

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Standards for Business Practices for Interstate Natural Gas Pipeline;)	Docket Nos. RM96-1-027
Standards for Business Practices for Public Utilities)	RM05-5-001

**REQUEST FOR CLARIFICATION OR,
IN THE ALTERNATIVE, REHEARING OF THE
INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA**

Pursuant to Section 19(a) of the Natural Gas Act (“NGA”), 15 U.S.C. § 717r(a), and Rule 713 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, 18 C.F.R. § 385.713 (2006), the Interstate Natural Gas Association of America (“INGAA”) hereby submits its request for clarification or, in the alternative, rehearing of the Commission’s Final Rule issued on June 25, 2007 in the above-captioned proceeding (“Final Rule”).¹

In support of its request, INGAA states as follows:

I. Background

On October 25, 2006, the Commission issued a Notice of Proposed Rulemaking (“NOPR”) in the captioned docket. The NOPR would require Independent System Operators, Regional Transmission Organizations, and gas-fired generators (“Electric Industry Participants”) and natural gas pipelines to adopt certain standards promulgated by the North American Energy Standards Board (“NAESB”). These standards include WEQ Standard 011-1.2/WGQ Standard 0.3.12 through WEQ Standard 011-1.6/WGQ Standard 0.3.15. (“NAESB Standards”). The NAESB Standards would require

¹ *Standards for Business Practices for Interstate Natural Gas Pipelines; Standards for Business Practices for Public Utilities*, Order No. 698, 72 Fed. Reg. 38,757 (July 16, 2007).

coordination and communication between gas pipelines and Electric Industry Participants, with the intention of improving the “reliability of both the gas and electric industries by ensuring that all parties have information necessary for the scheduling and dispatch of natural gas-fired generation, and for the scheduling of the natural gas transportation necessary to supply fuel to these generators.”² Such information and coordination would include establishing “procedures to communicate material changes in circumstances that may affect hourly flow rates.”³ After receiving comments on the NOPR, the Commission issued the Final Rule, adopting the NAESB Standards.

II. Request for Clarification

A. The Commission should clarify that only implementation of the NAESB Standards is required by November 1, 2007, not the clarifications of additional issues raised by NAESB.

The Final Rule, after requiring industry participants to implement the NAESB Standards by November 1, 2007, goes on to discuss three issues from the NOPR on which NAESB had sought guidance, all of which could require pipelines to make considerable operational changes. Two of the items (“Clarification Items”) include the use of index prices for capacity releases and changes to intra-day nomination schedules.⁴ INGAA requests that the Commission clarify that pipelines do not need to implement anything regarding the Clarification Items by November 1, 2007, and that, rather, it is appropriate for NAESB first to propose any necessary standards for the Clarification

² Final Rule at P 12.

³ *Id.*

⁴ The third of these three items is the pipelines’ ability to permit shippers to choose alternate delivery points. Because the Commission stated that it was “not modifying its requirement for within-the-path scheduling as adopted in Order No. 637,” INGAA is not requesting any clarification on that item.

Items and then for the Commission to have another rulemaking proceeding following notice and comment procedures.

1. Index Prices for Capacity Release

In the NOPR, the Commission noted that its current policy, as stated in *Panhandle Eastern Pipe Line Co.*, 106 FERC ¶ 61,194 at P 6 (2004), is that releasing shippers should be free to offer the same type of pricing arrangements that the pipeline offers. Therefore, if a pipeline's tariff such as Panhandle's provides for discounts to be offered at index-based rates, shippers would likewise be permitted to release their capacity at index-based rates. In the Final Rule, the Commission has extended its policy to allow shippers to release their capacity at index-based rates regardless of whether the pipeline has such authority in its tariff, and without restriction. The Commission interpreted Section 284.8(b) of its regulations, which allows releases "without restriction on the terms and condition for release," to permit releases using any pricing methodology provided the rate does not exceed the pipeline's maximum rate. The Commission reasoned that a pipeline could offer index-based rates if it either has authority in its tariff to do so, *or* if it files the rate provision as part of a non-conforming service agreement. Final Rule at P 55.

