

142 FERC ¶ 61,164  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony Clark.

Algonquin Gas Transmission, LLC	Docket Nos.	RP13-502-000
Big Sandy Pipeline, LLC		RP13-503-000
Bobcat Gas Storage		RP13-504-000
East Tennessee Natural Gas, LLC		RP13-505-000
Egan Hub Storage, LLC		RP13-506-000
Gulfstream Natural Gas System, L.L.C.		RP13-507-000
Maritimes & Northeast Pipeline, L.L.C.		RP13-508-000
Ozark Gas Transmission, L.L.C.		RP13-510-000
Saltville Gas Storage Company, L.L.C.		RP13-512-000
Steckman Ridge, LP		RP13-513-000
Texas Eastern Transmission, LP		RP13-514-000
Southeast Supply Header, LLC		RP13-515-000

ORDER ON SPECTRA PIPELINES' TARIFF AMENDMENTS

(Issued March 1, 2013)

1. The above captioned natural gas pipelines (Spectra Pipelines) submitted proposed, revised tariff filings incorporating copyright language in their respective FERC Gas Tariffs required by the North American Energy Standards Board (NAESB). The Spectra Pipelines state that Commission approval of the proposed tariff revisions will allow the insertion of language in the Spectra Pipelines' tariff that: (1) acknowledges NAESB's copyright of the NAESB Standards, and (2) includes a waiver from NAESB to the Spectra Pipelines allowing the pipelines to reproduce these standards. As discussed below, the tariff records referenced in the Appendix<sup>1</sup> are accepted to become effective March 4, 2013, as requested.

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<sup>1</sup> The Appendix identifies the specific tariff records filed by each of the Spectra Pipelines.

## **I. Background**

2. On July 19, 2012, the Commission issued Order No. 587-V, which amended the Commission's regulations to incorporate by reference Version 2.0 of certain business practices standards adopted by the Wholesale Gas Quadrant (WGQ) of NAESB.<sup>2</sup> Order No. 587-V also required pipelines, including the Spectra Pipelines, to incorporate these standards into their respective tariffs. As required by Order No. 587-V, the Spectra Pipelines submitted filings to comply with the requirements of Order No. 587-V. These compliance filings were approved and/or accepted by the Commission on various dates during the months of October – November 2012.

3. Following the Spectra Pipelines' compliance filings, an issue arose regarding the appropriate means by which NAESB Standards can be reproduced in tariffs given that these standards are subject to copyright by NAESB. Specifically, NAESB submitted a report<sup>3</sup> to the Commission on November 20, 2012, in which NAESB set forth its interpretation of NAESB's rights regarding its materials subject to copyright. The NAESB Report also included the procedures for obtaining access to copyrighted material and for the use of these materials by NAESB members and non-members in FERC filings and tariffs. In the NAESB Report, NAESB states, “[a]ny entity, member or non-member, wishing to quote verbatim language from copyrighted standards that are not the subject of a previous agreement between the Commission and NAESB must first obtain express permission of NAESB and must reference NAESB's consent to the request in the compliance filing and/or tariff, as well as, where applicable, the transmittal letter.”<sup>4</sup>

## **II. Spectra Pipelines' Filings**

4. In their tariff filings, the Spectra Pipelines state that they remain committed to full compliance with their obligations under the Site License Agreement between Spectra Energy Corporation and NAESB dated February 1, 2007 (Spectra/NAESB Agreement). The Spectra Pipelines assert that they do not agree with NAESB that a waiver was or is required for the Spectra Pipelines to reproduce the NAESB Standards in their respective FERC Gas Tariffs. Nevertheless, the Spectra Pipelines state that they have each requested a waiver from NAESB pending further discussion with NAESB regarding the proper interpretation of the respective parties' rights under the Spectra/NAESB Agreement. The Spectra Pipelines state that, by letter dated December 14, 2012, NAESB

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<sup>2</sup> *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-V, FERC Stats. & Regs. ¶ 31,332 (2012).

<sup>3</sup> Report of the North American Energy Standards Board, RM05-5-000 and RM96-1-000, November 20, 2012 (NAESB Report).

<sup>4</sup> *Id.* p 4.

granted each of the referenced Spectra Pipelines a waiver<sup>5</sup> consenting to the reproduction by the Spectra Pipelines of the NAESB WGQ's Version 2.0 Business Practice and Electronic Communications Standards.

