

137 FERC ¶ 61,051
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Natural Gas Supply Association,
American Forest and Paper Association,
American Public Gas Association,
Independent Petroleum Association of America, and
Process Gas Consumers Group

Docket No. RP11-1538-001

ORDER ON REHEARING

(Issued October 20, 2011)

1. On November 17, 2010, Petitioners¹ filed a Petition requesting that “the Commission exercise its NGA section 5 authority to enforce its policy regarding pipeline crediting during outages and order pipelines to amend their tariffs in accordance with Commission policy.”² The Petitioners stated that the Commission’s policy on crediting during times of interruption of service is clear, but many pipeline tariffs do not include provisions that comply with that policy. On April 21, 2011, the Commission issued an order denying the Petitioner’s request to institute the Natural Gas Act (NGA) section 5 action.³ However, the Commission urged all pipelines to determine whether their individual tariffs are in compliance, and if not, make an appropriate filing. In addition, the April 21 Order directed that future audits of interstate pipelines conducted by the Division of Audits in the Office of Enforcement should include whether the tariffs

¹ Petitioners consist of the Natural Gas Supply Association (NGSA), the American Forest and Paper Association, Inc. (AF&PA), the American Public Gas Association (APGA), the Independent Petroleum Association of America (IPAA), and the Process Gas Consumers Group (PGC).

² Petition P 1.

³ *Natural Gas Supply Association*, 135 FERC ¶ 61,055 (2011) (April 21 Order).

comply with the Commission's reservation charge crediting policy.⁴ Finally, the Commission restated and clarified its reservation charge crediting policy.

2. The Interstate Natural Gas Association of America (INGAA) filed a request for clarification, rehearing and reconsideration; BP Canada Energy Marketing Corporation and BP Energy Company (BP) filed a request for clarification and rehearing, and Proliance Energy LLC (Proliance) filed for rehearing. For the reasons set forth below, the Commission denies rehearing.

I. Background

3. When there is an interruption of service on a pipeline, and the shipper cannot use the capacity it reserved through the reservation charge, pipelines are required to provide shippers credits against their reservation charges. Commission policy distinguishes between *force majeure* and non-*force majeure* outages for determining the level of the credits during such outages. *Force majeure* outages are no-fault occurrences because they are unexpected and uncontrollable events. Since no blame can be ascribed to either party in that situation, the Commission's policy is that both the pipeline and the customer should share the risk. In *North Baja Pipeline, LLC v. FERC*,⁵ the Court of Appeals for the District of Columbia Circuit (D.C. Circuit) affirmed the Commission's policy that the risks of any *force majeure*-induced service disruptions should be "equitably" shared by the pipeline and its shippers. With respect to non-*force majeure* outages, where the curtailment occurred due to circumstances within a pipeline's control, the Commission requires pipelines to provide shippers a full reservation charge credit for the amount of primary firm service they scheduled which the pipeline failed to deliver. In *North Baja*, the D.C. Circuit also upheld that policy.

4. In their petition, the Petitioners stated that they had analyzed a sample of 33 tariffs from major interstate gas pipelines to determine the pipelines' compliance with the Commission's reservation charge crediting policy. The Petitioners asserted that their analysis indicated that 28 of the 33 pipelines in the sample have inadequate or inappropriate tariff language addressing outage crediting. The Petitioners accordingly requested that the Commission examine all pipeline tariffs over a reasonable period of time, using a phased approach, to ensure that they comply with the Commission's

⁴ The order noted that if any shipper believed that a pipeline's tariff does not comply with Commission reservation charge credit policy it could file a complaint alleging non-compliance, and seek section 5 relief, or raise the issue in any NGA section 4 filing by that pipeline, even if that issue was not directly related to the pipeline's section 4 filing.

⁵ 483 F.3d 819 (D.C. Cir. 2007) (*North Baja*).

crediting policy. The Petitioners requested that, if the Commission found that a pipeline's tariff did not conform to Commission policy, the Commission exercise its NGA section 5 authority and order the pipeline to amend its tariffs in accordance with Commission policy.

