuant to a *pro rata* allocation to any affiliate, or otherwise allow any affiliate to obtain the use of the allowed capacity. The Commission noted that some companies bidding with multiple affiliates have used capacity release as the final step in consolidating multiple shares of capacity for use by one of the company's units.[26] The Commission explained that, by releasing the capacity acquired in the open season, affiliates are able to transfer the capacity each acquires to a single company that benefits by obtaining more capacity than it could have obtained by itself.[27]

B. Comments

28. Parties generally argue that the capacity release prohibition, as drafted, is overbroad and would have a chilling effect on the capacity release markets. For example, AGA argues that where an affiliate complies with section 284.15(a) and legitimately obtains capacity in an open season with a *pro rata* allocation, that affiliate should be permitted to release its capacity to any entity under the normal capacity release rules applicable to all other shippers. It argues that this is especially the case if the releasing affiliate posts the release for bidding and has no control over who might acquire the released capacity. AGA further states that, if the proposed capacity release prohibition is adopted, an affiliate legitimately obtaining capacity in an open season may be reluctant to offer capacity to the release market for fear that an affiliate would be the winning bidder for the capacity.

29. Parties argue that, if the prohibition on capacity release is adopted, various clarifications are required. For example, AGA argues that the Commission should clarify that the prohibition on capacity release only applies where the affiliate cannot establish an independent business reason for bidding, and that, if an entity with multiple affiliates acquires capacity in an open season with a *pro rata* allocation and releases that capacity in a competitive bidding process where the winning bidder is an unaffiliated third party, an affiliate could subsequently acquire the capacity from that party. CPC proposes alternative language to the proposed regulation that would clarify that a ban on capacity release (1) Only applies to the extent two affiliates actually receive a *pro rata* award of capacity, and (2) expires after a reasonable period, such as two years. Numerous parties state that the Commission should clarify that the prohibition on capacity release does not apply to releases of pipeline capacity to (1) Qualifying asset managers as part of an Asset Management Agreement or (2) marketers participating in a state commission-regulated retail access program. PGC urges the Commission to recognize that, if industrial end-users decide to realign their natural gas purchasing and transportation practices to central management in order to maximize corporate efficiencies, capacity releases between affiliates may be required.

30. Parties also express concern that seeking waiver of the capacity release prohibition would be overly burdensome.

C. Commission Determination

31. In light of the comments received, the Commission has reconsidered its proposal and has decided not to adopt the proposed prohibition on capacity release. The prohibition on capacity release, proposed as section 284.15(b) in the NOPR, was intended to provide an additional deterrent to affiliates bidding for capacity for which they have no independent use. However, any behavior that the Commission intended to fall under the capacity release prohibition is covered by the prohibition on multiple affiliate bidding in proposed section 284.15(a). Therefore, the Commission believes that the prohibition on multiple affiliate bidding in proposed section 284.15(a) is sufficient to prohibit the subject conduct without the additional capacity release prohibition.

32. Furthermore, we appreciate commenters' concern that the capacity release prohibition could have a chilling effect on affiliates' participation in the capacity release markets. The Commission adopted the capacity release program in order to promote efficient use of firm pipeline capacity throughout the year.[28] For example, the capacity release program permits a firm shipper to release its capacity to another shipper during periods when the release shipper does not need its capacity. This allows the releasing shipper to reduce its cost of reserving capacity and enables other shippers who value the capacity more to use it.

33. Upon further consideration, the Commission has determined that an affiliate who legitimately obtains capacity in an open season for its own independent business purposes should be permitted to release that capacity to any entity under the normal capacity release rules applicable to all other shippers. This will enable affiliates to obtain the same benefits from capacity release as other shippers. We note, however, that the Commission may consider what an entity does with its awarded capacity, such as subsequently releasing the capacity to an affiliate on a long-term basis, as a factor in the determination of whether the entity in fact had an independent business reason to obtain the capacity.

34. The Commission will therefore promulgate the Final Rule without the prohibition on capacity release. This Final Rule, as amended, should prevent anticompetitive gaming of the *pro rata* allocation methodology by using multiple affiliates of the same entity to acquire a larger share of the available capacity than one affiliate would be able to acquire by itself.

V. Information Collection Statement

35. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.[29] This rule contains no new or revised information collections. Therefore, OMB review of this Final Rule is not required.

