

139 FERC ¶ 61,202
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

USG Pipeline Company, LLC

Docket Nos. TS12-2-000
RP12-300-000
(consolidated)

ORDER GRANTING IN PART, AND DENYING IN PART, PETITION FOR
WAIVERS, SUBJECT TO CONDITIONS

(Issued June 11, 2012)

1. This order addresses USG Pipeline Company, LLC's (USG Pipeline) January 9, 2012 petition for continuation or modification of existing waivers of the Commission's regulations. The Commission will grant in part and deny in part the requested waivers, subject to the conditions described below.

Background

2. USG Pipeline is a 15-mile long interstate pipeline that was certificated under Part 157 of the Commission's regulations¹ to provide non-firm transportation service to its affiliate, US Gypsum Company, a wallboard manufacturing plant in Alabama.² USG Pipeline states that it has no employees, no compression and no storage. Since the pipeline was constructed, it has been operated by employees of its affiliate, US Gypsum Company. USG Pipeline states that it receives all of its natural gas from East Tennessee Natural Gas, LLC (East Tennessee), at a single receipt point and, until now, USG Pipeline has transported natural gas only to US Gypsum pursuant to a Part 157 Service Agreement.

¹ 18 C.F.R. Part 157 (2011).

² *USG Pipeline Co.*, 81 FERC ¶ 61,039 (1997), *order denying reh'g*, 82 FERC ¶ 61,117 (1998) (Certificate Orders).

3. USG Pipeline reports that it began offering Part 284 open-access interruptible service to the Cooperative District for Northern Alabama (Northern Alabama) on January 5, 2012, and expects to commence firm, Part 284 transportation service to Northern Alabama and US Gypsum near the end of January 2012. The firm service to Northern Alabama will be provided pursuant to a negotiated rate agreement, which was noted in USG Pipeline's tariff in late 2011.³ USG Pipeline states that deliveries to Northern Alabama will be made at the south end of the USG Pipeline system, close to the existing delivery point to US Gypsum. In addition, USG Pipeline states that US Gypsum will convert to a Part 284 firm transportation service agreement under USG Pipeline's rate schedule FT prior to commencing firm service to Northern Alabama.⁴

4. USG Pipeline asserts that the initiation of Part 284 service to Northern Alabama constitutes a change of circumstance that has led USG Pipeline to file for a continuation of the waivers that it was initially granted based on its providing service to only one affiliated customer pursuant to the Part 157 transportation agreement. In addition, USG Pipeline notes that it also currently is excused from other requirements that have not yet been triggered by events.⁵ It states that it will seek an extension of those requirements, if the Commission directs it to do so.

5. USG Pipeline requests that the Commission continue its waivers of: (1) the Commission's Standards of Conduct requirements including its separation of function

³ The Commission accepted USG Pipeline's non-conforming negotiated rate FT service agreement with Northern Alabama. (*USG Pipeline Co.*, Docket No. RP11-2587-000, Letter Order (October 20, 2011) (unpublished)).

⁴ USG Pipeline Petition at 3. USG Pipeline explains that the current agreement commits all of USG Pipeline's firm capacity to US Gypsum.

⁵ See, e.g., *Order on Filings in Compliance with Order No. 587-U*, 133 FERC ¶ 61,096 (2010) (October 28 Order) at P 6, 12. USG Pipeline was granted waiver from NAESB WGQ Version 1.9 Standards pertaining to gas-electric communication protocols until such time as it serves an electric utility. Likewise, it was granted waiver from posting gas quality data until such time as it collects such data.

and no-conduit rules;⁶ (2) requirements related to the operation of an Electronic Bulletin Board (EBB);⁷ (3) accounting and reporting requirements in Parts 201 and 260;⁸ and (4) waiver of the requirement to offer segmentation.⁹ Further, USG Pipeline requests continuation of a waivers and an extension of time to comply with the NAESB WGQ Version 1.9 Standards.¹⁰ Specifically USG Pipeline requests that the Commission continue the extensions of time to comply with the Electronic Data Interchange (EDI), Electronic Delivery Mechanism (EDM), and Internet Electronic Transport (IET) related NAESB WGQ Standards. In its instant petition, USG Pipeline seeks continuation of all these waivers, notwithstanding changed circumstances, and requests permission, after it files its Index of Customers under section 284.13(c) of the Commission's regulations, to only refile the index in quarters following a quarter where there was a change in customers, rather than every quarter.

