Directors; actual agenda items are determined by the Chairman and Board.

Immediate Effective Date

Because this amendment concerns rules of NCUA Board procedure, prior notice and public comment are not required by 5 U.S.C. 553, and the rule is effective upon publication in the Federal Register.

Regulatory Procedures

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the NCUA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This rule affects internal NCUA Board operations only. Thus, it will not result in additional burden for regulated institutions. The purpose of this rule is to enhance the operations of the NCUA Board.

Paperwork Reduction Act

The amendments do not contain any collection of information requirements.

Executive Order 12612

The rule, like the provision of part 791 it replaces, only applies to the NCUA Board. Accordingly, the Board has determined that the rule will not have a substantial direct effect on the states, on the relationship between that national government and the states, or on the distribution of power and responsibilities among various levels of government. Further, the rule will not preempt provisions of state law or regulations.

List of Subjects in 12 CFR Part 791

Administrative practice and procedure, Sunshine Act.

By the National Credit Union Administration Board on October 16, 1996.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 791 as follows:

PART 791—RULES OF NCUA BOARD PROCEDURE; PROMULGATION OF NCUA RULES AND REGULATIONS; PUBLIC OBSERVATION OF NCUA BOARD MEETINGS

1. The authority citation for Part 791 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789 and 5 U.S.C. 552b.

2. Section 791.6 is revised to read as follows:

§ 791.6 Subject matter of a meeting.

(a) *Agenda.* The Chairman is responsible for the final order of each meeting agenda. Items shall be placed on the agenda by determination of the Chairman, or within 60 days of receipt of a written request from two Board members that includes an NCUA B–1 form and a Board Action Memorandum.

(b) *Submission of recommended agenda items.* Recommended agenda items may be submitted to the Secretary of the Board by Board members, the Executive Staff (which includes all Office Directors and President of the Central Liquidity Facility), and Regional Directors.

[FR Doc. 96–27131 Filed 10–24–96; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–001; Order No. 587–A]

Standards for Business Practices of Interstate Natural Gas Pipelines

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule; Order denying rehearing.

SUMMARY: The Federal Energy Regulatory Commission is denying a request for rehearing of its final rule revising the Commission's regulations to require interstate natural gas pipelines to follow standardized procedures for critical business practices—nominations; allocations, balancing, and measurement; invoicing; and capacity release—and standardized mechanisms for electronic communication between the pipelines and those with whom they do business. (61 FR 39053 (July 26, 1996)). The order reaffirms the Commission's determination to incorporate by reference into its regulations standards promulgated by the Gas Industry Standards Board.

DATES: The regulations were effective August 26, 1996, and are to be implemented based on a staggered scheduling with *pro forma* tariff filings in October through December, 1996 and corresponding implementation in April through June, 1997.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2294

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–1283

Kay Morice, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0507

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 2A, 888 First Street, N.E., Washington D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400 or 1200bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS in ASCII and WordPerfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 2A, 888 First Street, N.E., Washington D.C. 20426.

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- Logon to the FedWorld system
- Type: /go FERC

or:

- Point your Web Browser to: http://www.fedworld.gov
- Scroll down the page to select FedWorld Telnet Site
- Select the option: [1] FedWorld

- Logon to the FedWorld system
- Type: /go FERC

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

Issued October 21, 1996.

On July 17, 1996, the Federal Energy Regulatory Commission (Commission) issued a final rule revising the Commission's regulations to require interstate natural gas pipelines to follow standardized procedures for critical business transactions between the pipelines and their customers.[1] The final rule incorporated by reference standards promulgated by the Gas Industry Standards Board (GISB), a consensus standards organization comprised of members from all segments of the natural gas industry. On August 16, 1996, Natural Gas Clearinghouse and Vastar Gas Marketing, Inc. (NGC/Vastar), filing jointly, and Louisiana-Nevada Transit Company (LNT) filed for rehearing. For the reasons discussed below, the rehearing requests are denied.

