

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

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Bay Gas Storage Company, Ltd.

Docket Nos. PR04-9-000
PR04-9-001

ORDER DIRECTING PARTIAL RELEASE OF INFORMATION

(Issued February 14, 2005)

1. In an order issued on December 22, 2004, the Commission provided the parties an opportunity to comment on whether the Commission should release to the public certain information for which Bay Gas Storage Company, Ltd. (Bay Gas) had requested privileged and confidential treatment pursuant to 18 C.F.R. § 388.112 (2004), and directed Bay Gas to show cause why section 17 F of its General Terms and Conditions (GT&C) should not be removed as contrary to Commission policy.¹ As discussed below, the Commission by this order requires Bay Gas to make public certain of the information at issue. In addition, we will direct Bay Gas to remove section 17 F from its GT&C. This order benefits customers by ensuring that information which is not confidential is publicly disclosed.

Background

2. Bay Gas began operations of its original facilities in 1994. In 2001, it constructed additional facilities known as the Whistler spur facilities.² Before this rate case it had separate transportation rates for service on each set of facilities. On March 9, 2004, Bay Gas sought approval of rolled-in rates for firm and interruptible transportation services on all of its facilities, both the 17.5-mile Whistler spur facilities and the 22-mile original facilities,³ under section 311 of the Natural Gas Policy Act of 1978 (NGPA).⁴

¹ *Bay Gas Storage Co., Ltd.*, 109 FERC ¶ 61,348 (2004).

² Bay Gas also provides storage service pursuant to market-based rates.

³ *See Bay Gas Storage Co., Ltd.*, 97 FERC ¶ 61,020 (2001) (approving rates for Whistler spur facilities); 99 FERC ¶ 61,263 (2002) (approving rates for non-Whistler spur facilities).

⁴ 15 U.S.C. § 3371 (2000).

On April 12, 2004, Southern Company Services, Inc. (Southern) requested clarification, stating that Bay Gas's filing was silent on how shippers with receipt and delivery points only on the older pipeline will access receipt points on the newer, Whistler spur lateral and the rate they will pay for such access. Southern asked the Commission to clarify that if the rates to be paid by shippers on the older pipeline are to include the costs of the formerly incrementally-priced Whistler spur facilities then those shippers-including Southern- should be given flexible point rights throughout the system.

3. On September 21, 2004, a Staff Panel was convened in order to permit parties an opportunity to present oral views, data, and arguments in accordance with NGPA section 502(b). The Staff Panel requested that Bay Gas file certain additional information. The requested information included a summary of all of Bay Gas's contracts with its customers, including the level of firm and interruptible service provided under those contracts and cost of service information. On October 14, 2004, Bay Gas responded to the Staff Panel's data requests. However, pursuant to section 388.112 of the Commission's regulations, Bay Gas requested privileged treatment of certain transportation service agreement information; namely, the length of each contract, the maximum daily transportation quantity under each contract, and the individual contract rates. Bay Gas also sought privileged treatment for the names and volumetric contract data of certain storage customers.⁵ And Bay Gas sought privileged treatment of the overall amount of its revenues from discounted rate contracts, which was used in determining its discount adjustment.⁶ Bay Gas contended that public disclosure of this information could violate section 17 F of its GT&C, which reads:

Confidentiality. The terms of any Storage or Transportation Service Agreement shall be kept confidential by the parties except to the extent that any information must be disclosed to a third party as required by law, for either party's financial needs or for the purpose of effectuating any Storage or Transportation Service Agreement.

4. Bay Gas also contended that such disclosure could competitive harm to Bay Gas and its other shippers.

5. On December 22, 2004, the Commission issued an order on the request for confidential treatment. In that order, the Commission balanced the need for public disclosure against the harm that would be caused by the release of the information,⁷

⁵ The transportation contract information at issue is in Attachment 1 to Bay Gas's data response. The storage contract information is in Attachment 2.

⁶ The discount adjustment information is contained in Schedule I-1 of Attachment 3.

⁷ See *ANR Pipeline Co.*, 65 FERC ¶ 61,280, at 62,305 (1993).

concluding that in this case there is a clear need for public disclosure of the provisions of Bay Gas's contracts with its shippers for jurisdictional transportation and storage service performed pursuant to NGPA section 311. Such information included the name of the shipper under each contract, the length of each contract, and, for transportation service, the contract rate.⁸ The Commission stated that all this information is necessary to evaluate Bay Gas's proposed rates in this proceeding.

6. The Commission also noted that Bay Gas proposed an adjustment to its rates based on the revenues it has received from customers receiving discounted rates. In order to evaluate and verify the correctness of this proposal, the Commission concluded that it was necessary to make individual contract rate and term information publicly available. However, the Commission stated that it would not require Bay Gas to disclose individual contract information with respect to its contracts for non-jurisdictional intrastate service. The Commission stated it was considering denying Bay Gas's request for privileged treatment concerning the provisions of its individual contracts for NGPA section 311 service and its revenues from discounted rate contracts, and in accordance with section 388.112(d) of the Commission's regulations the Commission provided parties 15 days from the date of the order's issuance to submit comments on the Commission's intent to release this information.

7. In addition, the Commission directed Bay Gas to show cause why it should not remove section 17 F from its GT&C as contrary to Commission policy that favors public disclosure of contract provisions for service provided pursuant to NGPA section 311.

8. On January 6, 2005, Bay Gas submitted comments and its show cause response. On January 6, 2005, Southern submitted comments incorporating by reference its statements in its October 25 and November 5 filings.

Discussion

9. For the reasons discussed below, the Commission will require the release of certain information in Attachments 1 and 3, but will not require the release of any of the information related to storage in Attachment 2.

