

121 FERC ¶ 61,264
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 38 and 284

(Docket Nos. RM96-1-028 and RM05-5-004; Order No. 698-A)

Standards for Business Practices for Interstate Natural Gas Pipelines; Standards for
Business Practices for Public Utilities

(Issued December 20, 2007)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on Clarification and Rehearing

SUMMARY: This order denies requests for rehearing, and provides clarification of the final rule issued on July 16, 2007 that incorporated by reference standards dealing with coordination of scheduling between electric utilities and natural gas pipelines that were promulgated by the Wholesale Gas Quadrant (WGQ) and the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB), and provided policy guidance on issues relating to such coordination.

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UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Standards for Business Practices for Interstate Natural Gas Pipelines Docket Nos. RM96-1-028

Standards for Business Practices for Public Utilities RM05-5-004

ORDER NO. 698-A

ORDER ON CLARIFICATION AND REHEARING

(Issued December 20, 2007)

1. On June 25, 2007, the Federal Energy Regulatory Commission (Commission) issued Order No. 698,¹ in which the Commission amended parts 38 and 284 of its open access regulations governing standards for business practices and electronic communications with public utilities and interstate natural gas pipelines. The Commission incorporated by reference certain standards promulgated by the North American Energy Standards Board (NAESB)² in order to improve coordination between

¹*Standards for Business Practices for Interstate Natural Gas Pipelines; Standards for Business Practices for Public Utilities*, Order No. 698, 72 FR 38757 (July 16, 2007) FERC Statutes and Regulations ¶ 31,251 (June 25, 2007).

²The standards for the Wholesale Electric Quadrant are: Gas/Electric Coordination Standards WEQ-011-0.1 through WEQ-011-0.3 and WEQ-011-1.1 through WEQ-011-1.6. The standards for the Wholesale Gas Quadrant are: Additional

(continued)

the electric and gas industries. Specifically, the Commission sought to improve communications about scheduling of gas-fired generators.

2. In addition, the Commission provided policy guidance on issues raised by NAESB relating to scheduling coordination and to the possible development of additional standards by NAESB. First, the Commission discussed the use of gas indices for pricing capacity release transactions, stating that the Commission's regulations permit releasing shippers to use price indices or other formula rates on all pipelines, regardless of whether the pipeline has a provision allowing the use of indices as part of its discounting provisions, so long as the prices are less than the maximum rate in the pipeline's tariff.³ Second, the Commission discussed, but did not modify, the shipper's ability to choose alternate delivery points, stating that the ability to shift a delivery point when a pipeline constraint occurs upstream would make it easier for shippers to redirect gas supplies to generators when capacity is scarce. Lastly, the Commission discussed possible changes to the gas intraday nomination schedule, clarifying that NAESB should actively consider whether changes to existing intra-day schedules would benefit all shippers.

I. Requests for Rehearing

3. The Interstate Natural Gas Association of America (INGAA) requests clarification, or in the alternative rehearing, on the date pipelines are required to

Standards, Definitions 0.2.1 through 0.2.3 and Standards 0.3.11 through 0.3.15.

³Order No. 698, FERC Statutes and Regulations ¶ 31,251 at P 55.

implement changes with regard to the three issues on which the Commission provided guidance. INGAA notes that industry participants were required to implement the NAESB standards by November 1, 2007, and requests that the Commission clarify that it would be appropriate for NAESB to propose additional standards and then for the Commission to have another rulemaking proceeding before pipelines are required to implement changes.

4. Specifically, with regard to capacity release, INGAA notes that in the Final Rule the Commission acknowledges that NAESB may need to develop standards to ensure that the terms and conditions of a release and the means of implementing a formula rate are clearly set out.⁴ INGAA contends that prior to Order No. 698, the Commission's regulations were never interpreted to allow unrestricted pricing in capacity release transactions. INGAA argues that while pipelines had the ability to file non-conforming agreements, there was never a policy in place for releasing shippers to file non-conforming capacity release agreements based on index-based rates. INGAA further contends that pipelines are not currently equipped to allow unrestricted pricing in capacity release transactions, and that requiring them to do so raises implementation issues concerning bid evaluation and awards, scheduling and billing.