Rehearing Requests

NGC/Vastar principally contend the Commission acted arbitrarily and capriciously in giving deference to the GISB standards without offering a reasoned analysis of the GISB standards as compared with the alternative proposals put forward by NGC/Vastar/Conoco.[2] NGC/Vastar contend that the Commission's failure to address each of NGC/Vastar/Conoco's proposed standards ran afoul of the Administrative Procedure Act, because the Commission ''failed to consider an important aspect of the problem''[3] and ignored ''important arguments or evidence.''[4]

NGC/Vastar further maintain that § 12 of the National Technology Transfer and Advancement Act of 1995 (NTT&AA)[5] and OMB Circular A–119,[6] which require government agencies to use private consensus standards, do not justify the Commission's reliance on the GISB standards or the Commission's failure to analyze NGC/Vastar/Conoco's alternative standards. NGC/Vastar reiterate their position that the NTT&AA applies only to government agencies' use of private consensus standards for procurement, not for regulation of monopoly service providers, like pipelines.

Finally, NGC/Vastar maintain the Commission exceeded its authority in finding that pipeline tariff provisions inconsistent with the GISB standards are unjust and unreasonable under section 5 of the Natural Gas Act (NGA). They maintain the Commission should not find unjust and unreasonable tariff provisions the Commission specifically approved as part of settlement negotiations.

LNT challenges the Commission's incorporation by reference of the GISB standards. It avers incorporation by reference unreasonably requires LNT either to view the standards in Washington, D.C., or to purchase the standards from GISB for a charge of $2,000 for the four volumes, which it claims is excessive.

Discussion

The principal issues raised in the rehearing requests are whether the Commission adequately considered the comments of NGC/Vastar and others on the notice of proposed rulemaking (NOPR),[7] and whether the Commission is justified in giving deference to the GISB standards and incorporating them by reference into the regulations. As to the first issue, the Commission reviewed all the comments submitted and determined that the GISB standards are just and reasonable. Indeed, examination of NGC/Vastar/Conoco's comments reveals that they fundamentally disagree with only one GISB standard. Their principal position is that to attain maximum efficiency, some of the standards need supplementation and additional standards are required. Rather than rejecting NGC/Vastar/Conoco's proposed enhancements or additions, the Commission found that many of their suggestions may indeed have merit and deferred consideration of these issues until GISB and the industry had a further opportunity to consider them. Since the proposed GISB standards can be implemented without resolving the deferred issues, providing additional opportunity for industry review causes little or no harm and will have the benefit of helping to produce more considered and balanced standards.

In reviewing the comments, the Commission was warranted in giving greater deference to the consensus viewpoint than to the views of one or even several parties. Giving deference to the consensus decision is consistent with the NTT&AA. It also is warranted by the Commission's consistent policy goal of developing standards that satisfy the needs of the broadest possible base of industry participants.[8] Deference is due to consensus standards, first because the gas industry possesses specialized knowledge and expertise in the areas of business practices and computer protocols. Second, when all is said and done, it is the industry that has to operate businesses using these standards. The standards, therefore, should be acceptable to as many industry participants as possible. In short, adopting business practice standards that command a consensus of the industry is the most likely method of providing the greatest overall benefit to the industry as a whole. Moreover, as discussed in the final rule and below, the Commission considered the substantive changes put forward by NGC/Conoco and others and found that modifying the standards to try and accommodate the concerns of the minority would be inconsistent with the goals to be achieved through standardization.

LNT's concern is not over the substance of the standards, but goes to the manner by which the Commission adopted the standards, and is addressed below.

A. Deference to the GISB Standards Is Warranted and Consistent With the NTT&AA and OMB Circular A–119

In examining the standards proposed by GISB and the comments and alternative standards of NGC/Vastar/Conoco and others, the Commission was warranted in giving greater weight to the consensus agreement. Section 12 of the NTT&AA establishes governmental policy that federal agencies shall use technical standards that are developed or adopted by voluntary consensus standards bodies unless such use is ''inconsistent with applicable law or otherwise impractical.'' Although, as NGC/Vastar point out, Senator Rockefeller, a sponsor of the bill,

[1] Standards for Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), III FERC Stats. & Regs. Regulations Preambles ¶ 31,039 (Jul. 17, 1996).

[2] Conoco did not join in the request for rehearing.

[3] Citing American Horse Protection Assoc. v. Yeutter, 917 F.2d 594, 598 (D.C. Cir. 1992).

