UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Texas Eastern Transmission, LP	)	Docket No. RP12-318-001
	)	Docket No. RP12-318-002

INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA
EMERGENCY MOTION TO INTERVENE OUT OF TIME
AND REQUEST FOR REHEARING

Per Rules 214 and 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission),[1] the Interstate Natural Gas Association of America (INGAA)[2] hereby moves to intervene in this proceeding out of time and requests rehearing of the Commission's September 20, 2012, "Order on Rehearing and Compliance Filing" (September 20 Order).[3]

EMERGENCY MOTION TO INTERVENE OUT OF TIME

The September 20 Order declares that the Commission's position on reservation charge crediting, as articulated in the Commission's April 21, 2011, "Order on Petition" in *Natural Gas Supply Association*,[4] is "a binding policy having the force of law."[5] When the Commission issued the *NGSA Order on Petition*, INGAA requested rehearing[6] both to challenge the legality and substance of the Commission's reservation charge crediting policy, and to lay the statutorily required predicate so INGAA could, if necessary, submit the *NGSA Order on Petition* to judicial

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[1] 18 C.F.R. §§ 385.214, .713.

[2] INGAA, a national, non-profit trade association, represents the interstate natural gas pipeline industry. INGAA's members, which constitute the vast majority of the interstate natural gas transmission pipeline companies in the United States, are regulated by the Commission under the Natural Gas Act (NGA), 15 U.S.C. §§ 717-717w.

[3] *Texas Eastern Transmission, LP*, 140 FERC ¶ 61,216 (2012).

[4] *Natural Gas Supply Ass'n, et al.*, 135 FERC ¶ 61,055 (2011)(*NGSA Order on Petition*), *order on reh'g*, 137 FERC ¶ 61,051 (2011)(*NGSA Rehearing Order*).

[5] September 20 Order, P 27.

[6] "Request of the Interstate Natural Gas Association of America for Clarification, Rehearing and Reconsideration," Docket. No. RP11-1538-000, (filed May 23, 2011)(INGAA Rehearing Request).

review.[7] Among the many grounds INGAA identified for rehearing, INGAA plead that the Commission's restatement of reservation charge crediting policy and the threat of audit and enforcement action essentially constituted action under NGA section 5[8] without satisfying the requisite burdens.[9] INGAA also argued that the *NGSA Order on Petition* violated the Administrative Procedure Act (APA) by imposing a rule of general applicability — in effect, a regulation — without notice and comment rulemaking.[10]

The Commission dismissed INGAA's request, claiming that the *NGSA Order on Petition* did not constitute action under section 5, and that the Commission did not violate the APA rulemaking requirements, because the *NGSA Order on Petition* constituted a statement of policy rather than generic agency action.[11] Moreover, the Commission responded that since the *NGSA Order on Petition* was a policy statement, no party, including INGAA, was "aggrieved" in the sense required for filing a rehearing request under NGA section 19(a).[12] After determining that none of the *NGSA* parties had standing to file rehearing requests (and therefore had no standing to seek judicial review of the *NGSA Order on Petition*), the Commission concluded that parties may raise their issues "in future adjudications concerning the reservation charge crediting provisions of specific pipelines."[13]

The time for hearing INGAA's issues has come.

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[7] 15 U.S.C. § 717r(a)("No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon.").

[8] 15 U.S.C. § 717d (hereinafter, "section 5").

[9] INGAA Rehearing Request, 5-7.

[10] *Id.*, 7-8.

[11] *See generally, NGSA Rehearing Order*, PP 20-26.

[12] *Id.*, P 30 (referencing 15 U.S.C. § 717r(a)).

[13] *Id.*, P 31.

INGAA moves to intervene in this pipeline rate proceeding on two grounds. First, intervention in a rate proceeding is the only avenue sanctioned under the *NGSA Rehearing Order* for the interstate natural gas pipeline industry, standing together, to assert the legal defectiveness of the *NGSA Order on Petition*, to request Commission rehearing and, if necessary, to secure judicial review. Second, while the policy articulated in the *NGSA Order on Petition* has been touched upon in some subsequent cases, INGAA intervention is this docket is particularly warranted because the September 20 Order and the proceedings leading up to it embody the very issues the Commission deferred when it issued the *NGSA Rehearing Order*.

