



Federal Energy Regulatory Commission
November 15, 2007
Open Commission Meeting
Statement of
Commissioner Marc Spitzer

Item G-1: Promotion of a More Efficient Capacity Release Market (Docket No. RM08-1-000)

"Through the restructuring efforts of Order No. 636, the Commission instituted its capacity release program - a mechanism to reallocate pipeline capacity efficiently. The adopted regulations were designed to assure the transparency of capacity release transactions. Those regulations require that all shippers offering to release capacity be posted on the pipeline's internet web site and that contracting be done directly with the pipeline.

Order No. 636-A prohibited tying the release of capacity to any extraneous conditions. The Commission's capacity release policy requires a pipeline to offer all unused capacity at the pipeline's maximum cost-of-service rate (the recourse rate), thus acting as a check on pricing for capacity release by shippers. The current policy emphasizes transparency and non-discriminatory allocation of capacity.

Moreover, in Order No. 637, the Commission lifted the maximum rate cap on capacity releases of less than one year for a 22 month experimental period. The Commission concluded that the rate ceiling should be removed because cost-of-service rate regulation is not well suited to the short-term capacity market, the rate ceiling interfered with the efficient operation of the market, removal of the rate ceiling for short-term capacity would have little effect on the prices paid for capacity during peak periods since shippers can avoid the ceiling by making bundled sales. The Commission, however, did not remove the cap for short-term pipeline services.

On January 3, 2007, the Commission issued a request for comments on its capacity release program and whether any changes are needed. This request came about because last year, a group of eight gas marketing companies filed a petition with the Commission to clarify its capacity release rules in the context of portfolio management services. The Commission asked a series of questions including whether it should consider lifting the maximum rate cap on a permanent basis either for short-term or all capacity releases; and whether the Order No. 636 prohibition of tying arrangements interfere with beneficial capacity release arrangements, including portfolio management services.

In today's notice of proposed rulemaking, the Commission responds to the comments and proposes a number of significant changes to its capacity release regulations. Among them, the Commission proposes to remove, on a permanent basis, the rate ceiling on capacity release transactions of one year or less. The Commission also proposes to modify its regulations to facilitate the use of asset management arrangements under which a capacity holder releases some or all of its pipeline capacity to an asset manager who agrees to supply the gas needs of the capacity holder.

We propose to lift the price ceiling for short-term capacity release transactions of one year or less. Shippers and potential shippers are looking for greater flexibility in the use of capacity. The Commission's goal in establishing the capacity release program was to allow shippers to compete with pipelines. By lifting the cap on short-term releases, the Commission allows releasing shippers to offer competitively-priced alternatives to the pipelines' negotiated rate offerings.

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I am persuaded by the commenters that argued that removing the rate cap on capacity release transactions would improve the efficiency of the capacity market by giving releasing shippers a greater incentive to release their capacity during periods of constraint. Doing so is consistent with our longstanding goal of allocating capacity to the shipper that values it the most.

We are proposing to adjust the capacity release regulations to foster asset management agreements (AMAs) because a large number of commenters responded that AMAs are beneficial to the market place and that the Commission should do something to facilitate their use. AMAs are contractual relationships where a party agrees to manage gas supply and delivery arrangements, including transportation and storage capacity, for another party. In many instances the asset manager is chosen through a request for proposal process. AMAs are an important addition to the transportation mix. They are used by LDCs and others where the entity releases its capacity to a replacement shipper with greater market expertise, who will continue to use the capacity to provide gas supplies to the releasing shipper and will be better able to maximize the value of the released capacity when it is not needed to serve the releasing shipper. These are valuable tools for the LDCs.

I also support facilitating the use of AMAs because the proposed rule proposes to impose several safeguards. For example, we propose that AMAs will remain subject to all existing posting and reporting requirements. We also propose to retain our shipper-must-have-title requirement, which is an important transparency tool.

I also look forward to review Staff's report on the performance of the capacity release program after the industry and Commission have had two years of experience under the new rules. Specifically, I will look forward to reading whether there have been any allegations that a virtual pipeline, *i.e.*, a marketer controlling a significant percentage of capacity and supply on one of more pipelines has used that power to discriminate. I also remind entities that our complaint process remains a viable tool if an entity believes that a shipper has used the capacity release rules in a discriminatory manner."