[4] Citing Natural Resources Defense Council, Inc. v. U.S. Environmental Protection Agency, 822 F.2d 104, 111 (D.C. Cir. 1987).

[5] Pub L. No. 104–113, § 12(d), 110 Stat. 775 (1996).

[6] ''Federal Participation in the Development and Use of Voluntary Standards'' (Oct. 20, 1993). The Circular can be obtained from the Internet at http://www.whitehouse.gov/WH/EOP/OMB/html/circular.html. An earlier version is available at 47 FR 49496 (Nov. 1, 1992).

[7] Standards For Business Practices Of Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking, 61 FR 19211 (May 1, 1996), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,517 (Apr. 24, 1996).

[8] The Commission sought industry consensus when it began the standardization process by setting up a technical conference to develop standards for capacity release transactions. Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Notice of Informal Conferences, Docket No. RM93–4–000 (March 10, 1993).

referred to government use of standards for procurement purposes,[9] nothing in the final language of the Act limits its applicability to procurement. Congressman Brown, a cosponsor of the Act, in fact, specifically refers to the use of standards for ''procurement and *regulatory* purposes.'' [10] In addition, § 12 of the NTT&AA was intended to codify OMB Circular A–119, which did not limit the policy of using private sector standards to procurement.

Even if § 12 of the NTT&AA does not strictly apply here, the Commission is warranted in giving significant weight to the consensus standards. Not only does the industry possess specialized knowledge of business and electronic communication practices, but, since the industry itself has to operate under these standards, the standards should implement practices that are favored by the broadest cross-section of industry members.

Indeed, well before the passage of § 12 of the NTT&AA, government agencies relied on private sector standards for regulatory purposes, including protection of public health and safety.[11] Agencies rely on industry standards for much the same reasons the Commission has chosen to give GISB's standards great weight. Industry possesses specialized knowledge and expertise in the relevant technical areas, and the procedural process of consensus standards development helps ensure that the process is open to all affected interests and that the standards reflect a consensus of these interests.[12] There is no reason to make a distinction between the frequent use of standards by agencies to protect the public health and safety and the Commission's use of industry standards as part of its efforts to regulate the terms and conditions under which a monopoly service is provided.

NGC/Vastar point to language in OMB Circular A–119 cautioning federal agencies that private standards-setting is vulnerable to abuse. They contend the evidence NGC/Vastar/Conoco put forward in their comments shows that the pipeline interests unfairly dominated the task force meetings (the committees that developed and submitted draft standards to the GISB Executive Committee for final voting).

Without repeating all the discussion in the final rule, the Commission reviewed GISB's standards-development process and found that GISB reasonably assured broad based approval of the standards by all segments of the gas industry. At the Executive Committee level, the record shows that the voting generally exceeded GISB's rigorous consensus requirement; [13] most of the standards received virtually unanimous support. [14] The record also shows that the Standards Committee did not merely rubber stamp the recommendations from the drafting committee, as suggested by NGC/Vastar. The Executive Committee conducted preliminary sessions prior to its public meeting to debate and refine the standards. Its public meeting lasted for two full days, going late into the night, with the Committee making significant and fundamental changes to the task force recommendations.

The Commission, however, is not ignoring potential problems with consensus standard development, as NGC/Vastar argue. For instance, under GISB's procedures, a concerted effort by a single interest can prevent the adoption of a standard supported by the rest of the industry. That is why the Commission has been particularly vigilant about examining those areas in which GISB has failed to reach consensus on standards. The Commission, in fact, agreed with NGC/Vastar that, in many of these areas, standards appear necessary and instituted procedures to have GISB and the industry develop the needed standards.

The Commission established a September 30, 1996 date for submission of detailed reports on the additional standards, and, on that date, GISB submitted a report containing additional approved standards and a voting record for the standards that did not receive the necessary votes.

B. Response to NGC/Vastar/Conoco's Comments

While GISB's standards are legitimately entitled to great weight, the Commission did not, as NGC/Vastar/Conoco maintain, delegate to GISB the sole responsibility to develop these standards. The Commission has and is still taking an active role in the process. It has identified the areas requiring standardization. And, as discussed below, the Commission reviewed the GISB standards in light of NGC/Vastar/Conoco's comments and those of other participants and determined that the standards provide a just and reasonable solution to the lack of standardization in the industry.

