DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–281–000]

Colorado Interstate Gas Company; Notice of Request Under Blanket Authorization

March 23, 1998.

Take notice that on March 16, 1998, Colorado Interstate Gas Company (CIG), P.O.Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP98–281–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon the existing Bush Lake Purchase Meter Station in Sweetwater County, Wyoming by sale to BTA Oil Producers, under CIG's blanket certificate pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG states that the Bush Lake Purchase Meter Station is remote from CIG's facilities. It was constructed in 1978 to measure gas purchased by CIG from Western Transmission Corporation (Western). After measurement by CIG, the gas was delivered to Panhandle Eastern Pipe Line Company (Panhandle) and Panhandle redelivered the gas to CIG under an exchange agreement certificated in Docket No. CP77–423. Both Western and Panhandle facilities have been sold to other parties. CIG has agreed to sell the Bush Lake Purchase Meter Station to BTA Oil Producers (BTA), the current operator of the upstream facilities, for $7,000 as detailed in the Purchase and Sale Agreement dated February 27, 1998. Because this facility is remote from CIG's other facilities, it is more economic for BTA to own and operate.

CIG states that the proposed abandonment is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the proposed abandonment without detriment or disadvantage to CIG's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8006 Filed 3–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN98–3–000]

Consumers Energy Company; Order Instituting Proceeding

Issued March 23, 1998.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hebert, Jr.

Consumers Energy Company (Consumers), a local distribution company in Michigan, holds firm transportation (FT) capacity on interstate natural gas pipelines. Consumers has a limited-jurisdiction blanket certificate of public convenience and necessity under section 7 of the Natural Gas Act (NGA).[1] The blanket certificate is solely for the purpose of releasing FT capacity to replacement shippers pursuant to the Commission's capacity release regulations, 18 CFR 284.243 (1997).

This order establishes a proceeding pursuant to sections 5 and 16 of the NGA.[2] The Commission is requiring Consumers to identify each transaction in which it released or is releasing capacity to a replacement shipper at the pipeline's applicable maximum tariff rate and also received or will receive a payment in excess of the pipeline's applicable maximum rate. For each such transaction, we are requiring Consumers to show why it has not violated, and is not violating, NGA sections 4(a), 4(b)[3] and 5(a) and section 284.243(h)(1) of the Commission's regulations, as well as the section 284.243(g) blanket certificate Consumers holds.

For each such transaction, we are also requiring Consumers to show why it should not refund to the replacement shipper any payment Consumers received in excess of the relevant pipeline maximum tariff rate.

[1] 15 U.S.C. 717f (1994).

[2] 15 U.S.C. 717d and 717o (1994).

[3] 15 U.S.C. 717(a) and (b) (1994).

I. Regulatory Background

In Order No. 636,[4] the Commission added section 284.243[5] to its regulations to require all open-access pipelines to provide a capacity release mechanism. Under capacity release, shippers ''can voluntarily reallocate all or a part of their firm transportation capacity rights to any person who wants to obtain that capacity by contracting with the pipeline.''[6] Shippers may allocate their capacity only under section 284.243.[7] Section 284.243(g) grants shippers limited-jurisdiction blanket certificates of public convenience and necessity pursuant to section 7 of the NGA solely for the purpose of releasing firm capacity.

Section 284.243(h)(1) authorizes firm shippers to release capacity at the maximum applicable pipeline tariff rate without prior notice.[8] However, section 284.243(h)(1) also specifies that the release cannot exceed the maximum rate. Finally, section 284.243(h)(1) mandates that notice of a release at the maximum rate ''must be provided on the pipeline's electronic bulletin board * * * not later than forty-eight hours * * * after the release transaction commences.''

