

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

CenterPoint Energy Gas Transmission Company

Docket No. RP05-513-000

ORDER ON REVISED TARIFF SHEETS

(Issued August 25, 2005)

1. On July 18, 2005, CenterPoint Energy Gas Transmission Company (CEGT) filed the revised tariff sheets listed in the Appendix. The tendered tariff sheets were filed to amend various provisions of CEGT's tariff, including those pertaining to generic discount conditions, extension of service agreements and right-of-first-refusal (ROFR) procedures. CEGT is also proposing to remove the expedited discount retention procedures adopted in its Order No. 637 compliance proceeding and certain outdated provisions from its tariff. CEGT further proposes to make certain clarifying and "housekeeping" changes to its tariff. CEGT proposes a September 1, 2005 effective date for the tendered tariff sheets. The revised tariff sheets listed in the Appendix are accepted to be effective September 1, 2005, subject to the conditions discussed herein.

2. Notice of CEGT's filing was issued on July 21, 2005, with interventions and protests due on or before August 1, 2005. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.¹ Pursuant to Rule 214 (18 C.F.R. § 385.214 (2005)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage will not disrupt this proceeding or place additional burdens on the existing parties. On August 1, 2005, Constellation NewEnergy-Gas Division, LLC (Constellation) filed a protest, objecting to one aspect of CEGT's proposal concerning the types of discounts it will offer. On August 11, 2005, CEGT filed an answer. Although

¹ 18 C.F.R. § 154.210 (2005).

the Commission's rules prohibit answers to protests, it may for good cause waive this provision. The Commission finds good cause to do so in this instance as the answer has assisted in our decision-making.²

Discussion

A. Generic Discount Conditions

3. CEGT proposes to revise section 12.5 of its General Terms and Conditions (GT&C) to modify its provisions concerning two of the generic types of discount that CEGT may offer. First, section 12.5(vi) of CEGT's GT&C currently provides that CEGT may offer a discount for the transportation of "production reserves committed by the Shipper." CEGT proposed to add language to that section to allow it also to offer a discount in return for a Shipper's commitment to transport specific gas supplies or gas destined to a specific market. CEGT asserts that this proposal is consistent with the Commission's recent order in *Northern Natural Gas Company* permitting that pipeline to file a generally applicable tariff provision offering a full requirements service.³

4. Second, existing section 12.5 (vii) allows discount rates to be based upon published index prices for specific receipt or delivery points or other pricing reference points. CEGT would add the following language at the end of section 12.5 (vii):

Additionally, Transporter and Shipper may agree that rate components may be adjusted upward or downward to achieve an agreed upon overall rate or to collect amounts in accordance with a specified relationship to prices or other factors (*e.g.*, Fuel Use and LUG percentages) agreed to by Transporter and Shipper, so long as none of the resulting rate components exceed the maximum rate applicable to that rate component.

CEGT claims its proposed provisions are consistent with generic discount provisions approved by the Commission for other pipelines.⁴ CEGT further claims that

² See 18 C.F.R. § 213(a)(2) (2005).

³ *Northern Natural Gas Co.*, 110 FERC ¶ 61,321 at PP 21-22 (2005).

⁴ See, *Questar Pipeline Co.*, 103 FERC ¶ 61,244 (2003); *Kinder Morgan Interstate Gas Transmission LLC*, 93 FERC ¶ 61,316 (2000).

these revisions will provide CEGT and its shippers with greater flexibility in the contracting process and reduce the potential for material deviations from the Forms of Service Agreement in its tariff.

