

126 FERC ¶ 61,119
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Maritimes & Northeast Pipeline, L.L.C.

Docket No. RP08-374-002

ORDER ON REHEARING

(Issued February 13, 2009)

1. On May 12, 2008, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) filed revised tariff sheets pursuant to section 4 of the Natural Gas Act (NGA) proposing new tariff provisions regarding gas quality and interchangeability (Tariff Filing). On June 11, 2008, the Commission issued an order¹ accepting and suspending the proposed tariff sheets, to be effective on November 11, 2008 or an earlier date to be later established by subsequent order, and establishing a technical conference. Subsequent to the technical conference, on November 10, 2008, the Commission issued an order establishing a hearing² on some of the contested issues that parties had stipulated were the only ones that needed resolution by the Commission (Stipulated Issues) and making merits findings on other Stipulated Issues. On December 10, 2008, Calpine Energy Services L.P. (Calpine) filed a request for rehearing and clarification of the Hearing Order.³ In this order we explain our reasons for denying rehearing.⁴

¹ *Maritimes & Northeast Pipeline, L.L.C.*, 123 FERC ¶ 61,256 (2008) (Suspension Order).

² *Maritimes & Northeast Pipeline, L.L.C.*, 125 FERC ¶ 61,159 (2008) (Hearing Order).

³ Calpine's electronically filed request for rehearing failed to comply with the Commission's instructions for electronic documents filed with the Commission in that the document was not generated using the print-to-PDF function. As a result, Calpine's document was not searchable. *See Filing Via the Internet*, Order No. 703, FERC Stats. & Regs. ¶ 31,259, at P 7 (2007).

⁴ Rehearing of the Commission's Hearing Order was denied by operation of law on January 9, 2009. However, the Commission issues this order to explain the basis for its denial of rehearing. Maritime's December 23, 2008 Motion to Strike and For Leave to Answer is denied as moot.

I. Background

2. In its Tariff Filing, Maritimes stated that it filed the gas quality and interchangeability revisions to make its tariff consistent with the future operations of its expanded pipeline system, which is expected to receive substantial new regasified liquefied natural gas (LNG) supplies from the Canaport LNG terminal in Saint John, New Brunswick.

3. In the Tariff Filing, Maritimes stated that its starting point for its proposed specifications was the interim guidelines from the White Paper on Natural Gas Interchangeability and Non-Combustion End Use (Interim Guidelines).⁵ Maritimes asserted that it also relied on the Commission's *Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs* (Policy Statement) issued on June 15, 2006.⁶ Maritimes stated that its proposal is based on Maritimes' historical data and the Interim Guidelines, but also reflects the input of the participants in the collaborative process, as well as significant compromise among various stakeholders in an effort to reach a consensus on the filing.

4. As noted above, on June 11, 2008, the Commission issued the Suspension Order, and on July 15, 2008, the Commission held a technical conference to address the issues raised by Maritimes' filing. On August 4, 2008, Maritimes submitted to the Commission the following list of Stipulated Issues, which resulted from the technical conference:

- 1. Wobbe Number Range:** What is the appropriate Wobbe Number upper limit?
- 2. Wobbe Number Rate of Change:** Should there be a Wobbe Number rate of change limit? If so, what should that be?
- 3. Waiver Provision:** What is the appropriate change, if any, to the current waiver language of Section 12.5 of Maritimes' General Terms and Conditions?
- 4. Carbon Dioxide:** What is the appropriate limit on carbon dioxide?
- 5. Hourly Chromatograph Postings:** What additional informational posting requirements, if any, should be added to the Maritimes' tariff?

⁵ Submitted to the Commission on February 28, 2005 in Docket No. PL04-3-000 by the NGC+ Interchangeability Work Group.

⁶ 115 FERC ¶ 61,325 (2006).

6. Sulfur: What is the appropriate limit on sulfur?

5. In the Hearing Order, the Commission set Stipulated Issue number 1 (Wobbe Number Range) and Stipulated Issue number 6 (Hourly Chromatograph Postings) for hearing and ruled on the merits of the remaining Stipulated Issues.

II. Calpine Request for Rehearing

6. In its rehearing request, Calpine makes numerous arguments that essentially boil down to one issue: whether the Commission erred by not setting the Wobbe Number rate of change issue for hearing.