⁴*Id.* at P 56.

5. INGAA further contends that unrestricted pricing in releases raises scheduling priority issues. It argues that index-based or other formula prices raise the issue of how such prices can be compared to a fixed, discounted rate for scheduling purposes. INGAA adds that the Commission should be aware that, depending on the rate formula utilized, there may be several methodologies that can be used to determine a rate for scheduling purposes and that one methodology may favor some shippers over others.

6. INGAA requests that the Commission clarify the procedures needed for pipeline billing of capacity release transactions that use index-based or formula rates. INGAA argues that pipelines should not be required to calculate the rates under such pricing mechanisms, nor should pipelines be placed in the position of arbitrating disputes between a releasing shipper and a replacement shipper about the rate to be charged under the formula used. INGAA requests that the Commission clarify that (1) in any release that does not utilize a fixed stated rate, the releasing shipper must inform the pipeline of the rate to be charged to the replacement shipper in time for the pipeline to bill such rate; and (2) the pipeline is entitled to rely on the rate provided by the releasing shipper such that the only recourse a replacement shipper has if it disagrees with such rate is against the releasing shipper. INGAA adds that pipelines should not be required to determine the

rate to be charged under such releases or be placed in the middle of disputes between its shippers and their replacement shippers over such rates.⁵

7. INGAA also requests that the Commission clarify when pipelines are required to implement changes regarding intra-day scheduling, and that, rather, it is appropriate to wait for NAESB to consider any industry-wide standards.⁶

8. INGAA requests that the Commission clarify that Order No. 698 does not require pipelines to convey any non-public information. As an example, INGAA states that information concerning a pipeline's methods for dealing with hourly flow variances, the administration of operational balancing agreements, the operation of compressor units, and the operation of meter stations, all on a real-time or nearly real-time basis, may be implicated by or be part of, the required communications discussed in the Order No. 698. INGAA states that this information is not public information, which pipelines do not usually communicate.

9. The American Gas Association (AGA) filed an answer.

⁵INGAA Request for Rehearing at 6.

⁶*Id.* at 7.

II. Discussion

A. Procedural Matters

10. We reject AGA's answer. Rule 713 of the Commission's Rules of Practice and Procedures does not allow answers to requests for rehearing.⁷

B. Indexed Releases

1. Relation to NAESB Standards Development

11. INGAA requests clarification or in the alternative rehearing, arguing that pipelines should not have to permit shippers to use gas price indices as part of released transactions until NAESB develops standards for using price indices and they are adopted by the Commission. The Commission denies the clarification and the alternative rehearing request.

12. As we explained in Order No. 698, our existing regulations already permit releasing shippers to use price indices or other formula rates on all pipelines, regardless of whether the pipeline has included a provision allowing the use of indices as part of its discounting provisions, so long as the prices are less than the maximum rate in the pipeline's tariff.⁸ Section 284.8(b)⁹ of the Commission's regulations states that "firm

⁷ 18 CFR 385.713(d) (2007).

⁸ In a Notice of Proposed Rulemaking, the Commission has proposed to lift the price ceiling for short-term capacity releases. *Promotion of a More Efficient Capacity Release Market, Notice of Proposed Rulemaking*, 121 FERC ¶ 61,170 (2007).

⁹ 18 CFR 284.8(b) (2007).

shippers must be permitted to release their capacity, in whole or in part, on a permanent or short-term basis, without restrictions on the terms or conditions of the release,” and section 284.8(e)¹⁰ mandates that such a release may not be “over the maximum rate.” Releasing shippers are permitted under these regulations to set the appropriate price governing the release. In Order No. 698, we did not impose any additional regulatory requirements on the pipelines, and therefore we find no basis to delay implementation of our existing regulations.