In Order No. 636–A, the Commission stated that electronic bulletin board (EBB) postings of capacity releases are necessary to prevent abuse by releasing shippers, including requiring compensation ''outside of the reassignment process.''[9] Thus, the Commission requires that ''*all* terms and conditions for capacity release must be posted. * * *''[10] In Order No. 636–B, the Commission expressly rejected a proposal that pipelines need not post on their EBBs release transactions involving designated, prearranged replacement shippers at maximum rates.[11] Posting of releases at maximum rates, which are not subject to bidding, is nonetheless necessary to provide the industry and the Commission with the ability to review and monitor transactions at maximum rates.[12]

[4] FERC Stats. & Regs., Regs. Preambles 1991–1996 ¶ 30,939 (1992).

[5] 18 CFR 284.243 (1997).

[6] FERC Stats. & Regs. Regs. Preambles 1991–1996 at 30,418.

[7] *Id.*

[8] 18 CFR 284.243(h)(1).

[9] FERC Stats. & Regs., Regs. Preambles 1991–1996 ¶ 30,950 at 30,559 (1992).

[10] *Id.* (Emphasis in original.)

[11] 61 FERC ¶ 61,272 at 61,994 (1992).

[12] Order No. 577, FERC Stats. & Regs., Regs. Preambles 1991–1996 ¶ 31,017 at 31,316, n. 16 (1995).

II. Factual Background

Consumers is subject to the jurisdiction of the Michigan Public Service Commission (PSC) with respect to retail gas sales in the state of Michigan. In a gas cost reconciliation (GCR) proceeding pending before the PSC,[13] a Consumers witness testified that Consumers ''charge[d] more than the maximum pipeline rate for certain release transactions * * *.''[14] He also characterized the transactions as ''capacity pricing transactions in which [Consumers] receives an increment over maximum pipeline rates * * *.[15]

The Consumers witness was responding to evidence from the Michigan Department of Attorney General (Michigan AG) that, in six release transactions involving firm capacity on Panhandle Eastern Pipe Line Company (Panhandle) and ANR Pipeline Company (ANR), Consumers appears to have obtained release prices higher than the relevant pipeline's maximum tariff rate for the released capacity. In each instance, according to the Michigan AG witness, Consumers received a credit from the pipeline for a release at the maximum tariff rate, and the replacement shipper paid directly to Consumers additional consideration in excess of the pipeline's maximum tariff rate.[16] The Michigan AG witness concluded that, through the six releases, Consumers collected a total of $486,911 in excess of the applicable pipeline maximum tariff rate, as follows:

Replacement shipper	Pipeline	Month	Excess revenue
Anadarko Trading Co	ANR	7/96	25,668
Anadarko Trading Co	Panhandle	11/96	193,400
Howard Energy	Panhandle	4/96	100,599
Tenaska Mktg. Ventures	Panhandle	4/96	68,044
TransCanada Gas Services	Panhandle	7/96	37,200
Valero Gas Mktg., L.P	ANR	7/96	62,000
Total			486,911

III. Discussion

With[17] respect to the six releases, it appears that Consumers violated the Commission's rate ceiling applicable to capacity releases. It also appears that Consumers violated the regulations on providing notice of all the terms and conditions applicable to capacity release transactions.

A. Violations of the Rate Ceilings on Capacity Releases

In the PSC proceeding, Consumers stated that with respect to the six releases, it charged and collected a premium over the pipelines' maximum rates in return for releasing FT capacity. Nothing in the testimony of Consumers's witness or the Michigan AG's witness indicates that Consumers itself sold any gas in connection with the release transactions. For example, the release agreement between Consumers and Anadarko Trading Company (Anadarko) for capacity on Panhandle states that Consumers's payment will be based on Anadarko's price for Anadarko's gas sales.[18] Therefore, all revenue that Consumers received in excess of the pipelines' applicable maximum rates appears to have been consideration solely for Consumers's release of pipeline capacity. Thus, Consumers appears to have violated the capacity release maximum rate ceiling in section 284.243(h)(1).

