

University of Colorado Law School

## Colorado Law Scholarly Commons

---

Natural Gas Symposium: Contract Solutions for  
the Future of Regulatory Environment (March  
24-25)

1983

---

3-24-1983

### Section 311 and 312 of the Natural Gas Policy Act of 1978 and Hinshaw Pipelines

Lauren Eaton

Follow this and additional works at: <https://scholar.law.colorado.edu/natural-gas-symposium-contract-solutions-for-future-of-regulatory-environment>



Part of the [Administrative Law Commons](#), [Antitrust and Trade Regulation Commons](#), [Bankruptcy Law Commons](#), [Commercial Law Commons](#), [Contracts Commons](#), [Courts Commons](#), [Dispute Resolution and Arbitration Commons](#), [Energy and Utilities Law Commons](#), [Energy Policy Commons](#), [Law and Economics Commons](#), [Legal Remedies Commons](#), [Legislation Commons](#), [Marketing Commons](#), [Natural Resource Economics Commons](#), [Natural Resources Law Commons](#), [Natural Resources Management and Policy Commons](#), [Oil, Gas, and Energy Commons](#), [Oil, Gas, and Mineral Law Commons](#), [Operations Research, Systems Engineering and Industrial Engineering Commons](#), and the [Transportation Law Commons](#)

---

#### Citation Information

Eaton, Lauren, "Section 311 and 312 of the Natural Gas Policy Act of 1978 and Hinshaw Pipelines" (1983). *Natural Gas Symposium: Contract Solutions for the Future of Regulatory Environment (March 24-25)*. <https://scholar.law.colorado.edu/natural-gas-symposium-contract-solutions-for-future-of-regulatory-environment/3>

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.



William A. Wise Law Library  
COLORADO **LAW**  
UNIVERSITY OF COLORADO **BOULDER**



Getches-Wilkinson Center Collection

Lauren Eaton, *Section 311 and 312 of the Natural Gas Policy Act of 1978 and Hinshaw Pipelines*, in NATURAL GAS SYMPOSIUM: CONTRACT SOLUTIONS FOR THE FUTURE REGULATORY ENVIRONMENT (Natural Res. Law Ctr., Univ. of Colo. Sch. of Law 1983).

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.

SECTION 311 AND 312 OF THE  
NATURAL GAS POLICY ACT OF 1978  
AND HINSHAW PIPELINES

by

LAUREN EATON  
Attorney  
Dunnam & Strong  
Houston, Texas

for the

NATURAL GAS SYMPOSIUM: CONTRACT  
SOLUTIONS FOR THE FUTURE  
REGULATORY ENVIRONMENT

Sponsored by  
University of Colorado School of Law  
Natural Resources Law Center  
and the  
University of Houston Law Center

# DUNNAM & STRONG

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

1450 ONE ALLEN CENTER  
500 DALLAS STREET  
HOUSTON, TEXAS 77002  
713-757-0160

## Section 311 and 312 of the Natural Gas Policy Act of 1978 and Hinshaw Pipelines

### I. BACKGROUND

#### A. Natural Gas Act jurisdiction

1. Transportation and sales for resale in interstate commerce. (NGA §1(b))
2. Definition of natural-gas company. (NGA §2(6))
3. Hinshaw exemption - natural gas received within or at the boundary of a state if all such gas is ultimately consumed within such state provided rates and service are subject to regulation by a state commission. (NGA §1(c))
4. Consequences of Natural Gas Act jurisdiction.
  - (a) Rate regulation. (NGA §4)
  - (b) Certificate and abandonment authorization required. (NGA §7)

#### B. Policy basis for NGPA Sections 311 and 312

1. Removal of interstate-intrastate wellhead price disparity.
2. Creation of national gas market - market ordering.
3. Fuel oil displacement.
4. Past history.
  - (a) Emergency Natural Gas Act.
  - (b) Section 2.79 of the FERC regulations: relief to end-users of pipeline curtailment; authorization to transport gas sold directly to Priority 2 and 3 end-users.