5. In order to comply with NAESB's copyright requirements, the Spectra Pipelines propose to insert the following in each of their respective pipelines' tariffs:

NAESB has granted [pipeline name] a limited waiver to allow [pipeline name] to reproduce the following Business Practices and Electronic Communications Standards, NAESB WGQ Version 2.0, that are protected by NAESB's federal copyright. © NAESB, all rights reserved. Reproduction of these standards in any form is strictly prohibited without first obtaining permission from NAESB.

The Spectra Pipelines request that the Commission approve the proposed language for inclusion in their respective tariffs effective March 4, 2013.

### **III. Public Notice and Protests**

6. Public notice of these filings was issued on February 1, 2013. Interventions and protests were due as provided in section 154.210 of the Commission's Regulations (18 C.F.R. § 154.210 (2012)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2012)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceedings will not disrupt the proceedings or place additional burdens on existing parties. On February 12, 2013, the American Public Gas Association (APGA) filed a protest in each docket.

7. APGA protests NAESB's interpretation of its rights regarding its copyright material and the insertion of the standard language in the Spectra Pipelines' tariffs. Specifically, APGA states that NAESB's claim that customers may violate copyright law when they quote tariff language that was adapted verbatim from a NAESB Standard raises serious concerns for APGA and its members, many of whom take service on the Spectra Pipelines (and other similarly situated pipelines). APGA claims that the proposed requirement that parties first obtain NAESB's permission before reproducing a tariff section that quotes or is incorporated from a NAESB Standard would have the practical effect of requiring customers and their attorneys to obtain NAESB's permission before discussing certain tariff provisions in informal written exchanges or in formal pleadings. APGA avers that a pipeline's customer should be able to discuss, in writing (including quoting verbatim), tariff provisions with counsel and consultants and quote tariff sections in pleadings with the Commission without getting formal permission from

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<sup>5</sup> The Spectra Pipelines' respective waivers were attached to their tariff filings.

NAESB. APGA further argues this waiver requirement, which is inconsistent with the “fair use” doctrine in copyright law, would have a chilling effect on both attorney-client discussions and on airing grievances before this Commission.

8. APGA asserts, if the Commission accepts the Spectra Pipelines’ proposal to add the proposed copyright waiver language in each of the above-captioned proceedings, it should do so with the express caveat that such language does not inhibit full and free exchanges by pipeline customers with employees or third party consultants and/or with the Commission and the courts. Finally, APGA states the Commission should clarify that the mandatory requirement to “first obtain[] permission from NAESB” before reproducing NAESB provisions does not restrict a customer’s ability to reproduce verbatim a NAESB standard, whether that standard is copied directly into the tariff or incorporated into the tariff by reference, in the context of formal pleadings or in the context of informal communications with employees or third persons retained to assist the customers in understanding the meaning of such provisions.

#### **IV. Discussion**

9. The Commission accepts the Spectra Pipelines’ proposed tariff language and the tariff records identified in the Appendix are accepted March 4, 2013, as requested.

10. As the Commission has explained in prior orders, its incorporation by reference of the NAESB standards is consistent with the requirements of the National Technology and Transfer Act.<sup>6</sup> Under these requirements, the Commission is obligated to respect the copyright of the standards organization,<sup>7</sup> which helps defray the standards organization’s

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<sup>6</sup> Pub L. No. 104-113, section 12(d), 110 Stat. 775 (1996), 15 U.S.C. § 272 note (1997). This act requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, as means to carry out policy objectives or activities.

<sup>7</sup> See OMB Circular No. A-119 (Revised February 10, 1998), at 6J, <http://www.whitehouse.gov/omb/rewrite/circulars/a119/a119.html> (“if a voluntary standard is used and published in an agency document, your agency must observe and protect the rights of the copyright holder and any other similar obligations”), 28 U.S.C. § 1498 (federal government may be liable for copyright infringement). Other government agencies similarly have denied requests to publish copies of privately developed standards. *Updating OSHA Standards Based on National Consensus Standards*, 74 FR 46350-46361 (September 9, 2009) (“OSHA notes that copyright laws protect national consensus standards”); *Airworthiness Directives; Airbus Model A300 Airplanes*, 72 FR 6923 (Feb. 14, 2007) (finding that incorporated by reference materials “do not lose their copyright protection”).

administrative costs.<sup>8</sup> The Commission, therefore, is not the appropriate forum to determine the scope of fair use under the copyright laws.

