

XI. Effective Date and Congressional Notification

188. This final rule will take effect on February 9, 2004. The Commission has determined with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget that this rule is a “non-major rule” within the meaning of Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.⁸⁹ The Commission will submit the final rule to both houses of Congress and the General Accounting Office.⁹⁰

List of Subjects

18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 161

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental Shelf, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 358

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

By the Commission. Commissioner Brownell dissenting in part with a separate statement attached.

Magalie R. Salas,
Secretary.

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

PART 37—OPEN ACCESS SAME-TIME INFORMATION SYSTEMS

■ 1. The authority citation for part 37 continues to read as follows:

Authority: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. In part 37, the heading is revised to read as set forth above.

§ 37.4 [Removed and Reserved]

■ 3. Section 37.4 is removed and reserved.

§ 37.6 [Amended]

■ 4. In § 37.6(g)(3), the word “§ 37.4(b)(2)” is removed and the word “§ 358.4(c)” is added in its place and in § 37.6(g)(4), the word “§ 37.4(b)(5)(iii)” is removed and the word “§ 358.5(c)(4)” is added in its place.

PART 161—[REMOVED]

■ 5. Part 161 is removed in its entirety.

PART 250—FORMS

■ 6. The authority citation for part 250 continues to read as follows:

Authority: 16 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

§ 250.16 [Amended]

■ 7. In § 250.16(a), the word “§ 161.2” is removed and the word “§ 358.3” is added in its place and in § 250.16(e), the word “§ 161.3” is removed and the words “§§ 358.4 and 358.5” are added in its place.

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

§ 284.13 [Amended]

■ 8. In § 284.13(a), the word “Part 161” is removed and the word “part 358” is added in its place.

§ 284.286 [Amended]

■ 9. In § 284.286(c), the words “§ 161.3(a), (b), (d), and (k) of this chapter and comply with § 161.3(c), (e), (f), (g), (h), and (l) of this chapter” are removed and the word “part 358” is added in their place.

■ 10. Subchapter S, consisting of part 358, is added to read as follows:

SUBCHAPTER S—STANDARDS OF CONDUCT FOR TRANSMISSION PROVIDERS

PART 358—STANDARDS OF CONDUCT

Sec.

- 358.1 Applicability.
- 358.2 General principles.
- 358.3 Definitions.
- 358.4 Independent functioning.
- 358.5 Non-discrimination requirements.

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

§ 358.1 Applicability.

(a) This part applies to any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter.

(b) This part applies to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce.

(c) This part does not apply to a public utility Transmission Provider that is a Commission-approved Independent System Operator (ISO) or Regional Transmission Organization (RTO). If a public utility transmission owner participates in a Commission-approved ISO or RTO and does not operate or control its transmission facilities and has no access to transmission, customer or market information covered by § 385.5(b), it may request an exemption from this part.

(d) A Transmission Provider may file a request for an exemption from all or some of the requirements of this part for good cause.

§ 358.2 General principles.

(a) A Transmission Provider's employees engaged in transmission system operations must function independently from the Transmission Provider's marketing and sales employees, and from any employees of its Energy Affiliates.

(b) A Transmission Provider must treat all transmission customers, affiliated and non-affiliated, on a non-discriminatory basis, and must not operate its transmission system to preferentially benefit an Energy Affiliate.

§ 358.3 Definitions.

(a) *Transmission Provider* means:

(1) Any public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce; or

(2) Any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter.

(b) *Affiliate* means:

(1) Another person which controls, is controlled by or is under common control with, such person, and

(2) For any exempt wholesale generator, as defined under Section 32(a) of the Public Utility Holding Company Act of 1935, as amended, the same as provided in Section 214 of the Federal Power Act.

(c) *Control* (including the terms “controlling,” “controlled by,” and “under common control with”) as used in this part and § 250.16 of this chapter, includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting

⁸⁹ 5 U.S.C. 804(2) (2000).

⁹⁰ 5 U.S.C. 801(a)(1)(A) (2000).