- (c) Section 157.29 of the FERC regulations; relief of eminent danger to life and property or assure maintenance of adequate natural gas service or relief of curtailment; self-implementing sale (to p/l) or transportation limited to 60 days.

## II. NGPA SECTION 311: AUTHORIZATION OF CERTAIN SALES AND TRANSPORTATION

### A. Definition of terms

1. Interstate pipeline.
2. Intrastate pipeline.
3. Local distribution company.
4. Hinshaw pipeline - receipt of blanket certificate under Section 284.222 of the FERC regulations authorizes Hinshaw pipelines to conduct transportation and sales under Section 311 in the same manner as intrastate pipelines.

### B. Consequences of conducting Section 311 transactions

1. Exemption from NGA jurisdiction (certificate, abandonment and rate regulation authority) (NGPA Section 601).
2. Intrastate pipelines conducting Section 311 transactions will not thereby become subject to NGA jurisdiction (NGPA Section 601).
3. Facilities used solely for transportation transactions under Section 311(a) are not subject to NGA jurisdiction (Section 284.3(c) of the FERC regulations).

## III. NGPA SECTION 311 TRANSPORTATION

### A. Section 311(a)(1): Transportation by an interstate pipeline on behalf of an intrastate pipeline or local distribution company. (Subpart B of Part 284 of the FERC regulations)

1. Contractual requirements. (Section 284.104 of FERC regulations)

- (a) Availability of capacity without detriment to existing system supply customers (interruptible).
    - (b) Subject to FERC regulations.
  - 2. Rate regulation - just and reasonable standard. (Section 284.103)
    - (a) Rate schedule applicable to Section 311 transportation on file with the FERC; if no such rate schedule is on file, the election of the following:
      - (b) Rate determined by methodology used in designing presently effective sales rate schedules for transmission and storage costs;
      - (c) Rate used in transportation rate schedule for comparable services.
  - 3. Treatment of revenues (Section 284.103). General rule: excess of 1¢ per MMBtu credited to pipeline's rates and flowed back to its customers.
- B. Section 311(a)(2): Transportation by an intrastate pipeline on behalf of an interstate pipeline or local distribution company (Subpart C of Part 284)
- 1. Contractual requirements. (Section 284.124)
  - 2. Rate regulation - reasonably comparable to charges for similar service by interstate pipeline. (Section 284.123)
    - (a) Election of the following:
      - (1) Rate based on methodology used in designing effective city-gate sales rate schedule;
      - (2) Rate based on allowance included in local distribution company rates for city-gate service;
      - (3) Rate used in transportation rate schedule.

(b) If election not made above then apply for FERC approval; pending FERC review (FERC action must be taken within 150 days), rate may be collected subject to refund; fair and equitable standard.

3. Treatment of revenues (Section 284.123). FERC presumption that revenues are taken into account by state regulatory authority.

#### C. General Rules

1. FERC application and prior certificate authority necessary if transaction does not comply with requirements.
2. Excessive rates collected are subject to refund with interest. (Section 284.2)
3. FERC retains authority to prospectively apply terms and conditions. (Section 284.5)
4. The term "transportation" includes exchange and back-haul (displacement).
5. "On behalf of" - nexus between transporting pipeline and the party on whose behalf the service is being conducted; title to the gas during transportation need not reside with the party being served (FERC Order No. 46 issued August 30, 1979; Letter Opinion issued February 25, 1980 to Southern Natural Gas Company).

#### D. Self-implementation and reporting requirements

1. Self-implementing transactions limited to two-year term.
2. "System supply" test - natural gas transported under Section 311(a)(1) of 311(a)(2) must become part of the recipient's system supply for resale; delivery directly to an end-user may not qualify although that end-user is a customer of the pipeline on whose behalf the transportation is being conducted (FERC Order No 46 issued August 30, 1979; FERC Order issued in Louisiana Intrastate Gas Corporation, Docket No. ST81-319 on November 13, 1981; alternatively see FERC Order issued in Panhandle Eastern Pipe Line Company, et al., Docket No. CP80-231 on August 12, 1980.

