

§2.400

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(b) In order for the issue of abuse, as that term is used in section 601(c) of the NGPA, to be considered in a proceeding, an intervenor or intervenors must file a complaint alleging that:

(1) The interstate pipeline, a first seller who sells to the interstate pipeline, or both acting together, have made a negligent misrepresentation or concealment, or other misrepresentation or concealment in disregard of a duty; and

(2) Because of that negligent misrepresentation or concealment, or other misrepresentation or concealment in disregard of a duty, the amount paid by the interstate pipeline to any first seller of natural gas was higher than it would have been absent the negligent misrepresentation or concealment, or other misrepresentation or concealment made in disregard of a duty.

(c) In order for the issue of similar grounds, as that term is used in section 601(c) of the NGPA, to be considered in a proceeding, an intervenor or intervenors must file a complaint alleging that:

(1) The interstate pipeline, any first seller who sells natural gas to the interstate pipeline, or both acting together, have made an innocent misrepresentation of fact; and

(2) Because of that innocent misrepresentation of facts, the amount paid by the interstate pipeline to any first seller of natural gas was higher than it would have been absent the innocent misrepresentation of fact.

(Natural Gas Policy Act of 1978, Pub. L. 95-621, 92 Stat. 3350, (15 U.S.C. 3301-3432))

[47 FR 6262, Feb. 11, 1982]

STATEMENT OF INTERPRETATION UNDER THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

§2.400 Statement of interpretation of waste concerning natural gas as the primary energy source for qualifying small power production facilities.

For purposes of deciding whether natural gas may be considered as waste as the primary energy source pursuant to §292.204(b)(1)(i) of this chapter, the Commission will use the criteria de-

scribed in paragraphs (a), (b) and (c) of this section.

(a) *Category 1.* Except as provided in paragraph (b) of this section, natural gas with a heating value of 300 Btu per standard cubic foot (scf) or below will be considered unmarketable.

(b) *Category 2.* In determining whether natural gas with a heating value above 300 Btu but not more than 800 Btu per scf and natural gas produced in the Moxa Arch area is unmarketable, the Commission will consider the following information:

(1) The percentages of the chemical components of the gas, the wellhead pressure, and the flow rate;

(2) Whether the applicant offered the gas to all potential buyers located within 20 miles of the wellhead under terms and conditions commensurate with those prevailing in the region and that such potential buyers refused to buy the gas; and

(3) A study, which may be submitted by an applicant, that evaluates the economics of upgrading the gas for sale and transporting the gas to a pipeline. The study should include estimates of the revenues which could be derived from the sale of the gas and the fixed and variable costs of upgrading.

(c) *Category 3.* In determining whether natural gas with a heating value above 800 Btu per scf is marketable, the Commission will consider the information included in paragraph (b) of this section and whether:

(1) The gas has actually been flared, vented to the atmosphere, or continuously injected into a non-producing zone for a period of one year, pursuant to legal authority; or

(2) The gas has been certified as waste, *i.e.*, suitable for disposal, by an appropriate state authority.

[Order 471, 52 FR 19310, May 22, 1987]

STATEMENT OF PENALTY REDUCTION/WAIVER POLICY TO COMPLY WITH THE SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT OF 1996

§2.500 Penalty reduction/waiver policy for small entities.

(a) It is the policy of the Commission that any small entity is eligible to be considered for a reduction or waiver of a civil penalty if it has no history of

previous violations, and the violations at issue are not the product of willful or criminal conduct, have not caused loss of life or injury to persons, damage to property or the environment or endangered persons, property or the environment. An eligible small entity will be granted a waiver if it can also demonstrate that it performed timely remedial efforts, made a good faith effort to comply with the law and did not obtain an economic benefit from the violations. An eligible small entity that cannot meet the criteria for waiver of a civil penalty may be eligible for consideration of a reduced penalty. Upon the request of a small entity, the Commission will consider the entity's ability to pay before assessing a civil penalty.

(b) Notwithstanding paragraph (a) of this section, the Commission reserves the right to waive or reduce civil penalties in appropriate individual circumstances where it determines that a waiver or reduction is warranted by the public interest.

[Order 594, 62 FR 15830, Apr. 3, 1997]

APPENDIX A TO PART 2—GUIDANCE FOR DETERMINING THE ACCEPTABLE CONSTRUCTION AREA FOR REPLACEMENTS

These guidelines shall be followed to determine what area may be used to construct the replacement facility. Specifically, they address what areas, in addition to the permanent right-of-way, may be used.

Pipeline replacement must be within the existing right-of-way as specified by §2.55(b)(1)(ii). Construction activities for the replacement can extend outside the current permanent right-of-way if they are within the temporary and permanent right-of-way and associated work spaces used in the original installation.