5. In the April 21 Order, the Commission denied the Petitioners' request to institute an immediate NGA section 5 proceeding to require pipelines to modify the reservation charge crediting provisions in their tariffs to conform to Commission policy. The Commission recognized that the Petition suggested that a number of pipelines do not have tariff provisions properly implementing our reservation charge crediting policy. However, the Commission found that voluntary action by such pipelines to bring their tariffs into compliance would be a more efficient and less burdensome method of obtaining compliance than initiating an immediate industry-wide NGA section 5 proceeding requiring all pipelines to make filings showing whether their tariffs comply. Therefore, the Commission urged pipelines to determine whether their individual tariff is in compliance, and, if not, make an appropriate filing to come into compliance.

6. In addition, the Commission directed that future audits of interstate pipelines conducted by the Division of Audits should include whether the tariffs comply with the Commission's reservation charge crediting policy. The Commission also stated that, if any shipper believes that a pipeline's tariff does not comply with Commission policy and the pipeline is not taking appropriate action to bring its tariff into compliance, it can file a complaint alleging non-compliance, and seek section 5 relief, or raise the issue in any section 4 filing by that pipeline.

7. The Commission held that this procedure provides a more flexible approach to ensure compliance with Commission policy than instituting the requested section 5 action. However, the Commission stated that, in the event of significant non-compliance with the Commission's reservation charge crediting policy, the Commission would consider other appropriate actions to obtain compliance.

8. Finally, "[i]n order to assist pipelines and other interested parties in reviewing whether pipeline tariffs comply with Commission policy," the Commission included in the April 21 Order a detailed restatement of its policy concerning reservation charge credits.⁶ In addition, the Commission clarified certain aspects of its policy concerning the determination of full reservation charge credits in non-*force majeure* situations.

⁶ April 21 Order, 135 FERC ¶ 61,055 at P 14-27.

II. Requests for Rehearing

9. INGAA takes issue with the Commission's direction in the April 21 Order that pipelines review their tariff and take "voluntary" corrective action, together with "the threat of 'corrective action' against the non-compliant."⁷ INGAA asserts that the Commission should make it clear that a pipeline's continued operation under its tariff will not subject it to enforcement action, even if the tariff differs from the reservation charge crediting "policy" articulated in the April 21 Order. Absent such clarification INGAA argues, the Commission would violate the NGA and court precedent by essentially mandating that a pipeline justify an existing, Commission-approved tariff provision with the burden on the pipeline to show it just and reasonable under section 4, even though the pipeline has not proposed a change to the provision.

10. INGAA asserts that while the April 21 Order did not grant the specific relief requested by petitioners, in all pertinent respects it is tantamount to Commission action under NGA section 5. While the Commission characterized its direction to pipelines to review their tariffs as a voluntary action, INGAA urges that the Commission's action cannot be classified as voluntary where the failure to act triggers audit exposure and possible enforcement action.

11. INGAA argues that the April 21 Order operates as a regulation, and also has the impact of a regulation, but the Commission issued it without the rulemaking procedures required for a regulation. Thus the Commission's action fails to meet the Administrative Procedures Act (APA)⁸ rulemaking requirements. INGAA asserts that the April 21 Order's statement that there is a "well-established and longstanding policy concerning reservation charge credits which interstate pipelines must adhere to" is not a correct statement. Rather, INGAA maintains, the Commission's longstanding practice has been to take a pipeline-by-pipeline approach to reservation charge crediting provisions with the Commission allowing the pipeline to tailor reservation charge crediting to their unique circumstances. Thus, the April 21 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.

12. INGAA argues that reservation charge crediting is inextricably intertwined with the level of a company's rates, and it is inappropriate to address reservation charge crediting provisions in a pipeline's tariff on a stand-alone basis outside the context of a rate case or a NGA section 5 complaint proceeding.

⁷ Request at 2.

⁸ 5 U.S.C. § 706 (2)(C).

13. Finally, INGAA objects to the April 21 Order giving its imprimatur to pipeline customers raising crediting issues in any NGA section 4 case, even if that was not part of the pipeline's filing. This, INGAA maintains, runs contrary to the fundamental structure of the NGA, in which pipelines determine the breadth of their tariff filings in NGA section 4 proceedings, and the Commission and other parties determine the breadth of the issues they wish to raise in NGA section 5 proceedings. Moreover, the Commission's policy in the April 21 Order threatens to complicate and delay the processing of NGA section 4 proceedings, and deter pipelines from making NGA section 4 tariff filings altogether.