INGAA argued on rehearing that the *NGSA Order on Petition* violated section 5 by forcing pipelines to amend Commission-approved tariffs without the Commission or a complaining party demonstrating that the current tariff is not just and reasonable or that an alternative is just and reasonable.[14] In the September 20 Order, the Commission found it can avoid the statutory requirements because the reservation charge crediting policy articulated in the *NGSA Order on Petition* became "binding policy" through its application in other cases.[15] By attempting to elevate policy to rule via adjudication, the September 20 Order ignores the inherently fact-specific nature of adjudicatory findings and misstates the law governing the application of precedent. As to section 5, the September 20 Order amounts to an attempt to do indirectly what the NGA prohibits the Commission from doing directly.

The September 20 Order echoes the portions of the *NGSA Order on Petition* that gave rise to INGAA's section 5 arguments on rehearing in that proceeding. The *NGSA Rehearing*

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[14] INGAA Rehearing Request, 5-7.

[15] September 20 Order, P 24. In its rehearing request, INGAA disputed this characterization of precedent, and argued that the *NGSA Order on Petition* "announce[d] an industry-wide reservation charge crediting standard far different from the Commission's longstanding policy of handling reservation charge crediting through individual pipeline cases." INGAA Rehearing Request, 8-10.

Order deferred these arguments. With the issuance of the September 20 Order, these arguments must be considered now.

INGAA also argued on rehearing that the *NGSA Order on Petition* violated the APA by imposing a regulation under the guise of a policy statement.[16] Consistent with characterizing the *NGSA Order on Petition* as an articulation of policy, the *NGSA Rehearing Order* assured that in future cases parties could argue that the policy (and precedents applying it) should not be applied. The September 20 Order belies this assurance, holding that, in light of "binding precedents," a tariff's departure from the reservation charge crediting policy articulated in the *NGSA Order on Petition* is sufficient, in itself, to establish a *prima facie* case that the tariff is not just and reasonable and must be conformed to the policy.[17] According to the September 20 Order, no pipeline, no tariff, no set of facts and circumstances can justify a departure from the *NGSA Order on Petition* "policy." Through its generic application of the policy articulated in the *NGSA Order on Petition* as "binding policy having the force of law,"[18] the September 20 Order manifests the exact point INGAA articulated in its rehearing request: the *NGSA Order on Petition* adopted a rule, not a policy, assurances otherwise notwithstanding.

This motion satisfies the Commission's rules governing the grant of intervention out of time.

- Responding to Rule 214(b)(1),[19] INGAA's position on the September 20 Order's application of the *NGSA Order on Petition* is detailed throughout this pleading.
- INGAA satisfies Rule 214(b)(2)[20] on two grounds. First, the Commission expressly conferred INGAA's right to participate in this proceeding, consistent with Rule 214(b)(2)(i),[21] through the

16 INGAA Rehearing Request, 7-8.

17 September 20 Order, P 25.

18 *Id.*, P 27.

19 18 C.F.R. § 385.214(b)(1).

20 *Id.*, § 385.214(b)(2).

portion of the *NGSA Rehearing Order* directing INGAA to pursue its issues in future adjudications concerning the reservation charge crediting provisions of specific pipelines.[22] Separately, INGAA participation is in the public interest, within Rule 214(b)(2)(ii),[23] because there is no other means for the industry as a whole to litigate the fundamental legal defectiveness of the *NGSA Order on Petition* as applied to Texas Eastern and, generically, to interstate natural gas pipelines.

- Responding to Rule 214(b)(3),[24] the Commission can and should allow INGAA to intervene. The deadline for filing motions to intervene in this docket was January 31, 2012.[25] The issues giving rise to INGAA's interest in this proceeding materialized only after the Commission issued the September 20 Order and departed from the assurances contained in the *NGSA Rehearing Order*. An intervention based on the September 20 Order could not have been filed by January 31 because the September 20 Order did not yet exist. Moreover, INGAA accepts the record in this case as it now stands and does not seek to introduce evidence specific to this case. Instead, INGAA views this docket as the appropriate vehicle for voicing its legal and policy challenges to the policy articulated in the *NGSA Order on Petition*, consistent with the Commission's direction to do so "in future adjudications concerning the reservation charge crediting provisions of specific pipelines."[26] Granting intervention will not disrupt the proceeding or impose any prejudice or undue burden on the current parties.