7. Calpine states that it owns a 537 megawatt (MW) power plant at its Energy Center near Portland, Maine, which receives natural gas service from Maritimes. Calpine further states that there are two DLN turbines located at that facility, and alleges that past fuel variability issues caused the unintended shut down of those turbines. Calpine claims therefore that the Commission should have set its request to require Maritimes to implement a Wobbe Number rate of change specification of no more than 4 percent per minute for hearing. Under such a standard, Maritimes would be required to operate in a manner such that the Wobbe Number of delivered gas would not vary by more than 4 percent per minute.

8. Calpine makes several arguments regarding the Commission's allegedly misplaced reliance on Maritimes' assertions that it is operationally infeasible for Maritimes to implement a Wobbe Number rate of change restriction on its system. Calpine argues that the Commission erred by relying on the evidence produced by Maritimes during the technical conference comment stage of the proceeding. First, Calpine asserts that the affidavit evidence that Maritimes submitted with its initial comments on the technical conference, and which Calpine admittedly did not rebut, should have been made subject to "discovery, cross-examination or other due process procedures."⁷ According to Calpine, that evidence should have been made subject to examination in an evidentiary hearing and the decision to set the Wobbe Number range and the informational posting issues for hearing was unreasonable because the three issues are interrelated. Calpine contends that the Commission has typically set all disputed issues for hearing in gas quality proceedings and its decision to "rule on the merits of a single stipulated contested issue is violative of Calpine's due process rights."⁸

9. Calpine also claims that the Commission's reliance on Maritimes' record evidence was inconsistent with reasoned decision making because Calpine was not given adequate

⁷ Calpine Rehearing at 9.

⁸ *Id.*, at 10.

time to rebut the evidence presented by Maritimes.⁹ Calpine argues that the post technical conference briefing schedule only allowed for two weeks between initial and reply comments, and that two weeks was insufficient for it to obtain the necessary “expertise” to respond to Maritimes’ evidence. Calpine includes with its rehearing request an affidavit by Jack E. Elder (Elder affidavit) that purports to show that the facts relied on by the Commission are “misleading, neglect industry accepted approaches to measurement and control of rate of change, and entirely ignore evidence proffered regarding the adverse impact of excessive fuel variability on DLN turbines.”¹⁰ According to Calpine, the Elder affidavit contradicts the two key points of Maritimes’ evidence on which the Commission relied in the Hearing Order: “(1) that the pipeline is entirely unable to track the movement of non-conforming gas, should such gas make it into the system; and (2) that the rate of change criteria would be unenforceable in practice because the only tool available to Maritimes is to shut in supply, which would have adverse gas supply impacts on the region generally.”¹¹

10. Calpine asserts that Maritimes’ claim that it cannot track the movement of nonconforming gas once it enters the system is misleading because it ignores the possibility that Maritimes “appears to have the ability to obtain needed information on gas quality before this gas enters its pipeline system.”¹² Calpine suggests that it would be a good practice for Maritimes to obtain advance notice of gas quality issues before non-conforming gas entered its system.

11. Calpine also takes issue with Maritimes’ contention that its only available tool to control the Wobbe Number rate of change is to shut in supply. Calpine asserts that gas quality variations at one receipt point could be eased by mixing it with gas from other receipt points.¹³ Calpine argues that it should be allowed in an evidentiary hearing to examine evidence regarding the costs of blending gas on Maritimes in order to compare those costs to costs potentially to be incurred by DLN generators as a result of variations in fuel quality. According to Calpine, the Hearing Order ignores relevant evidence presented by Calpine concerning such costs and evidence purportedly supporting its claim that “changes in heat rate” have caused flameouts at one of its power plants.¹⁴ Calpine claims that the considerable costs it may face if its generating units are subject to

⁹ *Id.*, at 11.

¹⁰ *Id.*, at 9.

¹¹ *Id.*, at 12

¹² *Id.*, emphasis in the original.

¹³ *Id.*, at 13.

¹⁴ *Id.*, at 14.

unintended shutdowns as a result of excessive fuel variability are relevant facts in determining whether Maritimes' tariff is just and reasonable absent a Wobbe Number rate of change restriction.

12. Calpine further argues that the Commission's findings in *AES Ocean Express v. Florida Gas Transmission Company*¹⁵ provide support for Calpine's claim that the Wobbe rate of change issue should have been set for hearing and that the Commission erred by distinguishing *AES* in the Hearing Order on the grounds that the Wobbe Index rate of change specification in that case was for receipt not delivery points.¹⁶ Calpine claims that according to the Elder affidavit, if the Wobbe rate of change specification is met at the receipt point, then it would also be met at the delivery points. Calpine asserts that in *AES* the Commission found that a Wobbe rate of change standard was appropriate and necessary based on an evidentiary record that addressed many of the same issues Calpine raises here, and that those factors should also be considered in a hearing in this case.