If so, Consumers, a ''natural-gas company'' subject to the Commission's jurisdiction with respect to capacity releases, charged and received from replacement shippers unjust and unreasonable transportation rates and charges in violation of NGA sections 4(a) and 5(a). If Consumers charged prices for releasing capacity in excess of the rate cap, it also appears to have violated NGA sections 4(b) and 5(a) by subjecting the replacement shippers to an undue disadvantage (the premium above the applicable pipeline maximum rate).

Section 16 of the NGA empowers the Commission to take any necessary or appropriate actions to carry out the provisions of the NGA. In Order No. 636, the Commission explained that the certificates it issued to releasing shippers under section 284.243(g) ''make it clear that the Commission has sufficient jurisdiction to take appropriate enforcement action if capacity is not released on a nondiscriminatory basis.''[19] In other words, as a releasing shipper, Consumers is subject to the full scope of the Commission's authority under NGA section 16 with respect to all aspects of the release, including any violation of the section 284.243(h)(1) price ceiling. Section 16 thus authorizes the Commission to order Consumers to refund to the replacement shippers the excess over the just and reasonable rate (*i.e.*, the excess over the applicable pipeline's maximum tariff rate).[20]

Moreover, under NGA section 5(a), the Commission may require a natural-gas company to charge a just and reasonable rate if the Commission determines that the company is charging an unjust or unreasonable rate for transactions under the Commission's jurisdiction. Upon a finding that the company is engaging in an unduly discriminatory or preferential practice relating to such a transaction, NGA section 5(a) also authorizes the Commission to order a natural-gas company to change its contracts or practices. Thus, upon a finding that Consumers is violating NGA sections 4(a), 4(b) and 5(a) with respect to its capacity releases, the Commission could require Consumers to cease any current violations by amending its current capacity release agreements and by requiring new agreements to state that Consumers may not collect rates in excess of the pipelines' applicable maximum rates.

[13] Consumers Energy Company, PSC Case No. U–11060–R (1996–97 GCR Reconciliation).

[14] Rebuttal Testimony of Michael J. Shore on Behalf of Consumers Energy Company (December 1997), p. 7.

[15] *Id.* at 8.

[16] Supplemental Testimony of Ralph E. Miller on Behalf of the Michigan Department of Attorney General (December 5, 1997), pp. 7–8; Michigan AG Exhibit I–____(REM–1).

[17] Michigan AG Exhibit I–____ (REM–1); Michigan AG Exhibit I–____ (REM–4), Bates Nos. 06010042–46.

[18] An October 1, 1996 ''Transaction Agreement'' between Consumers and Anadarko covering releases from November 1, 1996 through March 31, 1997 is attached to Michigan AG Exhibit I–____(REM–4), Bates Nos. 06010049–50.

[19] FERC Stats. & Regs., Regs. Preambles 1991–1996 at 30,421.

[20] *C.f.*, 18 CFR 154.501 (1997) (refund obligation for natural-gas companies); *Coastal Oil & Gas Corp.* versus *FERC*, 782 F.2d 1249, 1253 (5th Cir. 1986), *citing Mesa Petroleum Co.* v. *FPC*, 441 F.2d 182 (5th Cir. 1971) (Commission can require violators to cure the harm caused by violations).

B. Violation of the Commission's Notice Requirements

As previously discussed, section 284.243(h)(1) requires that notice of a capacity release (at the maximum rate) must be provided on a pipeline's EBB not later than 48 hours after the release transaction commences. In Order No. 636–A, the Commission stated that it ''will not tolerate deals undertaken to avoid the notice requirements of the regulations.''[21]

With respect to the six transactions identified above, it is not clear whether Consumers disclosed to Panhandle or ANR that the replacement shippers had to share revenue (above the pipelines' maximum tariff rates) with Consumers. If Consumers did fail to notify the pipelines of this condition, the pipelines could not post the condition on their EBBs. Consumers would thus have violated the notice requirement of section 284.243(h)(1).