INGAA styles this pleading as an emergency motion because it seeks waiver of the 15-day response period alluded to in Rule 214(c).[27] This motion is accompanied by a request for rehearing of the September 20 Order. Section 19(a) of the Natural Gas Act provides that only parties to a proceeding may file rehearing requests and rehearing requests must be filed within 30 days after the Commission issues the underlying order.[28] The Commission must waive the

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21 *Id.*, § 385.214(b)(2)(i).

22 *NGSA Rehearing Order*, P 31.

23 18 C.F.R. § 385.214(b)(2)(iii).

24 18 C.F.R. § 385.214(b)(3).

25 *Combined Notice of Filings*, 77 Fed. Reg. 5005 (2012).

26 *NGSA Rehearing Order*, P 31.

27 18 C.F.R. § 385.214(c).

28 15 U.S.C. § 717r(a).

response period and grant INGAA's intervention immediately to confer the requisite party status on INGAA and allow its rehearing request to be filed within the statutory deadline.[29]

Communications regarding this motion should be directed to:

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INGAA requests that the same individuals be included in the Commission's official service list for this proceeding.

REQUEST FOR REHEARING

SPECIFICATIONS OF ERROR

1. In issuing the September 20 Order, which implemented as "binding policy" the reservation charge crediting policy articulated in the *NGSA Order on Petition*, the Commission acted in excess of its statutory authority, contrary to APA section 706(2)(C)[30] and NGA section 5, by taking action under section 5 without making the requisite findings, supported by substantial evidence, that Texas Eastern's current tariff and rates are not just and reasonable, and that a tariff and rates conforming to the reservation charge crediting policy, such as it is, are just and reasonable.

2. By neglecting to affirm the continued validity of Texas Eastern's Commission-approved tariff, and instead finding that, in light of "binding precedents," that tariff's departure from the reservation charge crediting policy articulated in the *NGSA Order on Petition* is sufficient, in itself, to establish a *prima facie* case that the tariff is not just and reasonable and must be conformed to the policy articulated in the *NGSA Order on Petition*, the September 20 Order violates APA section 706(2)(D)[31] by giving the reservation charge crediting policy the force of regulations without first conducting notice and comment rulemaking.

3. The Commission erred by stating that the *NGSA Order on Petition*, previously characterized by the Commission as a statement of policy, now has "the force of law" without explanation for this fundamental shift and without making any findings of fact.

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[29] The thirtieth day after the Commission issued the September 20 Order was Saturday, October 20, 2012. Per the Commission's "weekend rule" for rehearing requests, *see Turtle Bayou Gas Storage Company, LLC*, 136 FERC ¶61,052, n. 3 (2011), the filing deadline is the following Monday, October 22, 2012.

[30] 5 U.S.C. § 706(2)(C).

[31] 5 U.S.C. § 706(2)(D).

Failure to provide such an explanation is arbitrary and capricious and is not the product of reasoned decision-making. *See*, *e.g*., *Williams Gas Processing – Gulf Coast Co., L.P. v. FERC*, 475 F.3d 319, 326 (D.C. Cir. 2006) (quoting *Nuclear Energy Inst., Inc. v. EPA*, 373 F.3d 1251, 1296 (D.C. Cir. 2004)); *Busse Broad. Corp. v. FCC*, 87 F.3d 1456, 1458 (D.C. Cir. 1996); *Cross-Sound Ferry Services, Inc. v. ICC*, 873 F.2d 395, 398 (D.C. Cir. 1989); *Southwestern Elec. Power Co. v. FERC*, 810 F.2d 289, 291 (D.C. Cir. 1987) (quoting *Hatch v. FERC*, 654 F.2d 825, 834 (D.C. Cir. 1981)); *West Virginia PSC v. U.S. Dep't of Energy*, 681 F.2d 847, 863 (D.C. Cir. 1982).

STATEMENT OF ISSUE

The Commission initiated this section 5 proceeding on February 16, 2012,[32] claiming that the Commission satisfied its obligation to make a *prima facie* case against various provisions of Texas Eastern's tariff based solely upon a comparison of Texas Eastern's reservation charge crediting provisions to the Commission's reservation charge crediting policy articulated in the *NGSA Order on Petition* and the cases cited therein. On March 19, 2012, Texas Eastern filed a request for rehearing of the February 16 Order, as well as a response to the Commission's order to show cause. In the September 20 Order, the Commission accepted in part and denied in part Texas Eastern's request for rehearing and directed Texas Eastern to modify certain of its reservation charge crediting provisions, without adducing any evidence and refusing to consider the facts presented by Texas Eastern in its response to the show cause directive.

