

125 FERC ¶ 61,137  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

AES Ocean Express LLC

v.

Docket No. RP04-249-007

Florida Gas Transmission Company

OPINION NO. 495-B  
ORDER ON REHEARING

( Issued November 3, 2008)

1. On December 20, 2007, the Commission issued Opinion No. 495-A.<sup>1</sup> A timely request for rehearing of that order was filed by the Indicated Shippers.<sup>2</sup> For the reasons discussed below, the Commission denies the Indicated Shippers' request for rehearing.

**I. Background**

2. A detailed discussion of the background of these proceedings is contained in Opinion No. 495<sup>3</sup> and Opinion No. 495-A<sup>4</sup> and will not be repeated here. Briefly, this proceeding involves the issue of what gas interchangeability standards should be included

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<sup>1</sup> *AES Ocean Express LLC v. Florida Gas Transmission Company, Southern Natural Gas Company and Florida Gas Transmission Company*, 121 FERC ¶ 61,267 (2007) (Opinion No. 495-A).

<sup>2</sup> The Indicated Shippers are Chevron U.S.A. Inc. and ExxonMobil Gas & Power Marketing Company, a Division of Exxon Mobil Corporation.

<sup>3</sup> *AES Ocean Express LLC v. Florida Gas Transmission Company, Southern Natural Gas Company and Florida Gas Transmission Company*, 119 FERC ¶ 61,075, at P 2-15 (2007) (Opinion No. 495).

<sup>4</sup> Opinion No. 495-A at P 2.

in the tariff of Florida Gas Transmission Company, LLC (Florida Gas or FGT)<sup>5</sup> to accommodate the introduction of re-gasified natural gas (LNG) into the Market Area of Florida Gas's system. Gas interchangeability refers to the extent to which a substitute gas can safely and efficiently replace gas normally used by an end-use customer in a combustion application.<sup>6</sup>

3. The Commission's 2006 Policy Statement on gas quality and interchangeability encourages pipelines that wish to modify or add tariff provisions concerning interchangeability specifications to use the NGC+ Interim Guidelines proposed by the NGC+ Interchangeability Task Group in the NGC+ Interchangeability Report.<sup>7</sup> That report recommended five guidelines for resolving interchangeability issues. These Interim Guidelines provide for: (1) use of the local average historical Wobbe Index average with an allowable range of variation of plus or minus 4 percent; (2) subject to a maximum Wobbe Index level of 1,400; (3) a maximum heating value limit of 1,110 Btu/scf; (4) a limit on butanes and heavier hydrocarbons (butanes+ or C4+) of 1.5 mole percent; and (5) an upper limit on the amount of total inert gases (principally nitrogen and carbon dioxide) of up to 4 mole percent.<sup>8</sup> The Interchangeability Report also indicates that additional constituent limits may be necessary (such as butanes-plus, propane, etc.) to address manufacturer concerns until research and data are available to better understand the impact on operability of equipment.<sup>9</sup>

4. In this proceeding, Florida Gas proposed to include in its tariff not only Wobbe Index and heating value limits, but also a number of limits on specific gas constituents.<sup>10</sup> Among these proposals, was a proposal that Florida Gas's existing total sulfur limit of 10 grains per 100 scf be reduced to 2 grains per 100 scf solely for LNG imported into its

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<sup>5</sup> Florida Gas Transmission Company changed its name to Florida Gas Transmission Company, LLC, effective September 1, 2006. Unpublished Director Letter Order dated August 30, 2006, Docket No. RP06-463-000.

<sup>6</sup> *Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs (Policy Statement)*, 115 FERC ¶ 62,325, at P 7 (2006).

<sup>7</sup> *Id.* P 37.

<sup>8</sup> Ex. FGT-6 at 27, NGC+ Report on Natural Gas Interchangeability and Non-Combustion End Use (Interchangeability Report).

<sup>9</sup> *Id.* at 23, recommendation no. 10.

<sup>10</sup> See Opinion No. 495 at P 171 for a summary of these proposals.

Market Area. Florida Gas proposed that the existing 10 grain per 100 scf sulfur limit continue to apply to all domestic gas and to LNG imported into Florida Gas's Western Division.<sup>11</sup>

5. In the Initial Decision, the ALJ approved Florida Gas's proposed change in its sulfur limit, except that he required that the 2 grains per 100 scf limit apply to all LNG entering Florida Gas's system, including in the Western Division, as well as the Market Area.<sup>12</sup> The ALJ stated that the 2 grain per 100 scf limit was derived from the manufacturers' specifications for the General Electric (GE) and Siemens-Westinghouse DLN gas turbines concerning the fuel required to comply with environmental emissions limits.<sup>13</sup> The ALJ stated that no party specifically opposed the 2 grain limit, and accordingly he found the limit just and reasonable.<sup>14</sup> In addition to approving the 2 grain limit, the ALJ rejected the interchangeability standards proposed by the LNG Suppliers Coalition,<sup>15</sup> which standards were based entirely on the NGC+ Interim Guidelines.<sup>16</sup>