3. Importance of compliance with reporting requirements - See FERC Order issued in Valero Transmission Company, Docket NO. ST80-330-000 on June 22, 1982, wherein the FERC imposed \$30,000 civil penalty for failure to comply with reporting requirements.
4. Reports required
  - (a) Summary report - by telegram within 48 hours to FERC (or FERC and State agency if transaction conducted by intrastate pipeline). (Section 284.4 of the FERC regulations)
  - (b) Initial report - signed under oath and filed within 30 days with FERC (or FERC and State agency in case of intrastate pipeline). (Sections 284.106 and 284.126 of the FERC regulations)
  - (c) Significant change report.
  - (d) Extension report - filed not less than ninety days prior to expiration of original transaction.
  - (e) Final report - filed within 30 days after expiration of transaction.

E. Recent cases

1. Order issued in Natural Gas Pipeline Company of America, Docket No. CP80-520, and Energy Gathering, Inc., Docket No. CP81-43 on March 5, 1982;
  - (a) FERC reversed policy with respect to Hinshaw pipelines - no longer necessary to apply for exemption provided the pipeline meets the two-prong test.
    - (1) All gas received by the pipeline must be consumed within the state.
    - (2) The pipeline's rates, services and facilities must be subject to regulation by a state commission.



- (b) Present and future customers of a Hinshaw pipeline are not automatically exempt from NGA jurisdiction - every transportation or sale for resale occurring between wellhead and consumer must be analyzed separately.
2. Declaratory Order issued in Transwestern Pipeline Company, Docket No. CP81-99-000 on May 25, 1982: the fact that an intrastate pipeline receives gas at a first sale outside the state does not affect its jurisdictional status.
  3. Declaratory Order issued in Delhi Gas Pipeline Corporation and Houston Pipe Line Company, Docket No. CP81-496-000 on May 25, 1982: gas produced in one state and owned by an intrastate pipeline, transported under Section 311(a)(1) and resold to a second intrastate pipeline in another state will subject the transaction to NGA jurisdiction.
  4. Order issued in Kokomo Gas and Fuel Company, Docket No. CP81-455-000 on June 18, 1982: a Hinshaw pipeline "receives" natural gas at the point of physical delivery to its system, not at the point at which title passes; this decision overrules prior rule under Marathon and implements the underlying policy of NGPA Section 311 to create a national gas market.
  5. Order issued in United Gas Pipe Line Company, Docket No. CP81-52-000 on May 25, 1982: gas transported on behalf of intrastate pipeline to direct end-user in another state will not subject intrastate pipeline to NGA jurisdiction; the sale to an end-user is not a sale for resale; not applicable to Hinshaw pipelines because gas is not ultimately consumed within the Hinshaw's state.

#### IV. NGPA Section 311 Sales

- A. Section 311(b): Sales by an intrastate pipeline to interstate pipeline or local distribution company served by an interstate pipeline. (Subpart D of Part 284)
- B. Rate regulation
  1. Fair and equitable standard - weighted average acquisition cost plus adjustment for gas purchased at higher cost during same billing period and recovery and reasonable profit for transportation and processing costs. (Section 284.144)

- C. Limitation of two years
- V. NGPA Section 312 - assignments by intrastate pipeline of contractual rights to surplus gas to interstate pipeline or local distribution company
- A. No profit on assignment except for transportation and delivery services
  - B. Surplus natural gas excludes dedicated interstate gas and deregulated gas
  - C. Prior authorization required from FERC unless state agency determination that the gas is surplus to current requirements of intrastate pipeline and price does not exceed NGPA Section 102 ceiling price.
- VI. Fuel Oil Displacement Program (Subpart F of Part 284)
- A. Authorized by Economic Regulatory Administration and FERC
  - B. One year duration; extensions available