5. In its transmittal letter, CEGT states that it intends to use revised section 12.5 (vii) for various purposes. For example, it might agree to make an adjustment to a discounted rate to account for changes in its fuel retention percentage. In addition, CEGT states that it intends to use the revised language to support discount transactions based on published prices, particularly to allow it to "bank" amounts that cannot be charged or collected during a particular period due to the fact that published prices result in a rate in excess of the applicable maximum rate under CEGT's tariff. CEGT states that it would have the opportunity to charge and collect some or all of these "banked" amounts at a later time period under the agreement when, and to the extent that, the published prices result in a rate that is below CEGT's applicable maximum tariff rate. CEGT asserts that at no time would it ever charge or collect more than the maximum lawful rate approved by the Commission. CEGT argues that service agreements containing such provisions were approved by the Commission in *Mojave Pipeline Company*.⁵ CEGT claims that the key factor in the Commission's view was that at no time would the pipeline ever charge more than the maximum lawful rate under its tariff. CEGT argues that the same is true for its proposal.

Constellation's Protest

6. Constellation protests CEGT's discount "banking" proposal and urges the Commission to reject the proposal. Constellation states that section 12.5 (vii) permits CEGT to defer the billing of amounts in excess of the maximum applicable rate components until some later time period whenever the discount rate calculated pursuant to the agreed upon terms falls below the maximum applicable rate component. Constellation argues that the mere fact that the pipeline agrees to defer the actual billing of amounts that would otherwise be due does not change the fact that the shipper has been assessed the deferred amount, and that deferred amount is in excess of the maximum applicable rate. Constellation claims that, under CEGT's proposal, a discount rate shipper would pay the maximum rate plus a contingent claim on the shipper's future cash flow. Constellation argues that this contingent claim has value or the pipeline would not seek to acquire it. Constellation asserts that since the contingent claim has value, the shipper has "paid" the pipeline more than the maximum rate, regardless of the form of bill rendered at the time the contingent claim is created. Constellation also argues that inasmuch as these claims have value, they may be "factored" in a secondary market,

⁵ *Mojave Pipeline Co.*, 57 FERC ¶ 61,300 (1991) (*Mojave Pipeline*).

allowing the pipeline to contemporaneously collect amounts in excess of maximum rates. Constellation states that “banking” arrangements can be constructed in such a way that always results in the collection of deferred amounts at some stage, such as styling it to “evergreen” in the event a positive “bank” (*i.e.*, an amount owed to the pipeline) exists at expiration, or, alternatively, the “bank” could be transferred to another agreement and collected there. Constellation argues that since the recovery of deferred amounts in excess of the maximum rate can be made a virtual certainty, the pipeline has charged an amount in excess of the maximum rate. Constellation further argues that such arrangements cannot be considered “discounts.” Constellation states that it has no issue with CEGT constructing negotiated rates as proposed herein and asserts that its protest is directed only to CEGT’s proposal to classify such “contingent” arrangements as discounts.

7. Constellation asserts that CEGT’s proposal is inconsistent with applicable precedent and current Commission policy. Constellation argues that CEGT’s reliance on *Mojave Pipeline* in support of its proposal is misplaced and that *Mojave Pipeline* has been overtaken by subsequent policy developments. Constellation asserts that the matter currently before the Commission in the instant proceeding involves a pipeline proposal under section 4 of the Natural Gas Act, where the justness and reasonableness of that proposal is at issue. Constellation argues that, in contrast, *Mojave Pipeline* was a certificate proceeding involving the form of the pipeline’s authorizations to construct facilities and render service wherein the Commission authorized initial rates but did not find those initial rates just and reasonable.

8. Constellation argues that in more recent precedent in *ANR Pipeline*⁶ the Commission rejected a form of discount proposed by the pipeline that contained deferred billings and related contingent claims. Constellation requests that the Commission find that such “banking” arrangements will not be considered discounts and will not be eligible for discount adjustments in future rate proceedings.

CEGT’s Answer

9. CEGT responds that Constellation has misconstrued the Commission’s determination to reject the discount arrangement proposed in *ANR* and that its reliance on *ANR*⁷ is therefore incorrect. CEGT asserts that *ANR*’s proposal did not prohibit charging -- nor require the deferral of billing -- the shipper more than the maximum tariff rates

⁶ *ANR Pipeline Co.*, 108 FERC 61,028 (2004).