With the exception of the requirement for a nationwide nomination schedule, NGC/Vastar/Conoco did not fundamentally disagree with the GISB standards passed. Rather, their principal concerns were that a few of the GISB standards, in their view, do not go far enough and need to be improved and enhanced and that standards in additional areas need to be adopted.

1. NGC/Vastar/Conoco's Objections to the GISB Standards

NGC/Vastar/Conoco raised six specific concerns with the GISB standards in their comments on the NOPR: uniform nomination deadline; pooling; tracking of title transfers; intra-day nominations; prior period adjustments; and unit of measure. [15]

a. Uniform Nomination Deadline. GISB established a uniform nomination deadline for the entire country, starting at 11:30 a.m. CCT (central clock time). (Nomination Standard 1.3.2). NGC/Vastar/Conoco, as well as others, argued a staggered nomination timeline would be more efficient. NGC/Vastar/Conoco suggested that upstream pipelines should go first while others suggested a regional nomination system.

As was the case with many of the standards, the Commission found that the determination of an appropriate nomination schedule was a matter of judgment, not fact, and accepted the

[9] 142 Cong. Rec. S1080 (daily ed. Feb. 7, 1996).

[10] 142 Cong. Rec. H1266 (daily ed. Feb. 27, 1996) (emphasis added).

[11] For just a few examples of the use of standards for non-procurement purposes, see 42 CFR 405.2150, 60 FR 48039 (Sept. 18, 1995) (Health Care Financing Administration incorporation of Association for the Advancement of Medical Instrumentation standards for reuse of hemodialyzers); 49 CFR Part 659, 60 FR 67034 (Dec. 27, 1995) (Federal Transit Administration incorporation by reference of APTA rail transit system safety plans); 49 CFR 192.11, 193.2005 (Department of Transportation incorporation by reference of practice standards relating to transportation of petroleum gas and LNG); 24 CFR 200.926b, part 200, App. A, 3280.801 (Housing and Urban Development minimum property standards and manufactured housing standards); 16 CFR Material Approved for Incorporation by Reference, at 483 (1996) (listing standards incorporated by Consumer Product Safety Commission); 21 CFR 801.410 (FDA standards for impact-resistant eye glasses).

[12] *See* 142 Cong. Rec. S1081 (daily ed. Feb. 7, 1996) (remarks of Senator Rockefeller); 142 Cong. Rec. H1266 (daily ed. Feb. 27, 1996)(remarks of Congressman Brown).

[13] Under GISB rules, 17 out of 25 Executive Committee members must approve a standard with at least two affirmative votes from each of the five industry segments. The five segments are pipelines, local distribution companies (LDCs), producers, end-users, and services (including marketers and third-party computer service providers).

[14] See Volume III of GISB's March 15, 1996 filing, Voting Work papers.

[15] NGC/Vastar/Conoco also raised concerns about GISB's adoption of internet protocols as the electronic method for communication of the high priority data elements. They argued that, while the use of internet protocols is a step forward, GISB did not go far enough in using internet technology. This issue is not yet ripe for consideration. The Commission has not yet adopted the electronic delivery mechanism standards, because GISB had not completed the standards in time for the final rule. The Commission, however, did agree with some aspects of NGC/Vastar/Conoco's comments regarding the need to eventually replace pipeline electronic bulletin boards with a more uniform method of communication. 61 FR 39057, 39065, III FERC Stats. & Regs. Preambles at 30,063, 30,076.

consensus rationale for adopting a nationwide schedule. The industry consensus was that a nationwide timeline provides shippers with more assurance of their transportation arrangements. A nationwide nomination schedule enables a shipper using multiple pipelines to nominate and schedule each link in its transaction chain at one time. It also enables the shipper to learn quickly whether its nomination will go through as scheduled.

A staggered schedule could leave a shipper with one (or more) scheduled pipeline and one (or more) unscheduled.[16] For example, under a system where nominations on upstream pipelines are processed first, a shipper may receive confirmation of transportation on the upstream pipeline, without knowing whether it will be able to acquire transportation to deliver that gas to its needed destination.

b. Pooling. GISB's standard requires pipelines to offer one pool if requested by a shipper or supplier. (Nomination Standard 1.3.17). NGC/Vastar/Conoco agree with the standard, but object to the requirement that pooling must be requested by a shipper or supplier. They suggest pipelines may take a long time to establish pooling mechanisms and, therefore, argue the ''shipper request'' requirement could drag out implementation for years.

