

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Williams Energy Marketing & Trading Co.) Docket No. GP00-1-000

**MOTION FOR LEAVE TO INTERVENE AND PARTIAL PROTEST OF THE
NATURAL GAS SUPPLY ASSOCIATION**

Pursuant to Rules 211, 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.211, -.212 and -.214 (1999), the Natural Gas Supply Association (“NGSA”) hereby moves for leave to intervene in the above-captioned proceeding and submits its partial protest in response to the Petition for Declaratory Order (“PDO”) filed by Williams Energy Marketing & Trading Company (“Williams”). In support of its filing, NGSA states as follows:

I. Executive Summary.

NGSA strongly supports both the royalty-in-kind (“RIK”) projects administered by the Minerals Management Service (“MMS”) of the United States Department of the Interior and the Commission’s open-access transportation regime under Order Nos. 636 and 637. To ensure that both policies function in a consistent manner, and to eliminate any uncertainty in connection with MMS RIK projects, NGSA would support a narrow, specific exception to the Commission’s “buy/sell” policy applicable only to transportation arrangements performed directly in connection with an MMS RIK project.

This waiver would be effective only until MMS has the funding and staff required to purchase natural gas transportation services in its own right.

Because NGSA supports the Commission's open access transportation program, NGSA strongly opposes Williams' request that the Commission eliminate uniform capacity release rules for all outer continental shelf ("OCS") transportation transactions. This aspect of the Williams PDO is irreconcilable with the Commission's recent action in Order No. 639.¹

Granting this aspect of the Williams PDO would inhibit, rather than promote, the market transparency upon which Order No. 639 is based. In addition, removing generically the ban on buy/sell transactions for all jurisdictional natural gas companies operating in the OCS would eliminate a key element of the Commission's regulatory oversight under the NGA. Order No. 639 exempted jurisdictional natural gas companies operating on the OCS from separate reporting requirements and regulatory burdens under OCSLA because the Commission determined that continued compliance with the requirements of the Natural Gas Act and Order Nos. 436 and 636 would be sufficient to ensure compliance with the mandates of OCSLA. The relief sought by the Williams PDO is incompatible with this facet of Order No. 639.

The Williams PDO is simply a renewed request for a form of light-handed regulation of jurisdictional natural gas pipelines operating in the OCS. The Commission considered and rejected similar requests in Order No. 639, and should now reject the Williams PDO.

¹ Order No. 639, Final Rule, *Regulations under the Outer Continental Shelf Lands Act Governing the Movement of Natural Gas on Facilities on the Outer Continental Shelf*, Docket No. RM99-5-000, slip op. (April 10, 2000)("Order No. 639").

II. Communications and Correspondence.

Communications and correspondence regarding this filing should be directed to:

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III. Motion for Leave to Intervene.

NGSA represents integrated and independent companies that produce and market domestic natural gas. Established in 1965, NGSA encourages the expanded use of natural gas and a regulatory climate that fosters competitive markets.

As a threshold matter, the Williams PDO raises issues of concern to NGSA and to its members with respect to the need to harmonize the regulatory policies of the Commission with the ongoing RIK projects administered by the MMS. As an entirely separate matter, however, the Williams PDO appears to request a broad and far-reaching exemption from uniform capacity release requirements for all transportation arrangements in the OCS, a suggestion that is opposed by NGSA.

To address both issues raised by the Williams PDO, NGSA seeks leave to intervene in this proceeding with full rights as a party. No other party can represent adequately NGSA's interests. As a result, granting NGSA's motion for leave to intervene would be in the public interest.

IV. Overview of the Williams PDO.

On March 14, 2000, Williams filed a petition for a declaratory order to remove uncertainty regarding the applicability of the Commission's "buy/sell" policy to offshore production area transactions. Specifically, Williams requests that the Commission confirm that its "buy/sell" policy does not apply to OCS production area buy/sell arrangements, such as those contemplated by the MMS RIK pilot projects.

Williams' concern with the MMS RIK project (an effort designed to permit the U.S. government to take "in kind" its royalties for gas produced from certain offshore federal leases in the Gulf of Mexico) is that through that project, the MMS receives gas at onshore delivery points in exchange for gas that the MMS transfers to the RIK contractors at the offshore receipt points. Any intermediate transportation between those points, Williams explains, is likely to involve both jurisdictional and nonjurisdictional facilities and services, and is the responsibility of the successful bidding RIK contractor to and from whom MMS sells and re-purchases the gas. Because of the way in which the gas is purchased, transported and sold, Williams charges, the RIK projects clearly implicate the Commission's policy on buy/sell arrangements.