⁷ *Id.*

during any period. Rather, under ANR's proposal, there could be times during the term of the discount when the rate paid by the shipper would actually exceed the filed maximum rate, as long as there were other periods when the rate would be low enough to act as a sufficient offset. CEGT argues that, unlike ANR, its proposal does not permit it to charge more than the maximum tariff rate at any time. CEGT further argues that its proposed "banking" arrangement is just one variant of the permissible formulas for calculating fluctuating rates to which the parties may agree under the Commission's current discount policy.

Commission Determination

10. The language CEGT proposes to add to section 12.5 (vii) does not mention "banking" nor does it mention anything about deferred collection of "banked" amounts. However, CEGT states that it will use this proposed language to support discounts based on published prices, particularly to permit it to "bank" amounts in excess of the maximum tariff rate and to collect the "banked" amounts whenever the published prices result in a rate that is less than the maximum.

11. Constellation is correct in stating that the Commission's 1991 order in *Mojave Pipeline* is not dispositive. In that proceeding, the Commission issued Mojave Pipeline Company an optional certificate. Under optional certificates, the pipeline was required to assume the financial risk associated with the certificated facilities, but could share the risk of the project, including the risk of any cost overruns, with its customers through a negotiated reservation fee.⁸ Mojave negotiated such risk sharing agreements with its initial shippers. These agreements provided the shippers rate certainty by capping their rates at levels which could be less than Mojave's maximum rates, depending upon its actual cost of constructing the pipeline and its cost of operating the pipeline. A few of the agreements provided that if the shipper's negotiated rate cap was below the maximum rate for a period of time, but the rate cap then rose to a level higher than the maximum rate, the rate cap could be temporarily increased up to the maximum rate until Mojave recovered the difference between the rate cap and the maximum rate during the period the rate cap had been less than the maximum rate. The Commission approved these provisions as part of the negotiated risk sharing agreements between Mojave and its initial shippers. The Commission also required that Mojave make the rate provisions negotiated with each shipper available to all other shippers on a non-discriminatory basis by including each negotiated rate in its tariff.⁹

⁸ See *Wyoming-California Pipeline Co.*, 45 FERC ¶ 61,234 at 61,678 (1988).

⁹ *Mojave Pipeline*, 57 FERC at 61,960.

12. *MojavePipeline* thus involved individual agreements which the pipeline negotiated with its initial shippers for the purpose of sharing the risk of constructing a new pipeline consistent with the Commission's policies concerning optional certificates, and the pipeline filed each of those agreements with the Commission for its approval. Here, by contrast, no certificate or sharing of the risk of building a new pipeline is at issue. Rather, CEGT is seeking generic authorization to offer formula-based discounts that allow for banking of amounts in excess of the maximum rate for collection at a later date, without filing the individual agreements with the Commission for its approval. In addition, in *MojavePipeline* the Commission required that the rates negotiated with each shipper be set forth in the pipeline's tariff and offered to all other shippers, whereas CEGT is seeking authorization to negotiate its proposed discounted rate arrangements as selective discounts not offered to all its shippers.

13. When the Commission changed its selective discounting policy in 2003 to permit formula-based discounted rates, the Commission stated that such a rate "must remain within the range established by the maximum and minimum rates set forth in the pipeline's tariff."¹⁰ Constellation is correct in asserting that the proposed "banked" amounts, which are essentially rates above the maximum tariff rates, have value. CEGT's tariff states maximum and minimum rates, and CEGT bills its customers on a monthly basis. The fact that billing of the amounts above the tariff maximum rates is deferred for collection at a later date whenever the maximum tariff rates are above the formula rates does not change the fact that the charges were generated as a result of service performed during a prior month when the formula rates were above the tariff maximum. The Commission finds no substantive difference between CEGT's instant proposal and the proposal the Commission rejected in *ANR*. There, the Commission found that the pipeline's proposal would permit it "to charge more than the maximum rate during some portions of the period the agreement is in effect, so long as it charges less during other portions of the overall period the discount agreement is in effect" and concluded, "This is contrary to Commission policy."¹¹

14. Nevertheless, because CEGT's proposed amendment to section 12.5 (vii) does not specifically permit it to "bank" any amounts and because the Commission does not interpret the proposed language to permit the "banking" of any amounts, the Commission will accept the proposed language. However, the Commission finds that the banking proposal described on pages 2 and 3 of CEGT's cover letter is clearly inconsistent with the Commission's regulations governing discounts as well as Commission precedent

¹⁰ *Northern Natural Gas Co.*, 105 FERC ¶ 61,299 at P 12 (2003).