Although pooling is either already provided, or is likely to be requested, on larger pipelines, pooling may not be needed or demanded on smaller pipelines. The ''shipper request'' requirement helps to ensure that pipelines do not unnecessarily establish pools that are not needed. The ''shipper request'' requirement also should not cause any delay in implementing pooling. The standard requires nothing more than a request by a shipper or a supplier to trigger the obligation for the pipeline to establish a pool. Since the tariff changes to comply with the standards are not due to start being filed until October of 1996, and implementation does not begin until April of 1997, there is ample time for shippers needing pooling to make their requests, and for implementation to be timely.

c. Title Transfer Tracking. GISB adopted two principles dealing with title transfers[17]—title transfer tracking improves certainty and users of title transfers should bear the cost of the service (Nomination Principles 1.1.10 and 1.1.11). But GISB failed, after much discussion, to reach agreement on a title tracking standard.[18] NGC/Vastar/Conoco request the Commission to eliminate the two principles because the entire issue of title transfers has been deferred for further consideration.

Although the Commission adopted the principles, pipelines need not comply with them unless, and until they are adopted as standards. NGC/Vastar/Conoco, in fact, agree with the general principle that title transfer tracking is important, and improves certainty,[19] and the Commission concurred, including title transfer tracking as an issue for further consideration by GISB and the industry.[20] NGC/Vastar/Conoco have suffered no harm from adoption of the two principles, since pipelines are not required to revise their tariffs to comply with them, and, in any event, they are subject to revision based on the future deliberations.

d. Intra-day Nominations. GISB's standards for intra-day nominations (a nomination made after the nomination deadline for a gas day) provide that pipelines must allow shippers to submit at least one intra-day nomination four hours prior to gas flow and that intra-day nominations can be used to request increases or decreases in total flow and changes to receipt or delivery points for scheduled gas. (Nomination Standards 1.3.8, 1.3.10, and 1.3.11). NGC/Vastar/Conoco maintain that these standards, while a ''step in the right direction,'' do not go far enough to ensure equitable treatment of shippers. They propose six revised standards covering additional areas such as bumping rights, for example, between shippers submitting intra-day nominations to primary points and shippers using those points as secondary points.

The Commission accepted the GISB standards as a reasonable point of departure. NGC/Vastar/Conoco do not maintain that the GISB standards should not be implemented as written, only that their suggested additions may improve the efficiency of the market. The Commission agrees that improvements probably can be made in this area as the standards are refined. While permitting the industry to review such revisions through the consensus process may be somewhat slower than NGC/Vastar/Conoco would prefer, such review will lead to a better and more considered decision.

e. Prior Period Adjustments. GISB adopted three standards dealing with prior period adjustments (allocations, measurement, and invoices) that impose a six-month period for the adjustment and a three-month rebuttal period. (Flowing Gas Standards 2.3.26 and 2.3.14 and Invoicing Standard 3.3.15.) NGC/Vastar/Conoco contend the six-month reconciliation period does not reflect commercial realities, because most pipelines are unable to provide adjustments that quickly, the adjustments therefore may be inaccurate, and the six-month period is inconsistent with companies' internal and external auditing procedures. They recommend a two-year period for adjustments.

The consensus view of all segments of the industry, including the pipeline segment, is that expedition of these adjustments is important and can be made accurately within the six-month time period specified. There is no factual basis, at this point, to determine whether these adjustments can be made accurately. The question of how fast reconciliation is needed and what reasonably can be accomplished is a matter of judgment, and the Commission, therefore, chose to adopt the position supported by the majority of the industry.[21] Given the importance of obtaining financial data promptly, the Commission is unwilling to accept NGC/Vastar/Conoco's assumption that pipelines will fail to perform in the manner to which they have agreed. Pipelines are subject to the risks of alienating their own customer base as well as possible Commission action if they fail to follow the standards. Indeed, NGC/Vastar/Conoco's reluctance to hold the pipelines to the speed-up in reconciliation, to which the pipelines agreed, is at odds with the general thrust of NGC/Vastar/Conoco's arguments, on other standards, that pipelines should be forced to do more, and do it faster, than the consensus agreement.

f. Unit of Measure. GISB adopted dekatherms as the standard unit for nominations. (Nomination Standard 1.3.14.) It further adopted a standard providing that, subject to regulatory and/or contractual considerations for standardizing billing units on invoices, dekatherms should be used for invoices

[16] 61 FR 39061, III FERC Stats. & Regs. Preambles at 30,067–68.