Notice

6. Notice of USG Pipeline's Filing was published in the *Federal Register*, 77 FR 2517, 2012, with interventions and protests due on or before January 23, 2012. None was filed. In addition, on April 18, 2012, USG Pipeline filed a letter explaining its intention not to file Form 2-A for calendar year 2011 and its view that it is not obligated to file Form 3-Q until after it begins filing Form 2-A. It requests expedited instruction, if its assumption that these filings are not required is wrong.

⁶ USG Pipeline states that it has been granted a partial waiver of the Commission's Standards of Conduct requirements, specifically referencing the independent functioning requirements and information disclosure prohibitions in section 358.5 and 358.6(a) and (b). See USG Pipeline petition at 4 (citing *Standards of Conduct for Transmission Provider, Order No. 2004-A*, FERC Stats. & Regs. ¶ 31,161 at P 307 (Order No. 2004-A); *Standards of Conduct for Transmission Providers*, FERC Stats. & Regs. ¶ 31,297, at P 48 (2009) (Order No. 717-A); October 28 Order, at P 13 (2010)).

⁷ 18 C.F.R § 284.12(b) (2011).

⁸ 18 C.F.R § 201 and 260 (2011).

⁹ In *USG Pipeline Co.*, 98 FERC ¶ 61,231, at 61,928 (2002), the Commission found that segmentation would be infeasible for USG Pipeline's system since its pipeline is short, with only a single receipt and delivery point.

¹⁰ October 28 Order, 133 FERC ¶ 61,096 at P 36.

Discussion

7. As discussed in detail below, we will grant USG Pipeline's request for a partial waiver of the Commission's Standards of Conduct requirements, including its separation of function and no-conduit rules and information sharing prohibitions. We also will continue USG Pipeline's current waivers related to its use of a website, in lieu of installing a fully operational Electronic Bulletin Board, and will grant it a partial extension of the timing requirements for posting information regarding any revisions to firm service and release transactions. Further, we will grant USG Pipeline a continuation of waivers and an extension of time to comply with the NAESB WGQ Version 1.9 Standards promulgated by Order No. 587-U. We will deny USG Pipeline's request to first file Form 3-Q for calendar year 2012, and direct that it file this form for calendar year 2011. As to its request to begin filing Form 2 and 2-A in 2012, we will grant this request, with the exception that it must file Page 1 and Page 520 of Form 2-A for calendar year 2011. We will deny its request to waive the filing of a quarterly index of customers. Additionally, we grant USG Pipeline's request to maintain its current waiver of the requirement to offer segmentation, as this is still not feasible for its system.

1. Standards of Conduct

8. In support of its request for waiver of the Commission's Standards of Conduct requirements, USG Pipeline states that it currently has no employees and is operated by employees of its affiliate US Gypsum.¹¹ USG Pipeline suggests that US Gypsum's expertise in Commission polices and pipeline operations is concentrated in its energy-supply group's natural gas specialists, who are responsible for purchasing natural gas and pipeline transportation services to meet the manufacturing requirements at plants operated by US Gypsum or its affiliates located throughout North America, including the United States, Canada, and Mexico. USG Pipeline suggests that US Gypsum occasionally sells excess natural gas to either balance its contract gas supplies or comply with pipeline balancing rules.¹² USG Pipeline asserts that none of the natural gas that USG Pipeline transports for US Gypsum is sold off-system and US Gypsum confines its off-system sales to natural gas not transported by USG Pipeline.

9. USG Pipeline suggests that the provision of transportation service to an unaffiliated shipper should not subject USG Pipeline to the Standards of Conduct separation of function and no-conduit rules. USG Pipeline asserts that it is too small to justify hiring a separate staff to run USG Pipeline. USG Pipeline contends that no harm

¹¹ See USG Pipeline petition at 6 (noting that the same employees are responsible for the operation of B-R Pipeline Company which also serves US Gypsum facilities).

