

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. RP05-513-002

ORDER ON REHEARING

(Issued January 27, 2006)

1. This order addresses CenterPoint Energy Gas Transmission Company's (CEGT) request for clarification and rehearing of an order issued by the Commission on August 25, 2005,<sup>1</sup> and CEGT's September 9 compliance filing made in response thereto.
2. The August 25 Order accepted a number of changes to CEGT's FERC Gas Tariff (Tariff) that were characterized as "housekeeping" in nature or intended to rectify obsolete provisions that have been overtaken by Commission policy changes. With respect to proposed changes to CEGT's generic discount conditions in section 12.5 of CEGT's General Terms and Conditions (GT&C), the August 25 Order directed the company to remove a parenthetical reference to fuel and LUGF, citing the Commission's policy prohibiting discounting of variable costs.<sup>2</sup> The August 25 Order accepted other changes to section 12.5 that would allow CEGT and its customers to agree that rate components can be adjusted upward or downward on a prospective basis to achieve an agreed upon discount rate or to collect amounts in accordance with a specified

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<sup>1</sup> *CenterPoint Energy Gas Transmission Company*, 112 FERC ¶ 61,223 (2005) (the August 25 Order).

<sup>2</sup> August 25 Order at P 15, citing *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.

relationship to prices or other factors. However, the Commission instructed CEGT that section 12.5 could not be used to allow the company to “bank” amounts that cannot be charged during a particular period because they are in excess of the maximum tariff rate and to collect the “banked” amounts at a later time when the discount formula results in a rate that is less than the maximum. CEGT was directed to file revised tariff sheets and provide certain explanations, which the company has done.<sup>3</sup>

3. CEGT filed a timely request for clarification and rehearing of the August 25 Order, asking that the Commission clarify or grant rehearing to confirm that fuel retention percentages may be used as a factor in rate adjustment formulas in discount rate agreements. CEGT also seeks rehearing on the Commission’s determination to reject its “banking” proposal.

4. As discussed below, upon reconsideration, the Commission clarifies that fuel retention percentages may be used as a factor in discount rate formulas. However, the Commission will deny CEGT’s request for rehearing of the Commission’s determination to reject the “banking” proposal.

## **Discussion**

### **A. CEGT’s Generic Discount Rate Formula**

5. CEGT proposed to revise section 12.5 (vii) to 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 LUGF 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. (*Emphasis added*)

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<sup>3</sup> CenterPoint’s compliance filing was filed on September 9 and noticed on September 16, 2005. The compliance filing was accepted by delegated order issued on December 20, 2005.

In support, CEGT asserted that its proposal was consistent with generic discount provisions approved by the Commission for other pipelines,<sup>4</sup> and that the revised provision will provide CEGT and its shippers with greater flexibility in the contracting process.

6. The August 25 Order found the reference to fuel use and LUFG percentages to be inconsistent with the Commission's policy prohibiting discounting variable costs<sup>5</sup> and directed CEGT to submit tariff sheets revising section 12.5 to remove the parenthetical reference to fuel and LUFG percentages.

7. On rehearing, CEGT seeks clarification that the Commission did not intend to prohibit the use of changes in fuel percentages or values as a factor in rate adjustment formulas. CEGT explains that, under its proposal, the fuel retained by CEGT would never be less than the applicable tariff percentage. The parties could agree that, if the fuel retention percentage fluctuated up or down during the term of the agreement, then the original discounted rate would also be adjusted based on some specified relationship to the change in the fuel component. Any offsetting adjustment of the individual rate components would always remain within CEGT's maximum and minimum rates.<sup>6</sup> According to CEGT, although it seeks flexibility in its discount rate provisions, "it never intended to use the proposed tariff revisions as a basis for discounting the required fuel retention percentages. CEGT will continue to retain in-kind whatever fuel percentage is applicable under its Tariff for each transaction."<sup>7</sup> Absent the requested clarification, CEGT seeks rehearing of the August 25 Order.

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

<sup>5</sup> August 25 Order at P 15, citing *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.

<sup>6</sup> CEGT request for clarification or rehearing at 6.

<sup>7</sup> *Id.* at 5.

### **Commission Determination**

8. The Commission will grant CEGT's requested clarification. Upon reflection, the Commission finds that the directive to remove the parenthetical reference to "Fuel Use and LUFG percentages" was based upon a misunderstanding of how CEGT's rate adjustment formula works. The Commission's August 25 Order was based on the concern that CEGT would be discounting fuel retention percentages rather than using them as a component in the formula to calculate or adjust discounted rates. Because the formula does not result in increases or decreases in these components but is intended to provide a mechanism by which the discounted rate will be adjusted, the Commission finds that the parenthetical reference to "Fuel Use and LUFG" does not violate Commission policy. As noted by CEGT, this is consistent with the Commission's order in *Gulf South Pipeline Company, LP*,<sup>8</sup> where the Commission approved a similar proposal, finding that it did not violate the policy prohibiting discounting of fuel charges.