However, the prohibition in Section 284.8(b) against restrictions on the "terms and conditions" of a release was never interpreted prior to the Final Rule to allow unrestricted *pricing* in capacity release transactions. Indeed, while *pipelines* had the ability to file non-conforming agreements, there was never a policy or procedure in place for *releasing shippers* to file non-conforming capacity release agreements based on

index-based rates. Therefore, pipelines did not believe that they were required to permit shippers to release capacity using rates not permitted by their tariffs.

Pipelines are not currently equipped to allow unrestricted pricing in capacity release transactions. In addition to the fact that some pipelines' tariffs do not permit index-based pricing, even the pipelines that provide for such pricing have in place methodologies and/or processes to handle only those types of pricing arrangements that they have entered into. While INGAA's members do not suggest that releasing shippers be precluded from offering index-based pricing, allowing unrestricted pricing in capacity release transactions, as the Final Rule requires, raises numerous implementation and associated tariff issues that must be resolved before pipelines can accommodate such pricing. In addition, once such issues are resolved, pipelines would need time to implement the business process and system changes that would be required to accommodate bidding, contracting, scheduling, accounting and billing of capacity release transactions.

In the Final Rule, the Commission acknowledges that NAESB may need to develop standards to ensure that the terms and conditions of a release and the means for implementing a formula rate are clearly set out. Final Rule at P 56. Therefore, INGAA respectfully requests that the Commission allow NAESB to resolve these and other implementation issues discussed below before pipelines are required to allow such index-based pricing in capacity release transactions.

Allowing unrestricted pricing in capacity release transactions raises implementation issues concerning bid evaluation and awards, scheduling and billing. Until and unless all of these issues are addressed and resolved, pipelines will not be able

to allow unrestricted index-based or formula pricing in capacity releases. If shippers could utilize any formula price, pipelines may not have the information necessary to evaluate competing bids, or to complete the evaluation process in the time needed to implement the release. For example, a shipper may wish to use an index for the next day's release, but the index price may not yet be available. Or a shipper may wish to tie the price to specific market or weather/temperature conditions that fluctuate on a daily basis. In these situations, how would the pipeline evaluate the net revenues or present value of bids based on future prices?⁵ A releasing shipper may wish to allow either an index-based or a fixed discounted rate, whichever produces greater revenues. Given the unlimited nature and potential complexity of the pricing mechanisms that could be utilized, some combination of restrictions and/or mechanisms to compare and evaluate competing bids must be developed for such a program to work.

Unrestricted pricing in releases also raises scheduling priority issues. Many pipelines utilize economic dispatch (*i.e.*, price) to prioritize the scheduling of secondary firm and interruptible transportation. An indexed-based or other formula price raises the issue of how such price can be compared to fixed discounted, negotiated and other formula rates for scheduling purposes. It should be noted that segmentation rights utilized by both the pipeline's shippers and replacement shippers often result in the need to restrict secondary firm deliveries. Such restrictions may be required during every intra-day scheduling cycle. The rate that may apply under a formula rate at the time intra-day deliveries are scheduled is not necessarily known to the pipeline at such time. Further, the Commission should be aware that depending on the rate formula utilized,

⁵ Because the shipper may specify one of the three bid evaluation methodologies included in NAESB Section 5.3.3, *i.e.*, rate, net revenue or present value, the pipeline would arguably be required to

there may be several methodologies that can be used to determine a rate for scheduling purposes, and one methodology may favor some shippers over others.⁶ Thus, until and unless methodologies and procedures are developed to implement scheduling priorities in these circumstances, pipelines cannot be required reasonably to allow unrestricted pricing in capacity release transactions.

Finally, further clarification of the procedures for pipeline billing for capacity release transactions that use index-based or formula rates is needed. Pipelines should not be required to calculate the rates under such pricing mechanisms, nor should pipelines be placed in the position of arbitrating disputes between a releasing shipper and a replacement shipper concerning the rate to be charged under the formula used. Thus, INGAA respectfully requests the Commission to clarify that (1) in any release that does not utilize a fixed stated rate, the releasing shipper must inform the pipeline of the rate to be charged to the replacement shipper in time for the pipeline to bill such rate; and (2) the pipeline is entitled to rely on the rate provided by the releasing shipper such that the only recourse a replacement shipper has if it disagrees with such rate is against the releasing shipper. Pipelines should not be required to determine the rate to be charged under such releases or be placed in the middle of disputes between its shippers and their replacement shippers over such rates.