Moreover, the *NGSA Order on Petition* claimed the Commission was articulating a statement of policy and could not be applied generically to all pipelines. Consistent with this characterization of the *NGSA Order on Petition*, the *NGSA Order on Petition* expressly declined to initiate a generic proceeding for all pipelines with respect to reservation charge crediting provisions for service interruptions that occur due to *force majeure* and non-*force majeure* outages on their respective systems.[33] In response to points INGAA raised in its request for rehearing of the *NGSA Order on Petition*, the *NGSA Rehearing Order* assured that "the Commission did not take any action under NGA section 5 in the [*NGSA Order on Petition*]" and declared that the *NGSA Order on Petition* "did not order any interstate pipeline [to] take any specific action with respect to modifying its tariff."[34] In direct contradiction of these statements and assurances, the September 20 Order turns the *NGSA Order on Petition* policy statement into a requirement having the "force of law"[35] applicable generally to all pipelines.

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[32] *Texas Eastern Transmission, LP*, 138 FERC ¶ 61,126 (2012) ("February 16 Order").

[33] *See NGSA Order on Petition*, P 2 (holding that "the Commission will not institute the . . . section 5 action that Petitioners request").

[34] *NGSA Rehearing Order*, P 22.

[35] September 20 Order, P 24.

ARGUMENT

1. THE SEPTEMBER 20 ORDER TAKES SECTION 5 ACTION ADVERSE TO TEXAS EASTERN WITHOUT MAKING THE STATUTORILY REQUIRED FINDINGS AND MEETING THE STATUTORILY REQUIRED STANDARDS.

Under section 5, the burden of coming forward and the burden of proof rest with the party seeking to change an existing tariff or rate, whether the party advocating that change is a private party or the Commission. When the Commission is operating under section 5, it has the burden of going forward and the burden of proof to show both that the current tariff provisions are unjust and unreasonable and that any replacement tariff provisions are themselves just and reasonable.[36] In both instances, the burden must be borne by substantial evidence meeting each of the two discrete standards.[37]

The September 20 Order shifts the burden of coming forward and the burden of proof that Congress established when it enacted section 5. In the September 20 Order, the Commission found it can avoid the section 5 statutory requirements because the reservation charge crediting policy articulated in the *NGSA Order on Petition* became "binding policy" through its application in other cases.[38] By attempting to elevate policy to rule via adjudication, the September 20 Order ignores the inherently fact-specific nature of adjudicatory findings and misstates the law governing the application of precedent.[39] In short, the September 20 Order

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[36] *See, e.g., Western Resources v. FERC,* 9 F.3d 1568 (D.C. Cir. 1993); *Sea Robin Pipeline Co. v. FERC*, 795 F.2d 182-183-87 (D.C. Cir. 1986); *ANR Pipeline Co. v. FERC*, 771 F.2d 507, 513-14 (D.C. Cir. 1985).

[37] *Id.*

[38] September 20 Order, P 24. In its rehearing request, INGAA disputed this characterization of precedent, and argued that the *NGSA Order on Petition* "announce[d] an industry-wide reservation charge crediting standard far different from the Commission's longstanding policy of handling reservation charge crediting through individual pipeline cases." INGAA Rehearing Request, 8-10.

[39] As the Commission recognized in the *NGSA Rehearing Order*, n. 20, precedents establish rules to be followed when justified by the facts and circumstances of a particular case. Conversely, precedents should be modified or even discarded where they are not aligned with the facts and circumstances at issue.

amounts to an attempt to do indirectly what section 5 prohibits the Commission from doing directly.

2. THE SEPTEMBER 20 ORDER VIOLATES THE APA BY IMPOSING A RULE OF GENERAL APPLICABILITY, IN EFFECT, A REGULATION, WITHOUT NOTICE AND COMMENT RULEMAKING.

