

release capacity to a designated replacement shipper for a period of less than one calendar month without having to comply with the advance posting and bidding requirements. Releases under this provision would have to be posted no later than 48 hours after the release transaction begins. In addition, the Commission prohibited parties in transactions covered by this exception from rolling-over or granting extensions without complying with the requirements for prior notice and bidding.

The Commission adopted the less-than-one calendar month exception to balance two objectives of the capacity release mechanism.<sup>3</sup> The exception served to promote a robust secondary market by ensuring that parties could quickly and efficiently consummate short-term deals in emergency situations, such as a power plant outage resulting in excess capacity, without the administrative complications resulting from the advance posting and bidding requirements. On the other hand, the restriction to less-than-one calendar month was intended to ensure that normal monthly transactions would have to comply with the advance posting and bidding requirements to ensure open and non-discriminatory access to the capacity release market. The Commission expressed confidence that the pipelines could design capacity release procedures to efficiently handle full calendar month transactions.

The capacity release system has now been in effect for a full year and the Commission has begun the process of evaluating the system's operation. In the course of this review, the staff of the Commission has conducted informal discussions about the operation of the capacity release system and possible changes or modifications to improve the system with all major segments of the gas industry, including pipelines, local distribution companies, marketers, producers, end-users, and others interested in the capacity release market, such as companies developing third-party bulletin boards.

### III. Discussion

The Commission is now proposing to amend § 284.243(h) to extend the short-term release exception from less than one calendar month to a full calendar month. The revision would permit firm shippers to negotiate pre-arranged releases for a full calendar month without having to comply with the

advance posting and bidding requirements.

During the course of staff's review of the capacity release system, industry participants overwhelmingly recommended that the less-than-one calendar month exception be modified to a full calendar month. They argued that the industry generally conducts its gas purchases on a monthly basis, so that customers requiring capacity need to acquire a full month's capacity. They further pointed out that most monthly transactions occur during a very compressed time period known as bid week and that this time pressure requires that shippers be able to obtain released capacity quickly with the certainty that the deal will go through as negotiated.

As a result, the industry has developed a practice of designing so-called "29/1 day" deals to arrive at full month releases. Under this practice, shippers release capacity under the § 284.243(h) exception for 29 days (or less than one calendar month) and then post a release offer for bidding for the remaining day of the month. This practice ensures that the designated replacement shipper can obtain a full month's capacity, since rarely do other shippers want to purchase capacity for one day or the one-day prearranged deal is posted at the maximum rate. While this procedure does permit full month releases, the industry participants claimed that posting for one day is administratively cumbersome. They pointed out that the 29/1 day deals require two EBB postings, the consummation of a second contract with the pipelines, and the need for two bills. Pipelines similarly have sought waivers of the Commission's regulations to change the definition of short-term prearranged releases to one full calendar month to eliminate the administrative burdens associated with double release requests.<sup>4</sup>

Based on the seeming unanimity of support for extending the short term exception to one full calendar month, the Commission is proposing to make this change. This revision should promote a more effective capacity release market because it will better comport with the industry's purchasing practices and will provide the speed and certainty needed for one month transactions, without entailing the administrative burdens inherent in the 29/1 day deals.

<sup>4</sup> Natural Gas Pipeline Company of America, 67 FERC ¶ 61,385 at 62,316-17 (1994) (Commission denied the requests because it wanted to ensure that changes to the capacity release system were uniform for all pipelines).

The Commission's original reason for restricting the short-term exception to less-than-one calendar month deals was to limit the exception to emergency situations, so as to maximize the open bidding for capacity. The Commission believed at the time that the pipelines' posting and bidding procedures could be designed to permit normal one-month transactions. However, the widespread use of 29/1 day deals demonstrates that bidding for one month deals is not taking place, and any attempt to limit or restrict the 29/1 practice in order to further promote bidding would seem only to create further inefficiencies. On balance, therefore, the greater speed and efficiency made possible by the elimination of the less-than-one calendar month restriction appears to outweigh any potential loss from the elimination of the advance posting and bidding requirements. The Commission and the industry will still be able to monitor one month deals for adherence to the Commission's policies against undue discrimination because all deals will be posted on the pipelines' EBBs within 48 hours.

Given the apparent broad support for changing the short term exception, the Commission is proposing to make this one change at this time so it can be implemented as quickly as possible. This, however, is not the end of the Commission's inquiry. The Commission still is considering further adjustments to the capacity release mechanism.

### IV. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.<sup>5</sup> The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.<sup>6</sup> The action taken here falls within categorical exclusions provided in the Commission's regulations.<sup>7</sup> Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

### V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)<sup>8</sup> generally requires a description

<sup>5</sup> Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987).

<sup>6</sup> 18 CFR 380.4.

<sup>7</sup> See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5).

<sup>8</sup> 5 U.S.C. 601-612.

<sup>3</sup> See Order No. 636-A, III FERC Stats. & Regs. Preambles at 30,554; Order No. 636-B, 61 FERC at 61,994-95.