

Statements A and B in paragraphs (b)(1) and (2) of this section. The statement must include all pertinent data about the storage facilities and services.

(4) *Statement D—competitive alternatives.* This statement must describe available alternatives in competition with the applicant in the relevant markets and other competition constraining the applicant's rates in those markets. Such proposed alternatives may include an appropriate combination of other storage, local gas supply, LNG, financial instruments and pipeline capacity. These alternatives must be shown to be reasonably available as a substitute in the area to be served soon enough, at a price low enough, and with a quality high enough to be a reasonable alternative to the applicant's services. Capacity (transportation, storage, LNG, or production) owned or controlled by the applicant and affiliates of the applicant in the relevant market shall be clearly and fully identified and may not be considered as alternatives competing with the applicant. Rather, the capacity of an applicant's affiliates is to be included in the market share calculated for the applicant. To the extent available, the statement must include all pertinent data about storage or other alternatives and other constraining competition.

(5) *Statement E—potential competition.* This statement must describe potential competition in the relevant markets. To the extent available, the statement must include data about the potential competitors, including their costs, and their distance in miles from the applicant's facilities and major consuming markets. This statement must also describe any relevant barriers to entry and the applicant's assessment of whether ease of entry is an effective counter to attempts to exercise market power in the relevant markets.

(6) *Statement F—maps.* This statement must consist of maps showing the applicant's principal facilities, pipelines to which the applicant intends to interconnect and other pipelines within the area to be served, the direction of flow of each line, the location of the alternatives to the applicant's service offerings, including their distance in miles

from the applicant's facility. The statement must include a general system map and maps by geographic markets. The information required by this statement may be on separate pages.

(7) *Statement G—market-power measures.* This statement must set forth the calculation of the market concentration of the relevant markets using the Herfindahl-Hirschman Index. The statement must also set forth the applicant's market share, inclusive of affiliated service offerings, in the markets to be served. The statement must also set forth the calculation of other market-power measures relied on by the applicant. The statement must include complete particulars about the applicant's calculations.

(8) *Statement H—other factors.* This statement must describe any other factors that bear on the issue of whether the applicant lacks significant market power in the relevant markets. The description must explain why those other factors are pertinent.

(9) *Statement I—prepared testimony.* This statement must include the proposed testimony in support of the application and will serve as the applicant's case-in-chief, if the Commission sets the application for hearing. The proposed witness must subscribe to the testimony and swear that all statements of fact contained in the proposed testimony are true and correct to the best of his or her knowledge, information, and belief.

§ 284.504 Standard requirements for market-power authorizations.

(a) Applicants granted the authority to charge market-based rates under § 284.503 that provide cost-based service(s) must separately account for all costs and revenues associated with facilities used to provide the market-based services. When it files to change its cost-based rates, applicant must provide a summary of the costs and revenues associated with market-based rates with applicable cross references to §§ 154.312 and 154.313 of this chapter. The summary statement must provide the formulae and explain the bases used in the allocation of common costs between the applicant's cost-based services and its market-based services.

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(b) A storage service provider granted the authority to charge market-based rates under §284.503 is required to notify the Commission within 10 days of acquiring knowledge of significant changes occurring in its market power status. Such notification should include a detailed description of the new facilities/services and their relationship to the storage service provider. Significant changes include, but are not limited to:

- (1) The storage provider expanding its storage capacity beyond the amount authorized in this proceeding;
- (2) The storage provider acquiring transportation facilities or additional storage capacity;
- (3) An affiliate providing storage or transportation services in the same market area; and
- (4) The storage provider or an affiliate acquiring an interest in or is acquired by an interstate pipeline.

§284.505 Market-based rates for storage providers without a market-power determination.

(a) Any storage service provider seeking market-based rates for storage capacity, pursuant to the authority of section 4(f) of the Natural Gas Act, related to a specific facility put into service after August 8, 2005, may apply for market-based rates by complying with the following requirements:

- (1) The storage service provider must demonstrate that market-based rates are in the public interest and necessary to encourage the construction of the storage capacity in the area needing storage services; and
- (2) The storage service provider must provide a means of protecting customers from the potential exercise of market power.

(b) Any storage service provider seeking market-based rates for storage capacity pursuant to this section will be presumed by the Commission to have market power.

PART 286—ACCOUNTS, RECORDS, MEMORANDA AND DISPOSITION OF CONTESTED AUDIT FINDINGS AND PROPOSED REMEDIES

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DISPOSITION OF CONTESTED AUDIT FINDINGS AND PROPOSED REMEDIES

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AUTHORITY: 5 U.S.C. 551 *et seq.*; 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7102–7352.

§ 286.101 Application for stay.

(a) *General rule.* Any person who believes that any provision of a final or interim regulation issued under the Natural Gas Policy Act of 1978 is unlawful as applied to such person may file an application for stay.

(b) *Content of application.* The application shall state, clearly and concisely:

- (1) The provision of the regulation, by section, paragraph, subparagraph and clause, as appropriate, which applicant seeks to have stayed;
- (2) The conditions which the applicant believes require the stay, including the irreparable injury which the applicant believes will result if the stay is not granted; and
- (3) The factual and legal basis for applicant’s contention that the final or interim regulation is unlawful.

(c) *Filing requirements.* The application shall be under oath. An original and three conformed copies shall be filed with the Secretary of the Commission.

(d) *Commission action.* The Commission may grant the application, in whole or in part, by issuing an order specifying the scope of the stay granted and the effective dates of the stay.

[43 FR 57599, Dec. 8, 1978, as amended at 44 FR 13473, Mar. 12, 1979]

§ 286.102 Application for rehearing.

(a) *General rule.* Any person aggrieved by any order or regulation or any amendment to a regulation issued under the NGPA and subject to judicial review under section 506(a) or (b) thereof shall file a petition for rehearing within 30 days after the order or regulation is issued by the Commission or February 3, 1979, whichever is later. There has not been an exhaustion of