#### **B. CEGT's "Banking" Proposal**

9. CEGT seeks rehearing of the Commission's determination to reject its proposal to use the revisions to section 12.5 to allow CEGT to "bank" amounts that cannot be charged or collected during a particular period when published prices result in a rate in excess of the applicable maximum tariff rate, for later collection of some or all of the "banked" amounts when the published prices result in a rate below the maximum tariff rate. On rehearing, CEGT continues to argue that amounts "banked" under such discounted rate agreements would not result in the collection of more than the maximum lawful rate approved by the Commission.

10. CEGT explains that its transportation rates are typically priced at or below the basis differential,<sup>9</sup> and that it can only collect a discounted rate up to but not in excess of the basis differential.<sup>10</sup> CEGT asserts that it can recover its regulated cost of service only when it receives its maximum rate. Because there are times when the basis differential is in excess of CEGT's maximum rate, CEGT sees the "banking" mechanism as providing

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<sup>8</sup> 107 FERC ¶ 61,036 (2004).

<sup>9</sup> The basis differential is the difference in price for which gas can be purchased at one point (such as the producing basin) on the pipeline's system and then re-sold at another point on the pipeline's system.

<sup>10</sup> CEGT request for clarification or rehearing at 8.

it with an “opportunity to recover its maximum rate; i.e., its cost of service.”<sup>11</sup> According to CEGT, in order for it to be able to collect any “banked” amount, it must provide a transportation service at some point in the future against which the “banked” amount may be collected up to the maximum rate.

11. CEGT also asserts that its proposal is substantively different from the discount proposal rejected by the Commission in *ANR Pipeline*,<sup>12</sup> where the Commission determined that there could be times when the rate paid by the shipper actually exceeded the applicable maximum tariff rate. CEGT asserts that “the fact that the formula calculates a rate greater than the applicable maximum during any particular service month does not result in CEGT’s collecting such excess amounts during that month. CEGT claims that its “banking” proposal merely allows it the opportunity to achieve its “right to charge and collect its maximum rate for all services it may provide.” CEGT further argues that its proposed “banking” is fully consistent with Commission policy, which “gives the parties full flexibility to develop any rate adjustment formulas they may choose.”<sup>13</sup>

### **Commission Determination**

12. When the Commission changed its selective discounting policy in *Northern Natural Gas Co.*, 105 FERC ¶ 61,299 (2003), to permit formula-based discounted rates, the Commission first distinguished between its discounted rate program adopted in Order No. 436 and the subsequent negotiated rate program adopted after Order No. 636.<sup>14</sup> Both programs permit pipelines to negotiate individualized rates with particular customers so as to give the pipeline the flexibility to meet competition so as to retain existing customers and attract new customers. However, the Commission found that the regulatory requirements underlying each of these alternative ratemaking mechanisms differ. Section 284.10(c)(5) of the Commission’s regulations requires that discounted

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<sup>11</sup> *Id.*

<sup>12</sup> *ANR Pipeline Co.*, 108 FERC ¶ 61,028 (2004).

<sup>13</sup> CEGT request for clarification or rehearing at 9.

<sup>14</sup> The Commission’s negotiated rate policies were originally established in *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, Regulation of Negotiated Transportation Services*, 74 FERC ¶ 61,076, *order on clarification*, 74 FERC ¶ 61,194, *order on reh’g*, 75 FERC ¶ 61,024 (1996).

rates always remain within the range established by the pipeline's maximum and minimum tariff rates for both firm and interruptible service, with the minimum reflecting only variable costs. By contrast, under the negotiated rate option, the pipeline and shipper may negotiate rates that vary from the pipeline's otherwise applicable tariff rates and may exceed the pipeline's maximum rates or fall below its minimum rates. The Commission concluded that, "Given this distinction between discounted and negotiated rates, . . . formulas that produce varying rates during the term of an agreement are permissible as discounted rates, so long as the rate remains within the range established by the maximum and minimum rates set forth in the pipeline's tariff."<sup>15</sup>