14. Both BP and ProLiance assert that the ruling in the April 21 Order that reservation charge credits apply only to primary firm service and not to secondary service should be changed. They assert that it is in the public interest to require reservation charge credits for both primary point and secondary point in path interruptions. ProLiance states that the Commission's reason for this policy is that a customer who wants to receive reservation charge credits for service interruptions at a particular point should reserve that point as a primary point, citing *Tennessee Gas Pipeline Co.*, 73 FERC ¶ 61,083, at 61,206 (1995) (*Tennessee*). ProLiance contends that market conditions have changed substantially in the past sixteen years since *Tennessee*, and now is an appropriate time for the Commission to re-consider this policy. ProLiance states that under current Commission policy, the shipper's right to use the secondary receipt and delivery points is a significant right granted when the shipper contracts for firm service. ProLiance argues that Commission policy denying credit for curtailment of service at secondary points ignores the fact that a shipper's willingness to enter into a contract with a pipeline in the first place is influenced by both primary and secondary receipt and delivery point rights.

15. ProLiance urges the Commission to reconsider its rejection of the arguments made by Indicated Shippers in *Southern Natural Gas Co.*, 135 FERC ¶ 61,056 (2011) (*Southern*), that a pipeline should provide reservation charge credits where constraints on the primary flow path result in curtailment, regardless of whether the receipt/delivery point is primary or secondary. ProLiance argues that the reservation charge a shipper pays for encompasses the entire primary flow path, and that payment should ensure that the shipper can use the primary flow path, even if the shipper relies on a secondary receipt and/or delivery point.

16. BP argues the pipeline's contractual obligation should apply regardless of whether a shipper is using a primary firm point or a secondary firm point. It states this is particularly true where the constraint causing curtailment of service occurs upstream of both the primary and secondary point, such that as a result of the curtailment a firm shipper would not have received the service it requested either at its primary or its secondary points. BP contends that the Commission's existing policy as to secondary point reduces the pipeline's incentive to manage its system so that it can avoid interruptions, in violation of one of the Commission's policy rationales.

17. Both ProLiance and BP have concerns with respect to the April 21 Order adopting the ruling in the *Southern* case that when a pipeline has given advanced notice of an outage, it is reasonable for the pipeline to use an appropriate historical average of usage so the pipeline may use “the shipper’s prior seven day’s utilization of firm capacity to calculate the reservation charge credit.”⁹ ProLiance asserts this policy renders the Commission’s determination not to require reservation charge credits at secondary points, when the pipeline is unable to provide service at either the primary or secondary point more inequitable. Thus, if constraint develops due to a posted maintenance event on the primary capacity path, such that service is unavailable at either the primary or secondary point, the shipper would not receive a reservation charge credit because of the secondary point policy and the seven-day average policy.

18. BP requests clarification that the reservation charge credits are to be paid for failure to deliver 100 percent of the amount a firm shipper nominates, up to its maximum daily quantity, not the amount that is ultimately scheduled by the pipeline. Second, with respect to use of an appropriate historical average of usage as a substitute for use of actual nominated amounts, BP requests clarification that pipelines are to use the seven-day average immediately preceding the event that caused an interruption in service and the calculation of average quantities.¹⁰

III. Discussion

19. For the reasons discussed below, the Commission denies INGAA’s request for rehearing of the April 21 Order’s encouragement of pipelines to review their tariffs and the directive that future audits of interstate pipelines conducted by the Division of Audits should include whether the tariffs comply with the Commission’s reservation charge crediting policy. The Commission dismisses the requests for rehearing of the restatement and clarification of the Commission’s reservation charge crediting policy on the ground that rehearing of a statement of policy does not lie.

⁹*Southern* at P 33.

¹⁰ On June 6, 2011, INGAA filed a motion for leave to answer and an answer to the requests for rehearing. On June 21, 2011, BP filed an answer to INGAA’s answer. On July 29, 2011 Petitioners filed an answer to INGAA’s rehearing request. Answers to rehearing requests are not permitted under Commission Rule 213, 18 C.F.R. § 213(a)(2) (2011), unless otherwise ordered. Since these filings reiterate the parties’ previous filings the Commission declines to permit them.

