

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Bay Gas Storage Company, Ltd.

Docket Nos. PR04-9-000
PR04-9-001

ORDER ON REQUEST FOR CONFIDENTIAL TREATMENT AND DIRECTING TO
SHOW CAUSE

(Issued December 22, 2004)

1. On September 21, 2004, a Staff Panel was convened to give parties an opportunity to present oral views, data, and arguments with regard to a petition for approval of rates for firm and interruptible transportation services under section 311 of the Natural Gas Policy Act of 1978 (NGPA) filed by Bay Gas Storage Company, Ltd. (Bay Gas).¹ On October 14, 2004, Bay Gas submitted for filing public and non-public versions of Bay Gas's data responses to the Staff Panel's requests in this proceeding, and requested privileged treatment for certain information that Bay Gas provided pursuant to 18 C.F.R. § 388.112. As discussed below, the Commission is considering releasing the information for which Bay Gas has requested privileged treatment, and therefore pursuant to § 388.112(e), is giving the parties an opportunity to comment on the issue. In addition, the Commission will direct Bay Gas to show cause why section 17 F of its General Terms and Conditions (GT&C) should not be removed as contrary to Commission policy. This order benefits customers by ensuring that information which is not confidential is publicly disclosed, and that rates, terms, and conditions are just and reasonable.

Background

2. On March 9, 2004, Bay Gas filed in Docket No. PR04-9-000 a petition for approval of rates for firm and interruptible transportation services under section 311 of the NGPA. Public notice of Bay Gas's filing was issued on March 26, 2004, with comments, protests, and interventions due on or before April 12, 2004. On April 12, 2004, Southern Company Services (Southern) filed a Motion to Intervene and a Request for Clarification. On June 29,

¹ 15 U.S.C. § 3371 (2000).

2004, Bay Gas filed an Offer of Settlement in Docket No. PR04-9-001. On July 16, 2004, as corrected on July 20, 2004, Southern filed initial comments opposing Bay Gas's Offer of Settlement.

3. The parties were unable to achieve a settlement on the disputed issues in the proceeding; therefore, the Commission instituted a proceeding before a Staff Panel pursuant to section 284.123(b)(2)(ii) of its regulations. 18 C.F.R. § 284.123(b)(2)(ii) (2004). Such Staff Panel hearings are advisory, non-trial-type proceedings to permit the parties an opportunity to present oral views, data, and arguments in accordance with section 502(b) of the NGPA.²

4. On September 21, 2004, a Staff Panel was convened. The Staff Panel requested that Bay Gas file certain additional information by October 14. The requested information included a summary of all of Bay Gas's contracts with its customers, including the level of firm and interruptible service provided under those contracts and cost of service information. The Staff Panel also directed parties to file simultaneous initial briefs by October 28, and simultaneous reply briefs by November 5. On October 14, 2004, Bay Gas responded to the Staff Panel's data requests. However, pursuant to § 388.112 of the Commission's regulations, Bay Gas requests privileged treatment of certain transportation and storage service agreement information—namely, the length of each contract, the maximum transportation quantity under each contract, the contract rates, and the name of one transportation customer.³ Bay Gas also seeks privileged treatment of the overall amount of its revenues from discounted rate contracts, which was used in determining its discount adjustment.⁴ Bay Gas contends that public disclosure of this information could violate section 17 F of its GT&C (section 17 F). Section 17 F reads:

Confidentiality. The terms of any Storage or Transportation Service Agreement shall be kept confidential by the parties except to the extent that any information must be disclosed to a third party as required by law, for either party's financial needs or for the purpose of effectuating any Storage or Transportation Service Agreement.

² 15 U.S.C. § 3412(b) (2000).

³ The transportation contract information at issue is in Attachment 1 to Bay Gas' data response. The storage contract information is in Attachment 2. Bay Gas does not seek privileged treatment for the maximum storage quantity in its storage contracts, but does seek privileged treatment for the maximum daily injection volumes in those contracts.

⁴ That information is contained in Schedule I-1 of Attachment 3.

5. Bay Gas also contends that such disclosure could harm Bay Gas's competitive position.

6. On October 25, 2004, Southern filed an answer in opposition to Bay Gas's request for privileged treatment. Southern argues that it is entitled to all the information, except for individual contract rates, because Southern is a section 311 shipper and a party to this proceeding. Such information is directly relevant to issues of cost allocation and rate design for section 311 shippers, according to Southern. Southern argues that (1) Bay Gas has not justified its request for privileged treatment, (2) section 17 F does not preclude release of the information, and (3) Bay Gas will not be prejudiced from the release of such information. Further, Southern contends that, as a shipper on Bay Gas, it is not a competitor of Bay Gas.

7. On October 28, 2004, Bay Gas filed its initial brief in which Bay Gas argued that the three non-public pages of requested information are appropriately privileged and confidential. Bay Gas states that Southern already has the redacted discounted revenue information in Attachment 3.⁵ Next, Bay Gas contends that release of the transportation contract information in Attachment 1 would result in competitive harm, because Southern competes directly with other Bay Gas transportation customers. Bay Gas reiterates that section 17 F requires that such transportation service agreement terms be kept confidential. With regard to other shippers' contract terms, Bay Gas states that this information in Attachment 1 is not relevant or material to Southern's effort to add receipt and delivery point flexibility as a changed term and condition of service for its original facilities contract to gain access to the newer facilities (Whistler Spur). Finally, Bay Gas incorporates by reference its arguments against disclosing the Attachment 1 non-public transportation contract information in its argument against disclosing similar storage contract information in Attachment 2.