The Commission Orders

(A) Within 30 days of the issuance of this order, Consumers shall:

(1) File an answer to the allegations of violations that conforms to the requirements of Rule 213 of the Commission's Rules of Practice and Procedure, 18 CFR 385.213 (1997). In its answer, Consumers shall admit or deny, specifically and in detail, each allegation set forth in Part III of this order, and shall set forth every defense relied on. If an allegation is only partially accurate, Consumers shall specify that part of the allegation it admits and that part of the allegation it denies.

(2) Show in this answer why it has not violated sections 4(a), 4(b), and 5(a) of the NGA and section 284.243(h)(1) of the Commission's regulations. In addition, Consumers shall show why it has not violated its blanket certificate issued under section 7 of the NGA and section 284.243(g) of the Commission's regulations.

(3) For the period from January 1, 1996 through the date of its answer to this order, identify each transaction in which Consumers (a) released or is releasing capacity to a replacement shipper and (b) received or will receive any payment or other consideration in excess of the relevant pipeline's applicable maximum tariff rate.

(4) For each of the six release transactions identified by the Michigan AG discussed herein, and for each transaction identified in response to Ordering Paragraph (A)(3):

a. Identify the pipeline, the date(s) of the release and the replacement shipper, and calculate the amount in excess of the pipeline's applicable maximum tariff rate;

b. Provide copies of all documents relating to the release transaction, including the release agreement (with all amendments), all billing statements submitted by Consumers to the replacement shipper, all records of payments or other consideration made by the replacement shipper, and all communications between Consumers and the relevant pipeline, and all communications between Consumers and the replacement shipper, concerning the transaction; and

c. Show why Consumers should not refund to the replacement shipper any payment Consumers received in excess of the relevant pipeline's applicable maximum tariff rate; and

d. If the transaction is ongoing, show why Consumers should not be required to limit its collections of rates or other consideration from the replacement shipper to the pipeline's applicable maximum tariff rate.

(B) Notice of this proceeding will be published in the **Federal Register**. Interested parties will have 20 days from the date of publication of the notice to intervene.

By the Commission.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8010 Filed 3–26–98; 8:45 am]

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[21] FERC Stats. & Regs., Regs. Preambles 1991–1996 at 30,559.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–4084–001]

Denver City Energy Associates, L.P.; Notice of Filing

March 23, 1998.

Take notice that on February 27, 1998, Denver City Energy Associates, L.P., (DCE), tendered for filing a revised Code of Conduct in compliance with the Federal Energy Regulatory Commission order issued on January 28, 1998 in Docket No. ER97–4084–001.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before April 2, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8032 Filed 3–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10624–020]

French Paper Company; Notice Rejecting Request for Rehearing

March 23, 1998.

On February 10, 1998, the Acting Director, Office of Hydropower Licensing, issued an order modifying and approving the fish entrainment study recommendations proposed by French Paper Company, licensee for the French Paper Project No. 10624. 82 FERC ¶ 62,134. On March 12, 1998, the Michigan Department of Natural Resources (Michigan DNR) filed a request for rehearing of this order with the Commission.

Under Section 313(a) of the Federal Power Act, 16 U.S.C. 825*l*(a), a request for rehearing may be filed only by a party to the proceeding. In order to become a party to any Commission proceeding, an interested person must file a motion to intervene pursuant to Rule 214 of the Rules of Practice and Procedure, 18 CFR 385.214. Michigan DNR's prior intervention in the licensing proceeding for this project does not continue into post-licensing proceedings.[1] Because Michigan DNR did not file a motion to intervene in this post-licensing proceeding, it therefore is not a party. Consequently, its request for rehearing is rejected.

This notice constitutes final agency action. Requests for rehearing by the Commission of this rejection notice must be filed within 30 days of the date of issuance of this notice pursuant to 18 CFR 385.713.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8011 Filed 3–26–98; 8:45 am]

BILLING CODE 6717–01–M

[1] Kings River Conservation District, 36 FERC ¶ 61,365 (1986).