¹¹ *ANR*, 108 FERC at P 14.

described above. Thus, the language proposed for section 12.5 (vii) is accepted, subject to the condition that it may not be used to support “banking” as described in the cover letter. Such “banking” is impermissible in the context of discounted rates, but may be permissible in the context of negotiated rates.

15. CEGT proposes to revise section 12.5 to state that rate components may be adjusted upward or downward to achieve an agreed upon overall rate or to collect amounts in accordance with a specified relationship to prices or other factors (*e.g.*, Fuel Use and LUGF percentages) agreed to by Transporter and Shipper. Commission policy prohibits discounting variable costs,¹² Therefore CEGT is directed to submit tariff sheets revising section 12.5 to remove the parenthetical reference to fuel and LUGF percentages.

B. Non-Standard Capacity Releases

16. Section 19.3(f) of the GT&C provides for alternative time periods for certain actions with respect to non-standard capacity releases, rather than the compressed North American Energy Standards Board timelines. CEGT proposes to revise this subsection to provide it up to three business days to review a non-standard offer to release. CEGT claims that this should provide it with sufficient time to review non-standard release offers to ensure that the provisions are consistent with the terms of its tariff. Section 19.3(f) has also been revised to allow three days, rather than the current one day, to post on its web site notices of non-standard offers to release capacity or notices subject to special terms and conditions.

17. CEGT has not explained why it is revising section 19.3(f) to allow three days, rather than the current one day, to post notices of non-standard offers. Furthermore, as written, section 19.3(f) states that the notices will be posted no later than three days but does not specify the event that starts the three-day period. CEGT also proposes to remove language in section 19.3(f) that enumerates the time periods within which the replacement shippers must submit electronic bids for non-standard releases and has not proposed any language to replace the eliminated language. CEGT has not explained what would govern the time period for these releases.

¹² See *East Tennessee Natural Gas Co.*, 108 FERC ¶ 61,135 (2004); *Mississippi River Transmission Corp.*, 98 FERC ¶ 61,119 (2002) (*MRT*). See also *Columbia Gas Transmission Corp.*, 101 FERC ¶ 61,378 (2002); *Texas Eastern Transmission, LP*, 101 FERC ¶ 61,120, at P 33 (2002); *Reliant Energy Gas Transmission Co.*, 100 FERC ¶ 61,290 (2002); *ANR Pipeline Co.*, 99 FERC ¶ 61,240 (2002), including fuel and lost and unaccounted for gas.

18. CEGT is directed to explain why it needs three days to post non-standard offers and why it is removing, without replacing, language that enumerates the time periods within which the replacement shippers must submit electronic bids for non-standard releases. CEGT is also directed to state what provisions of its tariff would govern the time period for electronic submission of bids for non-standard offers. CEGT is further directed to revise its tariff to clarify what event or circumstance starts the three-day period. Furthermore, the Commission does not consider offers to release that are subject to recall to be non-standard offers of release merely because they are subject to recall.