13. INGAA maintains that the Commission’s regulations were never previously interpreted to permit unrestricted pricing in capacity release transactions. INGAA cites no support for the proposition that the Commission did not interpret its regulations to permit pricing flexibility. In fact, in Order No. 636-A, the Commission explained that releasing shippers are not required to rely on default provisions in the pipeline’s tariff, but can structure their own pricing terms:

Due to the variety of releasing conditions that may exist, the Commission will not establish only one methodology for evaluating best bids, but will use the following approach. The pipeline's tariff must include an objective and non-discriminatory economic standard for determining best bids. Releasing shippers may rely upon this standard in structuring their capacity releases, but are not required to do so. If a releasing shipper does not specify a standard, the standard in the pipeline's tariff will apply. Releasing shippers may include in their offers to release capacity reasonable and non-

¹⁰18 CFR 284.8(e) (2007).

discriminatory terms and conditions to accommodate individual release situations, including provisions for evaluating bids.¹¹

The Commission also has explained that these regulatory provisions provide releasing shippers with the flexibility to price using gas price indices.¹²

14. Contrary to INGAA's implication, the Commission did not ask NAESB to develop standards for indexed releases because such releases were not previously permitted. In this proceeding, due to the interest by shippers in such releases, the Commission requested NAESB to consider developing standards to make these releases quicker and more efficient.¹³ The existing WGQ NAESB standards recognize that non-standard pricing terms may be included in release transactions, but do not necessarily permit such releases to be accorded the same processing timeline as standard releases.¹⁴ The Commission requested NAESB to consider standards that would create a standardized

¹¹ *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation*, Order No. 636-A, 57 FR 36128 (Aug. 12, 1992), FERC Statutes and Regulations January 1991 – June 1996 ¶ 30,950, at 30,557 (Aug. 3, 1992). See *El Paso Natural Gas Co.*, 61 FERC ¶ 61,333, at 62,289 (1992).

¹² See *Panhandle Eastern Pipe Line Co.*, 106 FERC ¶ 61,194, P 6 (2006);

¹³ Order No. 698, FERC Statutes and Regulations ¶ 31,251 at P 56.

¹⁴ Standards 5.3.1 and 5.3.3 (18 CFR 284.12(a)((1)(vi))) provide that as long as releasing shippers use defined, standard bid methodologies, the pipelines are required to adhere to the NAESB timelines in processing such bids. However, these standards recognize that the releasing shipper might elect other bid evaluation methodologies for which pipeline processing can take longer than the standard timelines.

indexing methodology so that the use of indexed releases could become faster and could compete on a more equal footing with pipeline discounts and negotiated rate transactions.

15. INGAA suggests that permitting index pricing prior to the development of the NAESB standards may create difficulty in evaluating competing bids or completing the bid evaluation process in the time needed to implement the release. We do not find this to be a sufficient basis to delay shippers' ability to implement indexed releases to compete with the pipeline's use of such practices. The Commission required in Order No. 636 that the terms and conditions of all releases, including the methods for evaluating competing bids, must be objective, applicable to all shippers, and non-discriminatory.¹⁵ The releasing shipper has the burden of ensuring that the bid evaluation method is clear enough for the pipeline to administer. Further, the standard capacity release timelines do not apply to bid evaluation methods that are out of the ordinary or difficult to apply. Releasing shippers that want indexed deals implemented expeditiously therefore have an incentive to ensure that their bid evaluation methodologies are relatively simple to apply.

