

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

Bidding of Affiliates in Open Seasons for)
Pipeline Capacity)

Docket No. RM11-15-000

**COMMENTS OF THE
INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA**

Pursuant to the Notice of Proposed Rulemaking (NOPR) issued by the Federal Energy Regulatory Commission (FERC or Commission), 135 FERC ¶ 61,009 (2011), regarding the bidding of affiliates in an open season for pipeline capacity,¹ the Interstate Natural Gas Association of America (INGAA) comments that if the Commission promulgates a final rule it should specify that interstate pipelines have no obligation to determine whether affiliated entities are participating in an open season or whether each affiliate has “an independent business reason for submitting a bid,” and that interstate pipelines have no obligation to verify that the capacity originally obtained during an open season pursuant to a *pro rata* allocation is not released to, or on behalf of, an affiliate of the releasing shipper.

INGAA is a non-profit trade association that represents the interstate and interprovincial natural gas pipeline industry operating in North America. INGAA’s United States members, which transport more than 85 percent of the Nation’s natural gas, through some 185,000 miles of interstate natural gas pipelines, are regulated by the Commission pursuant to the Natural Gas Act, 15 U.S.C. §§ 717-717w.

¹ *Bidding of Affiliates in Open Seasons for Pipeline Capacity*, Notice of Proposed Rulemaking, 135 FERC ¶ 61,009 (2011).

BACKGROUND

In this NOPR, the Commission proposes to revise its Part 284 regulations to prohibit multiple affiliates of the same entity from bidding in an open season for pipeline capacity in which the pipeline may allocate capacity on a *pro rata* basis, unless each affiliate has an independent business reason for submitting a bid. The Commission also proposes that if more than one affiliate of the same entity participates in such an open season, then none of those affiliates may release any capacity obtained in that open season pursuant to a *pro rata* allocation to any affiliate, or otherwise allow any affiliate to obtain the use of the allowed capacity. These proposals, according to the Commission, are intended to prevent anticompetitive gaming of the *pro rata* allocation methodology by using multiple affiliates of the same entity to acquire a larger share of the available capacity than one affiliate would be able to acquire by itself.

COMMENTS

INGAA expresses no opinion on whether or not the Commission's NOPR is necessary or whether the behavior the Commission seeks to regulate is anticompetitive. However, if the Commission issues a final rule along the lines of the NOPR, the Commission must make certain that the regulatory burden and consequences of non-compliance fall on those who bid for and subsequently release interstate pipeline capacity, not the interstate pipelines themselves. Any final rule should be clear that the practices and entities whose conduct is being regulated here are the bidders, when bidding on, and shippers, when releasing, open season capacity subject to a *pro rata* allocation. INGAA's members cannot and should not be called upon to police these activities when the myriad affiliate relationships and transactions are opaque to them.

(1) Pipelines will not always know the affiliated relationships of entities in an open season or possess the ability to determine the existence of an “independent business reason” for bidding, therefore, pipelines should have no obligation to police these potential new regulatory requirements.

In an open season, pipelines electronically post their capacity for bidding by all interested creditworthy parties. Because of the changing nature of the energy marketplace, companies may change their affiliation quickly as new companies are created to meet market needs while existing companies increasingly are purchased and sold through mergers and acquisitions. Given the scope and pace of these changes, a pipeline will not necessarily know whether bidders are affiliated. And, even when a pipeline knows two bidders are in the same corporate family, a pipeline will not know whether the bidders meet the Commission’s definition of affiliation. Thus, if the Commission promulgates regulations in this docket, the Commission should specify that the pipeline has no obligation to determine whether bidders in an open season are affiliated with each other.

Similarly, should multiple affiliates bid in an open season, a pipeline would not have any knowledge, nor should it, of whether an affiliated bidder has an “independent reason” to bid. Pipelines are not privy to bidders’ business plans and should not have to inquire, investigate, verify or second guess a bidder’s own determination that it may legitimately bid along with its affiliate(s) in the open season. The obligation to ensure that affiliated bidders in an open season have a legitimate business reason for submitting separate bids should rest with the bidders. Accordingly, INGAA requests that any final rule specify that the pipeline will not be required to determine affiliate relationships or examine an entity’s reason for bidding.

The Commission recently addressed a very similar issue in Order No. 712.² Since capacity releases to asset managers are eligible for the exemptions from tying and bidding, the Commission was faced with setting rules for determining whether a claimed Asset Management Agreement (AMA) release was *bona fide*. The Commission proposed that any posting under section 284.13(b) that relates to a release to implement an AMA must include (1) the fact that the release is to an asset manager and (2) the delivery or purchase obligation of the AMA, in addition to the information required to be posted for all capacity releases. Order No. 712 at P 175. INGAA and others responded that pipelines' obligations should be limited to posting offers submitted by releasing shippers using the terms and conditions provided to the pipeline, including the determination of whether an asset manager is a *bona fide* asset manager.³ The Commission agreed and clarified that a pipeline is not responsible for policing asset managers' compliance with the Commission's regulations, and that releasing shippers should take responsibility for identifying AMAs. The Commission stated that:

... pipelines are responsible for posting offers submitted by releasing shippers that are meant to implement AMAs using the terms and conditions provided by the releasing shipper to the pipeline. It is incumbent upon the releasing shipper to include the details discussed above to qualify the release as an AMA. **The Commission further clarifies that the pipeline has no obligation to act on any information other than is provided to it by its customers.** The pipeline must of course, comply with all applicable elements of section 284.13 of the Commission's regulations.

Order No. 712 at P 177 (emphasis added).

INGAA asks for a similar clarification here.

² *Promotion of a More Efficient Capacity Release Market*, Order No. 712, 123 FERC ¶ 61,286 (2008).

³ INGAA Comments to the Notice of Proposed Rulemaking, *Promotion of a More Efficient Capacity Release Market*, Docket No. RM08-1, filed Jan. 25, 2008 at p. 21.

(2) Pipelines will not always know whether bidders in a capacity release transaction are affiliated, therefore, pipelines should have no obligation to verify that capacity originally obtained during an open season pursuant to a *pro rata* allocation was not released to, or on behalf of, an affiliate of the releasing shipper.

INGAA requests that the Commission specify that a pipeline has no obligation to verify that the capacity originally obtained by a shipper during an open season pursuant to a *pro rata* allocation is not subsequently released to, or on behalf of, an affiliate of the releasing shipper. For the reasons stated above, when a pipeline enters into a transportation service agreement with a shipper as a result of an open season, it does not have a reason to document whether affiliated entities of that shipper also participated in the open season. Pipelines do not capture or track that type of data as part of their business systems. A pipeline generally will not know of affiliate relationships at the time of the execution of the original transportation agreement or upon its release, which may potentially occur years from the date of when the capacity was originally awarded. The arguments that supported Order No. 712 apply equally here, and a pipeline should have no obligation to police the behavior of shippers releasing capacity to their affiliates or to others that may acquire the capacity for use on behalf of an affiliate of the releasing shipper.

CONCLUSION

WHEREFORE, consistent with Commission precedent, INGAA requests that should the Commission promulgate regulations in this docket, the Commission should specify that pipelines do not have to determine the affiliation status between open season bidders, the affiliation status between open season bidders and releasing shippers, or whether bidders have an independent basis for their bids.

Respectfully submitted,

/s/

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