

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Nucor-Yamato Steel Company and  
Nucor Steel-Arkansas

Docket No. RP05-500-000

v.

CenterPoint Energy Gas Transmission Company

ORDER ON COMPLAINT

(Issued September 6, 2005)

1. On July 6, 2005, Nucor-Yamato Steel Company, Inc. (Nucor-Yamato) and Nucor Steel-Arkansas, a division of Nucor Corporation (Nucor Steel-Arkansas) (collectively Nucor) filed a complaint pursuant to section 5 of the Natural Gas Act (NGA) against CenterPoint Energy Gas Transmission Company (CEGT). Nucor alleges that CEGT failed to provide proper notice, as required by its tariff, before assessing Excess Contract Quantities (ECQ) penalties for taking more gas than it scheduled on CEGT. Nucor seeks refund or billing adjustments for these penalties, and requests that the Commission require CEGT to revise the Operational Alert notice provisions of its tariff. On July 26, 2005, CEGT filed an answer in opposition to the complaint of Nucor denying these allegations. The Commission denies the complaint.

**Background**

2. Both Nucor-Yamato and Nucor Steel-Arkansas are owners and operators of steel production facilities in Mississippi County, Arkansas. These facilities utilize electric arc furnaces to melt recycled scrap steel. CEGT provides firm transportation service to

Nucor's facilities under Rate Schedule FT.<sup>1</sup> Service to the Nucor-Yamato facility is provided pursuant to a service agreement between Nucor-Yamato and CEGT, with Atmos Energy Marketing, LLC acting as its agent and gas marketer. Service to the Nucor Steel-Arkansas facility is provided pursuant to a service agreement between CEGS and CEGT. Pursuant to these agreements with CEGT, Nucor-Yamato has a firm contract demand of up to 19,000 Dth/day, and CEGS has a firm contract demand of up to 9,500 Dth/day at the Nucor Steel-Arkansas delivery point.

3. In December 2004, CEGT issued two Operational Alerts to its shippers.<sup>2</sup> It then imposed ECQ penalties on CEGS and Nucor-Yamato for takes in excess of 102 percent of their scheduled service on December 25, 2004 and December 26, 2004 respectively.<sup>3</sup> On July 6, 2005, Nucor filed this complaint alleging that CEGT did not provide proper notice that CEGT would assess ECQ penalties upon Nucor for taking more than it nominated, but less than its respective contract demands. Nucor also alleges that, as a result of delays in CEGT's notification to shippers of their actual takes, shippers are unable to cure their imbalances in order to avoid ECQ penalties when operational alerts are in effect. Nucor requests that the Commission direct CEGT to either refund the penalties, or provide Nucor with billing adjustments or credits. Further, Nucor requests that the Commission direct CEGT to revise the Operational Alert notice standards and procedures to mirror the requirements for the issuance of Operational Flow Orders (OFOs), and to ensure that ECQ penalties will be assessed appropriately.

4. On July 7, 2005, notice of Nucor's filing was published in the *Federal Register*, 70 Fed. Reg. 44,614 (2005), with answers and interventions due by July 26, 2005. CEGT filed a timely answer in opposition to the Nucor complaint, and on August 10, 2005, Nucor filed a response to CEGT's Answer.<sup>4</sup> Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2)(2005), prohibits an answer to an

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<sup>1</sup> CEGT contends that Nucor Steel-Arkansas lacks standing to bring this action because CenterPoint Energy Gas Services, Inc. (CEGS), and not Nucor Steel-Arkansas, is the contracting entity. However, Nucor states that CEGS flowed through the ECQ penalties to Nucor Steel-Arkansas.

<sup>2</sup> Complaint at Attachment 1.

<sup>3</sup> *Id.* at Attachment 3.

<sup>4</sup> On July 26, 2005, Duke Energy Trading and Marketing, L.L.C. filed a motion for leave to intervene. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely motions to intervene serve to make the entities that filed them parties to this proceeding.

answer unless otherwise ordered by the decisional authority. In this instance, we find that Nucor's response provides assistance in this decisional process and we will therefore accept it.

5. The parties' pleadings show that the facts of this situation are, for the most part, not disputed. The following is a summary of the relevant tariff provisions and the undisputed facts in this matter.