13. Calpine also takes issue with the statement in the Hearing Order that the hearing is to address the two Stipulated Issues set for hearing "in the context of the Commission's Policy Statement."¹⁷ Calpine requests clarification that the referenced statement only means that the topics addressed in the Policy Statement are relevant to the issues at hearing but that the governing law for any decisions must be the NGA and all findings must be supported by facts and law as if the Policy Statement did not exist.

14. Finally, Calpine argues that the Commission cannot apply Principles Four and Five of the Policy Statement to the issues set for hearing because to do so would be contrary to the principles of reasoned decision-making and therefore unlawful.¹⁸ Calpine contends that those principles, which state that the parties should use the Interim Guidelines as a common scientific reference point for resolving technical GQI issues (Principle 4), and that to the extent that parties cannot resolve disputes, the disputes can be brought before the Commission to be decided on a case-by-case basis, and in resolving such, the Commission will give great weight to the Interim Guidelines (Principle 5) should be completely disregarded in resolving the issues set for hearing in this proceeding. According to Calpine, the purpose of the hearing is to determine "whether Maritimes' tariff proposal, if implemented, would have unjust and unreasonable impacts on end users operating DLN turbines which are connected to this pipeline."¹⁹ Calpine

¹⁵ Opinion No. 495, 119 FERC ¶ 61,075 (2007) (*AES*).

¹⁶ Calpine Rehearing at 16-18.

¹⁷ *Id.*, at 19.

¹⁸ *Id.*, at 20-24.

¹⁹ *Id.*, at 21.

argues that it has shown that the level of fuel variability that could result from the tariff proposal is likely to have an adverse impact on such turbines, and that the facts and showings it has made are unique to Maritimes' system. Calpine argues that the Interim Guidelines have been recognized as not mitigating interchangeability impacts on DLN turbine operators, and that in cases where there has been a demonstrated showing that the pipeline proposal raises legitimate and specific concerns regarding such impacts, there should be no presupposition by the Commission that the Interim Guidelines should serve as a common scientific reference point. Calpine asserts that its direct evidence on the impact of fuel variability on the operations of end user equipment is more relevant and probative in this case.

III. Discussion

15. In this order we explain our reasons for denial of rehearing.

16. Maritimes' tariff does not contain a Wobbe Number rate of change nor did Maritimes propose such a standard in its Tariff Filing. Calpine therefore, as the proponent of a Wobbe Number rate of change, has the responsibility under section 5 of the NGA to show that Maritimes' currently effective tariff is no longer just and reasonable without a Wobbe Number rate of change and that Calpine's proposal to require such a standard is just and reasonable.²⁰ Calpine failed to make such a showing and the Hearing Order properly refused to set the issue for hearing.

17. Calpine's arguments that the Commission was not entitled to rely on the record evidence presented by Maritimes and that it lacked opportunity for rebuttal are incorrect and misplaced. First, as the advocate of a change to Maritimes' tariff, Calpine is responsible for presenting the initial evidence. The fact that Maritimes filed material to rebut Calpine's position is expected. Next, the Commission in the Suspension Order invited additional material in this record, and put both Maritimes and parties proposing alternatives under similar data requirements and procedural time lines:

Maritimes should be prepared to address all concerns raised by the parties in their comments and to provide technical, engineering, and operational support for its proposed gas quality and interchangeability specifications, as appropriate. Consistent with the Commission's Policy Statement, Maritimes should be prepared to explain how its proposal differs from the Interim Guidelines. In addition, *any party proposing alternatives to Maritimes' proposal should also be prepared to support its position with adequate technical, engineering, and operational information.*²¹

²⁰ See e.g., *Western Resources v. FERC*, 9 F.3d 1568 (D.C. Cir. 1993).

²¹ Suspension Order at P 25, footnote omitted, emphasis added.

Calpine was on notice of the Commission's expectations from the technical conference and the responsibilities for parties proposing alternatives to Maritimes' proposals. Subsequent to and consistent with the objectives of the technical conference, Maritimes' filed with the Commission evidence in the form of sworn affidavits.²² Calpine had the same opportunity and time as Maritimes to discuss its Wobbe Number rate of change proposal, support its position and supplement the record with the required technical, engineering and operational information. The Suspension Order did not presume that a hearing or other proceeding would be necessary, nor did it promise Calpine additional processes to make its affirmative case.