The MMS initiated the RIK project during the Fall of 1999, Williams states, and on January 21, 2000, initiated two new auctions for RIK gas from federal offshore leases in the Gulf of Mexico under terms substantially identical to those of the 1999 RIK Project. Williams believes that the MMS intends to implement additional RIK projects in the near future. Williams states that it is an active merchant in the OCS production area and it wishes to participate in the MMS's RIK projects.

Williams also has an interest in using the buy/sell framework of the RIK projects as a model in negotiations for various other gas supply acquisitions in the OCS production regions in the Gulf of Mexico. Because Williams claims to be concerned that such arrangements may violate the “letter” of the Commission’s “buy/sell” policy, Williams submitted the instant petition for a declaratory order.

In support of its petition, Williams argues that although the RIK projects do violate the Commission’s “buy/sell” policy in the literal sense, these projects are consistent with the Commission’s more fundamental objective of maximizing the benefits of natural gas deregulation by increasing the avenues in which a greater number of buyers and sellers may reach one another. The buy/sell framework provides an efficient means for such production-area transactions at issue in this case, Williams claims, as demonstrated by the fact that buy/sells are commonly employed for similar production-area transactions involving liquid hydrocarbon products.

Additionally, Williams does not believe that there is a need for the Commission to impose uniform capacity release requirements upon OCS transportation arrangements. Moreover, Williams believes that to unnecessarily impose such requirements upon OCS transportation would unnecessarily restrict the flexible, customer-tailored services existing in the competitive OCS environment. Williams asserts that the Commission, in granting similar exceptions to its Order No. 636 policies, has publicized the fact that it looks favorably upon flexible approaches that further the Commission’s goal of enhancing the development of OCS resources.² For these reasons, Williams requests that the Commission issue a declaratory order finding that its “buy/sell” policy does not apply

² See *Shell Gas Pipeline Co.*, 76 F.E.R.C. (CCH) ¶ 61,126 (1996).

to OCS production-area arrangements such as those contemplated by the MMS's RIK projects.

V. NGSAs Partial Protest on the Williams PDO.

A. NGSAs Agrees that the Commission's Regulatory Policies Should Be Developed in a Manner That Will Facilitate, Rather than Impede, MMS RIK Projects.

NGSA strongly supports both the MMS RIK projects and the Commission's open-access transportation regime under Order Nos. 436 and 636. Neither regulatory initiative need be placed at risk by the other. NGSA believes that the MMS RIK projects present a unique regulatory situation in the context of the Commission's uniform capacity release regulations. The MMS RIK projects are supported by a strong national public interest in simplifying and streamlining the administration and collection of federal natural gas royalties. In addition, MMS presently lacks necessary budget authorization to purchase open access transportation services directly in its own name. Finally (and in sharp contrast to the other proposed transactions that are the subject of the Williams PDO) extensive information regarding the MMS RIK programs is publicly available on the MMS website, including a listing of winning bidders, affected pipelines, and quantities of natural gas at issue.

Under these circumstances, to eliminate any uncertainty regarding the status of transportation arrangements entered into pursuant to an MMS RIK project (regardless of whether the analysis of RIK transactions in the Williams PDO is correct or incorrect), NGSA would support a narrow exemption from the Commission's policies regarding "buy/sell" transactions, either in the form of an exemption in this proceeding or through a limited, narrowly drawn interim rule. Such an exemption should be limited expressly to

transportation arrangements performed directly in connection with an MMS RIK project and should encompass no other activities, for the reasons set forth in detail below. In addition, such an exemption should be effective only until MMS has the funding and staff required to purchase transportation in its own right.

B. Williams' Request That the Commission Eliminate Uniform Capacity Release Requirements for All OCS Transactions Should Be Rejected.

Williams encourages the Commission to remove **all** uniform capacity release requirements in the OCS. To support this sweeping request, Williams simply claims generally that the OCS is “competitive” and “there is no compelling need to reallocate capacity.”³ Williams also adds that the Commission should exempt all production-area buy/sell arrangements “which promote competitive and efficient markets.”⁴

NGSA opposes this aspect of the Williams PDO. All jurisdictional interstate natural gas pipelines operating on the OCS have in place effective uniform capacity release mechanisms to ensure that all capacity reassignments take place in an open and non-discriminatory manner. With respect to jurisdictional facilities put into service following the advent of Order No. 636, the Commission has reaffirmed repeatedly that capacity reallocation must take place pursuant to the procedures outlined in Order No. 636. Even in connection with new “flexible” service offerings for OCS pipelines, the Commission has recognized that capacity reallocation must take place pursuant to generally applicable capacity release rules under Order No. 636.

Williams has put forward no meaningful argument to support its request for waiver, which amounts to a very belated attack on Order No. 636. Williams' arguments also are inconsistent with current Commission precedent. As the Commission recently

³ Williams PDO at 8.

has held “[I]f interstate pipeline firm capacity is effectively traded without the protections of the Commission’s capacity release mechanism . . . then the Commission’s oversight of interstate transportation transactions becomes ineffective.”⁵ If granted, Williams’ request would eliminate market transparency in the OCS, and establish separate and inconsistent regulatory frameworks for OCS and non-OCS transactions. Similar requests by Williams and aligned parties properly were rejected in Order No. 639. Order No. 639 establishes new regulations designed to foster, rather than to impede, market transparency:

The free flow of information regarding offshore gas activities is critical to the successful creation of a competitive and efficient marketplace. Access to relevant information is necessary for shippers to make informed decisions about capacity purchases and for the Commission and shippers to determine if market power is being exercised in violation of the applicable statutes. The ready availability of information will become increasingly important, both for efficient trading and for the monitoring for the exercise of market power.

Order No. 639, slip op. at 45.

The continued applicability of open-access transportation regulation—of which the buy/sell policy is a crucial part—to jurisdictional natural gas companies operating in the OCS formed the basis for the Commission’s decision in Order No. 639 to exempt jurisdictional natural gas companies from separate reporting requirements under the OCSLA.⁶ Granting the Williams PDO would undercut a major foundation for that exemption, an action that would be without adequate foundation in law or in logic. The Commission expressly considered and flatly rejected in Order No. 639 the claim (now repackaged by Williams) that the nature of OCS activities warrants light-handed

⁴ *Id.*

⁵ *Northern Illinois Gas Co.*, “Order Denying Rehearing,” Docket Nos. PR93-11-001, *et al.*, slip op. at 7 (March 29, 2000).

⁶ Order No. 639, slip op. at 14.

regulation under the NGA. The Commission found “insufficient evidence to conclude that this approach could assure fulfillment of our statutory obligations.”⁷

Williams also contends that the “maze” of jurisdictional and non-jurisdictional facilities in the OCS warrants permitting buy/sell transactions. This argument is unfounded. Williams made a similar claim in its comments in RM99-5-000 to support its position that gas service providers could not be required to report rates and terms and conditions of service between receipt and delivery points. The Commission dismissed this objection, observing that it “challenges the premise of this rule.”⁸

Williams maintains that the alleged use of buy/sell transactions with respect to liquid hydrocarbons would support a Commission decision to permit OCS buy/sell transactions under the NGA. Order No. 639 rejects the premise of this argument as well: “[w]e do not believe it is appropriate to rely on the [Interstate Commerce Act] as a model for gas regulation under the OCSLA.”⁹

Granting the Williams PDO also would undermine past Commission orders, in which the Commission has permitted affiliates of Williams to acquire substantial offshore transportation capacity on affiliated interstate pipeline systems, based in part on the assumption that any reallocation of that capacity would have to take place pursuant to uniform capacity release rules.¹⁰

Williams’ request to nullify Commission sanctioned capacity release procedures in the OCS should be rejected. In essence, Williams is requesting that the Commission abdicate a major portion of its statutory jurisdiction over jurisdictional natural gas

⁷ *Id.* at 22.

⁸ *Id.* at 49.

⁹ *Id.* at 53.

¹⁰ See *Transcontinental Gas Pipe Line Corp.*, 81 F.E.R.C. (CCH) ¶ 61,104 (1997).

pipelines operating in the OCS. NGSA submits that the Commission neither can nor should take this step.

WHEREFORE, for the foregoing reasons, NGSA seeks leave to intervene in this proceeding with full rights as a party, and requests that the Commission grant the relief requested herein.

Respectfully submitted,

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