16. INGAA also maintains that allowing unrestricted pricing discretion may cause problems for some pipelines that use price to prioritize the scheduling of secondary firm

¹⁵ Order No. 636-A, FERC Statutes and Regulations January 1991 – June 1996 ¶ 30,950, at 30,557.

transportation.¹⁶ However, the Commission does not require that pipelines employ such a method for scheduling firm transportation, and we find that a possible inconvenience to some pipelines does not justify prohibiting releasing shippers from choosing pricing methods permitted by the regulations. Those pipelines that may have such provisions would either need to apply their priced-based scheduling provisions to those capacity release transactions that use index pricing or file under section 4 of the Natural Gas Act to amend their tariffs to provide for such scheduling.¹⁷

2. Billing Under Index-Priced Releases

17. INGAA requests that we clarify that in any release that does not utilize a fixed stated rate, the releasing shipper must inform the pipeline of the rate to be charged to the replacement shipper in time for the pipeline to bill such rate; and the pipeline is entitled to rely on the rate provided by the releasing shipper such that the only recourse a replacement shipper has if it disagrees with such rate is against the releasing shipper.

18. We will not permit pipelines to delay acceptance of index price deals on this basis. Pipelines ought to be able to calculate prices under index releases, because, as the

¹⁶ The Commission requires pipelines to permit shippers, including replacement shippers, the flexibility to temporarily schedule the receipt and delivery of gas at points other than those listed in their contracts if capacity is available.

¹⁷ INGAA does not explain why the same procedures used to schedule pipeline index discount transactions and negotiated rate transactions, which employ a variety of pricing techniques, cannot be applied to capacity release transactions.

Commission required in Order No. 636, the terms and conditions of such releases must be objective and clearly stated. Many pipelines also currently bill shippers under their own negotiated rate and index price transactions, and, therefore, should be able to calculate the rates under released transactions in the same way. However, if after experience with index releases, a pipeline believes that the volume of such releases or other conditions warrants revisions in the method used to bill for index releases, the pipeline may file under section 4 of the Natural Gas Act to propose such revisions, and the Commission will consider those changes after evaluating the position of the pipeline's shippers.

C. Intra-Day Scheduling

19. INGAA also requests that we clarify that any changes regarding intra-day scheduling need not be implemented by November 1, 2007, and that instead it is appropriate for NAESB to consider and propose any industry-wide standards. We agree with INGAA. Order No. 698 did not adopt changes in the intra-day nomination timeline, so the November 1, 2007 deadline does not apply to any such change. While the Commission did not require the pipelines to make any changes in nomination schedules, we did indicate that such standards could be very beneficial to the industry and that pipelines with gas-fired generators should, on their own, consider the addition of other intra-day nomination opportunities that would be of benefit to the shippers.¹⁸ Pipelines

¹⁸Order No. 698, FERC Stats. & Regs. [Regulations Preambles] ¶ 31,251 at P 69.

are free to propose additional intra-day nomination opportunities prior to any proposal by NAESB if they so choose.

D. Non-Public Information

20. INGAA maintains that the Commission should clarify that Order No. 698 does not require pipelines to convey any non-public information as a result of the standards incorporated by reference in the Final Rule. In particular, INGAA points to information concerning a pipeline's methods for dealing with hourly flow variances, the administration of operational balancing agreements, the operation of compressor units, and the operation of meter stations.

21. INGAA does not point to which, if any, standards it believes would require the dissemination of this information, so we cannot provide a definitive answer. The standards themselves do not generally detail the type of information that should be provided. For example, it appears from the examples that INGAA may be referring to standard 0.3.12, which states that: "The Power Plant Operator (PPO) and the Transportation Service Provider(s) (TSP) that is directly connected to the PPO's Facility(ies) should establish procedures to communicate material changes in circumstances that may impact hourly flow rates." This standard does not require the dissemination of detailed information about why the hourly flow rates are affected; it requires only that the pipeline establish communication procedures so that the power plant operator and the pipeline are made timely aware that such hourly flow changes may

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occur. Without a more detailed explanation of which other standards would require the disclosure of information that INGAA wishes to keep non-public, we cannot address this issue further. INGAA and the pipelines may bring any specific issue to the Commission's attention.

The Commission orders:

The requests for rehearing and clarification are resolved as discussed in the body of the order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.