



Patricia W. Jagtiani
Vice President of Regulatory Affairs

April 13, 2005

Chairman Pat Wood, III
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

***Re: Marathon Oil Co., Complainant, v. Trailblazer Pipeline Co., Respondent,
Docket No. RP05-234-000***

Dear Chairman Wood:

The Natural Gas Supply Association (“NGSA”) takes this opportunity to submit comments in response to Marathon Oil Company’s (“Marathon”) complaint filed against Trailblazer Pipeline Company (“Trailblazer”) in the above-captioned proceeding. While not delving into the specifics of this case, to the extent this proceeding has an impact on the direction of the Commission’s negotiated rate policy, NGSA respectfully provides the following comments on the policy and the necessity of having viable recourse rates.

As the Commission is aware, this proceeding involves review of Marathon’s complaint filed March 22, 2005, against Trailblazer pursuant to Rule 206 of the Commission’s Rules and Regulations alleging that Trailblazer violated the Commission’s Negotiated Rate Policy, the Natural Gas Act, the Commission’s Part 284 Regulations and the Commission’s Order authorizing Trailblazer to charge negotiated rates, as well as Section 38 of the General Terms and Conditions of Trailblazer’s tariff.

Marathon alleges that Trailblazer’s rates under FTSX Agreement Nos. 927144 and 919467 are unlawful in that they are the product of the exercise of market power by Trailblazer and are unduly discriminatory under Section 4 of the Natural Gas Act. Marathon alleges that Trailblazer failed to offer potential shippers a cost based recourse rate for its Expansion 2002 FTS service and is charging negotiated rate shippers vastly different rates for the same service.

For nearly a decade, the Commission has implemented and refined its negotiated rate policy through policy statements,¹ individual Natural Gas Act (“NGA”) Section 4 pipeline

¹ “Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipeline” (herein “Alternative Rate Policy Statement”), 74 FERC ¶61,076, *reh’g and clarification denied*, 75 FERC ¶61,024, *reh’g denied*, 75 FERC ¶61,066 (1996), *petition for review denied sub nom. Burlington Resources Oil & Gas Co. v. FERC*, Nos. 96-1160, *et al.*, U.S. App. Lexis 20697 (D.C. Cir. July 20, 1998).

proceedings, and NGA Section 5 complaint proceedings. Generally, the policy provides pipelines and shippers with flexibility to structure rates for natural gas service that best fits their needs, while at the same time “mitigating pipeline use of market power by means of a recourse rate.”² Since the inception of its negotiated rate policy, the Commission has maintained this position that recourse rates are a fundamental element of the policy and “must remain a viable alternative to negotiated service” to act as a check against pipeline market power.³ For the limited purpose of supporting the Commission’s negotiated rate policy, NGSA urges the Commission to reaffirm in the Trailblazer proceeding that the availability of recourse rates in all negotiated rate situations is an essential part of the Commission’s negotiated rate policy.

Recourse rates ensure that a shipper can elect traditional cost-based service to obtain capacity if the pipeline requires excessive rates or withholds service. Specifically, NGSA urges the Commission to reaffirm the application of this policy to open seasons for new construction and expansions situations; *i.e.*, a pipeline cannot condition construction of an expansion or interconnect on the payment of a negotiated rate. As NGSA advocated in its comments filed in the Commission’s negotiated rate policy proceeding in 2002, conditioning the expansion of facilities on the agreement of a shipper to pay a negotiated rate “undermines the principle that a shipper should always be able to bid the recourse rate instead of a negotiated rate.”⁴ The Commission itself has stated that “this type of tying arrangement would be patently illegal.”⁵

There have been numerous instances where the Commission has upheld this policy, most recently in a Natural Gas Pipeline Company of America proceeding. In that case, the pipeline proposed an expansion of its existing storage facilities, and held an open season that required bidders for the expansion service to tender a fixed, monthly, negotiated reservation charge bid. In rejecting the open season as invalid, the Commission stated:

Given our clear intent regarding the availability of a recourse rate option, we will not permit Natural to declare that only negotiated fixed rate bids will be considered valid, and hold an open season that offers shippers no cost-of-service alternative by restricting recourse bids.⁶

The Commission found that Natural was an “experienced storage operator” and thus should have established a preliminary incremental rate before the open season based on an estimated cost of service. The Commission required Natural to hold another open season and allow shippers to bid the recourse rate.

NGSA believes it is sound policy for expansion shippers to have the right to recourse rates and not be required to pay negotiated rates for expansion or new construction service.

² *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134, at P 4.

³ *Alternative Rate Policy Statement*, 74 FERC at p. 61,240.

⁴ *Natural Gas Pipeline Negotiated Rate Policies and Practices*, Docket No. PL02-6, “Comments of the Natural Gas Supply Association” at 5 (filed Sept. 25, 2002).

⁵ *CNG Transmission Corp.*, 80 FERC ¶ 61,401, p. 62,329 (1997).

⁶ *Natural Gas Pipeline Company of America*, 101 FERC at P 39.

Further, NGSAs urges the Commission to require pipelines to make potential shippers aware when negotiating for service that a recourse rate is available.

For the Commission's negotiated rate policy to work properly, it is imperative that existing and potential shippers have the actual right to a real recourse rate that is based on the costs associated with the service provided. Absent such a recourse rate, the pipeline implicitly is imposing market-based rates without having gone through the Commission-required process to demonstrate a lack of market power. In essence, without a recourse rate, the pipeline is extracting from the shipper whatever rate the market will bear.

For the foregoing reasons, NGSAs respectfully requests that the Commission consider the above comments as they relate to this proceeding and the Commission's general negotiated rate policy.

Sincerely,

\s\ Patricia W. Jagtiani

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Vice President of Regulatory Affairs

cc: Commissioner Nora Mead Brownell
Commissioner Joseph T. Kelliher
Commissioner Suedeem G. Kelley
Secretary Magalie Salas