In sum, given the number of implementation issues that must be resolved before pipelines can allow index-based pricing in releases, it is appropriate to provide the

(Continued...)

meet the NAESB timelines even though it may not even be able to evaluate and compare the bids.

⁶ One method currently used by pipelines that have index-based rates is to use the first of the month index price. However, if releasing shippers are permitted to use any pricing methodology without restriction, it is not clear if such a methodology could or should be applied to all types of transactions.

industry with more time to formulate standards through NAESB and modify its procedures and programs to implement such standards. Consequently, INGAA requests the Commission to (1) clarify the pipelines' role in billing release transactions as stated above and (2) defer the implementation of the requirement that pipelines allow index-based rates in releases until such time as NAESB develops standards and pipelines implement such standards.

2. Changes to intra-day nomination schedules

Several commenters had discussed whether there should be changes to the intra-day nomination schedules. The Commission stated that "NAESB should actively consider whether changes to existing intra-day schedules would benefit all shippers, and provide for better coordination between gas and electric scheduling."⁷ The Commission also stated that it "fully expect[s] that individual pipelines supporting gas-fired generators will be considering the addition of other intra-day nomination opportunities that would be of benefit to their shippers."⁸ INGAA requests that the Commission clarify that this does not require pipelines to implement any changes regarding intra-day scheduling by November 1, 2007, and that, rather, it is appropriate to wait for NAESB to consider and propose any industry-wide standards.

B. The Commission should clarify that the Required Communications with Electric Industry Participants will not convey any non-public information

INGAA supports the Commission's efforts in the Final Rule to improve coordination and communication of information between the electric and gas industries with regard to the scheduling and dispatch of natural gas-fired generation and the

⁷ Final Rule at P 69.

⁸ *Id.*

scheduling of related gas transportation necessary to support such generation. INGAA, however, requests clarification that pipelines will not have to convey any non-public information as a result of the Final Rule. For example, information concerning a pipeline's methods for dealing with hourly flow variances, the administration of operational balancing agreements, the operation of compressor units, and the operation of meter stations, all on a real-time or nearly real-time basis, may be implicated by, or part of, the Required Communications. This information is not public information, which pipelines do not normally communicate.

II. Statement of Issues and Errors

To the extent the Commission denies INGAA's requested clarifications, INGAA provides this statement of issues and errors pursuant to Rule 713 of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.713:

1. The Commission should clarify that the Clarification Items do not require gas pipelines to take any action by November 1, 2007. There is not time to make the substantial changes that would be necessary, and these matters are more appropriately considered by NAESB, which can develop consensus standards for the industry. To the extent the Commission does not so clarify, the Final Rule is arbitrary and capricious.

2. The Commission should clarify that the Required Communications will not require the transmittal of non-public information. To the extent the Commission does not so clarify, the Final Rule is arbitrary and capricious.

IV. Request for Rehearing

For the reasons given in the above Request for Clarification, the Commission should grant the requested clarifications. To the extent the Commission does not grant

the requested clarifications, INGAA requests rehearing of the provisions of the Final Rule identified in the Statement of Issues and Errors. If not clarified as requested, such provisions are arbitrary and capricious.

WHEREFORE, for the foregoing reasons, INGAA respectfully requests that the Commission clarify the Final Rule or, in the alternative grant rehearing with respect to the Final Rule, as requested above.

Respectfully submitted,

Interstate Natural Gas Association
of America

By

Joan Dreskin
General Counsel
Timm Abendroth
Attorney
Interstate Natural Gas Association of
America
10 G Street, N.E., Suite 700
Washington, D.C. 20002
Phone: 202.216.5928
Fax: 202.216.0874
Email: jdreskin@ingaa.org

Dated: July 25, 2007