



**4910-60-W**

**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**[Docket No. PHMSA-2016-0092]**

**Pipeline Safety: Underground Natural Gas Storage Facility User Fee**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of agency action.

**SUMMARY:** On November 7, 2016, PHMSA published a notice and request for comments in the Federal Register, titled “Pipeline Safety: Underground Natural Gas Storage Facility User Fee” (November 2016 Notice), seeking comments from underground natural gas storage facility operators on a proposed PHMSA pipeline user-fee assessment and rate structure. PHMSA received nine comments in the docket. We are publishing this notice of agency action to address the comments received and to announce the rate structure PHMSA will implement in fiscal year (FY) 2017 if Congress appropriates FY 2017 funds for the Pipeline Safety Fund’s Underground Natural Gas Storage Facility Safety Account.

**FOR FURTHER INFORMATION, CONTACT:** Roger Little by telephone at 202-366-4569, by fax at 202-366-4566, by email at [Roger.Little@dot.gov](mailto:Roger.Little@dot.gov), or by mail at U.S. Department of Transportation, PHMSA, 1200 New Jersey Avenue, SE., PHP-2, Washington, DC 20590-0001.

## **SUPPLEMENTARY INFORMATION**

### **Background**

The Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) (Pub. L. 99-272, sec. 7005), codified in part at section 60301 of title 49, United States Code, authorizes the assessment and collection of user fees to fund the pipeline safety activities conducted under chapter 601 of title 49. On June 22, 2016, President Obama signed into law the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (Pub. L. 114-183) (PIPES Act of 2016). Section 12 of the PIPES Act of 2016 mandates that PHMSA issue regulations for underground natural gas storage facilities, authorizes user fees on operators of these facilities, and directs PHMSA to prescribe procedures to collect those fees upon appropriation. Section 2 of the PIPES Act of 2016 authorizes \$8 million per year to be appropriated from those fees for each of FY 2017-2019 for the newly established Underground Natural Gas Storage Facility Safety Account in the Pipeline Safety Fund. Accordingly, if Congress appropriates funds to this account for FY 2017 and beyond, PHMSA will collect user fees from the operators of the facilities.

### **Summary of Comments on the November 7, 2016 Notice**

The November 2016 Notice advised all underground natural gas storage facility operators of a proposed PHMSA pipeline user fee assessment and rate structure. 81 Fed. Reg. 78261. During the two-month response period, PHMSA received comments on the proposed underground natural gas storage user-fee billing methodology from nine commenters: David Reitz; the Louisiana Mid-Continent Oil and Gas Association; ENSTOR Operating Company; Consumers Energy; Cook Inlet Natural Gas Storage Alaska; Atmos Energy Corporation; Pacific Gas and Electric Company; the Texas Pipeline Association; and the Interstate Natural Gas

Association of America (INGAA). The comments may be found at <http://www.regulations.gov> in Docket Number PHMSA-2016-0092. Consumers Energy, Atmos Energy Corporation, the Texas Pipeline Association, and INGAA submitted comments generally supporting the rate structure proposed by PHMSA in the November 2016 Notice. The remaining comments are summarized below with PHMSA's response:

Comment: The Louisiana Mid-Continent Oil and Gas Association and Cook Inlet Natural Gas Storage Alaska questioned whether working-gas capacity was the most appropriate basis for the rate structure and expressed the view that using the number of wells at a facility may be a more suitable basis for the user-fee structure.

Response: PHMSA agrees that the number of wells would be an appropriate basis for the user-fee rate structure. However, the PHMSA information collection results that will include the number of wells will not be available for fiscal year 2017 billing. PHMSA is aware of an underground natural gas storage facility survey recently conducted by the American Gas Association (AGA). The survey results, however, are not publicly available. PHMSA also has no way to assess the accuracy of the AGA survey results and in several cases they appear to be inconsistent with information reported to the Energy Information Administration (EIA). In the absence of available, reliable data for another suitable metric, PHMSA's only viable option for an equitable allocation of fees among facility operators in the first year is working-gas capacity. After PHMSA's annual reporting is in place and PHMSA collects information regarding the number of wells, well count is likely to become the basis of the user-fee rate structure for these facilities in future fiscal years.

Comment: David Reitz suggested PHMSA base the tier determination on the working gas an operator has available to serve its customers rather than total working-gas capacity because doing so would facilitate a more precise determination of the appropriate tier in cases where storage fields are jointly owned.

Response: PHMSA's source for working-gas capacity data is the EIA. PHMSA currently lacks data to determine to which customers gas in storage is available. Therefore, PHMSA will need to use the total working-gas capacity of the field, but appreciates the comment and may revisit this issue in the future if a reliable data source becomes available that breaks working gas down by owner for jointly-owned storage fields and the joint owners are not able to apportion the fee among themselves.

Comment: Pacific Gas and Electric Company recommended that PHMSA use the number of wells collected on the new PHMSA annual report as the basis for the user-fee rate structure.

Response: As stated above, PHMSA agrees that the number of wells would be an appropriate basis for the fee structure. With respect to FY 2017, however, PHMSA does not expect to collect annual report data from facility operators before the FY 2017 billing.

Comment: The Louisiana Mid-Continent Oil and Gas Association requested clarification as to how PHMSA proposes to regulate Louisiana facilities and specifically how regulatory activity will be funded.

Response: PHMSA is supportive of state oversight activities and expects the appropriate Louisiana state agency to become certified to regulate Louisiana's intrastate facilities in accordance with 49 USC 60141(c). User fees collected by PHMSA from operators of intrastate underground natural gas storage facilities regulated by Louisiana would be granted to the certified Louisiana agency. PHMSA would regulate any interstate facilities in Louisiana. If a Louisiana

agency does not become certified, PHMSA will be responsible for regulating both the interstate and intrastate facilities in Louisiana.