A. Voluntary Review of Tariffs and Audits by Office of Enforcement

20. In the April 21 Order, the Commission stated that it expects all pipelines to maintain tariffs that conform to Commission policy, including the reservation charge crediting policy described in the April 21 Order. While the Commission denied the Petition's request for NGA section 5 action, the April 21 Order stated,

[T]he Commission believes that voluntary action by such pipelines to bring their tariffs into compliance is a more efficient and less burdensome method of obtaining compliance, than initiating an immediate industry-wide NGA section 5 proceeding requiring all pipelines to make filings showing whether their tariffs comply. Therefore, the Commission urges all pipelines to review their tariffs to determine whether their individual tariff is in compliance, and, if not, make an appropriate filing to come into compliance.¹¹

21. In its rehearing request, INGAA contends that, while the Commission declined to institute the section 5 action Petitioners requested, the Commission's action in the April 21 Order nevertheless amounted to NGA section 5 action. INGAA points out that the Commission directed that future audits by the Division of Audits should include whether pipeline tariffs comply with the Commission's reservation charge crediting policy, and the Commission stated that, in the event of significant noncompliance with the Commission's reservation charge policy, the Commission will consider other appropriate actions to obtain compliance. INGAA asserts that the "voluntary action by such pipelines to bring their tariffs into compliance" encouraged by the Commission cannot in fact be classified as voluntary where the failure to act triggers audit exposure and other enforcement action. Therefore, INGAA argues that the Commission has effectively ordered pipelines to modify their tariffs, without the Commission satisfying its section 5 burden to show that the pipelines' existing tariffs were unjust and unreasonable and that any replacement tariff provision was just and reasonable.

22. Contrary to INGAA's contentions, the Commission did not take any action under NGA section 5 in the April 21 Order. In fact, the Commission specifically denied the Petitioners' request for NGA section 5 action, and the April 21 Order did not order any interstate pipeline take any specific action with respect to modifying its tariff. In this regard, the Commission clarifies that a pipeline's continued operation under its existing tariff will not subject it to any enforcement action or penalties pursuant to the Commission's authority under NGA sections 20 through 22, even if the tariff differs from the reservation charge crediting policy articulated in the April 21 Order. Indeed, the NGA obligates interstate pipelines to follow whatever reservation charge crediting

¹¹ April 21 Order, 135 FERC ¶ 61,055 at P 12.

provisions are currently in their tariffs until those tariff provisions are modified, either pursuant an NGA section 4 proposal by the pipeline or pursuant to NGA section 5 action by the Commission.¹²

23. In the April 21 Order the Commission provided pipelines an opportunity to voluntarily bring their tariffs into compliance with the Commission's policy on reservation charge credits to the extent they need to do so. If pipelines with non-compliant tariffs do not file under NGA section 4 to bring their tariffs into compliance, then the "appropriate actions to obtain compliance" referred to by the April 21 Order¹³ would be some form of proceeding under NGA section 5 to require prospective modification of non-compliant tariffs. Consistent with this fact, if the Division of Audits determines during an audit of an interstate pipeline that its reservation charge crediting tariff provisions do not comply with Commission policy, then the Division of Audits may work with the pipeline to obtain voluntary compliance and, if unsuccessful, recommend that the Commission initiate a section 5 proceeding. In any such section 5 proceeding, the Commission will, of course, have the burden of showing that the pipeline's existing reservation charge crediting provisions are unjust and unreasonable and that any replacement tariff provisions are just and reasonable.

24. The Commission also rejects INGAA's contention that the April 21 Order violated the Administrative Procedure Act by imposing a rule of general applicability without notice and comment rulemaking. "In order to assist pipelines and other interested parties in reviewing whether pipeline tariffs comply with Commission policy," the Commission included in the April 21 Order a detailed restatement of its existing policy concerning reservation charge credits as developed in prior adjudications in individual cases.¹⁴ In addition, the Commission clarified certain aspects of its policy concerning the determination of full reservation charge credits in non-*force majeure* situations. INGAA contends that the April 21 Order operates as a rule because it subjects pipelines to audit exposure and other enforcement action for failure to conform to the reservation charge crediting policy set forth in the order.