VI. Environmental Analysis

36. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[30] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[31] The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are corrective, clarifying or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[32] Therefore an environmental review is

[26] NOPR, FERC Stats. & Regs. ¶ 32,673 at P 15 (citing *Tenaska Marketing Ventures, et al.,* 126 FERC ¶ 61,040 at P 13, 18).

[27] *Id.*

[28] *Promotion of a More Efficient Capacity Release Market,* Order No. 712, 73 FR 37058 (June 30, 2008), FERC Stats. & Regs. ¶ 31,271, at P 4 (2008), *order on reh'g,* Order No. 712–A, 73 FR 72692 (Dec. 1, 2008), FERC Stats. & Regs. ¶ 31,284 (2008), *order on reh'g,* Order No. 712–B, 74 FR 18127 (Apr. 21, 2009), 127 FERC ¶ 61,051 (2009).

[29] 5 CFR 1320.11 (2011).

[30] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[31] 18 CFR 380.4 (2011).

[32] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), and 380.4(a)(27) (2011).

unnecessary and has not been prepared in this rulemaking.

VII. Regulatory Flexibility Act

37. The Regulatory Flexibility Act of 1980 (RFA) [33] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such an analysis if proposed regulations would not have such an effect.[34] Most companies regulated by the Commission do not fall within the RFA's definition of a small entity.[35]

38. This Final Rule should have no significant negative impact on those entities, be they large or small, subject to the Commission's regulatory jurisdiction under the NGA. Most companies to which the Final Rule applies do not fall within the RFA's definition of small entities. In addition, this Final Rule is only triggered if more than one affiliate of the same entity participates in an open season for pipeline capacity in which the pipeline may allocate capacity on a *pro rata* basis, and each affiliate does not have an independent business reason for submitting a bid. Therefore, the rule would only affect a limited number of small entities. This Final Rule will not have a significant economic effect on these small entities. Therefore, the Commission certifies that this Final Rule will not have a significant economic effect on a substantial number of small entities.

VIII. Document Availability

39. In addition to publishing the full text of this document in the **Federal Register,** the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

40. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

41. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–(866) 208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

IX. Effective Date and Congressional Notification

42. These regulations are effective December 23, 2011. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

By the Commission. Commissioner Spitzer is not participating.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission amends part 284, Chapter I, Title 18, Code of Federal Regulations, as follows:

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

■ 1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

■ 2. Section 284.15 is added to subpart A to read as follows.

§ 284.15 Bidding by affiliates in open seasons for pipeline capacity.

(a) Multiple affiliates of the same entity may not participate in an open season for pipeline capacity conducted by any interstate pipeline providing service under subparts B and G of this part, in which the pipeline may allocate capacity on a *pro rata* basis, unless each affiliate has an independent business reason for submitting a bid.

(b) For purposes of this section, an affiliate is any person that satisfies the definition of affiliate in § 358.3(a)(1) and (3) of this chapter with respect to another entity participating in an open season subject to paragraph (a) of this section.

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BILLING CODE 6717–01–P

[33] 5 U.S.C. 601–612 (2006).

[34] 5 U.S.C. 605(b) (2006).

[35] 5 U.S.C. 601(3) (citing section 3 of the Small Business Act, 15 U.S.C. 623 (2006)). Section 3 defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR–5458–F–02]

RIN 2502–AI96

Federal Housing Administration (FHA) Appraiser Roster: Appraiser Qualifications for Placement on the FHA Appraiser Roster

AGENCY: Office of the Assistant Secretary of Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: On July 14, 2011, HUD published a proposed rule to update HUD's regulations to conform to the statutory requirement that appraisers must be certified, rather than licensed, by a state appraisal licensing board in order to appear on the FHA Appraiser Roster. This requirement was established by the Housing and Economic Recovery Act of 2008. Although current HUD practice is in compliance with the statutory mandate, the regulations reflect outdated prior policy of permitting state-licensed appraisers to be listed on the FHA Appraiser Roster. In addition, HUD proposed updating the FHA Appraiser Roster regulations by replacing the obsolete references to the Credit Alert Interactive Voice Response System (CAIVRS) with references to its successor, the online-based Credit Alert Verification Reporting System. This final rule follows the publication of the July 14, 2011, proposed rule. In this final rule, HUD is adopting the proposed rule without change. HUD did not receive any public comments on the proposed rule.

DATES: *Effective Date:* December 23, 2011.

FOR FURTHER INFORMATION CONTACT: Karin Hill, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9278, Washington, DC 20410–8000; telephone number (202) 708–2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 1 (800) 877–8339.

SUPPLEMENTARY INFORMATION: