

delineate differences between its negotiated contractual terms and that of its form of service agreement in redline and strikeout. In addition, the pipeline shall provide a detailed narrative outlining the terms of its negotiated contract, the manner in which such terms differ from its form of service agreement, the effect of such terms on the rights of the parties, and why such deviation does not present a risk of undue discrimination.

34. Information presented in such a manner, in conjunction with the tariff sheets, will permit the Commission and the parties to efficiently ascertain whether the proposed negotiated transaction entails such a risk of undue discrimination that it cannot be permitted or whether other similarly situated shippers may be able to obtain such service.

By the Commission. Commissioner Brownell dissenting with a separate statement attached.

Linda Mitry,
Acting Secretary.

Appendix

Commenters

Alliance Pipeline L.P. (Alliance)
American Gas Association (AGA)
American Public Gas Association (APGA)
BP Energy Company (BP) Calpine Energy Services, L.P. (Calpine)
Canadian Association of Petroleum Producers (CAPP)
Connecticut Department of Public Utility Control (Connecticut)
Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (ConEd and Orange and Rockland)
Dominion Resources, Inc. (Dominion)
Duke Energy Gas Transmission Corp. (Duke Transmission)
Duke Energy Trading and Marketing, L.L.C. (Duke Trading)
Dynergy Marketing and Trade (Dynergy)
Electric Power Supply Association (EPSA)
El Paso Corporation's Pipeline Group (El Paso)
EnCana Gas Storage Inc., EnCana Marketing (USA) Inc., and EnCana Energy Services Inc. (EnCana)
Gulf South Pipeline Company, LP (Gulf South)
Illinois Municipal Gas Agency (IMGA)
Independent Petroleum Association of America (IPAA)
Interstate Natural Gas Association of America (INGAA)
KeySpan Delivery Companies (KeySpan)
Louisville Gas and Electric Company (Louisville)
Maritimes & Northeast Pipeline, LLC (Maritimes)
Michigan Public Service Commission (Michigan PSC)
MidAmerican Energy Co. (MidAmerican)
Mirant Americas Energy Marketing, LP (Mirant)
National Association of State Utility Consumer Advocates (NASUCA)

Natural Gas Pipeline Company of America and Kinder Morgan Interstate Gas Transmission, LLC (jointly "KM Pipelines")
Natural Gas Supply Association (NGSA)
NEG Shippers (NEG)
NiSource Pipelines (NiSource)
Northern Natural Gas Company (Northern Natural)
Northwest Industrial Gas Users (NWIGU)
Oklahoma Corporation Commission (Oklahoma)
Peoples Gas Light and Coke Co., North Shore Gas Co., and Peoples Energy Resources Corp. (Peoples)
Process Gas Consumers Group, American Forest & Paper Association, American Iron and Steel Institute, Georgia Industrial Group, Industrial Gas Users of Florida, Florida Industrial Gas Users United States Gypsum Company (collectively, the "Industrials")
ProLiance Energy, LLC (ProLiance)
Public Service Commission of the state of New York (New York)
Public Utilities Commission of California (CPUC)
Semptra Energy Trading Corp. (Semptra)
TransColorado Gas Transmission Company (TransColorado)
Vector Pipeline L.P. (Vector)
The Williams Companies, Inc. (Williams)
Williston Basin Interstate Pipeline Company (Williston Basin)
Wisconsin Distributor Group (WDG)
Brownell, Commissioner, dissenting

1. In this order, the majority prohibits on a prospective basis the use of gas basis differentials to price negotiated rate transactions. The majority bases its determinations on the theory that such mechanisms provide pipelines with an incentive to withhold capacity in an attempt to widen the gas basis differential.

2. Gas basis differential pricing is a widely used tool for structuring competitive flexible transportation arrangements, demonstrating the appeal to both shippers and transporters alike. Many commenters argue that the Commission should assume that most shippers that negotiate rates are sophisticated market participants, and that gas basis differential pricing responds to the needs of shippers and consumers. These commenters conclude that the risk of manipulation is low while the potential benefits to shippers and pipelines are high and, therefore, the Commission should not preclude such transactions.

3. Gas basis differential pricing does not blur the role of the pipeline as a transporter with no direct interest in the commodity price because pipelines already use the gas basis differentials to value transportation. Whether or not a pipeline uses gas basis differential pricing in its negotiated rate transactions, pipelines determine the level of the discount that is necessary to maintain throughput on their systems by reference to the gas basis differentials. The Commission itself has recognized that the implicit price for transportation represents the most any shipper purchasing delivered gas at a downstream market would pay to move gas from the lower priced market to the higher priced market. Order No. 637 at 31,271.

4. The majority opinion ignores the Commission's existing regulations which prevent pipelines from withholding capacity. The order cites to no evidence that pipelines have the ability to withhold capacity or, in fact, have withheld capacity to increase the gas basis differentials. In Docket No. PL02-4-000, the Commission Staff presented data it had collected concerning capacity release transactions over a 22 month period. The data reflected that rates shippers received for their released transactions (above and below the recourse rate) tracked the applicable basis differentials. This finding further validates the Commission's determination in Order No. 637 that the "fact that prices for transportation rise during peak periods is not evidence of the exercise of market power but may be the appropriate market response to an increase in demand for capacity". Order No. 637 at 31,281.

5. The majority opinion seems to rely on *Transwestern Pipeline Co.*, 100 FERC ¶61,058 as a reason for prohibiting the use of gas basis differential pricing. In the *Transwestern case*, the pipeline was found to have violated its tariff by improperly giving prior notice of the capacity posting to two shippers that were awarded the capacity. Not complying with the open access tariff provisions is not a concern directed solely at negotiated rate transactions, but is a concern regardless of how the capacity is priced. I would further note that capacity was not being withheld in that proceeding, but unfairly directed.

6. Finally, the blanket prohibition of negotiated rate transactions that use gas basis differentials is overly prescriptive and an unnecessary intrusion in the marketplace, particularly when shippers have other choices. Most gas basis differential priced transactions are below the recourse rate. More importantly, shippers are protected because each negotiated rate transaction is noticed for comment and ultimately approved (or disapproved) by the Commission. The Commission has access to information about available pipeline capacity and daily gas basis differentials to monitor these types of transactions to determine if a pipeline is withholding capacity to increase the gas basis differential. With pipelines obligated to offer all available capacity, a viable recourse rate alternative, and our capability to monitor these transactions, the prohibition of gas basis differential pricing unnecessarily reduces flexibility and the value of the negotiated rate program.

7. For these reasons, I respectfully dissent.

Nora Mead Brownell,
Commissioner.

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