6. BG LNG Services, LLC (BG LNG) excepted to the ALJ's holdings on the grounds that there was no evidence to justify applying more restrictive gas quality specifications to LNG, than to domestic gas delivered to the same area. Using sulfur as an example, BG LNG stated that there was no operational explanation for why LNG should be subject to a 2 grains sulfur limit, while domestic gas was subject to a 10 grains sulfur limit. An end user's equipment can either handle the higher sulfur level or not, regardless of the source of the gas.

7. The LNG Suppliers Coalition, to which the Indicated Shippers belong, excepted generally to the ALJ's approval of individual hydrocarbon constituent and inert standards on the grounds they were unsupported in the record and were opposed by the LNG Suppliers Coalition. The LNG Suppliers Coalition argued that the Commission should

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<sup>11</sup> The Western Division includes all of Florida Gas's system west of the Alabama-Florida border and the Market Area includes all of Florida Gas's system in Florida.

<sup>12</sup> Initial Decision at P 192 and P 200.

<sup>13</sup> The ALJ cited Florida Gas's Exhibits FGT-4 at 15-17 and FGT-5 at 12.

<sup>14</sup> Initial Decision at P 192.

<sup>15</sup> The LNG Suppliers Coalition are BP Energy Company, ConocoPhillips Company, Chevron U.S.A., Inc., ExxonMobil Gas & Power Marketing Company, and Shell NA LNG, LLC.

<sup>16</sup> Initial Decision at P 226.

instead adopt the 1.5 percent mole limit on butanes and heavier hydrocarbons and the 4.0 percent limit on inerts, which, along with the Wobbe Index and HHV limits, would address LNG interchangeability issues without restricting access to worldwide LNG supplies.

8. In Opinion No. 495, the Commission reversed the ALJ on the 2 grains sulfur limit. The Commission found that Florida Gas's proposed total sulfur limit of 2 grains per 100 scf was unsupported by the evidence. The Commission accordingly rejected Florida Gas's proposed change in its total sulfur limit and held that the existing total sulfur limit of 10 grains per 100 scf would remain applicable to all gas, domestic and LNG, delivered to both the Western Division and the Market Area of Florida Gas's system.<sup>17</sup>

9. The Florida Generators<sup>18</sup> and Florida Power Corporation d/b/a/ Progress Energy Florida, Inc. (collectively, Florida Generators) jointly requested rehearing of the rejection of the 2 grain sulfur limit. They argued that the Commission erred in finding that there was no evidentiary support for that standard, and they cited a number of exhibits which they claim support the need for the 2 grain sulfur limit so that their generators can comply with environmental emissions limits and equipment specifications. They also contended that the only objection to the 2 grain sulfur standard was BG LNG's objection to having that standard apply solely to LNG, and that no party disputed the propriety of the 2 grain limit based on its potential impacts on gas supply or based on any technical, engineering, or other grounds. Accordingly, they asserted that the concerns of BG LNG could be addressed by requiring that the 2 grain sulfur limit apply to all gas entering the Market Area, both LNG and domestic gas.

10. In Opinion No. 495-A, upon further consideration, the Commission accepted Florida Gas's proposed total sulfur limit of 2 grains per 100 scf for gas entering the Market Area and stated that the 2 grain limit would apply to all gas entering the Market Area, both LNG and domestic gas, rather than just LNG as Florida Gas had originally proposed. The Commission stated that no party objected to the 2 grain sulfur limit per se. The Commission stated that, in these circumstances, approving the 2 grain sulfur limit was consistent with the Commission's policy of encouraging pipelines and customers to work together to develop agreed upon gas quality specifications based upon sound science, and to resort to Commission adjudication when consensual resolution cannot be obtained.<sup>19</sup>

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<sup>17</sup> Opinion No. 495 at P 200.

<sup>18</sup> The Florida Generators are Florida Power & Light Co. (FPL), Florida Gas Utility, and Seminole Electric Cooperative, Inc. (Seminole).

<sup>19</sup> Opinion No. 495-A at P 76.