¹² *Id.* at 5.

has or will occur from the operation of its system by US Gypsum's gas supply personnel. USG Pipeline contends that its situation is analogous to local distribution companies promulgated in Order No. 717-A in which the Commission exempted local distribution companies making off-system sales of natural gas that have been transported by their affiliated pipelines from the Standards of Conduct.¹³

10. Further, USG Pipeline suggests that it should qualify for the requested waivers based on criteria articulated in Order No. 2004-A.¹⁴ Specifically USG Pipeline suggests that it meets the requirements for exemption of the Standards of Conduct promulgated by the Commission based on: (1) the size of the USG Pipeline; (2) the number of employees of USG Pipeline; (3) the level of interest in transportation on USG Pipeline; and (4) the fact that USG Pipeline has separated its marketing and energy affiliates to the maximum extent practicable.

Commission Determination

11. USG Pipeline is requesting continuation of the Standards of Conduct waiver it was granted in Order No. 2004-A,¹⁵ where the Commission determined, based on then-present circumstances, that USG Pipeline qualified for a waiver of the Independent Functioning requirements of 18 C.F.R. § 358.4 and the information disclosure prohibitions in 18 C.F.R. § 358.5(a) and (b), but not from the remainder of the Standards of Conduct requirements.

12. The question before us is whether, in light of the change in circumstance that USG Pipeline will now be providing transportation services to a third party, and not just to its non-marketing affiliate, does USG Pipeline still qualify for the previously granted limited Standards of Conduct waivers? We will evaluate USG Pipeline's qualification for this waiver based on the criteria in Order No. 2004-A,¹⁶ where the Commission stated that it would grant waivers to small pipelines, based on the size of the company, the number of employees, the level of interest in transportation on the pipeline, and where appropriate,

¹³ *Id.* at 6 (citing Order No. 717-A at P 48).

¹⁴ *Id.* at 7 (citing Order No. 2004-A at P 30).

¹⁵ *18 C.F.R. Part 358 Standards of Conduct for Transmission Providers, order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, at P 31 (2004).

¹⁶ These criteria were carried over from Order No. 497. *See e.g., Ringwood Gathering Company*, 55 FERC ¶ 61,300 (1991).

whether the company has separated to the maximum extent practicable from its Marketing or Energy Affiliates.¹⁷

13. Based on our evaluation of these criteria, the Commission will grant USG Pipeline and US Gypsum limited exemptions from the Standards of Conduct, including the separation of functions, information sharing prohibitions and no-conduit rules, absent a further change in circumstance. At this time, USG Pipeline continues to be a small pipeline with no employees of its own and has excess capacity. Based on these facts, the operations of the pipeline and market circumstances, the Commission will not at this time require US Gypsum to separate its functions from those of USG Pipeline, nor prohibit their sharing of information. We also note that, as stated by USG Pipeline, if a shipper identifies any future abuses by USG Pipeline, it can file a complaint with the Commission and the issue can be reexamined at that time. In addition, the Commission reminds USG Pipeline that, under section 4 of the Natural Gas Act, USG Pipeline is prohibited from engaging in unduly discriminatory or preferential behavior.

2. Electronic Bulletin Board

14. USG Pipeline requests continuation of waivers related to the operation of its EBB.¹⁸ In support of its request, USG Pipeline states that, based on USG Pipeline's small size and limited customer base, the Commission previously granted it a general waiver of the obligation to implement an EBB until such time USG Pipeline acquires a firm shipper under its open-access rate schedule and implements a two-part rate for such service.¹⁹ Further, USG Pipeline states that it has an internet website, listing information about the pipeline. USG requests that the Commission find that its current website

¹⁷ Order No. 2004-A, P 30. *See also Bear Creek Storage Co.*, 108 FERC ¶ 61,011, at P 2 (2004).

