



## I. MOTION FOR LEAVE TO INTERVENE

### A. Communications

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### B. Background

On January 20, 2012, Texas Eastern Transmission, LP (“Texas Eastern”) filed a revised tariff record to change the *pro forma* service agreement for Texas Eastern’s Rate Schedule FTS-5 to provide additional flexibility. On February 16, 2012, citing *Natural Gas Supply Association*, *American Forest & Paper Association*, *American Public Gas Association*, *Independent*

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<sup>2</sup> Due to the joint nature of this filing, the Associations respectfully request a waiver of the requirements of Section 385.203 of the Commission’s regulations to allow the inclusion of more than two persons on the service list in these proceedings.

*Petroleum Association Of America, Process Gas Consumers Group*, Order on Petition, 135 FERC ¶ 61,055, *order on reh'g*, 137 FERC ¶ 61,051 (2011) (“Order on Petition”), the Commission accepted Texas Eastern’s filing subject to the condition that, pursuant to Section 5 of the Natural Gas Act (“NGA”), Texas Eastern either file revisions to its tariff concerning reservation charge credits to conform to current Commission policy or explain why it should not be required to do so.<sup>3</sup> On March 19, 2012, Texas Eastern filed a request for rehearing of and a response to the February 16, 2012 order. On March 29, 2012, INGAA filed a letter requesting reconsideration of the Order on Petition as well as the retraction of the February 16, 2012 order. On April 16, 2012, the Associations, along with the American Public Gas Association (“APGA”), filed an answer to INGAA’s March 29, 2012 letter. In the September 20 Order, the Commission largely denied Texas Eastern’s request for rehearing and declined to consider INGAA’s letter and the Associations’ answer because they were not parties to the proceeding.<sup>4</sup>

On October 22, 2012, Texas Eastern filed a request for rehearing of the September 20 Order and INGAA filed an Emergency Motion to Intervene Out of Time and Request for Rehearing of the same order.

### **C. Identity of the Associations**

NGSA represents integrated and independent companies that produce and market natural gas in the United States on issues that broadly affect the natural gas industry. NGSA is the voice of suppliers and marketers who find, sell, transport and deliver approximately 30 percent of the United States’ natural gas supply. Established in 1965, NGSA encourages the use of natural gas within a balanced national energy policy and promotes the benefits of competitive markets to

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<sup>3</sup> *Texas Eastern Transmission, LP*, 138 FERC ¶ 61,126 (2012).

<sup>4</sup> *See* September 20 Order at n. 44.

ensure reliable and efficient transportation and delivery of natural gas and to increase the supply of natural gas to U.S. consumers. Natural gas produced and marketed by NGSAs' members is transported on virtually all of the interstate natural gas pipelines regulated by the Commission.

IPAA represents thousands of American independent oil and natural gas producers and associated service companies. Independent producers develop 95 percent of American oil and gas wells, produce 54 percent of American oil, and produce 85 percent of American natural gas.

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. PGC members own and operate hundreds of plants in virtually every state in the nation. PGC members own and operate manufacturing facilities that consume natural gas delivered through interstate natural gas pipeline systems throughout the U.S.

AF&PA is the national trade association of the forest products industry, representing pulp, paper, packaging and wood products manufacturers, and forest landowners in the United States. AF&PA members make products essential for everyday life from renewable and recyclable resources that sustain the environment. The forest products industry accounts for approximately 5 percent of the total U.S. manufacturing GDP, putting it on par with the automotive and chemical industries. Industry companies produce \$200 billion in products annually and employ approximately 900,000 people earning \$54 billion in annual payroll. The industry is among the top 10 manufacturing sector employers in 48 states. AF&PA members own and operate facilities that consume natural gas delivered through the numerous interstate natural gas pipelines.

#### **D. Motion To Intervene Out-of-Time**

The Associations are interested in and affected by the results of the Rehearing Request. The Associations' interest, as representing the interests of customers and consumers, is stated in and protected by Rules 214(b)(2)(ii)(A) and (B).<sup>5</sup> In addition, the Commission's September 20 Order being challenged by INGAA relies on the Commission's Order on Petition which was issued in response to a petition submitted by the Associations.<sup>6</sup>

Further, as a matter of fairness and equity, if the Commission grants INGAA's motion to intervene out-of-time, the Commission should grant this motion as well.