### **Tariff**

6. Section 20.3 of the General Terms and Conditions (GT&C) of CEGT's tariff provides for two levels of operational remedies for managing limitations or constraints upon the system.<sup>5</sup> At the first level, Operational Alerts may be issued when CEGT determines that pressures on the system threaten normal operations. The Operational Alert must contain a description of the affected portion(s) of the system,<sup>6</sup> a description of the conditions(s) to be corrected and/or designation of shipper(s) to whom the Operational Alert is addressed,<sup>7</sup> and a list of voluntary remedial measures which can be undertaken by the shippers or other affected parties to correct the situation.<sup>8</sup> Moreover, Operational Alerts are to be posted on CEGT's web site, and constitute notice that issuance of the second level remedy, an OFO, may be imminent.<sup>9</sup>

7. Section 5.2(b) of Rate Schedule FT provides for the assessment of ECQ penalties in certain circumstances, including when CEGT "has invoked the provisions of section 20 of the GT&C," e.g., an Operational Alert. Section 5.2(b) defines the Excess Contract Quantities subject to ECQ penalties as:

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<sup>5</sup> The Commission accepted and approved CEGT's tariff sheets in compliance with Order No. 637, *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, FERC Stats. & Regs. Regulations Preambles July 1996-December 2000 ¶ 31,091 (2000), *order on reh'g*, Order No. 637-A, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,099 (2000). *See Reliant Energy Gas Transmission Co.*, 98 FERC ¶ 61,362 (2002), *order on reh'g*, 100 FERC ¶ 61,172 (2002) (*Reliant*). *See also Second Order on Compliance*, 102 FERC ¶ 61,258 (2003) (CEGT was formerly Reliant.)

<sup>6</sup> GT&C § 20.3(a)(i).

<sup>7</sup> GT&C § 20.3 (a)(ii).

<sup>8</sup> GT&C § 20.3 (a)(iii).

<sup>9</sup> GT&C § 20.3(a)(iv).

quantities that (i) exceed, on any day, one hundred two percent (102%) of the Contract Limitations (or . . . when Transporter has invoked the provisions of Section 20 of the General Terms and Conditions, quantities that exceed 102% of the total quantity which Shipper is authorized to transport); and (ii) are unauthorized Overrun Gas. . . In the event that Transporter has invoked the provisions of Section 20 of the General Terms and Conditions, the higher charges shown on Transporter's Statement of Effective Rates and Charges for Transportation of Gas for the Excess Contract Quantities will be assessed.<sup>10</sup>

8. CEGT's statement of effective rates sets forth the following ECQ penalties when section 20 of the GT&C is invoked. If the level of a shipper's Excess Contract Quantities is greater than 102 percent but less than or equal to 105 percent of the applicable limit, the penalty is \$10.00 per Dth. If the level of a shipper's Excess Contract Quantities is greater than 105 percent but less than 110 percent of the applicable limit, the penalty is the greater of \$25.00 per Dth, or the gas cost. All Excess Contract Quantities in excess of 110 percent of the applicable limit are penalized at the greater of \$50.00 per Dth, or the gas cost.

### **CEGT's Notices**

9. In December, 2005, CEGT issued two Operational Alerts pursuant to section 20 of its GT&C in response to weather conditions affecting its pipeline. CEGT's first Operational Alert, which it sent out on December 13, 2004, (Critical Notice No. 456) stated that it was "requiring all Shippers and Pool Managers, system wide, to remain in balance effective immediately." The alert explained that "in light of the dynamic conditions on the system, caused by weather deterioration across our service area, it is extremely important for all parties to maintain a balance between receipts and deliveries." The notice provided detailed information about what actions the shippers needed to take, and further stated: "Please be advised that while CEGT does not intend to assess Excess Contract Quantities penalties generally at this time, it may decide to do so in the future. CEGT will notify Shippers and Pool Managers via posting on this website in such event."

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<sup>10</sup> Rate Schedule FT § 5.2(b).

