

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Consumers Power Company

Docket No. PR97-1-002

ORDER GRANTING CLARIFICATION

(Issued April 20, 2004)

1. This case arose from a filing by Consumers Energy Company (Consumers), formerly Consumers Power Company, proposing a separate, nominal rate for non-physical transfers of natural gas occurring prior to the gas being physically transported under its blanket certificate. On September 27, 2002, the Commission issued an order rejecting Consumers' filing.¹ On December 23, 2003, we denied Consumers' request for rehearing of the September 27 Order.² Duke Energy Trading and Marketing, L.L.C. (Duke), Reliant Energy Services, Inc. (Reliant), and Dynegy Marketing and Trade (Dynegy), seek clarification that the Commission, having rejected Consumers' proposed rate, did not intend to foreclose refunds by Consumers to the customers who paid the disallowed rate. Alternatively, they request rehearing on this issue. As we explain below, we grant Duke and Dynegy's requests for clarification, but dismiss Reliant's request. Our action today benefits customers by ensuring that they pay fair and equitable rates for the non-physical transfer of natural gas.

Background

2. Consumers, a Hinshaw pipeline with facilities in the State of Michigan, began this proceeding by filing a revised statement of operating conditions pursuant to section 284.123(e) of the Commission's regulations.³ In the September 27 Order, the Commission held that, because Consumers did not have an intrastate rate on file for non-physical title tracking transfer services, it could not base its proposed rate on an approved

¹ Consumer Power Co., 100 FERC ¶ 61,354 (2002) (September 27 Order).

² Consumer Power Co., 105 FERC ¶ 61,369 (2003) (December 23 Order).

³ 18 C.F.R. § 284.123 (e) (2003).

intrastate rate.⁴ Rather, the Commission reviewed the proposal as a petition for rate approval under the fair and equitable standard set forth in section 284.123(b) (2). The September 27 Order rejected Consumers' title transfer tracking (TTT) rate under this standard because Consumers had failed to provide cost support for its filing, and had calculated the rate on a volumetric basis, which bore no relationship to the costs incurred in providing the service.

3. In the December 23 Order, we denied Consumers' request for rehearing which claimed that the Commission was without jurisdiction over non-physical title transfers. On the contrary, the Commission determined that title transfer tracking service is a jurisdictional transportation service. In passing, we noted that "no refunds are at issue" in this proceeding.⁵ It is this statement that prompted the new round of requests for clarification or rehearing.

Discussion

4. The September 27 Order granted motions to intervene filed by Duke (then known as Pan Energy Trading and Marketing Services, L.L.C.) and Dynegy (then Natural Gas Clearinghouse). However, Reliant (formerly NorAm Energy Services) filed a notice on February 25, 1997, that it was withdrawing from this proceeding.⁶ Having relinquished its status as a party, Reliant does not have standing to seek clarification or rehearing of the December 23 Order.

5. Duke and Dynegy question whether the Commission mistakenly referred in the December 23 Order to no refunds being at issue. The parties state that Consumers has been charging them the TTT rate since its original filing proposing the rate in October 1996. They observe that under section 284.123(b) (ii)(2)(i) of the Commission's regulations, Consumers was authorized to commence the service and "charge and collect the proposed rate, subject to refund."⁷ Duke and Dynegy request rehearing of the December 23 Order if the Commission intended to decide that Consumers was not liable for refunds of the TTT rate.

6. The Commission grants the clarification requested by the parties. Our statement that no refunds were at issue was in error. Consumers proposed the subject rate pursuant

⁴ 18 C.F.R. § 284.123 (b).

⁵ December 23 Order, 105 FERC ¶ 61,369 at P 13.

⁶ September 27 Order, 100 FERC ¶ 61,354 at at P 5 n.3.

⁷ 18 C.F.R. § 284.123(b) (ii) (2).

to section 4 of the Natural Gas Act and, as provided under our regulations, the proposed rate went into effect subject to refund. Because Consumers failed to meet its burden under section 4 to support its proposed rate, refunds (with interest) are appropriate to customers who paid the erroneous rate, to the extent that they paid more than they would have under a fair and equitable TTT rate.

7. The September 27 and December 23 Orders did not establish a fair and equitable TTT rate, but simply set forth guidelines that must be followed to establish such a rate. Therefore, the Commission is requiring that Consumers propose a TTT rate, to be effective October 1, 1996, in accordance with those guidelines. Additionally, Consumers will be required to make refunds of the difference between the new rate, once it is accepted by the Commission, and the rejected rate, to all customers who paid the former rate, with interest in accordance with our regulations.

8. In view of our disposition of the case, Duke and Dynegy's requests for rehearing are dismissed as moot.

The Commission orders:

(A) Reliant's request for clarification and/or rehearing is hereby dismissed.

(B) The requests for clarification filed by Duke and Dynegy are hereby granted, as explained in the body of this order.

(C) The requests for rehearing filed by Duke and Dynegy are hereby dismissed as moot.

(D) Consumers is hereby directed, within 30 days of the issuance of this order, to make a filing in compliance with the prior orders in this docket, proposing a fair and equitable TTT rate.

(E) Within 30 days of the date of the acceptance of Consumers' compliance filing, Consumers is hereby directed to make refunds to its customers, with interest, as explained in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.