[17] Title transfer tracking refers to keeping computerized record of nominations showing the transfer between parties of title to gas whether or not the gas is being physically transported on the pipeline.

[18] *See* Transcript of March 7, 1996 GISB Executive Committee Meeting, Docket No. RM96–1–000, at 316–370 (filed March 27, 1996).

[19] See Comments and Proposed Alternative Standards of NGC/Vastar/Conoco, Docket No. RM96–1–000, at 67 (May 28, 1996) (''title transfers create liquidity in the market, which in turn enhances reliability and competitiveness of natural gas as a fuel'').

[20] 61 FR 19216; IV FERC Stats. & Regs. Proposed Regulations at 33,213.

[21] 61 FR 39062, III. FERC Stats. & Regs. Preambles at 30,068–69.

to be consistent with nomination standard. (Invoicing Standard 3.3.3.)

NGC/Vastar/Conoco accepted the use of dekatherms for nominations, but contended dekatherms should not be required for billing. They contended that this standard ignores the commercial reality that thousands of contracts are based on Mcf and that parties such as LDCs, intrastate pipelines, and gatherers may have state rates based on Mcf and may not measure dekatherms. They recommended that Mcf should be included as an optional field.

The GISB standard, on its face, is conditioned on the relevant contractual relations between the parties, so that it will not result in trumping those agreements in the absence of negotiations between the parties. Thus, customers can still continue to receive invoices in Mcf if provided by their contract. The consensus standard, however, establishes parameters for future and renegotiated contracts to provide consistency in the measurement and billing process, which is a reasonable objective.

2. Deferred Issues

NGC/Vastar/Conoco's primary concern was with the standards that fall under the heading of deferred issues: the issues the Commission determined required further consideration by GISB and the industry. NGC/Vastar/Conoco contended the Commission should not have deferred resolution of these issues, but should have resolved them immediately based on NGC/Vastar/Conoco's proposed standards. NGC/Vastar/Conoco further contended the ''reserved'' issues are among the most complex facing the industry and, since GISB failed to resolve them the first time, its chances of resolving them on a second try are a ''false hope.''

The Commission heeded the comments of NGC/Vastar/Conoco, finding that ''many of NGC/Vastar/Conoco's points may have merit.'' [22] Where the Commission differed with NGC/Vastar/Conoco was in the process for resolving these issues. While recognizing that the additional standards need prompt consideration, the Commission concluded the GISB standards could be implemented while standards in the additional areas are being considered.[23] Indeed, although NGC/Vastar/Conoco contended that implementation of their proposed additional standards immediately may reduce the costs of ironing out the details in later filings, they did not suggest that implementation of the additional standards is a prerequisite to implementation of the GISB standards.

The Commission has determined to try to obtain resolution of standards issues through the consensus process and is not prepared to discard that process at this stage of the proceedings. Particularly for complex issues, achievement of a consensus that fairly balances the concerns of all industry segments is desirable. On its first try at standardization, GISB and the industry had to face and resolve a wide range of issues in a short timeframe. GISB conducted 45 meetings within a 53 day period and reached consensus on a significant number of critical issues. The Commission is not willing to short-circuit that process without giving the industry a chance to consider the deferred issues.

Moreover, the Commission could not have resolved these issues immediately based on the existing record. Since no party had an opportunity to respond to NGC/Vastar/Conoco's comments, the Commission would have had to establish additional procedures to resolve the issues in any event. The better path, therefore, is to proceed as the Commission has done and provide the industry with additional time to consider the issues. Even if the industry does not succeed at reaching consensus, the review by GISB and the industry will cast additional light on the issues involved in these complex areas, enabling the Commission to reach a more reasoned resolution if it is required to intervene in the process.

