

125 FERC ¶ 61,253
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

G4 Energy, LLC

v.

Docket No. RP08-560-000

Cheyenne Plains Gas Company, LLC

ORDER ON COMPLAINT

(Issued December 2, 2008)

1. On August 29, 2008, G4 Energy, LLC (G4 Energy) filed a complaint alleging that Cheyenne Plains Gas Company, LLC (Cheyenne Plains) violated section 5 of the Natural Gas Act (NGA), section 284.7(b) of the Commission's regulations, and section 21.5(d) of Cheyenne Plains' General Terms and Conditions (GT&C) by engaging in unduly discriminatory or unduly preferential behavior. G4 Energy claims that Cheyenne Plains acted unlawfully by publishing an ambiguous open season posting and failing to hold a second open season in which the terms were clearly delineated. As discussed below, the Commission denies the complaint based upon its finding that the open season clearly denotes the terms and conditions for the unsubscribed capacity.

Background

2. On June 11, 2008, Cheyenne Plains commenced an open season for seasonal transportation capacity on its system. The open season posting stated the capacity available for each month for the period of September 2008 to August 2010. For "every September through May thereafter," 5,000 Dth/d was available. Thus, there was no capacity available for the months of June, July or August.¹ The posting listed the

¹ It should be noted that capacity for June, July, and August was unavailable even in 2009 and 2010, since Cheyenne Plains listed the available capacity for those months as zero.

effective date as September 1, 2008 and the end date as December 31, 2099. Also included in the posting were the terms and conditions for the process of allocating capacity, which was a net present value calculation.

3. G4 Energy submitted a bid before the deadline on June 25, 2008, listing the maximum amount, at the maximum rate, for all volumes for each of the months from September 2008 to May 2010 and for September 2010 through May 2099. G4 Energy's bid was not contingent upon being awarded the full amount of requested capacity.

4. On June 25, 2008, Cheyenne Plains informed G4 Energy that its bid was unsuccessful because G4 Energy had failed to include a bid for the months of September, October, November, and December 2099.² G4 Energy informed Cheyenne Plains that it intended to request all of the volumes offered by Cheyenne Plains for the full term at the maximum rate; however, its interpretation of the open season posting was that the capacity was only offered in September through May packages, not for shorter periods.

5. On June 27, 2008, Cheyenne Plains informed G4 Energy that it referred the complaint to its legal department and it had sought advice from the Commission's Hotline. In conversations with Cheyenne Plains, the Hotline staff validated Cheyenne Plains' interpretation of the open season posting. The Hotline staff later informed G4 Energy that its determination was final and if G4 Energy disagreed with the Hotline's position, then it could file a complaint.

6. As an alternative to a complaint proceeding, G4 Energy expressed an interest in settling the matter with Cheyenne Plains, through a letter dated July 10, 2008. Cheyenne Plains acknowledged on July 28, 2008 that it did not intend to respond to G4 Energy's letter and G4 Energy should proceed with a complaint, if it wished.

G4 Energy's Complaint

7. G4 Energy asserts that the open season violated the NGA, Commission regulations and Cheyenne Plains' GT&C by engaging in unduly discriminatory or preferential behavior and by not awarding capacity using nondiscriminatory and objective posting and evaluation criteria. The complaint states that it is Cheyenne Plains' obligation to avoid posting terms that are susceptible to multiple interpretations and when the posting is interpreted differently, the only recourse for avoiding an unlawful act is to invalidate the results and hold another open season.

² Cheyenne Plains' website states that four other bidders accurately bid on the capacity for the full term, maximum rate, and maximum volume.

8. G4 Energy insists that there was nothing inconsistent between its bid and the fact that the heading of the open season used December 31, 2099 as the end date, since the “September through May” language in the posting refers to a multi-month package. G4 Energy contends that the last nine-month package would end on May 31, 2099, not December 31, 2099. G4 Energy states that it did not bid on the months of September through December 2099 because the open season posting had not offered any capacity for that period.

9. G4 Energy requests that the open season be invalidated and Cheyenne Plains be directed to hold another open season where the qualified bidders are limited to the winning bidders in the first open season, G4 Energy, and any other company that had the same interpretation of the posting as G4 Energy.

Public Notice, Interventions, Comments and Answers

10. On September 3, 2008, the Commission issued a notice of G4 Energy’s complaint providing for interventions, protests and answers to be filed by September 18, 2008. On September 12, 2008, BP America Production Company and BP Energy Company filed a motion to intervene. On September 18, 2008, Cheyenne Plains filed an answer and motion for summary disposition. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2008), all timely unopposed motions to intervene and any motion to intervene out-of-time filed before the issuance date of this order are granted.

11. Cheyenne Plains asserts that the process for requesting and allocating the capacity was fair and evenhanded. Cheyenne Plains contends that G4 Energy did not raise an objection to the posting process or allocation process. Cheyenne Plains argues that the end date was clearly written on the second line of the open season and G4 Energy’s interpretation of September through May “packages” is directly inconsistent with the end date. Cheyenne Plains asserts that an error of interpretation on G4 Energy’s behalf does not cause the open season to be unduly discriminatory or preferential and therefore requests that the complaint be summarily dismissed.

12. On September 29, 2008, G4 Energy filed a motion for leave to answer and an answer, essentially reiterating the points it made in its complaint.

Discussion

13. The issue presented by G4 Energy is whether Cheyenne Plains’ open season posting is open to multiple interpretations, and if so, does it constitute a violation of the NGA, Commission regulations, and Cheyenne Plains’ tariff. The Commission agrees with Cheyenne Plains and finds that the end date on the open season is clearly denoted and G4 Energy’s interpretation was in error.

14. G4 Energy states that the wording of “every September through May thereafter” implies that the capacity during those months was being offered only in packages, not for a shorter period. Nevertheless, the posting clearly states on the second line that the end date is December 31, 2099, not May 31, 2099 as was written in G4 Energy’s bid. Additionally, Cheyenne Plains listed each month’s capacity for the term within the posting and does not refer to seasonal “packages” in the posting. The “September through May” notation is not ambiguous because of the phrase “the capacity available by month” at the beginning of the monthly list and the consistency of 5,000 Dth/day for the period beginning September 2010.

15. As Cheyenne Plains notes, G4 Energy does not dispute the process for posting open season nor the use of a net present value procedure for allocating the capacity. Although G4 Energy may have intended to bid for all of the capacity at full term and rates, Cheyenne Plains cannot award capacity based on the unknown intent of the bidder. As such, G4 Energy’s argument for holding a second open season is without merit. Accordingly the Commission denies G4 Energy’s complaint.

The Commission orders:

G4 Energy’s August 29, 2008 complaint is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.