In considering motions for late intervention under the standards of Rule 214(d),<sup>7</sup> the Commission considers "whether the movant had good cause for not filing timely; any disruption of the proceeding that might result from permitting intervention; whether the movant's interest is adequately represented by other parties; and whether any prejudice to, or additional burden on, existing parties might result from permitting the intervention."<sup>8</sup>

The Associations have good cause for intervening out-of-time. In Docket No. RP11-1538-000, the Associations petitioned the Commission to enforce its policy regarding pipeline crediting during outages.<sup>9</sup> Approximately 60 entities, including INGAA, Texas Eastern,<sup>10</sup> as

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<sup>5</sup> 18 C.F.R. 385.214(b)(2)(ii)(A) and (B) (2012).

<sup>6</sup> In addition to APGA.

<sup>7</sup> 18 C.F.R. 385.214(d) (2012).

<sup>8</sup> *Erie Boulevard Hydropower, L.P.*, 117 FERC ¶ 61,189 at P 30 (2006).

<sup>9</sup> *Pipeline Credits During Outages*, Petition By The Natural Gas Supply Association, The Independent Petroleum Association Of America, The Process Gas Consumers Group, The American Public Gas Association And The American Forest & Paper Association Requesting The Federal Energy Regulatory Commission To Enforce Its Policies On Pipeline Credits During Outages, Docket No. RP11-1538-000 (November 17, 2010).

well as a number of other pipeline companies<sup>11</sup> were parties to that proceeding where all the related issues were presented, fully addressed, and adequately considered. That proceeding resulted in the Commission's Order on Petition. The findings and conclusions in the Order on Petition provide the policy direction and the legal underpinnings for the Commission's September 20 Order<sup>12</sup> and it is, in fact, the Order on Petition that is the subject of INGAA's challenge in this proceeding.

The Associations were rightfully under the impression that the issues raised by the Rehearing Request were put to rest after adequate consideration in Docket No. RP11-1538 and that they would not be re-litigated here. The Associations could not have expected that this proceeding could turn into yet another opportunity for INGAA to attempt to revisit the very same issues addressed in Docket No. RP11-1538 – all under the guise of challenging the “application” of the Commission's Order on Petition. Given the fact that INGAA's issues have already been addressed in a previous proceeding, FERC should deny INGAA's petition to intervene. However, to the extent that FERC allows INGAA to rehash the arguments previously debated in

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<sup>10</sup> See *Natural Gas Supply Association, American Forest & Paper Association, American Public Gas Association, Independent Petroleum Association Of America, Process Gas Consumers Group, Motion To Intervene And Comments Of The Spectra Entities*, Docket No. RP11-1538-000 (December 8, 2010). The Spectra Entities are “Spectra Energy Transmission, LLC, Spectra Energy Partners, LP, and their regulated pipelines and storage facilities” including “Texas Eastern Transmission, LP; Algonquin Gas Transmission, LLC; Saltville Gas Storage Company L.L.C.; Bobcat Gas Storage; and Copiah Storage, LLC . . .” *Id.* at 1 and n. 1.

<sup>11</sup> Such as ANR Pipeline Company, CenterPoint Energy, El Paso Pipeline Group, Empire Pipeline, Inc., Gas Transmission Northwest LLC, Kern River Gas Transmission Company, Kinder Morgan Interstate Gas Pipelines, NiSource Gas Transmission and Storage, North Baja Pipeline, LLC, Northern Border Pipeline Company, Northern Natural Gas Company, Northwest Pipeline GP, Panhandle Eastern Pipe Line Company, LP, Trunkline Gas Company, LLC, and Williston Basin Interstate Pipeline Company.

<sup>12</sup> See, e.g. September 20 Order at P 22.

RP11-1538 and grants INGAA's late intervention in the instant proceeding, FERC should also grant the Associations' intervention.

Additionally, no disruption would result from the grant of this motion as the Associations accept the record in this proceeding. Further, the Associations' interests cannot be adequately represented or protected by other parties and no prejudice or burden on existing parties will result from allowing the Associations to intervene.