11. On rehearing of Opinion No. 495-A, the Indicated Shippers maintain that the Commission erred in approving Florida Gas's proposed total sulfur limit of 2 grains per 100 scf for gas entering the Market Area on the grounds that Florida Gas's total sulfur limit was unopposed. The Indicated Shippers state that, as part of the LNG Suppliers Coalition, they advanced arguments throughout the proceedings opposing Florida Gas's proposed sulfur limit of 2 grains per 100 scf. Specifically, the Indicated Shippers state that they argued throughout the proceedings that the Commission should adopt only those interchangeability standards set forth in the NGC+ Interim Guidelines, which include a Wobbe Index range of 1,302-1,400 (+/-4 percent Wobbe Index of the historical average, subject to a maximum of 1,400), a higher heating value not to exceed 1,110 Btu/scf, and compositional maximums of 1.5 percent for butanes+ and 4 percent for total inerts.<sup>20</sup> The Indicated Shippers argue that, as a sulfur limit was not included in such standards, it was an additional constituent, which they opposed on multiple occasions.

12. The Indicated Shippers also maintain that the Commission erred in approving Florida Gas's proposed sulfur limit of 2 grains per 100 scf because such limit was unsupported in the record. The Indicated Shippers cite Opinion No. 495, wherein the Commission rejected Florida Gas's proposed 2 grain standard as unsupported and stated that it was unable to find anything in the record that demonstrated why the 2 grain standard was required for Florida Gas's operations or was of concern to its end users.<sup>21</sup>

## II. Discussion

13. The Commission denies the Indicated Shippers' request for rehearing on the grounds that they waived their objection to Florida Gas's proposed 2 grain sulfur limitation when they failed to object to the ALJ's approval of the 2 grain limit in their Brief on Exceptions following the Initial Decision. Under Rule 711(d)(2)-(3) of the Commission's Rules of Practice and Procedure,<sup>22</sup> a participant who has not objected to a part of an initial decision in a brief on exceptions waives objections to that part of the initial decision, and may not raise such objections before the Commission on rehearing.<sup>23</sup>

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<sup>20</sup> Indicated Shippers Request for Rehearing at 4.

<sup>21</sup> *Id.* at 5-6, *citing* Opinion No. 495 at P 200.

<sup>22</sup> 18 C.F.R. § 385.711(d)(2) and (3) (2006).

<sup>23</sup> *See, e.g., PJM Interconnection, L.L.C.*, 122 FERC ¶ 61,082, at P 69 & nn. 88-89 (2008); *Consolidated Edison Co. of New York, Inc. v. Public Service Electric and Gas Co.*, 119 FERC ¶ 61,071, at P 38 & n.87 (2007).

In the rulemaking proceeding in which Rule 711(d) was promulgated, the Commission explained that:

[T]his waiver provision is useful in avoiding delay by preventing parties from holding back positions and arguments until the rehearing stage. The Commission is better served by being apprised early of the positions of all participants. . . . The rule is not "unfair", as some commenters allege. On the contrary, it is unfair to other participants and wasteful of the Commission's time and resources for anyone to keep the Commission uninformed of facts and arguments which should otherwise have been presented to the Commission at the hearing and exceptions stages.<sup>24</sup>

14. The Indicated Shippers never mentioned sulfur in any context in their Brief on Exceptions to the ALJ's decision, or in their earlier Initial and Reply Post-Hearing briefs to the ALJ. Rather, in the Brief on Exceptions, the LNG Suppliers Coalition excepted to the ALJ's approval of Florida Gas's proposed hydrocarbon and inert gas constituents, consistent with their opposition to that proposal in their Reply Post-Hearing brief. While sulfur is a constituent in the gas stream, it is neither a hydrocarbon nor an inert gas. The LNG Suppliers Coalition's Brief on Exceptions stated, in relevant part:

[T]he Presiding ALJ inaccurately suggested that "for the most part, the limits FGT proposed for the constituents of LNG are not objected to on an individual basis." The LNG Suppliers Coalition specifically opposed not just FGT's proposed propane limit, but each of FGT's proposed hydrocarbon constituent and inert standards. The LNG Suppliers Coalition opposed the imposition of these additional standards on the grounds that: (a) they were unnecessary because the Interchangeability Box provided full and complete interchangeability standards, and (b) the individual limits would unnecessarily restrict LNG importation.<sup>25</sup>

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<sup>24</sup> See *Southern Company Services, Inc.*, 87 FERC ¶ 61,097, at 61,415-61,416 (1999), citing *Revision of Rules of Practice and Procedure to Expedite Trial-Type Hearings*, 47 FR 19014, at 19020 (1982).