13. In the instant case, CEGT seeks to enter into discounted rate agreements using basis differentials and, during months when the basis differential exceeds the maximum rate, "bank" the excess amount for collection during a subsequent month when the basis differential is less than the maximum rate. Whether this causes the discounted rate to exceed the pipeline's maximum tariff rate in violation of section 284.10(c)(5) of the Commission's regulations turns on whether the banked amount is viewed as a charge for service during the month when the basis differential exceeded the maximum rate or a charge for service during the subsequent month when the basis differential was less than the maximum rate. The Commission continues to find that the banked amount must be viewed as a charge for service during the month when the basis differential exceeded the maximum rate. The fact that "banked" amounts are deferred for collection until a later point in time when the formula rates are less than the maximum tariff rates does not change the fact that the charges were generated as a result of service performed during the prior month when the formula rates were above the tariff maximum. The level of the banked amount is a function of the amount of service performed during that prior month. Thus, it is the performance of transportation service during a month when the discount rate formula yields a rate above the maximum rate that triggers the excessive charge and the deferral – or "banking" – of the amount by which the rate exceeds the maximum rate does nothing to cure the violation.

14. As the Commission found in the August 25 Order, CEGT's performance of service during the month when the formula produced a rate in excess of the maximum rate would create a contingent claim on a shipper's future cash flow. As such, the shipper would be obligated to pay the pipeline at some point in the future amounts in excess of the maximum rate for the month in question, regardless of the form of bill rendered at the time the contingent claim is created.

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<sup>15</sup> *Northern Natural Gas Co.*, 105 FERC ¶ 61,299 at P 17.

15. 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 tariff proposal regarding index or formula-based discounts is consistent with Commission policy; however, it rejected a portion of the proposal, because it would permit the pipeline "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." Functionally, the Commission sees no difference between the proposal in *ANR* and CEGT's "banking" proposal. *ANR*'s proposal essentially would have allowed the pipeline to offset sums collected above maximum rates during certain portions of the agreement with sums that would be collected at less than the maximum rate at other times during which the discount rate agreement would be in effect. Similarly, CEGT's "banking" mechanism could result in the pipeline deferring for collection at a later time amounts in excess of the applicable maximum rate. As stated in *ANR*, "This is contrary to Commission policy."<sup>16</sup>

16. As discussed above, a signal distinction between the Commission's requirements for discounted rates and negotiated rates apropos to CEGT's "banking" proposal is that a negotiated rate agreement, unlike a discount rate agreement, may result in a rate that is outside the pipeline's maximum or minimum rates. For this reason, the August 25 Order pointed out that CEGT's banking mechanism may be permissible in the context of a negotiated rate.<sup>17</sup> However, although the "banking" feature of CEGT's proposal might have been acceptable as a negotiated rate, the basis differential pricing in section 12.5(vii) of CEGT's proposal would have run afoul of the Commission's negotiated rate policy as it existed at the time of CEGT's original filing. Since July 9, 2003 and until January 19, 2006, the Commission's policy has prohibited the use of gas basis differentials in negotiated rates.<sup>18</sup> However, the Commission has now adopted a new policy that permits the use of basis differentials in negotiated rate agreements, finding that "the use of basis differentials to price transportation services enables the pipeline to negotiate market sensitive transportation rates, consistent with the Commission's goal of encouraging competition in the transportation capacity market."<sup>19</sup> Thus, it appears to the

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<sup>16</sup> *ANR*, 108 FERC at P 14.

<sup>17</sup> August 25 Order at P 14.

<sup>18</sup> *NorAm Gas Transmission Co.*, 75 FERC ¶ 61,091 at 61,309, *order on reh'g*, 77 FERC ¶ 61,011 at 61,037 (1996).

<sup>19</sup> *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 114 FERC ¶ 61042, at P 8 (2006).

Commission that, with this policy change, CEGT could accomplish its objective of providing a “banking” mechanism and utilizing basis differential pricing in the context of a negotiated rate.

17. Because the language CEGT proposed to add to section 12.5 (vii) does not mention “banking” nor does it mention anything about deferred collection of “banked” amounts, the Commission’s August 25 Order accepted the proposed revisions. However, the Commission remains convinced that the “banking” proposal would allow CEGT to collect amounts in excess of those which it would collect at the applicable maximum tariff rate and therefore instructs CEGT that it may not implement “banking” under its discount rate provisions. The Commission again notes that, while “banking” is impermissible in the context of discounted rates, this mechanism may be permissible in the context of negotiated rates.<sup>20</sup> As proposed by CEGT, however, “banking” violates Commission policy and may not be employed within the context of a discounted rate.

The Commission orders:

(A) The Commission clarifies that it does not intend to prohibit the use of fuel rates or fuel retention percentages as factors in rate adjustment formulas in discount rate agreements, as discussed in the body of the order. CEGT may file revised tariff sheet to reinsert the parenthetical reference to “Fuel Use and LUGF percentages,” as discussed in the body of the order.

(B) Rehearing is denied with respect to CEGT’s “banking” proposal, as discussed in the body of the order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>20</sup> August 25 Order at P 14.