Therefore, if the Commission grants INGAA's Motion to Intervene, the Associations should similarly be granted permission to intervene in the instant proceeding due to their unique position to shed light on the issues presented here.

## II. MOTION FOR LEAVE TO ANSWER

Because an answer is not normally permitted in response to a rehearing request,<sup>13</sup> the Associations hereby move, pursuant to Rule 212, for leave to file an answer to INGAA's Rehearing Request. The Commission often waives the prohibition against answers to rehearing requests for good cause shown.<sup>14</sup> The Commission has found good cause, for instance, where an answer provides information that assists the Commission in its decision-making process,<sup>15</sup> narrows or clarifies important issues,<sup>16</sup> or responds to a rehearing request that raises an issue of fact.<sup>17</sup> This answer satisfies all of these tests for good cause.<sup>18</sup> Specifically, the Associations

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<sup>13</sup> See 18 C.F.R. § 385.213(a)(2) (2012); 18 C.F.R. § 385.713(d)(1) (2012).

<sup>14</sup> See, e.g., *Dominion Cove Point LNG, LP*, 118 FERC ¶ 61,007 at P 10 (2007).

<sup>15</sup> See, e.g., *id.*; *PSEG Power Connecticut, LLC*, 113 FERC ¶ 61,210 at P 17 (2005).

<sup>16</sup> See, e.g., *Consumers Energy Co.*, 110 FERC ¶ 61,317 at P 13 n.16 (2005); *Sound Energy Solutions*, 107 FERC ¶ 61,263 n.37 (2004).

<sup>17</sup> See, e.g., *SFPP, L.P.*, 117 FERC ¶ 61,275 at P 2 (2006).

submit this brief answer because the Rehearing Request merely attempts to re-litigate issues that were disposed of in another proceeding. The Associations believe that this answer will provide key information permitting the Commission to resolve relevant issues. For these reasons, the Associations respectfully request that the Commission grant their motion to provide the following answer.

### III. ANSWER

As mentioned above, the issues raised by INGAA in its Rehearing Request have been adequately addressed and disposed of in Docket No. RP11-1538-000 and they should not be revisited here.<sup>19</sup> The Commission has extensively and meticulously supported and documented its binding precedent, its findings, and its policies in Docket No. RP11-1538-000 as well as in the September 20 Order.<sup>20</sup> INGAA's attempt to re-argue the same failed positions that it

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<sup>18</sup> See, e.g., *PSEG Power Connecticut, LLC*, 113 FERC ¶ 61,210 at PP 10 & 17 (accepting an answer to respond to a misleading rehearing request); *Northwest Pipeline Corp.*, 95 FERC ¶ 61,029 at p. 61,092 (2001) (same).

<sup>19</sup> Clearly, the Rehearing Request is an impermissible collateral attack on the Commission's Order on Petition. The Commission has a longstanding and well-reasoned policy against re-litigation of the same issues. The Commission applies this policy rigorously, against parties who participated in the prior proceeding as well as against those who did not. In this case, the Associations note that both Texas Eastern and INGAA were parties to Docket No. RP11-1538-000 and should be held more rigorously to the requirements of this policy. See, e.g., *Entergy Nuclear Operations Inc. v. Consolidated Edison Co. of New York*, 112 FERC ¶ 61,117 at P 12 (2005), citing *KeySpan Ravenswood, Inc. v. New York Independent System Operator, Inc.*, 107 FERC ¶ 61,142 at P 22 and n.25 (2004); see also *El Paso Electric Co., et al.*, 111 FERC ¶ 61,504 at P 14 (2005); *Exxon Mobil Chemical Co., et al. v. Entergy Services, et al.*, 112 FERC ¶ 61,255 at P 19 (2005); *Duke Energy Moss Landing v. Cal. Independent Sys. Operator*, 111 FERC ¶ 61,451 at P 10 (2005); *Northeast Utilities Service Co.*, 105 FERC ¶ 61,122 (2003); *Iroquois Gas Transmission System, L.P.*, 63 FERC ¶ 61,285 (1993); *Transwestern Pipeline Company*, 63 FERC ¶ 61,138 (1993); *Pacific Gas Transmission Company*, 64 FERC ¶ 61,052 (1993); *Exxon Company, U.S.A. v. Amerada Hess Pipeline Corporation, et al.*, 83 FERC ¶ 63,011 (1998) (citing *Tagg Bros. & Moorhead v. United States*, 280 U.S. 420, 444-45 (1930), and *Niagara Frontier Tariff Bureau, Inc. v. United States*, 826 F.2d 1186, 1189-90 (2d Cir. 1987)).

