

burdensome compliance conditions, the Commission should ascertain critical information on its effects, including the percentage of the natural gas sellers that would be required to comply with the proposed rule or the amount of the gas affected. Commenters argue that uncertainty caused by the proposed rules would be particularly damaging in light of the current need for additional supplies and the current need to regain investor confidence.

19. However, several commenters support the Commission's action in imposing a code of conduct.<sup>8</sup> These commenters state that if jurisdictional gas sellers seek to avoid a requirement that they do business honestly by restructuring their business to escape the Commission's jurisdiction, Congress might be interested in broadening the Commission's jurisdiction to prevent such outcomes. Moreover, they assert that the only way that jurisdictional certificate holders could be at a competitive disadvantage is if they are competing against companies that are engaging in the very illegal acts that the Commission's code of conduct is proscribing. Finally, commenters argue that the proposed regulations should not harm any market participant and should not have a negative impact on natural gas prices, but will only require action consistent with a competitive market.

20. The Commission has reviewed the comments setting forth possible problems in placing a code of conduct regulations over the portion of the natural gas marketplace within its jurisdiction. In the Commission's view, implementing these regulations designed to prevent manipulation of market prices and prevent abusive behavior which distorts the competitive marketplace for natural gas will not present an undue burden for gas sellers under the Commission's jurisdiction or disrupt the competitive gas market.

21. As stated above, the Commission retains jurisdiction of sales of domestic gas for resale by pipelines, local distribution companies and affiliated entities, if the seller does not produce the gas it sells. The fact that the Commission does not regulate the entire natural gas market does not compel the Commission to refrain from exercising its authority over that portion of the gas market which is within its jurisdiction to prevent the manipulation of prices. By its action here, the Commission will maintain and protect the competitive marketplace within its jurisdiction. On balance, the Commission finds that its statutory responsibility to ensure just and reasonable rates for the sales over

which it does have jurisdiction outweighs concerns that a portion of the market will not be subject to these regulations and the potential resulting market disruptions.<sup>9</sup>

22. This finding is based upon a balancing of factors raised by the commenters against the Commission's duty to maintain the competitive marketplace for natural gas within its jurisdiction. Although all sellers of natural gas will not be under the same set of regulations, this does not by itself place an undue burden, or for that matter, a competitive disadvantage of any consequence upon the sellers of natural gas within the Commission's jurisdiction. This is because the regulations to be placed upon jurisdictional natural gas sellers only prevent such market participants from distorting the competitiveness of the marketplace by engaging in abusive or manipulative acts in the marketplace. For instance, commenters argue that the increased regulatory risk could shift capital markets against those subject to the new regulations. This argument is speculative and it appears to the Commission that it is at least equally likely that investors and gas buyers would gain confidence in the knowledge that the jurisdictional seller of natural gas was required to engage in business practices that do not abuse or manipulate the marketplace.

#### *B. Limited Jurisdiction of Blanket Certificates*

23. In its June 26 NOPR, the Commission proposed to delete the last sentence of 18 CFR 284.402(a) (2003) from its regulations. That sentence reads, "[a] blanket certificate issued under Subpart L is a certificate of limited jurisdiction which will not subject the certificate holder to any other regulation under the Natural Gas Act jurisdiction of the Commission by virtue of the transactions under the certificate."

24. Several commenters raise concerns regarding this deletion.<sup>10</sup> Commenters argue that the statement of limited jurisdiction for the subject blanket certificates should remain in the regulations in order to relieve blanket holders of market sales certificates from any aspect of the Commission's jurisdiction which does not apply to market based rates such as the filing of

tariff rates and various forms. Retaining this statement of limited jurisdiction is of particular concern to LDCs that are comprehensively regulated at the state level.<sup>11</sup> Commenters argue that the Commission should clarify that blanket certificate holders are not subject to any other regulations except as provided in Subpart L of Part 284. Finally, commenters argued that the new rules and burdens are inappropriate for affiliates of small pipelines, particularly where the pipeline is non-major and serves few customers and the affiliated seller is selling supplies for the primary purpose of balancing its purchases with its manufacturing needs.<sup>12</sup> These commenters argue that the Commission should establish a procedure to exempt such affiliates of small pipelines.

25. The Commission has reviewed the comments and has determined that it will not delete the affirmative statement of limited jurisdiction from its regulations; rather, in keeping with the points raised by the comments it will modify the sentence to read, "[a] blanket certificate issued under Subpart L is a certificate of limited jurisdiction which will not subject the certificate holder to any other regulation under the Natural Gas Act jurisdiction of the Commission, other than that set forth in this Subpart L, by virtue of the transactions under this certificate." Because the regulations adopted by the instant rulemaking will be placed in Subpart L, this action will maintain the original intent of the limited market based blanket certificate while allowing for the new conditions found necessary by the Commission.

26. Further, the Commission will not grant a generic exception to these regulations for small entities. In the Commission's view, entities with a small number of customers making few, or low volume, transactions should incur only minimal administrative or financial burden by virtue of these regulations.

#### *C. Code of Conduct*

##### *1. General Language Prohibiting Manipulation*

27. As revised Section 284.288(a) of the Commission's regulations provides that:

A pipeline that provides unbundled natural gas service under § 284.284 is prohibited from engaging in actions or transactions that are without a legitimate business purpose and that are intended to or foreseeably could manipulate market prices,

<sup>9</sup> We note that the Commission also does not have jurisdiction over all sales for resale in electric markets. The Commission nevertheless exercises its authority to prevent manipulation of the market by those sellers over whom it does have jurisdiction.

<sup>10</sup> See e.g., Peoples, TXU, NiSource, USG, AGA, NGA, NJR Companies, Shell Offshore, BP, Western.

<sup>11</sup> See NiSource.

<sup>12</sup> See USG.

<sup>8</sup> See, e.g., BP, EMIT, CPUC, NASUCA.