¹² See *Regulation of Short-Term Natural Gas Transportation Services*, 101 FERC ¶ 61,127, at P 35-37 (2002), in which the Commission held that if an approved, existing tariff provision is inconsistent with the Commission's policies, that tariff provision is nevertheless "part of the pipeline's lawful tariffs filed pursuant to NGA section 4, and therefore must govern the parties' conduct until changed under NGA section 5."

¹³ April 21 Order, 135 FERC ¶ 61,055 at P 13.

¹⁴ *Id.* at P 14-27.

25. However, as INGAA recognizes, section 553(b)(3)(A) of the APA¹⁵ permits the Commission to issue statements of policy without conducting a notice and comment rulemaking.¹⁶ The D.C. Circuit has held that a statement of policy “does not establish a ‘binding norm’” and “is not finally determinative of the issues or rights to which it is addressed.” Rather, a policy statement only “announces the agency’s tentative intentions for the future.”¹⁷ For example, a statement of policy may “announce[] the course which the agency intends to follow in future adjudications.”¹⁸ As the court also stated,

As an informational device, the general statement of policy serves several beneficial functions. By providing a formal method by which an agency can express its views, the general statement of policy encourages public dissemination of the agency’s policies prior to their actual application in particular situations. . . . Additionally, the publication of a general statement of policy facilitates long range planning within the regulated industry and promotes uniformity in areas of national concern.¹⁹

26. The April 21 Order’s summary of the Commission’s existing reservation charge crediting policy is just such a policy statement. It provides in one place a comprehensive summary of the Commission’s existing policies concerning reservation charge crediting, as developed in prior adjudications, so as to assist the parties in future case-by-case adjudications of whether a particular pipeline’s reservation charge crediting tariff provisions are just and reasonable. The April 21 Order did not order any interstate pipeline to modify its tariff in any particular way, and thus that order was not “finally determinative” of any issue concerning the justness and reasonableness of any pipeline’s reservation charge crediting provisions. Moreover, as the Commission has clarified above, a pipeline’s continued operation under an existing tariff that varies from the reservation charge crediting policy set forth in the April 21 Order will not subject the pipeline to any enforcement action or penalties pursuant to NGA sections 20 through 22. Rather, the Commission intends to continue its existing policy of deciding reservation charge crediting issues in case-by-case adjudications under NGA sections 4 and 5. In those cases, the Commission will provide each pipeline an opportunity to raise any issue

¹⁵ 5 U.S.C. § 553(b)(3)(A) (20??).

¹⁶ *Syncor Int’l Corp. v. Shalala*, 127 F.3d 90, 94 (D.C. Cir 1997).

¹⁷ *Pacific Gas & Electric Co. v. FPC*, 506 F.2d 33, 38 (D.C. Cir. 1974).

¹⁸ *Id.*

¹⁹ *Id.*

it desires as to why its existing or proposed reservation charge crediting provisions are just and reasonable.²⁰

27. Finally, contrary to INGAA's assertion, permitting the reservation charge crediting issue to be raised in a pipeline's NGA section 4 proceeding is not a departure from prior Commission policy but is consistent with Commission precedent. The Commission has permitted the reservation charge crediting issue to be raised in this manner in a number of NGA section 4 proceedings.²¹ For example, in *Tuscarora* the pipeline objected to the Commission order requiring it to revise its existing tariff provision, arguing "the provision is not directly related to the subject filing and no complaint has been filed." The Commission rejected the argument stating, "[t]hese factors are not conditions precedent to Commission action under section 5 of the NGA where the Commission is made aware of a tariff provision that is clearly contrary to Commission policy."²² Thus, the April 21 Order was not a change in policy.

28. Moreover, the D.C Circuit has held that a proceeding may originate as a section 4 proceeding only to be transformed later into a section 5 proceeding.²³ We recognize that

²⁰ While the April 21 Order is itself a policy statement, the Commission may in future cases treat its decisions in the adjudications described in the April 21 Order as binding precedent. In *PG&E v. FPC*, 506 F.2d at 38, the court recognized that an "agency may establish binding policy. . . through adjudications which constitute binding precedents." The Commission precedents described in the April 21 Order were established in adjudications concerning the justness and reasonableness of the reservation charge crediting tariff provisions of specific pipelines. In addition, the most significant policies established in those adjudications were examined and affirmed by the United States Court of Appeals in *North Baja*. As with any such precedent, parties are free to argue in particular proceeding that the Commission should modify the policies established in such precedents because of changed circumstances or other reasons. However, as the courts have held many times, the Commission may not depart from established policies without providing an explanation of the reasons for doing so. *Wisconsin Valley Improvement Co. v. FERC*, 236 F.3d 738, 748 (D.C. Cir. 2001).

