UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Cost Recovery Mechanisms for Modernization of Natural Gas Facilities	**Docket No. PL15-1-000**

MOTION FOR LEAVE TO FILE LATE ANSWER AND ANSWER OF THE NATURAL GAS SUPPLY ASSOCIATION TO REQUEST FOR CLARIFICATION OF THE PROCESS GAS CONSUMERS GROUP AND THE AMERICAN FOREST & PAPER ASSOCIATION, AND COMMENTS ON ANSWER SUBMITTED BY THE INTERSTATE NATURAL GAS ASSOCATION OF AMERICA

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission's ("Commission" or "FERC") Rules of Procedure, 18 C.F.R. §§ 385.212 and 385.213 (2014), the Natural Gas Supply Association ("NGSA") submits its motion to file an answer out of time and answer in response to a request for clarification submitted by the Process Gas Consumers ("PGC") and the American Forest & Paper Association ("AF&PA") regarding the need for a generic determination on cost responsibility for the modernization surcharges in existing capacity release contracts ("PGC and AF&PA Request").[1] Given the importance of these issues, good cause exists to accept this answer. Also, NGSA comments herein on an inaccurate assertion submitted by the Interstate Natural Gas Association of American ("INGAA") that a prior modernization

[1] "Request for Clarification of the Process Gas Consumers Group and the American Forest & Paper Association" at 5, Docket No. PL15-1-000 (filed on May 15, 2015).

surcharge settlement creates precedent ("INGAA Answer").[2] The PGC and AF&PA Request and the INGAA Answer both address the Commission's April 16, 2015 Policy Statement issued in this proceeding.[3]

I. Capacity Release Contracts that Are Silent with Respect to Cost Responsibility for Surcharges Are Most Appropriately Resolved by the Contractual Parties.

Given 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.[4] In addition, we believe an absolute generic determination regarding cost responsibility would unnecessarily impede resolution on contractual issues. Therefore, NGSA does not believe that a generic determination should be made as to which party should be held responsible for the cost of modernization surcharges within an existing capacity release contract.

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[2] "Answer of the Interstate Natural Gas Associate Of America To Request For Clarification Of The Process Gas Consumers Group and the American Forest & Paper Association," Docket No. PL15-1-000 (filed on June 1, 2016).

[3] *Cost Recovery Mechanisms for Modernization of Natural Gas Facilities*, "Policy Statement," 151 FERC ¶ 61,047 (2015) ("Policy Statement").

[4] With the issuance of the Policy Statement, one can expect that parties entering into any capacity release arrangements going forward will structure their transactions in a manner that directly addresses the issue of cost responsibility for surcharges. Thus, this issue only pertains to a limited number of existing long-term capacity release contracts that did not contemplate surcharges and are likely to remain in effect once pipelines propose modernization surcharges on their systems and they are placed into effect.

The Commission has afforded pipeline shippers numerous options in order to structure capacity releases. Parties can enter into releases of various durations, with shorter releases at market-based rates and longer-term deals up to the maximum tariff rate. Parties can enter into negotiated rate releases in which parties negotiate fixed prices as well as various terms and conditions, such as recall rights. Still other transactions may be Asset Management Arrangements ("AMA") in which the releasing party's needs continue to be met by the agent and, in some instances, added efficiencies are shared between the two parties. Given the various contract-specific options, NGSA believes it is inappropriate for FERC to arbitrarily deem a specific party responsible for payment of modernization costs without full knowledge of the circumstances surrounding each agreement. Such a generic determination, especially in the case of an AMA, in which the asset manager (as a replacement shipper) is still serving the capacity requirements of the releasing shipper, can easily disrupt the risk/reward balance achieved during the initial contract deliberations. For these reasons, NGSA believes that all parties are much better served by resolving cost responsibility issues that may arise under a limited number of existing capacity release contracts between the commercial parties.

II. INGAA Inaccurately Refers to The Columbia Settlement as Current Precedent.

In its Answer to PGC and AF&PA's Request, INGAA states, "If and when the Commission issues orders on any tracker filings made prior to October 1, 2015, the

Commission then can determine whether the Policy Statement or the pre-Policy Statement precedent established in *Columbia Gas* applies."[5] Contrary to INGAA's assertion, the Commission has a well-established policy that precludes settlements from creating precedent. In fact, the *Columbia Gas* settlement itself contains a provision that states, "The Settling Parties agree that this Stipulation is specifically designed to apply to the unique physical, and operational and other circumstances of the Columbia system as it currently exists and ***should not be regarded as applicable to, or precedent for, any other pipelines systems*** or the Columbia system in a subsequent period… particularly given that approximately 50 percent of Columbia's system was constructed prior to 1960 and approximately 55 percent of Columbia's compressor units were installed prior to 1970. In addition, Columbia's system contains approximately 1,070 miles of bare steel pipeline subject to Department of Transportation regulation, and the majority of the system cannot accommodate in-line inspection and cleaning tools."[6] INGAA's inaccurate assertion is particularly troubling given that this settlement provision reflects a conscious decision by the settling parties to make great concessions in order to achieve an agreed-upon settlement with the understanding that such concessions would not set precedent in terms of Commission policy. If settlements,

[5] INGAA Answer at 9, citing *Columbia Gas Transmission, LLC*, 142 FERC ¶ 61,062 (2013) ("*Columbia Gas*").

[6] Columbia Gas Transmission, LLC, "Stipulation And Agreement of Settlement" at 20, Docket No. RP12-1021 (filed on September 4, 2012) (emphasis added); *Columbia Gas* at P 13.

such as the settlement in *Columbia Gas*, are subsequently considered precedent for setting Commission policy, FERC will deter pipeline shippers from entering into these agreements or from making concessions during the settlement process.

For the foregoing reasons, NGSA respectfully requests the Commission deny PGC and AF&PA's Request in part and disregard INGAA's inaccurate claim that the *Columbia Gas* settlement constitutes current Commission precedent with respect to FERC's policy with respect to recovery of modernization costs.

Respectfully submitted,

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