¹⁸ USG Pipeline's waiver of certain of the Commission's EBB requirements was granted in *USG Pipeline Co.*, 89 FERC ¶ 61,121, at 61,325 (1999) (October 1999 Order). That order also deferred USG Pipeline's obligation to comply with the GISB EDI and EDM interactive EBB requirements until such time as a Part 284 customer requests that USG Pipeline allow it to enter transactions via its website. *Id.* at 61,326. USG Pipeline obtained an additional deferral of compliance with the version of these requirements contained in the WGQ Version 1.9 Standards in the October 28 Order. October 28 Order at P 36. USG Pipeline relies on the deferral it obtained in the October 28 Order and contends that it does not need any additional time extension at this time. *See USG Pipeline Petition* at 7 (citing October 28 Order at P 36).

¹⁹ *Id.* at 8 (citing October 1999 Order, 89 FERC ¶ 61,121 at 61,325).

continues to satisfy the Commission's requirements for EBBs, given USG Pipeline's operational and market circumstances, and available alternatives for the communication of transportation-related information.

15. USG Pipeline states that its existing website provides information about the pipeline including contact information, a list of customer's open seasons, a copy of its currently effective tariff, and procedures for requesting service. USG Pipeline commits to notifying its customers of the availability of firm and interruptible transportation service by email or fax. Further, USG Pipeline commits to providing information regarding pipeline operations, operational flow orders, curtailments, and other operations changes directly by posting, email, fax, or phone.

16. USG Pipeline states that, while it does not separately measure gas quality, such information is available from East Tennessee's website.²⁰ USG Pipeline submits that daily nominations are to be submitted either by email or fax and all nominations will be automatically confirmed absent an operational or contractual limitation. USG Pipeline also states that it is upgrading its website to permit posting of customer information required by 18 C.F.R. § 284.13(b).²¹ However, USG Pipeline asks that the Commission permit the post of such updates within two business days of commencement of service. USG Pipeline avers that, in light of its two customer base, the delay in posting such information should not create any problems.

Commission Determination

17. In light of USG Pipeline's market and operational circumstances, the Commission will grant USG Pipeline's request to retain use of its current website in lieu of installing a full EBB, absent a further change in circumstance, subject to the condition that it provide information about pipeline operations and messages about operational flow orders, curtailments, and other operational changes on its website. USG Pipeline has not supported its request for waiver and we are not persuaded that such informational postings are unduly burdensome. Having such information accessible via USG Pipeline's website provides greater transparency and may contain pertinent information that may be of interest to other parties outside of USG Pipeline's shippers. Further, as an open access transportation service provider, USG Pipeline must ensure that it does not provide any undue preference to US Gypsum with respect to information. USG Pipeline should contemporaneously share information with all of its customers.

²⁰ USG Pipeline states it currently has a waiver from the requirement to post gas quality information on its website. *See* USG Petition at 7 (citing October 28 Order at P 12).

²¹ 18 C.F.R. § 284.13(b)(1) (2011).

18. Section 284.13(b)(1) of the Commission's regulations requires that pipelines post information regarding any revisions to firm service and released transactions no later than the first nomination under a transaction. USG Pipeline has not justified its request for an extended posting time that would allow it to post such information within two business days of commencement of service and we are not persuaded that timely postings of this information would be unduly burdensome. The posting of contractual revisions contain necessary information for USG Pipeline's shippers and other interested parties. However, we recognize the unique operational circumstances presented and potential difficulty of posting such information immediately after each nomination cycle. Therefore, we will waive the requirement in 18 C.F.R. § 284.13(b)(1) to post this information no later than the first nomination under a transaction, subject to USG Pipeline posting such revisions within one business day of commencement of service, absent changed circumstance that the Commission finds warrant different treatment.

19. Finally, we also affirm USG Pipeline's waivers or extensions of time to comply with the NAESB WGQ Version 1.9 standards granted in the October 28 Order, absent a further change in circumstance. As discussed in the October 28 Order,²² all waivers and extensions of time are limited to the NAESB WGQ Version 1.9 Standards promulgated by Order No. 587-U and USG Pipeline must file a renewal request if it seeks similar waivers/extensions with respect to compliance with subsequent editions of the standards.²³

3. Accounting and Reporting Requirements

20. USG Pipeline notes that it has been granted waiver of the requirements to implement the Uniform System of Accounts and the requirements to file Forms 2-A and 3-Q based on the fact that it only served its affiliate, US Gypsum.²⁴ USG Pipeline states that it will no longer qualify for such waiver and will file its first Form 2-A in 2013 for calendar year 2012. USG Pipeline requests approval to begin filing Form 3-Q on the same timetable, arguing that such an extension would give it time to implement the Uniform System of Accounts and to compile data needed for Form 2-A and Form 3-Q for the first full year in which it provides firm open-access transportation. In support of its request, USG Pipeline contends that the Commission estimated it will take approximately

²² October 28 Order at P 36.

