

4. Under Sections 284.288 and 284.403 of the new codes of conduct, a pipeline providing unbundled natural gas sales service under Section 284.284, or any person making natural gas sales for resale in interstate commerce pursuant to Section 284.402, is prohibited from engaging in actions without a legitimate business purpose that manipulate or attempt to manipulate market conditions, including wash trades and collusion.

5. New Sections 284.288 and 284.403 also contain various reporting obligations. To the extent a pipeline providing service under Section 284.284, or any person making natural gas sales for resale in interstate commerce pursuant to Section 284.402, engages in reporting of transactions to publishers of gas price indices, the pipeline or blanket marketing certificate holder shall provide complete and accurate information to any such publisher. Further, such entities must retain all relevant data and information upon which they billed the prices they charged for natural gas they sold pursuant to their market based sales certificate or the prices they reported for use in price indices for three years. Moreover, such entities that engage in reporting must do so consistent with the *Policy Statement on Natural Gas and Electric Price Indices*, 104 FERC ¶ 61,121 (2003) (*Policy Statement*), which provides that a data provider should only report each bilateral, arm's-length transaction between non-affiliated companies. Violation of the preceding provisions may result in disgorgement of unjust profits, suspension or revocation of a pipeline's blanket certificate or other appropriate non-monetary remedies. Finally, any person filing a complaint for a violation of the preceding provisions must do so no later than 90 days after the end of the calendar quarter in which the alleged violation occurred unless that person could not have known of the alleged violation, in which case the 90-day time limit will run from the discovery of the alleged violation.

6. This code of conduct is designed to provide market participants adequate opportunities to detect, and the Commission to remedy, market abuses. This code is clearly defined so that it does not create uncertainty, disrupt competitive commodity markets or simply prove ineffective. However, since competitive markets are dynamic, it is important that we periodically evaluate the impact that these regulations have on the energy markets. We direct our office of Market Oversight and Investigation to evaluate the effectiveness and consequences of these

regulations on an annual basis and to include this analysis in the State of the Markets Report.

## II. Background

### A. Changes in Natural Gas Industry

7. A decade ago, as a result of changes in the natural gas industry, Congressional legislation and various Commission rulemaking proceedings restructuring the gas industry, the Commission issued blanket certificates to allow pipelines and other persons selling natural gas to make sales for resale of natural gas at market-based or negotiated rates. These certificates were granted in two final rules issued by the Commission: Order No. 636<sup>1</sup> and Order No. 547.<sup>2</sup>

8. In Order No. 636, the Commission required all pipelines that provide open-access transportation to offer their sales services on an unbundled basis. To this end, the Commission issued to pipelines holding a blanket transportation certificate under subpart G of part 284 of the Commission's regulations, or performing transportation under subpart B, a blanket certificate authorizing firm and interruptible sales for resale.<sup>3</sup> The Commission required that all firm and interruptible sales services be provided as unbundled services under the blanket sales certificate. The Commission found that this form of regulation would enable the pipelines to compete directly with other gas sellers on the same terms at prices determined in a competitive market. The unbundled sales services were also afforded pregranted abandonment authority.

9. In Order No. 636, the Commission authorized pipelines to make unbundled sales at market-based rates because it concluded that, after unbundling, sellers of short-term or long-term firm gas supplies (whether they be pipelines or other sellers) would not have market power over the sale of natural gas. The Commission's determination was also based on

Congress' express finding that a competitive market exists for gas at the wellhead and in the field. The Commission indicated that it was instituting light-handed regulation, relying upon market forces at the wellhead or in the field to constrain unbundled pipeline sales for resale gas prices within the Natural Gas Act's "just and reasonable" standard. In addition, the requirement that pipelines provide open access transportation from the wellhead to the market also permitted the Commission to exercise light-handed regulation over jurisdictional gas sales. Finally, the Commission stated that it would be regulating the pipeline sales in the same manner as it had done for sales for resale by marketers.

10. The Commission also determined that a pipeline as a gas merchant would be the functional equivalent of a pipeline's marketing affiliate. The Commission concluded that standards of conduct set forth by Order No. 497 would apply to the relationship between the pipeline transportation function and its merchant function.<sup>4</sup> Accordingly, the regulations issuing pipelines blanket sales certificates included standards of conduct and reporting requirements. The purpose of imposing the requirements set forth in Order No. 497 was to ensure that the pipeline did not favor itself as a merchant over other gas suppliers in performing its transportation function.

11. In Order No. 547, as part of the industry restructuring begun by Order No. 636, the Commission issued blanket certificates to all persons who are not interstate pipelines authorizing them to make jurisdictional gas sales for resale at negotiated rates with pregranted abandonment authority.<sup>5</sup> The blanket certificates were issued by operation of

<sup>1</sup> Order No. 636, Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under part 284 of the Commission's Regulations, and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, FERC Stats. & Regs. ¶ 30,939 (1992), order on reh'g, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950 (1992), order on reh'g, Order No. 636-B, 61 FERC ¶ 61,272 (1992), aff'd in part, rev'd in part, *United Distribution Cos. v. FERC*, 88 F.3d 1105 (DC Cir. 1996), cert. denied, 137 L. Ed. 2d 845, 117 S. Ct. 1723, 117 S. Ct. 1724 (1997), on remand, Order No. 636-C, 78 FERC ¶ 61,186 (1997), order on reh'g, Order No. 636-D, 83 FERC ¶ 61,210 (1998).

<sup>2</sup> Regulations Governing Blanket Marketer Sales Certificates, FERC Stats. & Regs. ¶ 30,957 (1992), order on reh'g and clarification, 62 FERC ¶ 61,239 (1993).

<sup>3</sup> 18 CFR 284.281-287 (2003).

<sup>4</sup> Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, Order No. 497, 53 FR 22139 (June 14, 1988), FERC Statutes and Regulations, Regulation Preambles 1986-1990 ¶ 30,820 (1988), order on rehearing, Order No. 497-A, 54 FR 52781 (Dec. 22, 1989), FERC Statutes and Regulations, Regulation Preambles 1986-1990 ¶ 30,868 (1989), order extending sunset date, Order No. 497-B, 55 FR 53291 (Dec. 28, 1990), FERC Statutes and Regulations, Regulation Preambles 1986-1990 ¶ 30,908 (1990), order extending sunset date and amending final rule, Order No. 497-C, 57 FR 9 (Jan. 2, 1992), FERC Statutes and Regulations ¶ 30,934 (1991), reh'g denied, 57 FR 5815, 58 FERC ¶ 61,139 (1992), aff'd in part and remanded in part, *Tenneco Gas v. Federal Energy Regulatory Commission*, 969 F.2d 1187 (DC Cir. 1992), order on remand, Order No. 497-D, 57 FR 58978 (Dec. 14, 1992), FERC Statutes and Regulations ¶ 30,958 (1992), order on reh'g and extending sunset date, Order No. 497-E, 59 FR 243 (Jan. 4, 1994), FERC Statutes and Regulations ¶ 30,987 (Dec. 23, 1994), order on reh'g, Order No. 497-F, 59 FR 15336 (Apr. 1, 1994), 66 FERC ¶ 61,347 (1994).

<sup>5</sup> 18 CFR § 284.401-402 (2003).