8. On November 5, 2004, Southern filed its reply brief, stating that the use of non-public information to determine fair and equitable rates in this proceeding remains a concern. Southern states that, without any supporting volumetric information, there is no basis in the public record to support the total billing units used to set rates. Southern maintains that it should have individual contract quantity information for each shipper by type (intrastate or interstate) and form (firm or interruptible) in order to confirm whether the appropriate volumes are being used to design interstate rates.

⁵ The three non-public pages for which Bay Gas seeks confidential treatment are included in Attachments 1, 2, and 3 of Bay Gas's October 14 filing.

Discussion

9. In deciding whether to grant requests for privileged treatment of information, we balance the need for public disclosure against the harm that will be caused by the release of the information.⁶ Here, there is a clear need for public disclosure of the provisions of Bay Gas's contracts with its shippers for jurisdictional transportation and storage service performed pursuant to NGPA section 311. This includes the name of the shipper under each contract, the length of each contract, and, for transportation service, the contract rate.⁷ All this information is necessary to evaluate Bay Gas's proposed rates in this proceeding. For example, the total contract demands of Bay Gas's firm customers and the level of service provided to interruptible customers is used in designing Bay Gas's rates. In order to verify whether the aggregated volumes Bay Gas proposes to use are correct, it is necessary to review the volumes related to each individual contract. One of the issues in this proceeding is the roll-in of the costs of Bay Gas's Whistler Spur facilities, which would require a breakdown of the cost and volume information described above for Bay Gas's existing system and the newer Whistler Spur facilities. Therefore, the individual contract rate and term information for which Bay Gas seeks privileged treatment is also necessary for this purpose.

10. Also, Bay Gas proposes an adjustment to its rates based on the revenues it has received from customers receiving discounted rates. In order to evaluate and verify the correctness of this proposal, it is necessary to have individual contract rate and term information. For these reasons, the Commission is not persuaded by Bay Gas's contention that Southern has no legitimate interest in this information.

11. Aside from the need for public disclosure of this information for purposes of this rate case, Commission policy generally favors disclosure of individual jurisdictional contract information in order to ensure that the pipeline's contracting practices are not unduly discriminatory, and no undue preferences are granted to any customer.⁸ In fact, the Commission's regulations require pipelines performing transportation and storage service pursuant to NGPA section 311 to make annual or semi-annual public reports of most of the information for which Bay Gas seeks confidential and privileged treatment.

⁶ *ANR Pipeline Co.*, 65 FERC ¶ 61,280, at 62,305 (1993).

⁷ The Commission has authorized Bay Gas to charge market based rates for its storage service, and information concerning the rates Bay Gas has charged for that service has not been requested in this proceeding either by staff or any other party.

⁸ *See, e.g., Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs*, Order No. 582, FERC Stats. & Regs. ¶ 31,025 (1995), *order on reh'g*, Order No. 582-A, FERC Stats. & Regs. ¶ 31,034 (1996) (concluding that rate information is not generically confidential, privileged, or proprietary, and that such information must be made publicly available).

18 C.F.R. § 284.126(b), (c). The Commission will not require Bay Gas to disclose individual contract information with respect to its contracts for intrastate service, since that service is not subject to our jurisdiction, but is regulated solely by the state.

12. Given the clear interest in public disclosure of the information at issue here, any request for privileged treatment would have to be supported with specificity, rather than with vague and speculative allegations of competitive harm.⁹ In this case, Bay Gas has thus far merely made a general and unsupported allegation that privileged treatment is required to ensure confidentiality of commercially sensitive information. Such a general allegation of competitive harm is not sufficient to support a claim of confidentiality.

13. The Commission is thus considering denying Bay Gas's request for privileged treatment of information concerning the provisions of Bay Gas's individual contracts for NGPA section 311 service and its revenues from discounted rate contracts. Therefore, in accordance with § 388.112(d), the parties are given 15 days in which to comment in writing on the Commission's intent to release this information. Bay Gas must support any claim for privileged treatment with specific detail regarding the basis for the request for privilege and the harm that will result from public disclosure, as well as the legal basis for nondisclosure.

14. In addition, the Commission believes that section 17 F of Bay Gas's GT&C is contrary to the policies discussed above concerning favoring public disclosure of the provisions of contracts for service provided pursuant to NGPA section 311. Therefore, we also direct Bay Gas to show cause why it should not remove section 17 F from its GT&C.

The Commission orders:

(A) The parties may submit comments concerning the public disclosure of the redacted information in Attachments 1, 2, and 3 of Bay Gas's responses to the Staff Panel's data requests, within 15 days from the date of the issuance of this order, as discussed in the body of this order.

⁹ *Williston Basin Interstate Pipeline Co.*, 76 FERC ¶ 61,030, at 61,177 (quoting Order No. 582, FERC Stats. & Regs. ¶ 31,025, at 31,413 (1995) (footnote omitted)).

(B) Bay Gas is directed to submit a show cause response, within 15 days from the date of the issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.