10. Attachment 1 to Bay Gas's data response includes information concerning Bay Gas's contracts with its customers for transportation service. Bay Gas redacted from that attachment the contract terms, maximum daily transportation quantities, and contract rates per MMBtu. Bay Gas does not expressly oppose release of the information concerning maximum daily transportation quantities. With regard to the contract length

⁸ The Commission has authorized Bay Gas to charge market based rates for its storage service, and information concerning the rates Bay Gas has charged for that service has not been requested in this proceeding either by staff or any other party.

and contract rate data, Bay Gas contends that Southern's request for such data is not relevant or material to Southern's effort to add receipt and delivery point flexibility as a changed term and condition of its existing contract with Bay Gas. Bay Gas contends that Southern has raised no rate issues. Bay Gas also argues that the disclosure of such data could harm the competitive position of its other customers. Bay Gas contends that Southern is a competitor of at least some of Bay Gas's other customers and release of such data could provide Southern with valuable commercial information of its competitors' cost structures.

11. Incorporating by reference its October 25 and November 5, 2004 comments, Southern states that it should have access to individual contract quantity information in order to confirm whether the appropriate volumes are being used to design interstate rates, for such information is directly relevant to issues of cost allocation and rate design for section 311 shippers.

12. We will direct Bay Gas to revise and re-file the redacted version of Attachment 1 to disclose the maximum daily transportation quantity amounts for each shipper, but not the contract length and contract rate data. In its comments, Bay Gas does not argue against disclosure of the contract demand data in Attachment 1. That information is relevant to the issues of cost allocation and rate design in this case, including the issue of whether Bay Gas's rolled-in rate proposal should be accepted. Southern does contest that proposal, and in any event there is a public interest in having the information used in determining jurisdictional rates available to the public. The Commission will not direct the release of the other redacted information in Attachment 1 at this time. Southern does not request disclosure of the contract term data, and expressly has declined to request the contract rate data.⁹ Nor does that individual contract information appear necessary for resolution of the issues in this case. However, section 284.126(b) of Commission's regulations requires pipelines performing transportation service pursuant to NGPA section 311 to file annual reports not later than March 31 of each year, including among other things, the revenue received from each shipper and, for firm service, a separate statement of reservation and usage revenues.¹⁰ Therefore, Bay Gas will have to make that revenue information publicly available as part of filing its annual report.

13. Attachment 2 to Bay Gas's data response includes information concerning Bay Gas's contracts with its storage customers. Bay Gas redacted from Attachment 2 the names of four storage customers, their contract terms, maximum storage quantities, maximum daily injection volumes, maximum daily withdrawal volumes, and the corresponding indication of whether the service was firm or interruptible; and for three other named customers Bay Gas redacted the contract terms and maximum daily injection

⁹ Southern October 25, 2004 Answer at 2.

¹⁰ See 18 C.F.R. § 284.126(b).

volumes. Bay Gas states that, because the information contained in Attachment 2 has been provided to the Commission and has not been requested by Southern or any other party, the redacted information in Attachment 2 need not be made public. Bay Gas incorporates by reference its arguments against the disclosure of the information in Attachment 1.

14. Southern does not specifically request disclosure of the redacted storage contract information in Attachment 2. Such information relating to storage contracts is not necessary in order to design and calculate the transportation rates at issue in this proceeding. Accordingly, we will not in this proceeding direct the release of the redacted information in Attachment 2. However, we note that section 284.126(c) of the Commission's regulations require pipelines performing storage service pursuant to NGPA section 311 to make semi-annual reports of certain maximum storage and withdrawal contract quantities, withdrawal volume, and injection volume data.¹¹

15. Attachment 3 to Bay Gas's data response includes information concerning the calculation of Bay Gas's proposed discount adjustment. Bay Gas redacted from Attachment 3 certain Discount Adjustment Revenues Credit data. Bay Gas states that the redacted information in Attachment 3 already has been provided to Southern informally, and that Southern has not requested a public, non-redacted version of this information; therefore, such information need not be made public. Southern does not specifically request disclosure of the redacted information in Attachment 3.

16. The Commission finds that the redacted information concerning Bay Gas's revenue from a discounted rate contract is directly relevant to the determination of the jurisdictional rates at issue in this proceeding, since it is the information on which Bay Gas' proposed discount adjustment is based. Therefore, there is a public interest in releasing this information. To the extent the redacted information includes the name of a customer receiving non-jurisdictional intrastate service, Bay Gas need not release the name of the shipper. Accordingly, we will direct Bay Gas to revise and re-file Attachment 3 to disclose the redacted discounted rate information.

17. In response to the Commission's request to show cause, Bay Gas avers that section 17 F of its GT&C is in no way inconsistent with Commission policy, for section 17 F states that transportation and storage contract information must be disclosed if any law (including a Commission determination) requires disclosure. The Commission finds that section 17 F of Bay Gas's GT&C is contrary to Commission policy favoring public disclosure of the provisions of service contracts under NGPA section 311 in that it

¹¹ See 18 C.F.R. § 284.126(c).

encourages, as in the instant case, non-disclosure of information required to be disclosed “by law.” Section 17 F is confusing and inefficiently might require an individual Commission determination each time a case such as this arises. Therefore, we will direct Bay Gas to remove section 17 F from its GT&C.

The Commission orders:

(A) Bay Gas is directed to file revised redacted versions of Attachment 1 and Attachment 3, within 5 days of the issuance of this order, as discussed in the body of this order.

(B) Southern may file additional comments in this proceeding based upon the newly released information within 20 days of the date of this order.

(C) The Staff Panel shall certify the record of this proceeding and any recommendation within 90 days of the issuance of this order.

(D) Bay Gas is directed to remove section 17 F from its GT&C, and to file revised tariff sheets reflecting this removal, within 15 days from the date of the issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.