

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

Coordination of the Scheduling Processes of  
Interstate Natural Gas Pipelines and Public Utilities

Docket No. RM14-2-002

**COMMENTS OF THE NATURAL GAS SUPPLY  
ASSOCIATION IN RESPONSE TO REQUEST FOR COMMENTS  
ON CAPACITY RELEASE RECALL PROVISIONS**

The Natural Gas Supply Association (“NGSA”) hereby submits its comments in response to the Federal Energy Regulatory Commission’s (“FERC” or “the Commission”) request for comments on whether FERC should establish a default interpretation for capacity release contracts that will include outdated recall right provisions after the new pipeline nomination schedule established in the captioned docket is implemented.

NGSA represents integrated and independent energy 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 supports the benefits of competitive markets. NGSA promotes increased supply and the reliable, efficient delivery of natural gas to customers.

Consistent with NGSA’s recently-filed comments in response to a request for FERC to decide which party in a capacity release contract should bear cost responsibility for modernization surcharges, absent specific language in the contract, NGSA reiterates its position here that the Commission should leave contractual matters to the parties to negotiate. NGSA is confident that contractual parties are fully capable of renegotiating the recall provisions well in advance of the April 1st implementation date. Therefore, NGSA believes it is inappropriate for the Commission to establish a generic default interpretation

for a limited number of transitional contracts that, if implemented, would inappropriately influence negotiations between the parties.

## **I. Background**

The Commission is seeking comments on the merits of establishing a default approach or an alternative approach on recall rights in capacity release transactions after the new intraday nomination schedule is implemented April 1, 2016. This issue was brought to the Commission's attention when the American Gas Association, the American Public Gas Association and the Interstate Natural Gas Association of America (collectively, the "Associations") filed a request asking FERC to clarify that capacity release recall rights for the Intraday 3 cycle will be available for releases entered into prior to April 1, 2016 and terminating thereafter. The Associations' supplemental comments filed on May 28, 2015 furthered the scope of their request by asking the Commission to specify default outcomes (in the absence of the parties' agreement) in defining the capacity release recall rights that will be available after implementation. In response, FERC issued an order on July 31, 2015 requesting comment on whether the default approach, or an alternative, is reasonable.

## **II. Parties Should Resolve Capacity Release Recall Rights Matters**

When the new gas nomination timeline is implemented, a default interpretation will not be necessary to effectuate the transition, as all parties are much better served by resolving contract issues that may arise between the commercial parties. As NGSAs stated in its answer filed in Docket No. PL15-1-000:

[G]iven the myriad number of ways parties can opt to structure releases under the capacity release program, **resolution of contractual matters are best left up to the commercial parties to resolve**, including in those instances in which existing long-term capacity releases are silent with respect to surcharge cost responsibility.<sup>1</sup>

The same principle applies here, where parties may need to renegotiate recall rights in a limited number of capacity release contracts that may become outdated once the new pipeline nomination cycle is in effect on April 1, 2016.

NGSA does not believe there are any special circumstances here that warrant FERC involvement in the renegotiation of recall provisions between two commercial parties, given that renegotiation of contract terms is not an uncommon occurrence in the industry. There is no reason to doubt that releasing and replacement shippers can effectively renegotiate their contracts well in advance of the April 1st nomination schedule. As with all contract disputes, the parties already have multiple methods for reaching a mutual agreement, including direct negotiation, mediation, and litigation. If the default position is a more favorable outcome for one of the parties, its availability can influence a shipper during negotiations and hinder efforts to reach a mutual agreement since the outcome is already guaranteed. Additionally, since the circumstances surrounding each capacity release transaction with recall rights vary, it would be inappropriate for FERC to arbitrarily establish a default determination. In fact, FERC recently supported this position in the above-referenced modernization surcharge cost responsibility order when it stated “the issue of cost responsibility for modernization costs during the term of a capacity release is a contractual issue between the relevant parties, and that issue cannot be resolved on a

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<sup>1</sup>*Cost Recovery Mechanisms for Modernization of Natural Gas Facilities*, Docket No. PL15-1-000 at 2 (June 11, 2015) (emphasis added).

generic basis.”<sup>2</sup> Consistent with that determination, FERC should leave the transition of the few impacted contracts as a business decision between the parties.

### **III. Conclusion**

For the foregoing reasons, NGSА respectfully requests that the Commission refrain from establishing a default interpretation on recall rights in capacity release transactions occurring after the new nomination schedule is implemented. Instead, FERC should remain consistent with its recent ruling on the modernization surcharge cost responsibility that renegotiation of recall provisions is best resolved through mutual agreement between the parties. NGSА is confident that the contractual parties are fully capable of renegotiating recall right provisions on a timely basis, well in advance of the April 1st effective date.

Respectfully submitted,

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<sup>2</sup>*Cost Recovery for Modernization of Natural Gas Facilities*, 152 FERC ¶ 61,046 at P 20 (2015) (citations omitted).