The APA distinguishes between regulations and policy statements, requiring notice and comment for rules while granting an express exemption for policy statements.[40] The distinction between the two is that regulations have the force of law, binding on the regulated, while policy statements are statements of position that are binding on neither the issuing agency nor the parties it oversees:

> The critical distinction between a substantive rule and a general statement of policy is the different practical effect that these two types of pronouncements have in subsequent administrative proceedings. A properly adopted substantive rule establishes a standard of conduct which has the force of law. In subsequent administrative proceedings involving a substantive rule, the issues are whether the adjudicated facts conform to the rule and whether the rule should be waived or applied in that particular instance.
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> A general statement of policy, on the other hand, does not establish a "binding norm." It is not finally determinative of the issues or rights to which it is addressed. The agency cannot apply or rely upon a general statement of policy as law because a general statement of policy only announces what the agency seeks to establish as policy. * * * When the agency applies the policy in a particular situation, it must be prepared to support the policy just as if the policy statement had never been issued.[41]

INGAA argued on rehearing that the *NGSA Order on Petition* violated the APA by imposing a regulation under the guise of a policy statement.[42] Consistent with characterizing the

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[40] 5 U.S.C. § 553(b)(3)(A).

[41] *Pacific Gas & Elec. Co. v. FPC*, 506 F.2d 33, 38 (D.C. Cir. 1974)(internal citations omitted); *see also*, *U.S. Telephone Assn. v. FCC*, 28 F.3d 1232, 1235 (D.C. Cir. 1994); *Syncor Int'l Corp. v. Shalala*, 127 F.2d 90, 94 (D.C. Cir. 1997).

[42] INGAA Rehearing Request, 7-8.

NGSA Order on Petition as an articulation of policy, the *NGSA Rehearing Order* assured that in future cases parties could argue that the policy (and precedents applying it) should not be applied to a pipeline's particular circumstances. The September 20 Order belies this assurance, holding that, in light of "binding precedents," a tariff's departure from the reservation charge crediting policy articulated in the *NGSA Order on Petition* is sufficient, in itself, to establish a *prima facie* case that the tariff is not just and reasonable and must be conformed to the policy.[43]

In the September 20 Order, however, the Commission blurs precedent with policy in a way that moots the traditional application of precedent. Under the theory of precedent application expressed in the September 20 Order, the facts and circumstances of each case are expendable. This aspect of the September 20 Order is arbitrary and capricious and not the product of reasoned decision making.

Moreover, the Commission stated in the *NGSA Order on Petition* that pipelines would have an opportunity to present individual facts and circumstances in each reservation charge crediting proceeding. Now, under the September 20 Order, no pipeline, no tariff, and no set of facts and circumstances can justify a departure from the "policy" articulated in the *NGSA Order on Petition*. Through its generic application of the policy articulated in the *NGSA Order on Petition*, as "binding policy having the force of law,"[44] the September 20 Order imposes a rule without conducting the notice and comment rulemaking required by the APA.

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[43] September 20 Order, P 25.

[44] *Id.*, P 27.

3. THE SEPTEMBER 20 ORDER DEPARTS FROM A LONGSTANDING COMMISSION POLICY — RESOLVING RESERVATION CHARGE CREDITING THROUGH INDIVIDUAL PIPELINE CASES — WITHOUT REASONABLE EXPLANATION OR SUBSTANTIAL EVIDENCE IN THE RECORD.

The Commission characterizes the *NGSA Order on Petition* as restating "a well-established and longstanding policy concerning the reservation charge credits, which all interstate pipelines must provide their firm shippers during both *force majeure* and non-*force majeure* situations."[45] The facts do not bear this out.

The Commission's longstanding practice, in fact, has been to take a pipeline-by-pipeline approach to reservation charge crediting. This practice dates back to the beginning of the open-access era and pipeline Order No. 636 restructuring proceedings. In many of these cases, including Texas Eastern's, reservation charge crediting was a significant issue, which the Commission permitted to be resolved on a pipeline-by-pipeline basis. Reservation charge crediting provisions in many pipeline tariffs during this time resulted from settlement or litigation. The pipeline-by-pipeline approach has continued well after Order No. 636 restructuring, with the Commission allowing pipelines to tailor reservation charge crediting provisions to their unique circumstances.[46]

The September 20 Order is unlawful because it contains neither a reasonable explanation nor substantial record evidence supporting a departure from the Commission's longstanding, pipeline-by-pipeline approach. The Commission cannot arbitrarily or discriminatorily change its

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45 *NGSA Order on Petition*, P 12.