10. On December 21, 2004, CEGT issued a second Operational Alert pursuant to section 20 of its GT&C (Critical Notice No. 457), effective the following day, “based on the current weather forecast in our service area.” This second alert stated that, effective December 22, CEGT would not schedule interruptible receipts from two pooling areas, and would only schedule secondary receipts from those pools to the extent they alleviated capacity constraints or were consistent with firm entitlements. The alert also stated that, effective December 23, CEGT would not schedule interruptible or authorized overrun deliveries and would limit service to primary firm obligations east of the Chandler compressor station. CEGT also stated that customers were required to take deliveries as close to ratably as possible throughout the day, and pool managers were required to have sufficient pool supplies to support the deliveries scheduled out of such pools so as to avoid short imbalances. The notice stated that such imbalances can exacerbate operational problems and would result in the assessment of ECQ penalties. And, in the last sentence of this notice, CEGT stated, “Please be advised that CEGT intends to assess Excess Contract Quantities penalties during this period to the extent applicable under the CEGT’s tariff.”

11. On December 22, 2004, CEGT sent individual faxed notices to its shippers informing them again that they were required to stay within their firm scheduled levels.<sup>11</sup> The fax sent to CEGS was entitled “Emergency Notice”. Beside the heading “Contact Reason:” the notice stated “Cold weather impacting CEGT service area. Hold usage to CD (Contract Demand) effective 12/23/2004.” Under the heading “Action Required:” shippers were instructed to “adjust consumption levels in order not to exceed the firm scheduled volume noted below. Ensure that your supplier physically delivers to CEGT quantities sufficient to meet your scheduled volumes.” This fax itemized CEGS’s Maximum Delivery Obligation (MDO),<sup>12</sup> firm nominations and scheduled volumes as of December 22 at its five delivery points, including the delivery point for Nucor Steel-Arkansas. The fax indicated that CEGS’s MDO at the Nucor Steel-Arkansas delivery point was 9,500 Dth, the firm nominated volume was 7,500 Dth, and the scheduled

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<sup>11</sup> Complaint at Attachment 2.

<sup>12</sup> GT&C section 1 defines the MDO:

[T]he maximum Dth or quantity of Gas which Transporter is obligated to tender for delivery to Shipper on any given Day or in any Hour, as applicable, at a Point of Delivery or group of Points of delivery, under a Service Agreement on a firm basis, to the extent such quantity is nominated by Shipper . . . and scheduled or otherwise authorized by Transporter.

volume was also 7,500 Dth. Finally, the fax contained the following language under the title “Consequence of Non-Action”:

You may be subject to excess contract quantity charges of \$35 to \$75, or gas cost if greater, per Dth for gas delivered to your facility in excess of 102 % of the firm scheduled volumes noted above.

12. CEGT faxed a slightly different notice to Nucor-Yamato. It was entitled “Operational/Scheduling Notice”. This fax set forth the same “Contact Reason:” as being “Cold weather impacting CEGT Service Area. Hold usage to CD (Contract Demand) effective 12/23/2004.” It also instructed this shipper to:

Maintain consumption levels in order not to exceed your firm scheduled volume noted below. Ensure that your supplier physically delivers to CEGT quantities sufficient to meet your scheduled volume. Should the need arise for you to consume additional gas up to your MDO noted below, please submit revised nominations reflecting the increase. Nominations are used by CEGT to determine firm requirements of all customers, both industrial and residential. This information is necessary in order for CEGT to meet those requirements particularly during periods of capacity constraints on the system.

The notice then listed the MDO and scheduled volume levels as of December 22 at Nucor-Yamato’s delivery point. These were 19,000 Dth and 14,675 respectively. Finally, the notice contained the identical language as in the fax to CEGS, under the heading of “Warning,” that CEGT would assess excess contract quantity charges for usage over 102 percent of the firm scheduled volumes included in the notice.

13. Thereafter, both shippers reduced their daily nominations. CEGS nominated, and CEGT scheduled, deliveries of 2,500 Dth/day at the Nucor Steel-Arkansas delivery point for December 25, 2004. However, actual deliveries at that point on December 25 were 4,062 Dth/day, or 1,562 Dth in excess of the scheduled amount. Nucor-Yamato nominated, and CEGT scheduled, deliveries of 8,247 Dth/day at its delivery point for December 26, 2004, but actual deliveries to Nucor-Yamato on that day were 12,095 Dth, or 3,848 Dth in excess of the scheduled amount. CEGT assessed CEGS and Nucor-Yamato ECQ penalties of \$69,475 and \$163,945 respectively on the delivered amounts in excess of 102 percent of the scheduled volume on the two days in question. Nucor states that CEGS flowed its penalties through to Nucor Steel-Arkansas.

