



## NEWS

**For Immediate Release: March 30, 2007**

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### **FERC Has Options for Pipeline-Affiliate Conduct Beyond Status Quo, NGSA Says**

(Washington, DC)... When it comes to the working relationship between regulated interstate pipelines and their marketing affiliates, federal regulators don't need to rely on the status quo to satisfy appeals court objections to previous standards of conduct, the Natural Gas Supply Association (NGSA) said today.

"NGSA believes that having effective standards of conduct in place is essential to securing competitive balance in the natural gas industry and to ensuring the efficient functioning of natural gas markets," according to an association filing with the Federal Energy Regulatory Commission (FERC).

The comments follow a 2006 Washington, D.C. Circuit Court ruling overturning as unsubstantiated a previous set of regulations designed to prevent preferential treatment or information sharing among U.S. natural gas pipelines and their holding company siblings. In response to the successful appeal by Williamsville, N.Y.-based National Fuel Gas Supply Corp. and others, FERC reverted to its previous standards of conduct, which it is now proposing to make permanent.

"NGSA encourages the commission to discard this single-solution view of the court's decision in *National Fuel* and take a fresh look at the standards of conduct," the producer association said in its follow-up filing. "NGSA believes that more appropriate regulations, successfully meeting the standards set out by the court in *National Fuel*, are in easy reach. NGSA supports improvements to the standards of conduct in order to prevent abuses that have been detected and that could, if unchecked, distort the natural gas markets."

Among its recommendations, NGSA said FERC should ensure that revised standards of conduct apply to the relationship between natural gas pipelines and their affiliates that manage or control transmission capacity, either directly in their

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own name, or indirectly as an agent on behalf of others. The standards of conduct should also govern the relationship between natural gas pipelines and their power marketing affiliates.

In addition, to the extent the commission limits the scope of the standards of conduct to only affiliates that conduct transportation transactions on one affiliated pipeline, it should also ensure that the standards apply to any energy marketing firm that conducts transportation transactions on any of its other affiliated pipelines, as well, according to the comments. This, NGSA said, will prevent any affiliated entities from acting as a conduit for the sharing of otherwise prohibited information.

On the issue of natural gas pipeline's discretionary waiver requirements for natural gas and power transmission, NGSA maintains there are "valid reasons not to revert to a regime of limited transparency or to make permanent a different discretionary action requirement for natural gas pipelines, particularly where the consistent requirement was not substantively challenged in Order No. 2004."

"Requiring pipelines to post discretionary actions on their Web sites, to which all shippers have access, allows a shipper not only to determine whether it is being treated properly, but also to take action in the event it is not. Requiring the shipper to request the log of discretionary actions – the requirement as expressed in Order No. 497 – is unduly restrictive and defeats the goal of transparency, because a shipper will not know when the pipeline has taken a discretionary action, let alone whether such action is appropriate."

Finally, NGSA stressed that the commission should also be willing to use all of its new enforcement powers, beyond those in any final standard of conduct, to weed out any related market abuses.

"The Commission should also signal its commitment to vigilant enforcement, not only of the standards of conduct developed in this rulemaking proceeding, but also to any instance of affiliate preference that is prohibited by the Natural Gas Act, even if not be specifically covered by these standards of conduct," NGSA said.

"Although the court in *National Fuel* concluded that the record did not support the costly prophylactic rules promulgated by the commission in Order No. 2004, the court's decision in *National Fuel* should not be read to prevent the commission from punishing individual instances in which a pipeline grants a preference to an affiliate."

NGSA – 03 – 07

**(Editor's Note: A copy of the association's complete filing will be available soon at [www.ngsa.org](http://www.ngsa.org), or contact Sandra Crockett at [scrockett@ngsa.org](mailto:scrockett@ngsa.org), (202) 326-9300).**