<sup>25</sup> LNG Suppliers Coalition Brief on Exceptions at 17-18, footnotes omitted. The interchangeability standards proposed by the Indicated Shippers, discussed *supra* at P 11, are based upon the "Interchangeability Box." The Interchangeability Box is explained in Opinion No. 495 at P 145 as follows:

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In the Reply Post-Hearing Brief, the LNG Suppliers Coalition listed each of the Florida Gas hydrocarbon constituent and inert standards that they opposed. They listed methane (C<sub>1</sub>), ethane (C<sub>2</sub>), propane (C<sub>3</sub>), butane plus (C<sub>4+</sub>), pentane plus (C<sub>5+</sub>) and inert (CO<sub>2</sub>+ N<sub>2</sub>). They did not list Florida Gas's proposed 2 grain sulfur limit.<sup>26</sup>

15. The Indicated Shippers' allegation that the placement of the sulfur discussion under "Other Constituents" in Opinion No. 495 meant that the Commission understood sulfur to be one of the constituents to which the Indicated Shippers objected, is also unavailing. To the contrary, at the beginning of its discussion on "Constituent Limitations," the Commission explained that though the section focused on additional limitations to constrain the acceptable solutions in the Wobbe Index Interchangeability Box, "sulfurs are not factors in the Wobbe Index or HHV calculations. . . . The sulfur components address separate operational issues not relevant to the Wobbe Index, HHV, and gas stream composition discussion."<sup>27</sup>

16. The Indicated Shippers' argument that the ALJ should have adopted only the interchangeability standards set forth in the NGC+ Interim Guidelines also does not amount to an exception to the ALJ's approval of the 2 grain sulfur limit in the Initial Decision, particularly when they took exception with Florida Gas's proposed hydrocarbon and inert gas limitations which, they argued, were not included in the interim guidelines.<sup>28</sup> The Indicated Shippers failure to articulate their sulfur exception is

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If the mathematical exercise is reversed to calculate the constituents necessary to achieve a target Wobbe Index, the solution set will be infinite. This is because each one of the hydrocarbon constituents (in this proceeding typically C<sub>1</sub> through C<sub>5+</sub>, but can include through C<sub>9</sub> or higher if present and known) adds a different heat contribution to the gas stream. Inerts, while not adding to the heat content, affect the specific gravity of the gas stream, and thus the Wobbe Index. Further, the number of possible acceptable gas constituent solutions is magnified by the fact that a range of acceptable Wobbe Index values is proposed. The resulting set of gas composition solutions, at least in this proceeding, is referred to as the "Interchangeability Box."

<sup>26</sup> LNG Suppliers Coalition Reply Post-Hearing Brief at 23.

<sup>27</sup> Opinion No. 495 at P 169 & n.255.

<sup>28</sup> See, e.g., *Constellation Energy Commodities Group, Inc. v. FERC*, 457 F.3d 14, at 20 (2006) ("Parties are required to present their arguments to the Commission in such a way that the Commission knows 'specifically ... the ground on which rehearing [i]s

(continued...)

evidenced by the Commission's addressing of the LNG Suppliers Coalition's objections to the methane number, propane limit and other hydrocarbon constituents, but not the unstated sulfur objection.<sup>29</sup> Further, in the Initial Decision, the ALJ rejected the Indicated Shippers' proposition that Florida Gas's interchangeability standards should be based solely on the NGC+ Interim Guidelines. The Indicated Shippers should have been on notice that, to the extent the Commission did the same, each of Florida Gas's proposed constituent limitations would be at issue.

17. It was not the Commission's responsibility to infer the Indicated Shippers' exception to the ALJ's decision to approve the 2 grain sulfur limitation. It was, instead, the Indicated Shippers' obligation to make its exception obvious to the Commission. When they failed to do so, the Indicated Shippers waived their right to object to the ALJ's approval of the 2 grain sulfur standard on rehearing.<sup>30</sup> Opinion No. 495-A thus accurately found that no party objected to the 2 grain sulfur limit per se.<sup>31</sup> For these reasons, the Indicated Shippers' request for rehearing is denied, and the Commission reaffirms its approval of the 2 grain sulfur limit for all gas entering the Market Area, both domestic and LNG.

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being sought.” (alteration in original) (*citing Intermountain Municipal Gas Agency v. FERC*, 326 F.3d 1281, at 1285 (D.C. Cir. 2003))).

<sup>29</sup> See, e.g., *Intermountain Municipal Gas Agency v. FERC*, 326 F.3d 1281, at 1285 (D.C. Cir. 2003) (“[I]ntermountain’s failure to specifically urge its [] argument in the rehearing petition is doubtless the reason FERC did not address the issue in its rehearing denial.”).

<sup>30</sup> Rule 711(d)(3) of the Commission's Rules of Practice and Procedure permits waiver of Rule 711(d)(2) for good cause shown. However, the Indicated Shippers do not request such a waiver, and, in any event, the Commission finds there is no good cause to grant such a waiver in light of the many opportunities afforded the Indicated Shippers to clearly state and support their positions.

<sup>31</sup> In this regard, the Commission notes that BG LNG, the only party who raised any concern about the 2 grain proposal in its brief on exception, did not seek rehearing of Opinion No. 495-A's resolution of the issue.

The Commission orders:

The request for rehearing is denied.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.