If documentation is not available on the location and width of the temporary and permanent rights-of-way and associated work space that was used to construct the original facility, the company may use the following guidance in replacing its facility, provided

the appropriate easements have been obtained:

a. Construction should be limited to no more than a 75-foot-wide right-of-way including the existing permanent right-of-way for large diameter pipeline (pipe greater than 12 inches in diameter) to carry out routine construction. Pipeline 12 inches in diameter and smaller should use no more than a 50-foot-wide right-of-way.

b. The temporary right-of-way (working side) should be on the same side that was used in constructing the original pipeline.

c. A reasonable amount of additional temporary work space on both sides of roads and interstate highways, railroads, and significant stream crossings and in side-slope areas is allowed. The size should be dependent upon site-specific conditions. Typical work spaces are:

Item	Typical extra area (width/length)
Two lane road (bored)	25–50 by 100 feet.
Four lane road (bored)	50 by 100 feet.
Major river (wet cut)	100 by 200 feet.
Intermediate stream (wet cut)	50 by 100 feet.
Single railroad track	25–50 by 100 feet.

d. The replacement facility must be located within the permanent right-of-way or, in the case of nonlinear facilities, the cleared building site. In the case of pipelines this is assumed to be 50-foot-wide and centered over the pipeline unless otherwise legally specified.

However, use of the above guidelines for work space size is constrained by the physical evidence in the area. Areas obviously not cleared during the original construction, as evidenced by stands of mature trees, structures, or other features that exceed the age of the facility being replaced, should not be used for construction of the replacement facility.

If these guidelines cannot be met, the company should consult with the Commission's staff to determine if the exemption afforded by §2.55 may be used. If the exemption may not be used, construction authorization must be obtained pursuant to another regulation under the Natural Gas Act.

[Order 603, 64 FR 26603, May 14, 1999]

APPENDIX B TO PART 2 [Reserved]

Appendix C to Part 2—Nationwide Proceeding Computation of Federal Income Tax Allowance Independent Producers,
Pipeline Affiliates and Pipeline Producers Continental U.S.—1972 Data (Docket No. R-478)

Pl. 2, App. C

Line No.	Particulars	Schedule No.	Line No.	(1)—Total ¹	(2)—Total excluding production taxes ²	(3)—Gas only ³	(4)—Lease separation ³	(5)—No lease separation ³	(6)—Total ⁴	(7)—Percentage lease separation gas ⁵	(8)—Allocated amount gas ⁶
PRODUCTION, EXPLORATION AND DEVELOPMENT COSTS											
2 ...	Direct and indirect lease costs and expenses.	1-A	01	1,694,893,558	1,694,893,558	57,287,938	\$144,679,567	\$19,763,791	\$221,731,296	90.33	207,740,782
2 ...	Taxes (except income and production).	A-1	02	210,335,720	210,335,720	16,507,630	20,431,444	4,360,024	41,299,098	9.33	39,323,337
4 ...	Production taxes	1-A	03	479,424,297	.....	27,124,210	96,699,673	10,005,599	133,829,482	90.33	124,478,624
5 ...	Other lease expenses	1-A	04	61,102,433	61,102,433	17,527,077	24,988,900	336,427	42,852,404	90.33	40,435,977
6 ...	Depletion, depreciation and amortization.	1-A	05	1,716,823,070	1,716,823,070	105,999,777	297,881,312	25,502,048	429,383,137	90.33	400,578,014
7 ...	Corporate general expense	1-A	06	278,845,909	278,845,909	13,611,337	25,077,796	3,579,728	42,268,861	90.33	39,843,838
8 ...	Area, district, division and field expense.	1-A	07	261,718,417	26,178,417	7,207,320	21,758,604	2,778,944	31,744,868	90.33	29,640,811
9 ...	Miscellaneous lease revenues	1-A	09	(12,203,136)	(12,203,136)	(1,348,729)	(2,768,788)	(314,067)	(4,431,584)	90.33	(4,163,842)
10	Return on production rate base at 15 percent.	1-A	13	2,505,272,672	2,505,272,672	186,055,524	427,939,601	69,857,212	663,852,337	90.33	622,470,578
11	Exploration and development costs and expenses.	1-A	15	1,673,945,853	1,673,945,853	.....	.....	.....	.....	.....	594,971,262
12	Return on exploration rate base at 15 percent.	1-A	16	588,558,894	588,558,894	.....	.....	.....	.....	.....	234,604,103
13	Regulatory commission expense including return.	1-A	17	6,514,279	6,514,279	.....	.....	.....	.....	.....	6,514,852
14.											
15	Total computed revenue			9,465,231,966	8,985,807,669	.....	.....	.....	.....	.....	2,336,439,376
16	(gross income).										
17.											
18	revenue deductions.										
19	Direct and indirect lease costs and expenses.	1-A	01	1,694,893,558	1,694,893,558	.....	.....	.....	.....	.....	207,740,872
20	Taxes (except income and production).	1-A	02	210,335,720	210,335,720	.....	.....	.....	.....	.....	39,323,377
21	Production taxes	1-A	03	479,424,297	.....	.....	.....	.....	.....	.....	124,478,624
22	Other lease expenses	1-A	04	61,102,433	61,102,433	.....	.....	.....	.....	.....	40,435,977
23	Book depletion			⁷ (283,121,142)	283,121,242	24,287,986	61,675,828	6,177,596	92,141,410	90.33	86,177,357
24	Depreciation expense	1-A	05	⁷ (654,604,447)	654,604,447	30,223,586	94,010,520	7,007,662	131,241,768	90.33	122,150,951
25	Amortization of capitalized IDC			⁷ (779,097,382)	779,097,382	51,488,205	142,194,964	12,316,790	205,999,959	90.33	192,249,706
26	Corporate general expense	1-A	06	278,845,909	278,845,909	.....	.....	.....	.....	.....	39,843,838
27	Area, district, division and field expense.	1-A	07	261,718,417	261,718,417	29,640,811
28	Miscellaneous lease revenues	1-A	09	(12,203,136)	(12,203,136)	(4,163,842)