11. We appreciate APGA's and the Spectra Pipelines' concern over the tension between copyright protection and the ability of the industry that developed the standards to use excerpts or individual standards, for example, when necessary for interpretation of requirements in judicial or regulatory proceedings.<sup>9</sup> We expect NAESB will continue to permit the use of verbatim quotation of limited portions of its standards, as it has done in this case. We, however, urge NAESB to post on its website specific procedures for obtaining such waivers or licenses quickly, and we would further encourage it to develop a safe harbor covering "fair use" of its standards language to limit the burden of obtaining a waiver or license for each legitimate use.

The Commission orders:

Accordingly, the revised tariff records identified in the attached Appendix are accepted effective March 4, 2013, as requested.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>8</sup> See *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-E, FERC Stats. & Regs. ¶ 31,299, at PP 115-121 (discussing Commission's obligation to preserve copyright); *Trans-Union Interstate Pipeline LP*, 141 FERC ¶ 61,167, at P 55 (2012) ("language of the NAESB WGQ Standards is copyrighted and the Commission cannot require a pipeline to reproduce the Standards in its tariff").

<sup>9</sup> NAESB permits companies that have obtained legitimate copies of the standards to make reasonable use of these materials internally, but does not permit transfer outside their own companies. NAESB Copyright Policy (<http://www.naesb.org/copyright.asp>).

**Appendix**

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*Tariff Records Accepted Effective March 4, 2013*

**Docket No. RP13-502-000 - Algonquin Gas Transmission, LLC**

Algonquin Gas Transmission, LLC, FERC NGA Gas Tariff, Algonquin Database 1, [44., North American Energy Standards Board, 3.0.0.](#)

**Docket No. RP13-503-000 – Big Sandy Pipeline, LLC**

Big Sandy Pipeline, LLC, FERC NGA Gas Tariff, Big Sandy Database 2, [33., North American Energy Standards Board \("NAESB"\), 2.0.0.](#)

**Docket No. RP13-504-000 – Bobcat Gas Storage**

Bobcat Gas Storage, FERC NGA Gas Tariff, Bobcat Database 1, [23., North American Energy Standards Board, 6.0.0.](#)

**Docket No. RP13-505-000 – East Tennessee Natural Gas, LLC**

East Tennessee Natural Gas, LLC, FERC NGA Gas Tariff, East Tennessee Database 1, [43., North American Energy Standards Board Standards, 4.0.0.](#)

**Docket No. RP13-506-000 – Egan Hub Storage, LLC**

Egan Hub Storage, LLC, FERC NGA Gas Tariff, Egan Hub Database 1, [24., North American Energy Standards Board, 4.0.0.](#)

**Docket No. RP13-507-000 – Gulfstream Natural Gas System, L.L.C.**

Gulfstream Natural Gas System, L.L.C., FERC NGA Gas Tariff, Gulfstream Database 1, [32., North American Energy Standards Board Standards, 3.0.0.](#)

**Docket No. RP13-508-000 – Maritimes & Northeast Pipeline, L.L.C.**

Maritimes & Northeast Pipeline, L.L.C., FERC NGA Gas Tariff, Maritimes Database 1, [32., North American Energy Standards Board, 3.0.0.](#)

**Appendix**

*Tariff Records Accepted Effective March 4, 2013*

**Docket No. RP13-510-000 - Ozark Gas Transmission, L.L.C.**

Ozark Gas Transmission, L.L.C., FERC NGA Gas Tariff, Ozark Database 1, [27.](#), [Compliance with NAESB WGQ Standards, 3.0.0.](#)

**Docket No. RP13-512-000 – Saltville Gas Storage Company L.L.C.**

Saltville Gas Storage Company L.L.C., FERC NGA Gas Tariff, Saltville Database 1, [22.](#), [North American Energy Standards Board, 4.0.0.](#)

**Docket No. RP13-513-000 - Steckman Ridge, LP**

Steckman Ridge, LP, FERC NGA Gas Tariff, Steckman Ridge Database 1, [23.](#), [North American Energy Standards Board, 4.0.0.](#)

**Docket No. RP13-514-000 – Texas Eastern Transmission, LP**

Texas Eastern Transmission, LP, FERC NGA Gas Tariff, Texas Eastern Database 1, [27.](#), [North American Energy Standards Board, 3.0.0.](#)

**Docket No. RP13-515-000 - Southeast Supply Header, LLC**

Southeast Supply Header, LLC, FERC NGA Gas Tariff, SESH Database 1, [31.](#), [North American Energy Standards Board Standards, 3.0.0.](#)