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FEDERAL ENERGY
REGULATORY COMMISSION

STAMP & RETURN

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Texas Gas Transmission LLC)

Docket No. TS04-253-000

**MOTION OF THE NATURAL GAS SUPPLY ASSOCIATION
FOR LEAVE TO INTERVENE OUT-OF-TIME**

AND

**REQUEST FOR CLARIFICATION
OR, IN THE ALTERNATIVE, REHEARING**

Standards of Conduct for
Transmission Providers)

Docket No. RM01-10-000

REQUEST FOR CLARIFICATION

Pursuant to Rule 214 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), and in accordance with Section 19(a) of the Natural Gas Act ("NGA"), 15 U.S.C. § 717r(a) and Rule 713, 18 C.F.R. § 385.713 (2004), the Natural Gas Supply Association ("NGSA") hereby respectfully moves for leave to intervene out-of-time in, and requests clarification or, in the alternative, rehearing of, the Commission's September 20, 2004 order issued in Docket No. TS04-253-000.¹ NGSA is submitting this filing in light of significant policy concerns arising from the Commission's decision to grant Texas Gas's request for a complete exemption from the Order No. 2004 Standards of Conduct for Transmission Providers ("Standards of Conduct"). In addition, NGSA requests clarification as this matter relates to Order No. 2004.

¹ *Texas Gas Transmission LLC*, 108 FERC ¶ 61,243 (2004)(herein "September 20 Order").

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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Vice President of Regulatory Affairs
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B. NGSA represents integrated and independent companies that produce and market natural gas in the United States. Established in 1965, NGSA encourages the expanded use of natural gas and supports regulatory and legislative actions that foster competitive markets.

C. This proceeding involves the Commission's decision to grant Texas Gas Transmission LLC's ("Texas Gas") request for an exemption from the Standards of Conduct.

D. Since NGSA represents companies that produce and market natural gas, NGSA has substantial and vital interests herein and desires to intervene in order to protect those interests. Therefore, NGSA is an interested party within the meaning of Section 15(a) of the Natural Gas Act, and its intervention and participation will be in the public interest. NGSA is not now, and will not be, adequately represented by any other party in this proceeding, and may be bound or adversely affected by the Commission's action herein.

E. NGSA is filing this intervention out-of-time due to concerns that the Commission's September 20 Order granting Texas Gas's request for a complete exemption from the Standards of Conduct has significant policy implications that may adversely impact shippers on interstate natural gas pipelines throughout the United States. NGSA filed comments in the original Standards of Conduct rulemaking proceeding also cited in the above-captioned docket,

and has generally supported the adoption of those standards.² NGSA believes that the Commission's recent decision in the Texas Gas implementation docket may increase the potential that Transmission Providers can unduly discriminate against shippers and therefore seeks to bring these concerns to the Commission's attention by intervening in the instant proceeding.

WHEREFORE, given the significant policy issues presented by the September 20 Order, NGSA respectfully seeks to intervene out-of-time in order to seek clarification or rehearing on these important policy points in Docket No. TS04-254-000. In addition, and due also to the significant policy implications of the September 20 Order in applying the Standards of Conduct, NGSA is filing the instant pleading and seeking clarification in Docket No. RM01-10-000.

II. REQUEST FOR CLARIFICATION, OR IN THE ALTERNATIVE REHEARING

A. Summary

NGSA requests clarification of the Commission's September 20 Order approving Texas Gas's request for complete exemption from the Standards of Conduct and also clarification of Order No. 2004. NGSA believes that certain sections of the Standards of Conduct are applicable to Transmission Providers irrespective of whether the Transmission Provider has an Energy Affiliate. Specifically, sections 358.5(c) and 358.5(d)³ set forth general

² See "Supplemental Comments of the Natural Gas Supply Association, the American Public Gas Association, and the Independent Petroleum Association of America in Response to Corporate Governance Concerns," Docket No. RM01-10-000 (June 5, 2003); Letter from Joseph A. Blount, Jr., Chairman-Elect, NGSA, to The Honorable Pat Wood, Chairman, Federal Energy Regulatory Commission, Docket No. RM01-10-000 (December 18, 2003); and Letter to The Honorable Pat Wood, Chairman, Federal Energy Regulatory Commission, Docket No. RM01-10-000, (February 20, 2004).

³ Section 358.5(c) combined sections 161.3(a), (b), (c), (d) and (k) and 37.4(b)(5) and requires Transmission Providers to treat all customers in a fair and impartial manner. Transmission Providers must apply tariff provisions in a manner that treats all transmission customers in a non-discriminatory manner. Similarly, section 358.5(d) combined the requirements of sections 161.3(h) and 37.6(c)(3).

non-discrimination requirements that Transmission Providers must abide by in providing service to shippers on their systems. While the Standards of Conduct promulgated by Order No. 2004, in general, are intended to govern relationships between Transmission Providers and their Energy Affiliates, these specific provisions apply generically to service provided by all Transmission Providers, including Texas Gas. In the alternative, NGSa requests rehearing of the Commission's September 20 Order to the extent that a complete waiver of the Standards of Conduct may lead to the unduly discriminatory treatment of shippers on Texas Gas's system in contravention of the Natural Gas Act, generally applicable regulations and Commission precedent designed to prevent undue discrimination.

B. Specifications of Error

1. The September 20 Order erred in granting Texas Gas's request for a complete exemption from the Standards of Conduct.
2. The September 20 Order erred by failing to condition Texas Gas's exemption from certain provisions of the Standards of Conduct on a requirement that Texas Gas abide by Sections 358.5(c) and 358.5(d).
3. The September 20 Order erred by failing to identify a policy rationale for contradicting the Commission's regulations and policy, which do not permit undue discrimination, and by failing to find that Sections 358.5(c) and 358.5(d) should not be waived, absent extraordinary circumstances, not here present.
4. The September 20 Order erred in demonstrating a lack of reasoned decisionmaking, is arbitrary and capricious, and is otherwise unlawful.

