

107 FERC ¶ 61,147  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Cranberry Pipeline Corporation

Docket No. PR04-6-000

ORDER DENYING PROTECTIVE ORDER, DISCOVERY MASTER  
AND GRANTING TIME EXTENSION

(Issued May 10, 2004)

1. On April 7, 2004, Cranberry Pipeline Corporation (Cranberry) filed two motions requesting: (1) that the Commission extend the 150-day deadline for Commission action on its rate petition, so as to facilitate a settlement of the issues in this proceeding; and (2) that the Commission appoint an Administrative Law Judge (ALJ) to act as a Discovery Master for the purpose of issuing a protective agreement and ruling on any discovery dispute arising among the parties. As discussed below, the Commission rejects Cranberry's request for appointment of a Discovery Master and extends the time for action on Cranberry's petition for rate approval. This order benefits customers by promoting the Commission's goal of encouraging settlements.

**Cranberry's Filing**

2. Cranberry is an interstate pipeline located in West Virginia. On December 16, 2003, Cranberry filed an application for rate approval pursuant to sections 284.123(b)(2)<sup>1</sup> to establish revised rates for interruptible transportation on behalf of interstate pipelines and local distribution companies pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA). Cranberry also proposes to begin offering firm and interruptible storage services pursuant to NGPA section 311<sup>2</sup> and to continue the \$50 per well monthly low flow meter fee. Cranberry also filed a revised Operating Statement and requested an effective date of May 1, 2004.

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<sup>1</sup> 18 C.F.R. § 284.123(b)(2)(2003).

<sup>2</sup> 15 U.S.C. § 3371 (1982).

3. Notice of Cranberry's filing was published in the Federal Register, 68 Fed. Reg. 2,912 (2004), with interventions and comments due on or before January 21, 2004. The Consumer Advocate Division of the West Virginia Public Service Commission (CADWV) filed a notice of intervention and protest. Equitable Production Company (Equitable) filed a motion to intervene and the Independent Oil & Gas Association of West Virginia (IOGA) and Monongahela Power Company (Monongahela) filed protests. Cranberry filed an answer.

4. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely unopposed motions and notices to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept Cranberry's and CADWV's answers because they have provided us with information that aided us in our decision-making process.

5. On February 12, 2004, and March 19, 2004 the Office of Markets, Tariffs and Rates (OMTR) issued requests for additional information. Also CADWV, Monongahela, and Equitable all filed requests for information. Cranberry has submitted information responding to OMTR's requests and states it is still in the process of providing responses to the parties' requests.

6. On April 7, 2004, Cranberry filed this motion requesting a protective order and the appointment of a Discovery Master. Cranberry states that while preparing its response to the data requests it has determined that some of its responses include confidential and proprietary data as well as other sensitive commercial documents and information. Cranberry states it has discussed with the parties its concerns over the sensitive nature of the information and they have agreed to the Commission issuing a protective order.

7. Additionally, Cranberry requests the Commission appoint an ALJ to act as a Discovery Master to issue the protective order to govern and limit the production and disclosure of the protected materials and to rule on any potential disputes concerning discovery that may arise among the parties.<sup>3</sup>

8. On the same day, Cranberry filed a second motion to extend the time for action. Cranberry states that this proceeding is in the early stages of discovery. Cranberry also asserts it will respond to all presently pending data requests, and notes that some of the

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<sup>3</sup> Cranberry cites Puget Sound Energy, Inc., v. All Jurisdictional Sellers of Energy, et al., 101 FERC ¶ 61,304 (2002) (Puget) in support of the Commission appointing a Discovery Master prior to the Commission referring the case to hearing or settlement judge proceedings.

parties have indicated that they may make additional requests for information. In order to provide sufficient time for discovery and in order for the parties to have a reasonable period of time to discuss the possibility of settling all or a portion of this case, Cranberry requests an extension of time for action on Cranberry's petition for 120 days beyond the current deadline. Cranberry states all of the parties either support or do not oppose the extension.

### **Discussion**

9. The Commission generally processes section 311 rate cases through informal advisory proceedings.<sup>4</sup> As in the instant case, this process typically begins with technical staff issuing a data request for additional information to supplement the record. This is often followed by several exchanges of data requests and information which can lead to a settlement or staff panel proceeding. The Commission accordingly denies Cranberry's motion for appointment of an ALJ to act as a Discovery Master, since Cranberry has not shown a need for the more formal procedures it suggests.

10. The Commission recognizes that Cranberry may have valid reasons for seeking to protect some information from public disclosure. However, in proceedings not set for hearing, the Commission believes it preferable for the parties to negotiate protective agreements among themselves without Commission involvement and the Commission only issues protective orders when they fail to agree.<sup>5</sup> In this case, Cranberry has indicated that the parties do not object to its proposed protective agreement and has given no reasoning why a protective order issued by an ALJ is necessary in light of the parties' willingness and ability to sign onto a protective agreement among themselves.

11. In addition, we expect the parties to be cooperative in exchanging relevant information and Cranberry has provided no reason to anticipate disputes arising that would require the appointment of a Discovery Master. In the vast majority of cases, our informal section 311 rate setting procedures have involved voluntary compliance with informal discovery. It is only in the extraordinary situation that we have set such a matter for hearing.<sup>6</sup>

12. While in Puget the Commission did direct the appointment of a Discovery Master prior to ordering a formal hearing before an ALJ, that case involved the potential re-opening of a prior proceeding to conduct further investigation, was a much more involved investigation of spot market bilateral sales transactions in the Pacific Northwest over a

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<sup>4</sup> Louisiana Interstate Gas Corporation, 44 FERC ¶ 61,397 (1988) (LIG).

<sup>5</sup> Trunkline Gas Company, 53 FERC ¶ 61,065 (1990).

<sup>6</sup> LIG, 44 FERC at 62,284.

six month period and involved a large number of parties. In this case, Cranberry's petition is an advisory proceeding and does not involve a formal trial-type investigation. Therefore, Cranberry's request of referral to the Administrative Law Division for the appointment of a Discovery Master is inappropriate at this time, and is hereby denied.

### **Extension of Time**

13. Section 284.123(b)(2)(ii) provides that 150 days after the date on which the Commission receives an application, the rate proposed in the application will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for providing similar transportation service, unless within 150 days the Commission either extends the time for action, or institutes a proceeding in which all interested parties will be afforded an opportunity for written comments and for the oral presentation of views, data and arguments.<sup>7</sup>

14. The 150-day period for review of Cranberry's proposed rates will expire on May 14, 2004. While the parties have engaged in several rounds of discovery, Cranberry is still in the process of providing responses to the parties' respective data requests.

15. Given Cranberry's request for an extension of time to respond to the data requests, and the Commission's preference for settlements, the Commission finds good cause exists to extend the 150-day period and grants Cranberry's request. We will extend the time for action until the Commission can make a determination whether Cranberry's rates are fair and equitable.

### **The Commission orders:**

- (A) Cranberry's request for a protective order is hereby denied.
- (B) Cranberry's request for a discover master is hereby denied.

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<sup>7</sup> 18 C.F.R. § 284.123(b)(2)(ii) (2003).

(C) Pursuant to the Commission's authority under section 311 of the NGPA and § 284.123(b)(2)(ii) of the Commission's regulations, time for action on Cranberry's petition for rate approval is extended until the Commission can make a determination whether Cranberry's rates are fair and equitable or until it determines that formal proceedings are necessary.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.