107 FERC ¶ 61,149
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

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

Natural Gas Pipeline Company of America — Docket Nos. RP00-409-004 and RP00-631-005

ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILING

(Issued May 10, 2004)

1. On June 13, 2003, Natural Gas Pipeline Company of America (Natural) filed revised tariff sheets[1] to comply with the Commission's May 14, 2003 Order (May 14 Order).[2] The Commission finds that Natural generally complied with the May 14 Order and accepts Natural's revised tariff sheets effective December 1, 2003, subject to Natural filing revised tariff sheets within 15 days of the date this order issues as directed herein. Acceptance of this filing benefits the public by ensuring that Natural's tariff properly implements the Commission's Order No. 637 mandates, which are designed to enhance competition and transportation services in the natural gas industry.

I. Background

2. The May 14 Order accepted Natural's filing, but required Natural to make further tariff revisions with respect to primary points in segmented releases. The Commission accepted the tariff sheets to be effective December 1, 2003, to accommodate Natural's proposed timeline to modify its DARTPlus interactive website for the implementation of its Order No. 637 tariff sheets. In a November 26, 2003 letter, Natural stated that it commenced operating under the revised tariff sheets submitted in the instant filing.

---

[1] Substitute Original Sheet No. 252A, Substitute Original Sheet No. 252E, Substitute Original Sheet No. 252F, Substitute Tenth Revised Sheet No. 264A and Substitute First Revised Sheet No. 267B to its FERC Gas Tariff, Sixth Revised Volume No. 1.

[2] 103 FERC ¶ 61,174 (2003), Order on Rehearing and Compliance Filing.

3. Public notice of Natural's filing issued June 18, 2003. Interventions and protests were due as provided in § 154.210 of the Commission's regulations (18 C.F.R. §154.210 (2003)). On June 25, 2003, timely protests were filed by Northern Illinois Gas Company (Nicor Gas) and the Indicated Shippers (consisting of BP Energy Company, BP America Production Company, and ChevronTexaco Natural Gas, a division of Chevron U.S.A. Inc.). On July 8, 2003, Natural filed a response to the protests to clarify its proposed tariff language (Response). While the Commission's regulations do not provide for responses to protests, we will accept Natural's response as it aids in clarifying the record.

II. Discussion

4. The Commission's May 14 Order directed Natural to revise its tariff to provide that a segmented primary point has the same priority as any other primary point and that in capacity release situations, releasing and replacement shippers are permitted to have primary point rights equal to, but not exceeding, their contract demand. In the instant compliance filing regarding primary points in segmented releases, Natural states it has removed tariff language which would have made any additional primary point subject to the subsequent award of firm capacity at that point to another original shipper, and clarified that these additional primary points have the same priority as other primary points during the term of the release unless changed by the shipper. However, Natural proposed certain tariff language contrary to Order No. 637.

A. Affiliate Exemption

5. Natural's revised tariff[3] provides that a segmented primary point has the same priority as any other primary point as directed in the May 14 Order, but Natural also added that, "Such additional primary point may not be designated if a shipper is releasing to itself or to an affiliate." Nicor Gas and the Indicated Shippers protest this restriction of the rights of releasing and replacement shippers. Nicor Gas states there is no basis for reducing the flexibility of released capacity that is made available to an affiliate of a releasing shipper. The Indicated Shippers argue that Natural seeks to impose a significant restriction on the right to establish additional primary point entitlements.

6. In its response, Natural states this language is necessary to prevent a shipper from gaming the system and obtaining additional primary points via a segmented release to itself. This occurs because although a shipper segmenting its own capacity through the nomination process does not have the right to designate additional primary points. According to Natural, both the releasing and replacement shipper can designate additional primary points under Commission policy on a segmented release.

---

[3] Proposed on Substitute Original Sheet No. 252E, section 8.14(f)(3).

7. We concur that the affiliate exemption language is contrary to Order No. 637, and have disallowed a similar proposal by another pipeline.[4] The Commission has allowed Natural to limit the primary points a shipper may reserve to its mainline contract demand. However, consistent with the Texas Eastern/El Paso policy, the Commission requires the pipeline to treat the releasing and replacement shippers as separate shippers with separate contract demands for purposes of this limit, and thus allow each to reserve primary points up to its contract demand, subject to the availability of capacity at the requested point. The Commission permits shippers to release their capacity to affiliates. Affiliated replacement shippers should have the same rights as other replacement shippers, absent a showing that a particular release between affiliates had no legitimate business purpose other than to evade tariff or other requirements that would otherwise apply to the releasing shipper. Natural's proposed blanket prohibition on affiliated replacement shippers obtaining primary points would, in effect, treat all releases to affiliates as sham transactions with no legitimate purpose other than to evade the limit on primary point capacity that each firm shipper can reserve. We find that Natural fails to demonstrate the need to deny all affiliated replacement shippers the primary point rights available to all other replacement shippers and required by our policy.[5] For this reason, we require Natural to remove this restriction from its segmentation tariff provisions. If Natural believes that a particular release transaction between affiliates has an improper purpose it may file a complaint.