III. ARGUMENT

NGSA supported and continues to support the Commission's efforts to establish higher standards of conduct governing the relationship between regulated transmission providers and their energy affiliates. In fact, in a letter to the Commission, NGSa urged the Commission

to “stand firm and limit exemptions ... that could, in turn, nullify the effectiveness of the rule.”⁴ Based on the recent ruling granting Texas Gas’s complete exemption from the Standards of Conduct, NGSA is concerned that its fears regarding the impact of broad exemptions from these Standards may have become a reality.

In its filing requesting an exemption from the Standards of Conduct, Texas Gas, an interstate pipeline, justifies such exemption by demonstrating that it does not have a marketing or sales arm, nor does it have an Energy Affiliate as that term is defined by the Standards of Conduct. Therefore, Texas Gas argued, it should be exempt from the Standards of Conduct. NGSA does not dispute the facts of the Texas Gas corporate structure and recognizes that the absence of an Energy Affiliate should require less work for Texas Gas to comply with the Standards of Conduct applicable to a Transmission Provider. However, NGSA nonetheless believes that certain provisions of the Standards of Conduct have general application, and therefore should not be waived except in extraordinary circumstances, which are not here present.

Specifically, Sections 358.5(c) and 358.5(d) address general tariff implementation issues such as discounting and timing, requests for transportation service and the maintenance of a log detailing waivers from the pipeline’s tariffs. These sections state:

c) Implementing tariffs.

(1) A Transmission Provider must strictly enforce all tariff provisions relating to the sale or purchase of open access transmission service, if these tariff provisions do not permit the use of discretion.

(2) A Transmission Provider must apply all tariff provisions relating to the sale or purchase of open access transmission service in a fair and impartial manner that treats all transmission customers in a non-discriminatory manner, if these tariff provisions permit the use of discretion.

⁴ Letter from Joseph A. Blount, Jr., at 1.

(3) A Transmission Provider must process all similar requests for transmission in the same manner and within the same period of time.

(4) The Transmission Provider must maintain a written log, available for Commission audit, detailing the circumstances and manner in which it exercised its discretion under any terms of the tariff. The information contained in this log is to be posted on the OASIS or Internet website within 24 hours of when a Transmission Provider exercises its discretion under any terms of the tariff.

.....

(d) Discounts.

Any offer of a discount for any transmission service made by the Transmission Provider must be posted on the OASIS or Internet website contemporaneously with the time that the offer is contractually binding. The posting must include: the name of the customer involved in the discount and whether it is an affiliate or whether an affiliate is involved in the transaction, the rate offered; the maximum rate; the time period for which the discount would apply; the quantity of power or gas scheduled to be moved; the delivery points under the transaction; and any conditions or requirements applicable to the discount. The posting must remain on the OASIS or Internet website for 60 days from the date of posting.⁵

These provisions set forth generally applicable non-discriminatory requirements that govern a Transmission Provider's treatment of customers, regardless of whether the Transmission Provider has an Energy Affiliate. NGSA is concerned that a complete waiver of the Standards of Conduct, specifically including Sections 358.5(c) and 358.5(d), inadvertently eliminates important protections that should apply to all pipeline operations regardless of whether the Transmission Provider has an Energy Affiliate and also inadvertently provides Transmission Providers with an opportunity to treat customers in an unduly discriminatory manner. While Texas Gas may not have an Energy Affiliate and therefore the provisions of the Standards of Conduct governing the affiliate relationship are not operative, the pipeline is, nonetheless, subject to the Standards of Conduct with respect to those provisions that apply

⁵ 18 C.F.R. § 358.5(c) and (d) (2004).


generally, such as the non-discrimination provisions noted above. That is, Texas Gas should only receive a waiver from those Standards of Conduct that apply specifically to affiliate relationships. NGSAs also seeks clarification that, if in the future Texas Gas forms or acquires an Energy Affiliate, the previously-waived provisions that expressly address affiliate relationships will become operative immediately with respect to Texas Gas.

For these reasons, the Commission should grant NGSAs's request for clarification, or in the alternative rehearing, and condition acceptance of Texas Gas's exemption from the Standards of Conduct upon a recognition that Texas Gas remains bound by the non-discrimination provisions identified in 18 C.F.R. §§ 358.5(c) and (d), and that these two specific sections generally should not be waived absent extraordinary circumstances, not here present, justifying such a waiver. In addition, the Commission should clarify that exemptions from Order No. 2004 are not intended to waive any of the generally applicable, non-discriminatory provisions of the Standards of Conduct.

IV. CONCLUSION

WHEREFORE, in consideration of the foregoing, the Natural Gas Supply Association respectfully requests that the Commission grant its motion to intervene out-of-time and provide the clarification or grant rehearing consistent with the above pleading.

Respectfully submitted,



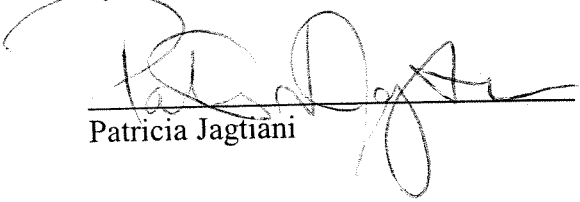
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October 20, 2004

CERTIFICATE OF SERVICE

In accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2004), I hereby certify that I have this day served 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 20th day of October, 2004.


Patricia Jagtiani