46 *See, e.g., Kern River Gas Transmission Co.*, 129 FERC ¶ 61,262 (2009), *order on reh'g*, 132 FERC ¶ 61,111 (2010).

policies,[47] let alone elevate those policies to rules having the force of law. Instead, the Commission bears the burden of explaining the reasonableness of any departure from a longstanding practice, and any facts underlying its explanation must be supported by substantial evidence. General statements regarding a generic policy that applies to all pipelines without regard to the unique circumstances that may underlie the Commission's earlier approval of a tariff provision that does not precisely conform in all respects to the Commission's purported policy does not provide the substantial evidence necessary to overturn a policy of approving reservation charge crediting provisions on a pipeline-by-pipeline basis.[48]

CONCLUSION

The reservation charge crediting policy articulated in the *NGSA Order on Petition* is legally defective in its substance and application. INGAA tried to voice these defects when it requested rehearing. The Commission responded that INGAA was not aggrieved, and therefore

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[47] *See, e.g., Otter Tail Power Co. v. FERC*, 583 F.2d 399, 408 (8th Cir. 1978), *cert. denied,* 440 U.S. 950 (1979); *Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C. Cir. 1970), *cert. denied,* 403 U.S. 923 (1971); *Grace Petroleum Corp. v. FERC*, 815 F.2d. 589 (10th Cir. 1987); *NEPCO Municipal Rate Committee v. FERC*, 668 F.2d 1327 (D.C. Cir. 1981); *Union Elec. Co. v. FERC*, 890 F.2d 1193, 1195 (D.C. Cir. 1989); *Tennessee Gas Pipeline Co. v. FERC*, 824 F.2d 78, 82 (D.C. Cir. 1987); *ANR Pipeline Co. v. FERC*, 771 F.2d 507, 519-20 (D.C. Cir. 1985).

[48] *Grace Petroleum Corp. v. FERC*, 815 F.2d. 589, 591 (10th Cir. 1987)(acknowledging that an agency has a right to change previous precedent, but in doing so, the "agency must provide a reasoned explanation for any failure to adhere to its own precedents")(citations omitted); *NEPCO Municipal Rate Committee v. FERC*, 668 F.2d 1327 (D.C. Cir. 1981)(holding that FERC did not act arbitrarily or discriminatorily in changing its policy because FERC adequately supported its findings with evidence); *Union Elec. Co. v. FERC*, 890 F.2d 1193, 1195 (D.C. Cir. 1989)(holding that FERC did not satisfy the standard of amply supporting both factually and legally their contract interpretations); *Tennessee Gas Pipeline Co. v. FERC*, 824 F.2d 78, 82 (D.C. Cir. 1987)(stating that the Commission may not "cavalierly disregard" its prior decisions and adopt a new or different standard, and that "[i]n the absence of a clear explanation, imposition of costs on one group rather than another appears completely arbitrary"); *ANR Pipeline Co. v. FERC*, 771 F.2d 507, 519-20 (D.C. Cir. 1985)(reversing the Commission's decision because the Commission failed to "present substantial evidence that the differing [rate] treatment" compared to its previous treatment under similar circumstances was necessary and appropriate); *Wisconsin Valley Improvement Co. v. FERC*, 236 F.3d 738, 748 (D.C. Cir. 2001)(stating the rule that an "agency acts arbitrarily and capriciously when it abruptly departs from a position it previously held without satisfactorily explaining its reasons for doing so"); *Columbia Gas Transmission Corp. v. FERC*, 628 F.2d 578, 585-86 (D.C. Cir. 1979)(rejecting the Commission's generic assertion that a new rate formula would result in a better distribution of cost responsibility and holding that the Commission needed to provide a reasoned explanation for its decision to depart from a formula that had been applied for twenty-five years).

did not have standing to file a rehearing request or seek judicial review, because the *NGSA Order on Petition* was merely a policy statement. The Commission told INGAA it would have to wait: that INGAA could raise its issues when the policy is applied in pipeline rate proceedings.

Now is the time to be heard. INGAA generally does not insert itself into individual rate proceedings. It seeks to do so here because the September 20 Order makes it clear the Commission considers the reservation charge crediting policy articulated in the *NGSA Order on Petition* to be legally binding on all interstate natural gas pipelines. Reservation charge crediting raises issues of central importance to INGAA's members, and INGAA respectfully insists on having its objections to this policy heard.

With respect to the emergency motion to intervene, INGAA asks the Commission to waive the response period for this motion, to grant this motion immediately, and to permit INGAA to intervene out of time in this proceeding.

With respect to the request for rehearing, INGAA asks the Commission to reverse and modify the September 20 Order consistent with the points and authorities presented above.

Respectfully submitted,

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October 22, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have this day 22nd day of October, 2012, caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in these proceedings.

/s/ Joan Dreskin
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