The Commission, however, recognized the need to monitor industry progress on these standards to ensure that a stalemate does not impede development of the standards. Thus, the Commission rejected calls to extend the September 30, 1996 deadline to report to the Commission on the industry's progress on these issues.[24] Analysis of the reports filed on September 30 by GISB and others should reveal whether the industry is en route to resolving these issues or whether the Commission should institute additional procedures.

C. The Commission's § 5 Action Is Warranted

NGC/Vastar take issue with the Commission's finding that pipeline tariff provisions inconsistent with the GISB standards are unjust and unreasonable under § 5 of the NGA. They maintain that a § 5 finding is inappropriate since the Commission has specifically ordered or approved many of these provisions, which were crafted as part of extensive settlement processes.

As the Commission pointed out in the final rule, pipeline tariff provisions governing business practices initially were crafted in individual restructuring proceedings pursuant to Order No. 636. But experience under these tariffs clearly showed the policy of relying on individual, non-standardized tariff filings was not sufficient to create the uniform pipeline grid the Commission envisioned in Order No. 636. [25] Indeed, before initiating this rulemaking, the Commission held a technical conference on September 21, 1995, to assess the industry's standardization progress.[26] At that conference, all segments of the industry agreed that relying on individual pipeline procedures inhibited efficiency. One participant aptly summarized the problem:

> Moving gas across multiple pipelines today is a logistical nightmare. Each pipeline wants data specified in a different way. Delays are standard operating procedure, errors are routine, and the cost of this process is too great for all of us. * * * Let me give you an example of the problem. Today, the 18 largest pipelines use 14 different nomenclatures to describe a pipeline receipt point. About 80 unique data elements are required to execute a nomination on these pipelines.[27]

NGC/Vastar, themselves, recognize that individual pipeline tariff procedures are not sufficient and that ''standardization of pipeline business practices will go a long way to making the trading of natural gas in an integrated market more efficient, and should make gas service more reliable.'' [28]

Through this rulemaking proceeding, the Commission sought to correct this obstacle to efficiency by requiring standardization of pipeline business practices. Accordingly, tariff provisions that conflict with the Commission's standardization policy are, of necessity, unjust and unreasonable.

D. Incorporation by Reference Is Appropriate

LNT does not object to the substance of the GISB standards, but to the Commission's incorporation of the standards by reference into its regulations. LNT complains that by

[22] 61 FR 39060, III FERC Stats. & Regs. Preambles at 30,068.

[23] 61 FR 19216, IV FERC Stats. & Regs. Proposed Regulations at 33,213.

[24] 61 FR 39066, III FERC Stats. & Regs. Preambles at 30,076–79.

[25] 61 FR 39056, III. FERC Stats. & Regs. Preambles at 30,059.

[26] Technical Conference, Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Docket No. RM93–4–000 (Sept. 21, 1995).

[27] Transcript of September 21, 1995 Technical Conference, *supra,* note, at 44–45.

[28] Request for Rehearing, August 16, 1996, at 1.

incorporating the standards by reference, rather than reprinting the standards in the Code of Federal Regulations, the Commission has forced it to incur either the expense of traveling to Washington, DC. to view the standards at the Commission or the Office of the Federal Register or the $2,000 cost of purchasing the standards from GISB. LNT maintains the $2,000 cost is exorbitant and, therefore, argues the standards are not reasonably available to the class of persons affected by the regulations, contrary to the regulations promulgated by the Office of the Federal Register.[29]

As discussed earlier, section 12 of NTT&AA establishes a government policy under which agencies are to rely upon, and adopt, private sector standards whenever practicable and appropriate. The Freedom of Information Act and implementing regulations establish that the proper method of adopting such copyrighted material is to incorporate it by reference into the agency's regulations.[30] To be eligible for incorporation by reference, the document must be reasonably available to the class of persons affected by the publication.[31] Once adopted, a copy must be provided to the Office of the Federal Register for viewing, and the material must be available and readily obtainable. Neither the statute nor the regulations require that the standards be available at no cost. Indeed, standards incorporated by reference are exempt from the requirement that the agency provide copies of documents according to the agency's fee schedule.[32]

GISB, in fact, is not insisting on payment for the reproduction for regulatory purposes of the business practice standards and the associated datasets (data dictionaries), so small companies or municipalities will have easy access to the standards for purposes of reviewing and responding to pipeline tariff filings.[33] The only material for which GISB has restricted reproduction is the complex and detailed ASC X12 mappings and other computer protocols and examples.