C. Other Issues

19. CEGT proposes to add a new provision to section 21.10 of its GT&C to allow for extension of an existing service agreement prior to the expiration of its term and prior to any required posting of capacity under the ROFR process. CEGT also proposes a number of changes that are either of a "housekeeping" nature or are intended to address obsolete provisions that have been overtaken by Commission policy changes. In this vein, CEGT would: (1) eliminate the five-year matching cap for existing capacity subject to the ROFR process;¹³ (2) delete the tariff provisions related to the *CIG/Granite State* policy concerning the retention of discounts when using secondary points from section 12 of the GT&C of its tariff; (3) eliminate section 24 of the GT&C, to remove tariff language which contains various provisions that has no current applicability and reserve section 24 for future use and (4) remove section 29.2 of the GT&C, which allowed CEGT to have specific Commission authorization to hold capacity in its own name. This last provision was rendered obsolete by the Commission's *Texas Eastern* order on remand from the D.C. Circuit, which permitted pipelines to use generic tariff authority as the basis to acquire capacity on other pipelines by receiving a waiver of the "shipper must have title" rule as long as the pipeline sells the capacity under the terms and conditions of its tariff.¹⁴ CEGT also proposes to remove section 18 of its GT&C, which contains its take-or-pay cost (referred to as contract settlement costs or CSC) recovery mechanism. That tariff provision specified a recovery period during which CEGT and its predecessors were authorized to assess and collect the CSC charge. The recovery period ended on March 31, 2002.

¹³ *Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services, Order on Rehearing and Clarification*, 106 FERC ¶ 61,088 (2004).

¹⁴ *Texas Eastern Transmission Corp.*, 93 FERC ¶ 61,273 (2000), *reh'g denied*, 94 FERC ¶ 61,139 (2001).

20. CEGT proposes a series of definitional and other minor changes that are intended to provide clarity to the tariff and to eliminate provisions that are no longer necessary due to operational and other changes. CEGT is proposing to revise its definitions for items which rely on spot prices to refer to “Daily Price Indices” rather than *Gas Daily* published prices. CEGT further proposes to remove the discontinued Sterlington point from the list of Perryville receipt and delivery points. CEGT is also providing an updated system map.

21. CEGT is proposing certain minor revisions to its Form of Credit Application, its Form of Agency/Asset Manager Authorization Agreement and section 11.1 of its GT&C to allow shippers to execute all service agreements via facsimile.

22. Finally, CEGT proposes changes to sheet nos. 251, 412 and 416 to conform to Order Nos. 2004, *et seq.*, changes in terminology (the term “marketing affiliate” is changed to “Energy Affiliate as defined by FERC Order Nos. 2004, *et seq.*”) and C.F.R. section references and the removal of reference to a Washington, D.C. office since it no longer maintains one (Sheet No. 573).

23. The Commission accepts these miscellaneous changes and finds that they comply with the Commission’s regulations.

The Commission orders:

(A) The tariff sheets listed in the Appendix are accepted to be effective September 1, 2005 subject to the conditions discussed in the body of this order and subject to further order pending the receipt of the explanations requested herein.

(B) CEGT is directed to file the revised tariff sheets and explanations requested in the body of this order within 15 days of the date this order issues.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

CenterPoint Energy Gas Transmission Company
FERC Gas Tariff
Sixth Revised Volume No. 1

Tariff Sheets Accepted Effective September 1, 2005, Subject to Conditions

Second Revised Sheet No. 0
First Revised Sheet No. 13
First Revised Sheet No. 251
First Revised Sheet No. 267
Second Revised Sheet No. 305
First Revised Sheet No. 306
First Revised Sheet No. 311
First Revised Sheet No. 313
First Revised Sheet No. 320
First Revised Sheet No. 321
First Revised Sheet No. 332
First Revised Sheet No. 412
Second Revised Sheet No. 416
Second Revised Sheet No. 453
Third Revised Sheet No. 456
Second Revised Sheet No. 456A
Third Revised Sheet No. 457
First Revised Sheet No. 478
First Revised Sheet No. 479
First Revised Sheet No. 491
First Revised Sheet No. 492
First Revised Sheet No. 544
First Revised Sheet No. 545
First Revised Sheet No. 573
First Revised Sheet No. 578
First Revised Sheet No. 579
First Revised Sheet No. 581
First Revised Sheet No. 583
First Revised Sheet No. 596
First Revised Sheet No. 597
First Revised Sheet No. 598
First Revised Sheet No. 599
First Revised Sheet No. 627
Second Revised Sheet No. 724
First Revised Sheet No. 788