<sup>20</sup> See, e.g., September 20 Order at PP 22-29, 47-77, 82-96; Order on Petition at PP 15-28. See also, e.g., *Kern River Gas Transmission Company*, 129 FERC ¶ 61,262 (2009), order on reh'g, 132 FERC ¶ 61,111 (2010); *Tennessee Gas Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022 (1996), reh'g, Opinion No. 406-A, 80 FERC ¶

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previously put forward should not be countenanced by the Commission. However, to the extent that INGAA is allowed to advocate these positions here, the Associations' answer should also be taken into consideration. Moreover, to the extent the Commission decides to re-visit any of the fundamental policy decisions set forth in the Order on Petition, the Associations reserve the right to file additional comments at such later date as might be appropriate.

The Commission's outage crediting rules and policies are just and reasonable, and they have been examined and affirmed numerous times by the Commission and the courts in binding precedents and sound decisions. It is time to move beyond challenges to these straightforward and binding rules and policies.

The Commission's outage crediting rules and policies place the burden of an outage on the pipeline when the outage is due to a non-*force majeure* event and share the burden between the pipeline and its shippers when the outage is due to a *force majeure* event. This policy, rooted in time-honored Commission precedent, reflects an appropriate and fair sharing of risk and assigns the burden commensurate with the pipeline's ability to lessen the negative impact on shippers.

Pursuant to this policy, the Commission must continue to ensure that shippers are not charged for services that they did not receive, except in the narrowest of circumstance of a *force majeure* event where shippers share the burden with the pipeline.

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61,070 (1997); *North Baja Pipeline, LLC*, 111 FERC ¶ 61,101 (2008); *Texas Eastern Transmission Co.*, 62 FERC ¶ 61,015 (1993); *Natural Gas Pipeline Company of America*, 106 FERC ¶ 61,310, at P 20-24, *reh'g*, 108 FERC ¶ 61,170, at P 10-11 (2004); *Petal Gas Storage, L.L.C.*, 126 FERC ¶ 61,199, at P 25 (2009); *Entrega Gas Pipeline LLC*, 114 FERC ¶ 61,326, at P 13 (2006); *Alliance Pipeline L.P.*, 84 FERC ¶ 61,239 (1995); *Florida Gas Transmission Co.*, 105 FERC ¶ 61,171, at P 34 (2003); *El Paso Natural Gas Co.*, 105 FERC ¶ 61,262 (2003) (*El Paso*).

The Supreme Court has explained that “[t]he primary aim of [the NGA] was to protect customers against exploitation at the hands of natural gas companies.”<sup>21</sup> The Associations submit that shippers face significant financial losses when outages occur. These losses pertain to the high costs of alternative arrangements, the significant disruptions in the shippers’ business activities and commercial relationships, as well as numerous other negative impacts. Shippers’ losses should not be compounded by having to pay for services that they did not receive and that the pipeline did not provide. This issue is of utmost importance for the shippers represented by the Associations, and the Associations continue to urge the Commission to remain vigilant in enforcing its fair reservation charge crediting policies and in ensuring that pipeline tariff provisions are just and reasonable.

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<sup>21</sup> *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 610 (1944); *see also FPC v. Louisiana Power & Light Co.*, 406 U.S. 621, 631 (1972); *FPC v. Texaco Inc.*, 417 U.S. 380, 397-401 (1974).

#### IV. CONCLUSION

Wherefore, for the foregoing reasons, the Associations respectfully request that they be permitted to intervene in, and be made a party to, the subject proceeding, with all rights attendant thereto. In addition, the Associations respectfully request that the Commission accept their answer and take it into consideration as mentioned above.

Respectfully submitted,

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Dated: November 29, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Commission Secretary in these proceedings.

Dated at Washington, DC this 29<sup>th</sup> day of November 2012.

/s/ Jack N. Semrani

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Document Content(s)

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