B. Recall of Capacity

8. In revised GT&C section 8.14 (f)(3), Natural proposes that when the replacement shipper elects to go outside the original primary contract path of the releasing shipper, the original capacity is no longer subject to recall because Natural may have resold firm capacity in the original primary path which is not part of the redesigned primary path for the period of the release. Specifically, the new tariff language reads:

---

[4] See Trailblazer Pipeline Company, 106 FERC ¶ 61,278 (2004).

[5] See Order No. 637-A at ¶ 31,594 (the Commission found that a pipeline's restrictive allocation of primary point rights to existing shippers could impede the shipper's flexibility to use its capacity.) Regulation of Natural Gas Transportation Service and Regulation of Interstate Natural Gas Transportation Services, Order No. 637-A at 31,593, FERC Statutes and Regulations (Preambles) ¶ 31,099, order on reh'g, Order No. 637-B, 92 FERC ¶ 61,062 (2000), aff'd in part and remanded in part sub nom., Interstate Natural Gas Association of America v. FERC, 285 F.3d 18 (D.C. Cir 2002), order on remand, 101 FERC ¶ 61,127 (2002).

> . . . Where a Replacement Shipper selects primary points which are outside the primary path under the Releasing Shipper's contract (and thus creates a new primary path at least partially outside the original primary path), the Releasing Shipper cannot recall the capacity which it had released; provided that a Releasing Shipper specifying recall rights in a release may include a provision in the release which precludes selection of any primary point by the Replacement Shipper which is outside the original primary path absent the Releasing Shipper's consent.

9. Nicor Gas and the Indicated Shippers request clarification that a shipper can reserve the right to recall capacity even if the replacement shipper changes the primary points. They argue that such a ban on recalls would consequently harm secondary markets and give Natural an unfair advantage in marketing capacity.

10. The Commission will require Natural to remove the provision prohibiting recall of capacity where a replacement shipper selects primary points outside the primary path of the releasing shipper's contract. During the implementation of Order No. 637, the Commission determined that, if a replacement shipper obtains primary points by changing the releasing shipper's primary points, the change is permanent. The pipeline is then free to sell the newly available capacity at the original primary points to new shippers. The Commission found that this policy establishes a reasonable balance between the need to enhance competition by providing replacement shippers with the right to obtain primary points, and the pipeline's ability to market available capacity.[6] Consistent with this policy, if a replacement shipper changes the releasing shipper's primary points and the releasing shipper then recalls its capacity, the recalled capacity will contain the changed primary points, not the releasing shipper's original primary points. However, Natural's proposed tariff language appears to prohibit the releasing shipper from making any recall of its capacity, where primary points have been changed. We see no reason for such a blanket prohibition on recall when the replacement shipper changes the primary points in a release. For this reason, we require Natural to remove this restriction from its segmentation tariff provisions.

C. Request for Clarification

11. The Indicated Shippers also ask the Commission to clarify that the releasing shipper has the same rights as any other shipper to request a change in its primary points upon termination of the release via a recall, including a change that would restore the

---

[6] See e.g., Natural Gas Pipeline Co. of America, 103 FERC ¶ 61,174 at P 18 (2003).

original points, if there is available capacity.[7] Natural's tariff language on Sheet No. 224A.05 states that Natural shall, subject to the availability of firm capacity at the requested point, agree to any point changes in primary delivery or receipt points to the extent such new point is within the transportation path of the existing primary points. The tariff further provides that at other points, Natural shall agree to a change to the extent that firm transmission and point capacity is available. Accordingly, no further tariff revisions are required.

<u>The Commission Orders:</u>

(A) Natural's tariff sheets listed in footnote one are conditionally accepted, effective December 1, 2003.

(B) Natural is directed to file, within 15 days of the date this order issues, revised tariff sheets consistent with the discussion in the body of this order.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Acting Secretary.

[7] Indicated Shippers cite Natural's General Terms and Conditions § 5.1(c), First Revised Sheet No. 224A.05.