**Discussion**

14. At issue in this complaint is the adequacy of the notices provided by CEGT to Nucor during several weeks in December, 2004 when harsh weather conditions threatened the operations of the pipeline system. Nucor contends that CEGT's various notices did not reasonably inform Nucor that CEGT intended to apply ECQ penalties to firm shippers that took delivery of gas in excess of their nominated amounts, but within their respective contract demands. Nucor states that the only specific actions the December 21, 2004 Operational Alert required CEGS and Nucor-Yamato to take were (1) not to use interruptible or unauthorized overrun service, (2) to take firm deliveries as close to ratably as possible throughout the day, and (3) to have sufficient pool supplies to support the deliveries scheduled out of such pools so as not to incur imbalances. Nucor contends that it complied with all these requirements. Nucor also points out that the faxes sent to CEGS and Nucor-Yamato each contained the directive that the shipper "hold usage to CD (contract demand) effective 12/23/2004," and that both CEGS and Nucor-Yamato complied with this requirement. Nucor contends that because of its affirmative responses to these directives, it should not be subject to any penalties for its gas takes on the days in question.

15. Upon review of CEGT's December notices, we conclude that these notices complied with the provisions of the CEGT's Commission approved tariff.<sup>13</sup> They conveyed adequate information to the shippers that an Operational Alert was in effect, and then, a week later, that ECQ penalties would be assessed against amounts taken in excess of 102 percent of scheduled amounts. More exactly, the two Critical Notices, posted on the CEGT internet website, told shippers that the notices were being issued pursuant to section 20 of the GT&C. This section authorizes Operational Alerts and OFOs, and the corresponding ECQ penalties. The first notice, Critical Notice 456, alerted shippers that an OFO might be issued imminently and that ECQ penalties might be issued in the future. The second notice, Critical Notice 457, clearly stated that CEGT would impose ECQ penalties "to the extent applicable under the CEGT's Tariff." As described above, section 5.2(b) of Rate Schedule FT clearly provides that shippers under that rate schedule, such as CEGS and Nucor-Yamato, will be subject to ECQ penalties whenever CEGT issues an Operational Alert under section 20 of the GT&C, and that those penalties will apply to quantities that "exceed 102% of the total quantity the shipper is authorized to transport" during the Operational Alert. These notices did not give an expiration date, thereby continuing the special system-wide alert until CEGT issued a terminating notice.

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<sup>13</sup> *Reliant*, 98 FERC ¶ 61,362.

16. The faxes CEGT sent on December 22, 2004, to CEGS and Nucor-Yamato gave notice of the quantities each would be authorized to transport during the Operational Alert. The faxes directed these particular shippers to adjust or maintain “consumption levels in order not to exceed the firm scheduled volumes listed below.” Each shipper’s MDO and scheduled volume were separately itemized in its fax, with the scheduled quantities in each case less than the MDO. Below these itemized amounts, there appeared a further statement entitled “Consequence of Non-Action” in the fax to CEGS and “Warning” for the Nucor-Yamato. This statement expressly warned shippers that they “may be subject to excess contract quantity charges of \$35 to \$75, or gas cost if greater, per Dth for gas delivered to your facility in excess of 102% of the firm scheduled volumes noted above.”<sup>14</sup>

17. These faxes, in combination with the two Critical Notices posted by CEGT, gave Nucor advanced warning that, in response to severe weather conditions, CEGT was suspending its normal procedure of waiving over-consumption penalty charges. Instead, CEGT issued a system-wide Operational Alert, and beginning on December 23, 2004, took the additional step of assessing ECQ penalties, a remedy for over-consumption provided in its tariff. CEGT’s communications with its shippers provided express and clear notice that CEGT was instituting these operational controls, including the imposition of ECQ penalties, and that these penalties would be assessed against all quantities taken in excess of 102 percent of scheduled volumes, even though the quantities were within the shipper’s contract demand or MDO. The Commission thus concludes that CEGT sufficiently notified CEGS and Nucor-Yamato that they would be subject to ECQ penalties if they took in excess of their scheduled amounts. Therefore, when each of those shippers subsequently reduced their scheduled amounts and then took in excess of the reduced scheduled amounts, CEGT was within its rights in assessing the contested ECQ penalties.

