

154 FERC ¶ 61,071
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Tallgrass Interstate Gas Transmission, LLC

Docket No. RP16-137-003

ORDER ON CLARIFICATION

(Issued February 1, 2016)

1. On December 21, 2015, the American Forest and Paper Association (AFPA) filed a request for clarification regarding the Commission's disposition of AFPA's November 24, 2015, motion to intervene out-of-time in the above-captioned proceeding. The Commission clarifies that we are denying AFPA's motion to intervene, as discussed below.

2. On November 30, 2015, the Commission accepted and suspended Tallgrass Interstate Gas Transmission, LLC's (Tallgrass) proposed tariff records, subject to refund and conditions, and the outcome of a hearing established in this proceeding.¹ The November 30 Order stated "any *unopposed* motions to intervene out-of-time filed before the issuance date of this order are granted."² However, the November 30 Order did not address AFPA's November 24, 2015 motion to intervene out-of-time, which was opposed by Tallgrass.³

3. In its December 21, 2015 motion, AFPA seeks clarification regarding its intervener status. In its pleadings, AFPA states that its members, which are end-users of natural gas, have an interest in this proceeding because the Commission's disposition of this proceeding may have precedential effect involving the future application of the

¹ *Tallgrass Interstate Gas Transmission, LLC*, 153 FERC ¶ 61,258 (2015). Specifically, the Commission set for hearing those tariff records filed pursuant to section 4 of the Natural Gas Act (NGA) to implement a general rate case. Separately, the Commission also accepted tariff revisions related to *force majeure* events and reservation charge crediting to be effective December 1, 2015, subject to conditions. *Id.* P 1.

² *Id.* P 10 (emphasis added).

³ On November 24, 2015, Tallgrass had filed an answer opposing AFPA's intervention.

Modernization Cost Recovery Policy Statement.⁴ On January 5, 2015, Tallgrass filed an answer reiterating its opposition to AFPA's intervention, asserting that AFPA has shown no direct interest in the proceeding.

4. The Commission denies AFPA's requested intervention. A trade association may intervene if it demonstrates that its members have "an interest which may be directly affected by the outcome of the proceeding...."⁵ AFPA's intervention request does not satisfy this standard. AFPA's broad statement that its members are "end-users" of natural gas does not demonstrate that its members have a direct interest in this litigation specific to Tallgrass' system. AFPA has not represented that any of its members are customers using Tallgrass' system or otherwise demonstrated that its members are affected by the rates, including any surcharges, on Tallgrass' system. Furthermore, a movant's mere concern regarding the possible precedent that could result from the disposition of a proceeding does not establish a direct interest that supports intervenor status.⁶ Accordingly, AFPA's motion to intervene is denied.⁷

⁴ *Cost Recovery Mechanisms for Modernization of Natural Gas Facilities*, 151 FERC ¶ 61,047 (2015) (Modernization Cost Recovery Policy Statement). The Modernization Cost Recovery Policy Statement establishes a process to allow interstate natural gas pipelines to seek to recover via a surcharge mechanism certain one-time capital expenditures made to modernize system infrastructure. In its filing, Tallgrass has proposed such a surcharge.

⁵ 18 C.F.R. 385.214 (2015); *Northern Natural Gas Co.*, 141 FERC ¶ 61,221, at P 59 (2012) (same); *Stingray Pipeline Co., L.L.C.*, 135 FERC ¶ 61,099, at P 20 (2011) (accepting intervention when trade association demonstrated its members had an interest in the proceeding); *American Electric Power Services Corp.*, 120 FERC ¶ 61,052, at PP 10-11 (2007) (*American Electric Power*) (same).

⁶ *E.g. American Electric Power*, 120 FERC ¶ 61,052 at PP 5, 11; *Duke Energy Shared Services, Inc.*, 119 FERC ¶ 61,146, at P 9 (2007) (citing *Northeast Utilities Service Co.*, 53 FERC ¶ 61,135, at 61,456 (1990); *New England Power Co.*, 37 FERC ¶ 61,078, at 61,196-97 (1986)). AFPA has cited to no Commission order which permitted an intervention solely on the basis that the movant expressed concern regarding the potential precedent established by a proceeding. Moreover, although AFPA attempts to distinguish *Northeast Utilities* and *American Electric Power*, these holdings are applicable to the present case. In those proceedings, as is the case here, the Commission rejected motions to intervene by entities which, despite lacking a direct interest related to the filing utility, sought to intervene due to concerns about the possible precedential effects upon other proceedings.

⁷ For the purpose of ensuring future administrative efficiency, the Commission notes that the Presiding Administrative Law Judge has delegated authority to address all interventions not addressed by the Commission's prior order establishing hearing procedures. 18 C.F.R. § 385.504 (b)(12) (2015).

The Commission orders:

For the reasons discussed above, AFPA's motion to intervene out-of-time is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.