²¹ *Kern River Transmission Co.*, 129 FERC ¶ 61,262, at P 22 (2009); *Tuscarora Gas Transmission Co.*, 120 FERC ¶ 61,022 (2007) (*Tuscarora*); and *Wyoming Interstate Co., Ltd.*, 129 FERC ¶ 61,022 (2009). In *Southern*, 135 FERC ¶ 61,056, also issued on April 21, 2011, the Commission held, at P 13, that in a section 4 proceeding "the Commission may use its discretion under section 5 of the NGA when it is made aware of a tariff provision that is clearly contrary to Commission policy."

²² *Tuscarora*, 120 FERC ¶ 61,022 P 13.

²³ *Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1579 (D.C. Cir. 1993).

if a pipeline has not proposed to modify its reservation charge crediting provisions in a section 4 proceeding, the Commission will have the burden under NGA section 5 to show that any tariff provisions it seeks to change are unjust and unreasonable and that any replacement tariff provisions are just and reasonable.

B. Restatement and Clarification of Reservation Charge Crediting Policy

29. INGAA, BP and ProLiance request rehearing of various parts of the reservation charge crediting policy set forth in the April 21 Order. For example, INGAA contends that the Commission's policy requiring full reservation charge credits for interruptions of primary firm service caused by scheduled maintenance is based on antiquated concepts of fault. BP and ProLiance, on the other hand, request rehearing of the Commission's statement that its requirement of full reservation charge credits during outages due to scheduled maintenance does not extend service to firm service at secondary points. BP and ProLiance also raise concern about the April 21 Order's adopting the ruling in the *Southern* case, that when a pipeline gives notice of a coming service interruption the amount of reservation charge credits could be "based on appropriate historical average of usage," such as the "shippers' prior seven days utilization for firm capacity."²⁴

30. The Commission dismisses these requests for rehearing related to that portion of the April 21 Order restating and clarifying the Commission's reservation charge crediting policy. As the Commission found in the preceding section, this portion of the April 21 Order constituted a statement of policy. NGA section 19(a) provides for parties to request rehearing only when they are aggrieved by a Commission order.²⁵ A policy statement is not a final action of the Commission but an expression of policy intent. As noted previously the D.C. Circuit has held, a statement of policy "is not finally determinative of the issues or rights to which it is addressed"; rather, it only "announces the agency's tentative intentions for the future."²⁶ Therefore, the parties are not

²⁴ April 21 Order P 25.

²⁵ Section 19 states in part:

Any person, State, municipality, or State Commission *aggrieved by an order* issued by the Commission in a proceeding under this act to which such person, State, municipality, or State Commission is a party may apply for a rehearing within thirty days after issuance of such order. 717r U.S.C. (2000) (emphasis added).

²⁶ *Pacific Gas & Electric Co. v. FPC*, 506 F.2d 33, 38 (D.C. Cir. 1974).

aggrieved by the policy statement, and rehearing does not lie.²⁷ The Commission accordingly dismisses these requests for rehearing.²⁸

31. Parties may raise these issues in future adjudications concerning the reservation charge crediting provisions of specific pipelines. For example, the Commission is addressing similar issues to those raised in the instant requests for rehearing in the *Southern* rehearing order, being issued concurrently with this order.

The Commission orders:

The requests for rehearing are denied or dismissed as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁷Rule 713 (a) of the Commission's regulations regarding the applicability of a request for rehearing to a Commission determination provides that:

This section applies to any request for rehearing of *a final Commission decision or other final order*, if rehearing is provided for by statute, rule, or order. 18 CFR §385.713 (2005). (emphasis added).

²⁸ See *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 75 FERC ¶ 61,024 at 61,076 (citing, *American Gas Association v. FERC*, 888 F.2d 136 (1989); *Interstate Natural Gas Pipeline Rate Design*, 47 FERC ¶ 61,295 (1985), *order on reh'g*, 48 FERC ¶ 61,122, at 61,442 (1989)).