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<sup>14</sup> We recognize that the faxes contained a general directive that the shippers hold usage to CD (contract demand). However, given that the faxes expressly stated that ECQ penalties would be imposed on quantities in excess of scheduled volumes, we think it was reasonably clear that ECQ penalties would be imposed on excess scheduled volumes. The general directive that shippers hold usage to contract demand levels is reasonably read as a directive not to seek to schedule in excess of contract demands.

18. Nucor notes that in May 2005, CEGT used a revised notice for a subsequent Operational Alert.<sup>15</sup> Nucor argues that this revised notice is more informative than the notices issued in December, 2004, and is therefore an implicit acknowledgement by CEGT that its prior notices provided insufficient notice to its shippers. However, our evaluation of the sufficiency of these notices is based upon whether CEGT complied with the requirements of the tariff notice provisions under its tariff in December 2004 and whether the notices issued at that time adequately informed shippers that they would be subject to ECQ penalties for takes in excess of scheduled quantities. As noted above, we are not persuaded that the December alerts were out of compliance with the applicable tariff requirements, and we find their express statements that ECQ penalties would be assessed against takes in excess of 102 percent of scheduled quantities adequately informed CEGS and Nucor-Yamato of the conduct which would trigger imposition of the penalties. Further, we are not persuaded that revisions to the language of an alert is indicia of a prior deficiency. For these same reasons, we deny Nucor's request that CEGT be required to revise its tariff provisions for notices and procedures regarding Operational Alerts.

19. Finally, Nucor argues that CEGT's system of daily nominations has the effect of improperly shifting onto shippers the responsibility for balancing shortfalls on the pipeline system. Nucor cites section 5.5(a)(i) of GT&C as requiring shippers to nominate their daily gas flow by 11:30 a.m. of the day prior to delivery, but states that CEGT does not give shippers accurate information about the amount of gas actually delivered until one business day after the day of gas flow.<sup>16</sup> Because of delays in access to accurate delivery information, Nucor argues that shippers are not able to cure excess takes and thus the only way they can avoid the penalty is to over-nominate their expected deliveries. Nucor claims that this benefits CEGT's system, to the detriment of the shippers. Nucor contends that under Order No. 637, penalties are intended to deter conduct harming the integrity of the system, and therefore should only be imposed when a pipeline can show that shippers are engaged in harmful conduct. Nucor thus asserts that CEGT is improperly using its action alerts and ECQ penalties to shift to shippers the pipeline's obligation to keep its system in balance.

20. As CEGT explained in its notices to CEGS and Nucor-Yamato, it uses the quantities nominated by shippers for scheduling to determine the firm requirements of all its customers, and this information is necessary in order for CEGT to meet those requirements particularly during periods of capacity constraint on the system. Therefore,

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<sup>15</sup> Complaint at Attachment 5.

<sup>16</sup> GT&C § 5.5(a)(i) and § 5.6 (c).

as the Commission found in CEGT's Order No. 637 compliance proceeding, CEGT may appropriately apply its ECQ penalties during critical periods when it has issued an Operational Alert, as here.<sup>17</sup> Moreover, each shipper has the opportunity to revise its nominations during the day gas flows to the extent its need for gas is greater than it anticipated when it made its initial nomination the day before gas flow.<sup>18</sup> And, ECQ penalties are assessed only when a shipper exceeds its nomination by 102 percent of its nomination. While CEGT may not provide the shipper information concerning the actual amount delivered until the day after gas flow, the shipper should be able to monitor its own usage during the day of gas flow with a reasonable degree of accuracy. Finally, since CEGT must credit all ECQ penalties it collects back to its customers, it does not profit in any way from the imposition of such penalties. The Commission thus rejects Nucor's contention that CEGT's tariff provisions concerning ECQ penalties are inconsistent with Order No. 637. For all of the above reasons, the Commission denies Nucor's complaint.

The Commission orders:

The complaint is denied.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>17</sup> *Reliant*, 98 FERC at 62,552.

<sup>18</sup> GT&C § 5.7(a).