Comment: ENSTOR Operating Company asked if PHMSA will sum the working-gas capacity of facilities for the operator and its affiliates.

Response: PHMSA will sum the working-gas capacity for all fields operated by each holder of a PHMSA-issued operator identification number. For the past several months, PHMSA has been contacting operators of storage facilities to determine the appropriate operator identification number for each facility reported to the EIA.

Comment: ENSTOR Operating Company, LLC, asked if PHMSA has a different definition of working-gas capacity than the EIA.

Response: PHMSA does not have a different definition of working-gas capacity. PHMSA will use the working-gas capacity reported to the EIA.

Comment: ENSTOR Operating Company, LLC, requested that PHMSA provide further analysis supporting the proposed user-fee assessment tier structure to ensure the regulated community can fully comment.

Response: PHMSA provided a full description of the analysis in the November 2016 Notice. PHMSA will also place a spreadsheet in the docket with this notice to provide a more detailed breakdown of the data behind the analysis.

### **Revised Underground Natural Gas Storage Facility User-Fee Plan**

As discussed above in the comment responses, in the absence of available, reliable data for another suitable metric, PHMSA's only viable option for an equitable allocation of fees among facility operators in the first year is working-gas capacity. Accordingly, for FY 2017

billing, PHMSA will use working-gas capacity as the basis for the user-fee rate structure.

PHMSA will use the working-gas capacity values from the most recent Form EIA-191 Monthly Underground Natural Gas Storage Report. PHMSA will sum the working-gas capacity for all fields operated by the holder of a PHMSA-issued operator identification number. For fields where PHMSA is unable to determine the operator identification number, working-gas capacities will be summed based on the company name in the Form EIA-191 data. If a company receives a bill that it believes to be in error in some way, it should contact PHMSA for further information, using the website <http://www.phmsa.dot.gov/pipeline/operator-resources/pay-user-fee-assessments>.

The operator working-gas capacity values will be divided into 10 tiers. The lowest values will be in tier 1 and the highest values in tier 10. The minimum and maximum working-gas capacities for each tier will be selected to place an equal number of operators in each tier. Each tier will have a user-fee assessment to be paid by each operator in the tier.

In the November 2016 Notice, PHMSA used Form EIA-191 annual data from 2015 to determine the published assessment per tier and tier ranges. Based on Form EIA-191 monthly data available through the EIA's Natural Gas Annual Respondent Query System,<sup>1</sup> and summing working-gas capacity using the EIA company name, the tiers and assessment per tier to collect \$8,000,000 would be:

Tier	Assessment per Operator	Working-gas Capacity (Mcf) Range
1	\$11,799	Less than 930,000
2	\$23,599	More than 930,000 and less than

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1

[http://www.eia.gov/cfapps/ngqs/ngqs.cfm?f\\_report=RP8&f\\_sortby=&f\\_items=&f\\_year\\_start=&f\\_year\\_end=&f\\_show\\_compids=&f\\_fullscreen=](http://www.eia.gov/cfapps/ngqs/ngqs.cfm?f_report=RP8&f_sortby=&f_items=&f_year_start=&f_year_end=&f_show_compids=&f_fullscreen=)

		3,000,000
3	\$29,499	More than 3,000,000 and less than 5,800,000
4	\$35,398	More than 5,800,000 and less than 11,000,000
5	\$47,198	11,000,000 or more and less than 13,700,000
6	\$58,997	More than 13,700,000 and less than 21,000,000
7	\$70,796	More than 21,000,000 and less than 32,100,000
8	\$76,696	More than 32,100,000 and less than 48,000,000
9	\$88,496	More than 47,000,000 and less than 91,500,000
10	\$147,493	More than 91,500,000

PHMSA placed a spreadsheet in the docket showing the EIA company names in each tier, as well as the methodology used to determine the assessment per tier and tier ranges.

If Congress appropriates less than \$8 million to the Underground Natural Gas Storage Facility Safety Account, PHMSA will proportionally reduce the assessment for each tier to collect the appropriated amount. Regardless of the appropriated amount, PHMSA expects that approximately 25% will fund PHMSA actions and 75% will fund grants to certified state agencies.

Finally, in the November 2016 Notice, we expressed an intent to assess user fees on operators of active fields on the EIA list. Since then, PHMSA has learned that the EIA includes inactive fields in the Form EIA-191 data because inactive fields could be restored to service at

any time. The EIA removes a field from the Form EIA-191 list only after the company reports that all wells connected to the field have been abandoned. Essentially, inactive fields on the Form EIA-191 list are idle, but not abandoned. Therefore, at least for fiscal year 2017 billing, PHMSA will use the EIA-191 form data, which includes inactive wells.

This approach is also consistent with PHMSA’s exercise of regulatory jurisdiction over pipelines and with its assessment of user fees on such pipelines. In an Advisory Bulletin published on August 16, 2016, titled: “Clarifications of Terms Relating to Pipeline Operational Status,” PHMSA emphasized that idle pipelines are subject to the same regulatory requirements as active pipelines. 81 FR 54512. This same regulatory approach applies to underground natural gas storage fields. Because inactive fields could be restored to service, PHMSA will exercise regulatory authority over inactive fields. Accordingly, PHMSA will bill both inactive and active fields appearing in the Form EIA-191 data.

Issued in Washington, DC, on March 31, 2017, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,  
Associate Administrator for Pipeline Safety.

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