²³ See *B-R Pipeline Co.*, 128 FERC ¶ 61,126 (2009) ("Each time the Commission adopts new versions of [the] Standards ... pipelines must request waiver [or extension of time] of the new Standards").

²⁴ USG Pipeline Petition at 10 (citing Certificate Orders).

415 hours per response to complete the Form 2-A and 3-Q. USG Pipeline contends that such hours are unduly burdensome given that USG Pipeline is not publically traded and only has one unaffiliated customer.

Commission Determination

21. Given the circumstances presented, we will grant in part USG Pipeline's request to file Form 2-A and 3-Q for calendar year 2012. However, USG Pipeline has provided no evidence to support its request for waiver of the various natural gas reporting requirements necessary for the calculation of FERC annual charges. While USG Pipeline claims that imposing the reporting requirements will be burdensome, the filing requirements and thresholds for filing these forms were established for the exact purpose of reducing the burden on small companies. Moreover, absent a waiver based on financial hardship pursuant to 18 C.F.R. § 382.105, there is no reason any NGA company should be exempt from the Annual Charge Assessment if its meets the filing thresholds that are prescribed in 18 C.F.R. § 382.102(a). The Commission relies on Page 520 of the Forms 2 and 2-A to determine whether a pipeline meets these thresholds. Accordingly, we will require USG Pipeline to file Page 1 and Page 520 of Form 2-A for calendar year 2011 within 15 days from the date of this order. Further, we deny USG Pipeline's request for waiver for the FERC Form No. 3-Q until such time as its files its Form 2-A.²⁵ As a first time filer that will be offering service to the market under its open access tariff, it is important for the Commission to collect timely information and make it available to the public. The Commission believes that the increased frequency of financial information provided in Form 3-Q is important. The quarterly reports allow for timely evaluation of existing rates and improved transparency of financial information submitted to the Commission.

4. Index of Customers

22. USG Pipeline states that it intends to file its index of customers pursuant to 18 C.F.R. § 284.13(c). USG Pipeline asserts that it will file its first index on the first business day of the second quarter of 2012.²⁶ USG Pipeline also intends to post its index of customers on its informational website. USG Pipeline requests that it be granted a partial waiver so that it does not need to refile the index of customers in quarters when there have been no changes in its customers. USG Pipeline suggest that, because it has added only one new customer in more than ten years of operations and it does not expect

²⁵ See *T.W. Phillips Pipeline Corp.*, 126 FERC ¶ 62,132, at 64,282 (2009) (explaining that "[w]aiver of filing requirements may be granted when unique circumstances are presented").

²⁶ 18 C.F.R. § 284.13(c)(1) (2011).

any additional customers in the foreseeable future, it should not be required to file quarterly reports on this topic.

Commission Determination

23. The Commission finds that USG Pipeline has not justified its request for waiver of 18 C.F.R. § 284.13(c). While it is likely that there will rarely be changes in USG Pipeline's index of customers, we are not persuaded that updating the quarterly filings will be unduly burdensome.

5. Segmentation

24. USG Pipeline notes the Commission granted its request for waiver of a requirement to offer segmentation.²⁷ USG pipeline maintains that, although it now has a receipt point at the north end of its system and two delivery points at its south end, segmentation is still not operationally feasible for its system.

Commission Determination

25. The Commission finds, for good cause shown, that our prior finding that USG Pipeline need not, at this time, revise its tariff to allow segmentation should remain in force, absent a further change in circumstance.

The Commission orders:

The Commission hereby grants USG Pipeline's request for a partial waiver of the Commission's Standards of Conduct requirements and grants in part, and denies in part USG Pipeline's requests for waivers and extensions of other Commission requirements, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁷ *USG Pipeline Co.*, 98 FERC ¶ 61,231, at 61,928 (2002).