It is common practice for standards organizations to charge for copies of their standards in order to defray the publishing costs as well as some of the administrative, legal, and other costs of developing the standards.[34] The GISB price of $2,000 covers the complete four volume set of documents, running over 2,000 pages, including the provision without charge for one year, of the updates and revisions that are certain to be forthcoming. Determining an appropriate price for such standards is not simply a matter of calculating the direct costs of publishing the standards, but involves consideration of the administrative, legal, and other developmental costs as well as the anticipated number of purchasers. In this case, this determination was made, not by an independent publishing firm, but by those who themselves have to purchase the documents—the GISB membership composed of firms, of varying sizes, from all segments of the industry.[35] The Commission has no basis to disagree with their determination of the price. Even for small pipelines, like LNT, a regulatory cost of $2,000, whether for legal fees or for acquiring standards, is within the normal course of doing business. Moreover, LNT can seek to include the costs of compliance with the GISB standards in future rate proceedings.

The Commission orders: The requests for rehearing are denied.

By the Commission.

Lois D. Cashell,

Secretary.

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[29] 1 CFR 51.7(4).

[30] 5 U.S.C. § 553(a)(1); 1 CFR 51.7(4). *See* 28 U.S.C. § 1498 (government liability for patent and copyright infringement). Other government agencies similarly incorporate private standards by reference. *See, e.g.,* note 11, *supra.*

[31] *See* 5 U.S.C. 553(a)(1); 1 CFR 51.7(4).

[32] 5 U.S.C. 553(a)(3).

[33] Letter of September 12, 1996 from counsel for GISB to the Secretary of the Commission (Docket No. RM96–1–000).

[34] *See* Why There Is a Charge for Standards and Standards Information, American National Standards Institute (explaining why charges need to be assessed for standards even if obtained electronically, with no publishing costs). The document is accessible at ANSI's Internet site, http://www.ansi.org/why__chrg.html.

[35] Although GISB members can receive the four volume set at the member's fee of $1,000, their yearly membership dues of $2,000 help defray the administrative, legal, and other costs of developing the standards. See Gas Industry Standards Board Standards Action Bulletin, September 17, 1996, at 8. The Bulletin is accessible via GISB's Internet site at http://www.NeoSoft.com/~gisb/gisb.htm.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1210

[NHTSA Docket No. 96–007; Notice 2]

RIN 2127–AG20

Operation of Motor Vehicles by Intoxicated Minors

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule implements a new program enacted by the National Highway System Designation (NHS) Act of 1995, which provides for the withholding of Federal-aid highway funds from any State that does not enact and enforce a ''zero tolerance'' law. This final rule clarifies what States must do to avoid the withholding of funds.

DATES: The regulation contained in this final rule becomes effective on November 25, 1996.

FOR FURTHER INFORMATION CONTACT: In NHTSA: Ms. Marlene Markison, Office of State and Community Services, NSC–01, telephone (202) 366–2121; or Ms. Heidi L. Coleman, Office of Chief Counsel, NCC–30, telephone (202) 366–1834.

In FHWA: Ms. Mila Plosky, Office of Highway Safety, HHS–20, telephone (202) 366–6902; or Mr. Raymond W. Cuprill, HCC–20, telephone (202) 366–0834.

SUPPLEMENTARY INFORMATION: The National Highway System Designation (NHS) Act of 1995, Pub. L. 104–59, was signed into law on November 28, 1995. Section 320 of the Act established a new Section 161 of Title 23, United States Code (Section 161), which requires the withholding of certain Federal-aid highway funds from States that do not enact and enforce ''zero tolerance'' laws. As provided in Section 161, these ''zero tolerance'' laws must consider an individual under the age of 21 who has a blood alcohol concentration of 0.02 percent or greater while operating a motor vehicle in the State, to be driving while intoxicated or driving under the influence of alcohol.

Section 161 specifically provides that the Secretary must withhold from apportionment a portion of Federal-aid highway funds from any State that does not enact and enforce a conforming ''zero tolerance'' law.