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29	Exploration and development costs and expenses ..	4-A	01	1,673,945,853	1,673,945,853	594,971,262
30	Regulatory commission expense ..			6,384,384	6,394,384	6,394,384
31.						
32	Total book expenses ..			6,371,380,505	5,891,856,209	1,479,243,227
33.						
34	Production net income (line 15 less line 32).			3,093,951,461	3,093,951,460	857,190,149
35.						
36	tax adjustment—add (DEDUCT).					
37	Amortization of capitalized IDC			779,097,282	779,097,382	192,249,706
38	Estimated IDC capitalized in 1972			⁸ (1,470,935,857)	(1,470,935,857)	(362,967,445)
39	Interest expense (calculated)			⁹ (243,846,540)	(243,846,540)	(60,587,136)
40.						
41	Taxable income			2,158,266,445	2,158,266,445	625,891,274
42.						
43	Federal income tax at 48 percent.			1,992,245,949	1,992,245,949	¹⁰ 577,745,791

¹ Lines 1 thru 15, col. (1). From Notice issued Sept. 12, 1974, app. A, p. 12, col. (d).

² Production taxes have been deleted from col. (1).

³ From notice issued Sept. 12, 1974, app. A, p. 12, cols. (g), (h), and (i).

⁴ Col. (3) plus col. (4) plus col. (5).

⁵ Calculated on a modified British thermal unit basis (1.5 to 1).

⁶ Col. (7) times col. (4), plus cols. (3) and (5).

⁷ See composites mailed to all parties on Feb. 13, 1974.

⁸ Calculated, 188.8 percent (A R64-1-2) times \$779,097,382 equals \$1,470,935,857.

⁹ Calculated 0.0146 (interest rate) times \$16,701,817,818 (app. A, schedule 2-A, (d), line 11, p. 13) equals \$243,846,540.

¹⁰ \$577,745,791 divided by 9,508,369,001 equals 6.08 cents per thousand cubic feet.

[Opinion 749, 41 FR 3092, Jan. 21, 1976]

PART 3 [RESERVED]

GENERAL

PART 3a—NATIONAL SECURITY INFORMATION

GENERAL

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AUTHORITY: E.O. 11652 (37 FR 5209, March 10, 1972), National Security Council Directive of May 17, 1972 (37 FR 10053, May 19, 1972), sec. 309 of the Federal Power Act (49 Stat. 858, 859; 16 U.S.C. 825h) and sec. 16 of the Natural Gas Act (52 Stat. 830; 15 U.S.C. 717o).

SOURCE: Order 470, 38 FR 5161, Feb. 26, 1973, unless otherwise noted.

§ 3a.1 Purpose.

This part 3a describes the Federal Power Commission program to govern the classification, downgrading, declassification, and safeguarding of national security information. The provisions and requirements cited herein are applicable to the entire agency except that material pertaining to personnel security shall be safeguarded by the Personnel Security Officer and shall not be considered classified material for the purpose of this part.

§ 3a.2 Authority.

Official information or material referred to as classified in this part is expressly exempted from public disclosure by 5 U.S.C. 552(b)(1). Wrongful disclosure thereof is recognized in the Federal Criminal Code as providing a basis for prosecution. E.O. 11652, March 8, 1972 (37 FR 5209, March 10, 1972), identifies the information to be protected, prescribes classification, downgrading, declassification, and safeguarding procedures to be followed and establishes a monitoring system to insure its effectiveness. National Security Council Directive Governing the Classification, Downgrading, Declassification and Safeguarding of National Security Information, May 17, 1972 (37 FR 10053, May 19, 1972), implements E.O. 11652.

CLASSIFICATION

§ 3a.11 Classification of official information.

(a) *Security Classification Categories.* Information or material which requires protection against unauthorized disclosure in the interest of the national defense or foreign relations of the United States (hereinafter collectively termed *national security*) is classified Top Secret, Secret or Confidential, depending upon the degree of its significance to national security. No other categories are to be used to identify official information or material requiring protection in the interest of national security, except as otherwise expressly provided by statute. These classification categories are defined as follows: