

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

SG Resources Mississippi, L.L.C.)

Docket No. RP08-606-000

**MOTION TO INTERVENE AND PROTEST OF THE
NATURAL GAS SUPPLY ASSOCIATION, THE INDEPENDENT PETROLEUM
ASSOCIATION OF AMERICA, AND THE PROCESS GAS CONSUMERS GROUP**

Pursuant to Rules 211 and 214 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. §§ 385.211, 385.214 (2008), the Natural Gas Supply Association ("NGSA"), the Independent Petroleum Association of America ("IPAA"), and the Process Gas Consumers Group ("PGC") (together "the Associations") hereby submit their Motion to Intervene and Protest in response to the September 3, 2008 Petition ("Petition") of SG Resources Mississippi, L.L.C.'s ("SGRM") in the above-captioned proceeding. In support, the Associations respectfully state the following:

I. INTERVENTION

A. Communications concerning this motion should be addressed as follows, and the following should be included on the official service list in this proceeding:

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B. NGSA represents integrated and independent companies that produce and market domestic natural gas. Established in 1965, NGSA encourages the use of natural gas within a balanced national energy policy, and promotes the benefits of competitive markets to ensure reliable and efficient transportation and delivery of natural gas and to increase the supply of natural gas to U.S. consumers.

IPAA represents the companies that drill 90 percent of the nation's oil and natural gas wells. These companies produce 82 percent of American natural gas and 68 percent of American oil.

PGC is a trade association of industrial consumers of natural gas organized to promote the development and adoption of coordinated, rational, and consistent federal and state policies with respect to gas service to industrial gas users. Members of PGC own and operate manufacturing facilities that consume natural gas that they receive through the interstate pipeline system.

C. This proceeding involves review of SGRM's Petition, in which SGRM requests "waivers of the provisions of 18 C.F.R. § 284.13(b)(1)(iii) and (b)(2)(ii) (2008) that require Internet posting of transactional pricing information insofar as they pertain to natural gas storage providers authorized under the Natural Gas Act to charge market-based rates."¹

D. Since the Associations represent companies that produce and market and/or consume natural gas, the Associations have substantial and vital interests herein and desires to intervene in order to protect those interests. Therefore, the Associations are interested parties within the meaning of Section 15(a) of the Natural Gas Act, and their intervention and participation will be in the public interest. The Associations are not now, and will not be, adequately represented by any other party in this proceeding, and may be adversely affected by the Commission's action herein.

II. PROTEST

In its Petition, SGRM requests "waivers of the provisions of 18 C.F.R. § 284.13(b)(1)(iii) and (b)(2)(ii) (2008) that require Internet posting of transactional pricing information" for all "natural gas storage providers authorized under the Natural Gas Act to charge market-based rates."² In the alternative, SGRM requests a rulemaking proceeding to rescind these posting requirements. The Associations oppose both requests, which the Commission must reject for the following reasons.

¹ Petition of SG Resources Mississippi, L.L.C. for Waivers of Certain Internet Posting Requirements Relating to

² *Id.* at 1.

A. SGRM's Request for Waivers for all Interstate Storage Providers Authorized to Charge Market-Based Rates is Procedurally Flawed and Must be Denied

SGRM's request for waivers "for itself and for all other holders of NGA certificates authorizing the provision of interstate natural gas storage services at market-based rates" is procedurally flawed and must be denied by the Commission.

Essentially, SGRM has asked the Commission to change its regulations to exempt all natural gas storage providers that have been authorized to charge market-based rates from the posting requirements of 18 C.F.R. § 284.13(b)(1)(iii) and (b)(2)(ii). SGRM's request for such an across-the-board change is tantamount to a request for the Commission to amend previously issued final rules, which may only be accomplished through a rulemaking proceeding, and not by the inappropriate mass waiver sought by SGRM.³

At most, SGRM can request a waiver of its own posting requirements, which the Associations oppose because such a waiver would eliminate some of the few remaining customer protections required of a "natural-gas company" within the meaning of Section 2(6) of the Natural Gas Act ("NGA"). SGRM remains subject to regulation by the Commission notwithstanding that it has been authorized to charge market-based rates.

SGRM argues that the posting requirements are not necessary because "[c]ustomers of a storage service provider that may charge market-based rates *cannot be*

³ See, e.g., *Columbia Falls Alum. Co. v. EPA*, 139 F.3d 914, 919 (D.C. Cir. 1998) ("Once a rule is final, an agency can amend it only through a new rulemaking.").

forced to pay unreasonable rates since the Commission only grants authorization to charge market-based rates to storage providers that demonstrate that they lack market power or otherwise satisfy the customer protection requirements of NGA Section 4(f).”⁴ However, SGRM could attain market power in the future and eliminating the posting requirement would prevent both customers and the Commission from monitoring potential changes in SGRM’s market-power status. Clearly, the posting requirements provide an important check on potential market abuse, which the Commission should not waive, even for a single natural gas storage provider.

Additionally, although SGRM maintains that it is disadvantaged vis-à-vis intrastate storage providers who do not post their prices and customers, the Associations are uncertain whether these intrastate “competitors” can even be considered to operate in the same market as interstate storage providers. Potential storage customers simply cannot obtain the same services from intrastate operators. Moreover, under Section 311 of the NGPA, storage service providers are subject to different regulations than interstate storage facilities operating under the NGA, and are therefore subject to different reporting requirements.

B. The Commission Should Not Institute a Rulemaking Proceeding to Eliminate the Posting Requirements for Interstate Storage Providers Authorized to Charge Market-Based Rates

SGRM’s alternative request that the Commission institute a rulemaking proceeding to eliminate the posting requirements must also be denied, as such a

⁴ SGRM Petition at 10.

rulemaking proceeding would potentially remove one of the last of the already reduced protections provided to storage customers. As the Commission recognized in Order No. 678 only two years ago, posting ensures that the Commission receives sufficient information to know whether storage markets in which applicants have been authorized to charge market-based rates remain competitive. Specifically, in explaining its decision not to impose a generic five-year reporting requirement on storage providers granted market-based rates, the Commission explained its belief that “existing reporting requirements and [our] ongoing market monitoring programs generally give us sufficient information to know whether storage markets where applicants have been authorized to charge market-based rates remain competitive.”⁵ The Commission went on to explicitly recognize the importance of the requirement that storage providers report the rates of storage service transactions under Section 284.13(b), explaining that “these reports will provide the opportunity to detect potential undue discrimination or preference in storage rates or services” and “that this requirement will be monitored closely by our oversight and audit staff to assure full compliance.”⁶ The Commission specifically mandated the continuation of this concurrent, minimal reporting requirement on storage operators with market-based rates in lieu of an intensive five-year competitive review and analysis.⁷ The basis for

⁵ Rate Regulation of Certain Underground Storage Facilities, “Final Rule,” Order No. 678, Docket No. RM05-23-000 (June 19, 2006), at ¶ 90 (hereinafter “Order No. 678”).

⁶ Order No. 678 at ¶ 175.

⁷ *Id.* at ¶ 90.

this finding has not changed over the last two years, and SGRM has provided no factual evidence to the contrary.

Storage operators with market-based rate authority generally are deemed to lack market power and thus are not regulated in the same manner as those who retain market power and operate with cost-based rates. However, such storage operators nevertheless remain subject to regulation, and the Commission has the ability to take appropriate action if the required postings reveal changes in an operator's market-power status. Eliminating these posting requirements would essentially insulate storage operators with market-based rate authority from regulation by preventing customers and the Commission from monitoring potential changes in an operator's market-power status.

Additionally, monitoring for potential market-power abuse must be performed on a real-time basis. Only real-time monitoring can ensure that market participants are not subjected to market-power abuse for an extended period of time before the abuse is detected and ultimately corrected. Thus, it is imperative that storage providers with market-based rates continue their current posting obligations.

SGRM asserts that interstate storage operators face "highly competitive" markets, analogous to unregulated commodity markets. Commodity markets afford market participants an array of publicly available information about transaction values and there is therefore no need for the Commission to require reporting of transactional details.

In contrast to SGRM's views, storage providers can act as a "natural monopoly" and, even for those facilities where the Commission has found a lack of market power, circumstances over time can change this finding. FERC recognized this possibility in Order No. 678 when it stated that these reports would be closely monitored. Moreover, there are no comparable sources of price discovery for market-based rate storage services. Thus, unlike customers in commodity markets which have liquid points for price discovery, storage customers would have no recourse absent the Commission's posting requirements. Additionally, even rates that are set under market-based rate authority are required to be just and reasonable. If the Commission were to eliminate the posting requirements, there would be no way to ensure that this requirement is met.

Accordingly, the Commission must maintain the storage reporting of transactional details, including rates, in order to prevent discrimination and to monitor for potential market-power abuses.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the Natural Gas Supply Association, the Independent Petroleum Association of America, and the Process Gas Consumers Group respectfully request that they be allowed to intervene in this proceeding with full rights as parties hereto and that the Commission order action consistent with this protest and reject SGRM's Petition.

Respectfully submitted,

/s/ Patricia W. Jagtiani

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CERTIFICATE OF SERVICE

In accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2008), I hereby certify that I have this day served a copy of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 15th day of September, 2008.

/s/ Patricia Jagtiani

Patricia Jagtiani