18. Calpine is also incorrect that the Commission's decision to limit the issues set for hearing to those for which the Commission determined there was a material issue of fact somehow violated Calpine's due process rights. Though the Commission has, in some gas quality proceedings, set all issues for hearing, that has not been always the case.²³ Moreover, those cases where we have instituted hearings do not impose a duty to do so always. The Commission strives to promote the efficient use of Commission resources. The record in this proceeding indicates that many parties worked diligently in a collaborative effort to identify those issues that remained in dispute. The Commission made merits determinations on those issues, which included Calpine's Wobbe Number rate of change, where there were no material issues of fact.

19. Calpine is mistaken in its assertion that the Commission ruled on the "merits of a single stipulated issue...." The Hearing Order ruled on the merits of four out of six stipulated issues and set only two for hearing. As we have stated before, the Commission encourages parties to work among themselves toward a consensus on disputed issues, which the parties to this proceeding did to a great extent. But an agreement that there are issues in dispute is not the same as an agreement that there is a lack of record evidence to resolve the issues. The Commission examined the record and found it sufficient to make merit rulings on four issues. There was no reason to subject those four issues to an evidentiary hearing.

20. Calpine's attempt to present evidence with its rehearing request is of no avail. The Commission did not set the Wobbe Number rate of change issue for hearing and thus it is

²² See *Maritimes Initial Comments* and *Appendix C* thereto (*Affidavit of Mark E. Macpherson*).

²³ See *Southern Natural Gas Company*, 124 FERC ¶ 61,188, at P 5-24 (2008); *Norstar Operating LLC v. Columbia Gas Transmission Corporation, et al.*, 125 FERC ¶ 61,289, at P 2-6 (2008) and *Indicated Shippers v. Columbia Gulf Transmission Company*, 123 FERC ¶ 61,150, at P 6-20 (2008), discussing the procedural history of those cases.

too late for Calpine to present additional evidence on that issue.²⁴ Additionally, the Commission finds nothing in the Elder affidavit to suggest that there is a factual issue regarding Maritimes' ability to implement a Wobbe Number rate of change provision that warrants an evidentiary hearing.

21. Calpine challenges two key points of Maritimes' evidence that it claims the Commission relied on in its ruling. First, Calpine asserts that Maritimes' statement that it is unable to track the movement of non-conforming gas, should such gas make it into the system, is misleading because it glosses over the fact that Maritimes has the ability to obtain needed information on gas quality before gas enters the pipeline. Second, Calpine argues that Maritimes' claim that the Wobbe Number rate of change restriction is unenforceable in practice ignores the fact that gas quality variations can be eased by blending of different gas sources. These arguments were fully addressed in the Hearing Order.²⁵

22. Calpine does not challenge Maritimes' statement that once gas enters its system it cannot track the movement of non-conforming gas. Instead, Calpine suggests that Maritimes obtain information from others prior to the gas entering its system. Calpine does not explain, however, or even suggest, how that would solve the problem. The only logical conclusion based on Calpine's comments is that Calpine is suggesting that Maritimes' impose a receipt point restriction on Wobbe Number rate of change in the absence of such information. Calpine also complains, however, that Maritimes' suggestion that its only tool to enforce such a rate of change is to shut in supply. These arguments demonstrate Calpine's lack of understanding of the operational abilities of Maritimes' system.

23. As noted in the Hearing Order, Calpine's solution does not solve the problem. Actual knowledge of a Wobbe Number change does not alter Maritimes' operational limitations to respond to that knowledge. Maritimes' remedy is limited to shutting in the receipt point at the location where the non-conforming gas would enter the system. Maritimes has no way to separate conforming gas from non-conforming gas upstream of the receipt points on its system. Moreover, Maritimes has no control over the composition of the gas it receives because the gas it receives at its receipt points is a function of what its shippers deliver.²⁶

²⁴ Calpine may avail itself of its NGA section 5 rights to file a complaint. The requirements for such a filing are located at 18 C.F.R. § 385.206 of the Commission's regulations.

²⁵ Hearing Order at P 20-24.

²⁶ Hearing Order at P 23.

24. Calpine characterizes the receipt point remedy of having to shut off supply as “draconian.”²⁷ As we stated in the Hearing Order, the Commission agrees. If Maritimes were to do what Calpine suggests and impose a Wobbe Number rate of change restriction at its receipt points, then the only way for Maritimes to enforce that restriction would be to cut off the supply of gas at the point. As noted in the Hearing Order, such action would have serious detrimental consequences for the natural gas supply in the northeast United States.²⁸

25. Calpine’s suggests that instead of shutting in supply (which is Calpine’s apparent answer to Maritimes’ first point) Maritimes should blend the gas from its different receipt points to bring it into conformance with the Wobbe Number rate of change proposed by Calpine. Blending is an option to manage gas composition and Wobbe Number rate of change but it requires multiple sources of gas to blend and a variety of pipeline assets to perform the blending. Maritimes demonstrated there are currently only two receipt points on Maritimes’ system, soon to be three. One of those receipt points is an interconnection with Portland Natural Gas Transmission System (Portland), a company independent from Maritimes with its own customer mix and its own sources of gas. Therefore, while Portland’s gas is blended with Maritimes, there is no ability to control the mix of gas to achieve a specific Wobbe Number or Wobbe Number rate of change. Gas flow is only from north to south on Maritimes’ system and there are no null points. Further, there are no storage fields or gas processing facilities attached to the system that could be used to blend the composition of the gas stream. Accordingly, blending is simply not operationally feasible on Maritimes’ system.²⁹

26. Calpine also argues that the Hearing Order ignores the evidence that Calpine presented concerning the potential harm to DLN turbines as a result of excessive fuel variability. To the contrary, the Commission did address those concerns in the Hearing Order but concluded that Calpine’s proposed Wobbe Index rate of change restriction simply would not solve the problem.³⁰

27. Calpine’s reliance on *AES* is also misplaced. Calpine argues that the Commission was wrong to distinguish *AES* on the grounds that the provision in that case related to receipt points while the issue in this proceeding was about delivery point specifications. In *AES*, as the Hearing Order points out,³¹ it was the pipeline that proposed the provision

²⁷ Calpine Rehearing at 13.

²⁸ Hearing Order at P 23.

²⁹ Hearing Order at P 22-24.

³⁰ Hearing Order at P 26.

³¹ Hearing Order at P 25.

adopted in that case, and, as such, the pipeline only had to show that its proposal was just and reasonable. Here, Calpine must show that the pipeline's tariff is no longer just and reasonable, and that its solution is just and reasonable.

28. Calpine asserts that the Commission's directive that the hearing should be conducted in the context of the Policy Statement needs clarification because the Policy Statement does not have the force and effect of law and should not bind the ALJ with regard to fact-finding and decision-making. The Commission has stated previously that policy statements are not binding and has never made any statement suggesting that the Policy Statement somehow trumps the NGA in a gas quality proceeding. The Commission's statement that the hearing should be conducted in the context of the Policy Statement means just that, i.e., that the ALJ may consider the Commission's policy as outlined in the Policy Statement and the Interim Guidelines as guidelines for addressing the technical issues that may arise during the hearing. It does not mean that the Policy Statement governs on such issues. Parties are free to introduce evidence showing certain aspects of the policy should not apply and the ALJ is free to consider such evidence in ruling on technical issues.

29. The same reasoning applies with regard to Calpine's assertions that the ALJ should completely disregard Principles Four and Five of the Policy Statement. The fact that the Policy Statement advocates using the Interim Guidelines as a scientific reference point does not preclude any party from submitting evidence to demonstrate that certain specifications recommended under the Interim Guidelines are not the correct ones for a particular situation or that the Interim Guidelines should not apply to certain issues. Contrary to Calpine's assertions, the hearing is not solely to determine whether Maritimes' tariff proposal would have adverse impacts on DLN turbines connected to the system. The issues set for hearing involve the appropriate Wobbe Number range and the appropriate amount and procedures for disseminating gas quality information to all Maritimes' customers. Calpine is thus free to present evidence at the hearing that certain specifications of the Interim Guidelines should not apply with regard to setting a Wobbe Number rate of change. It is not just and reasonable, however, to preclude the ALJ from considering all aspects of the Policy Statement during the course of the hearing.

30. In that regard, and as noted, the Commission has set for hearing the appropriate Wobbe Number range on Maritimes' system. Calpine argues that decision was erroneous because the Wobbe Number range is inherently linked to its proposal for Wobbe Number rate of change. As discussed above, a Wobbe Number rate of change is not operationally feasible for Maritimes as either a receipt point or a delivery point standard. Nevertheless, Calpine is entitled to submit evidence at the hearing regarding its claims that lack of a Wobbe Number rate of change limit on Maritimes' system is a relevant issue to consider in adopting an appropriate Wobbe Number range.

The Commission orders:

Calpine's request for rehearing of the Hearing Order in this proceeding has been denied for the reasons explained above.

By the Commission. Commissioner Kelliher not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.