FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Natural Gas Pipeline Company of America — Docket Nos. RP00-409-002, RP00-409-003, RP00-631-003, RP00 -631-004

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued May 14, 2003)

1. This order addresses the requests for rehearing and clarification of the Commission's November 21, 2002 order on the filing by Natural Gas Pipeline Company of America (Natural) to comply with Order Nos. 637, 587-G, and 587-L (the November 21 order),[1] as well as Natural's December 23, 2002 filing to comply with the directives of the November 21 Order. In Order No. 637, the Commission revised, among other things, its regulations relating to scheduling procedures, capacity segmentation, and pipeline penalties in order to improve the competitiveness and efficiency of the interstate pipeline grid.[2] The Commission generally denies rehearing and finds that Natural generally has complied with the November 21, 2002 Order, but requires Natural to make certain further revisions, as discussed below.

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[1] 101 FERC ¶ 61,200 (2002).

[2] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, FERC Stats. & Regs., Regulations Preambles (July 1996 - December 2000) ¶ 31,091 (Feb. 9, 2000); order on rehearing, Order No. 637-A, FERC Stats. & Regs., Regulations Preambles (July 1996 - December 2000) ¶ 31,099 (May 19, 2000); order on rehearing, Order No. 637-B, 92 FERC ¶ 61,062 (July 26, 2000); aff'd in part and remanded in part, Interstate Natural Gas Association of America v. FERC, 285 F.3d 18 (D.C. Cir. Apr. 5, 2002).

2. This order encourages competitive conditions on the pipeline grid; helps create competitive equality for capacity release and pipeline capacity; removes impediments to the sale and use of capacity; and creates greater flexibility for shippers. Overall this order benefits customers by enhancing pipeline transportation services.

Background

3. The November 21 Order accepted Natural's filing, but required Natural to file revised tariff sheets with respect to a number of issues, including, among others, segmentation, the rights of replacement shippers at points, discounting, unauthorized overrun charges, penalty revenue crediting, and operational flow orders. The Commission directed Natural to include in its compliance filing, a detailed plan including the proposed implementation date for compliance with Order No. 637 which the Commission would address in its order on Natural's filing. Natural filed for rehearing and clarification, and Indicated Shippers[3] also filed for rehearing.

4. On December 23, 2002, Natural filed revised tariff sheets to comply with the November 21 order. In its transmittal letter Natural stated that the filing addressed the following items: segmentation, the rights of replacement shippers at points, discounting, imbalance information, balancing service charges, unauthorized overrun charges, penalty revenue crediting, operational flow orders, and computer modification timing. Indicated Shippers and The Peoples Gas Light and Coke Company with North Shore Gas Company (together as "Peoples") protested Natural's filing. Natural filed a letter in response to Indicated Shippers' protest to clarify and augment its compliance filing.[4] This order accepts Natural's filing, subject to the discussion below, which addresses the rehearing requests and protests.

Discussion

A. Segmentation and Flexible Point Rights

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[3]Indicated Shippers consist of BP Energy Company, BP America Production Company, and ChevronTexaco Exploration & Production Company.

[4]The Commission accepts Natural's letter since it assists in determining the issues.

5. Order No. 637 requires pipelines to permit a shipper the use of the firm capacity that it has contracted for by segmenting that capacity for its own use or for release of that capacity to replacement shippers to the extent such segmentation is operationally feasible.[5]

6. Paragraph 44 of the November 21 Order required Natural to clarify that in the case of a segmented release, both the releasing and replacement shipper may reserve primary points up to their respective contract demands and are not limited to points within the path of the original Agreement, and that Natural must evaluate point change requests within two business days, not 5 days as Natural had proposed. In its compliance filing Natural has addressed the priority and implications of such point designations under various circumstances. Natural seeks rehearing on this point.

7. In its rehearing request, Natural states that in the Order the Commission required that Natural revise its tariff provisions on segmented releases so that both releasing and replacement shippers can choose primary points equal to MDQ under their respective contracts. Natural contends that this sentence could be read to mean that each shipper can select primary point capacity equal to the full contract quantity at the receipt and delivery points defining each segment, thus multiplying primary firm point rights under the contract. Natural asserts that if this is the intent, the result is contrary to Order No. 637 and Commission precedent because Commission policy is to allow releasing and replacement shippers "to choose primary points consistent with their mainline contract demand."[6] This must mean that point capacity must be consistent with, and cannot exceed, primary point rights under the contract.

8. Natural argues that if the Commission's ruling in the November 21 Order is read as allowing shippers to multiply their primary points rights, however, it will allow shippers to hoard capacity through segmentation. Natural contends that this would force it to reserve additional primary point capacity that otherwise would be available to other shippers. Natural asserts that this type of action is inconsistent with the Commission's efforts to further liquidity in pipeline capacity markets.

9. Natural states that the Commission has repeatedly acknowledged the need to prevent shippers from using flexible point rights to hoard capacity.[7] In Order No. 637, et seq., the Commission recognized that flexible point changes may create circumstances that give

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[5] 18 C.F.R. § 284.7(d) (2002).

[6] Trailblazer Pipeline Company, 97 FERC ¶ 61,056 (2001).

[7] Transwestern Pipeline Company, 62 FERC ¶ 61,090 (1993); El Paso Natural Gas Company, 62 FERC ¶ 61,311 (1993).

certain shippers an incentive to hoard capacity, so it could not address the issue of primary point rights on a generic basis. Thus, the Commission stated that pipelines may need to address the hoarding of capacity through tariff provisions. Moreover, under the Commission's Texas Eastern/El Paso policy,[8] shippers do not gain extra primary receipt or delivery point rights when they release primary point capacity.

10. In its compliance filing, Natural provides that primary points outside the primary path of the original agreement may be requested pursuant to Natural's generally applicable point change provisions, and all point designations are subject to the availability of firm capacity, unless the shipper elects to have these points treated as secondary (either in-path or out-of-path, as applicable). If the points chosen by the segmenting parties are not points under the original Agreement (or primary point changes that affect the Agreement), these additional primary points will be subject to subsequent award of firm capacity at the point to another original shipper. The provision described in the prior sentence is necessary to prevent shippers from hoarding capacity and from multiplying firm primary point rights beyond those in the original contract, while still providing maximum flexibility on segmentation.

11. Indicated Shippers protested Natural's revised tariff sheets on this item. They contend that the Commission should reject this proposal and should determine that a segmented primary point has the same priority as any other primary point. They cite to Order No. 637, where the Commission stated that a shipper can not only change its primary points, but can also establish additional primary points via segmentation.

12. Indicated Shippers contend that absent the right to establish new primary point entitlements, a shipper would not be able to get the top scheduling priority associated with service at new locations. Therefore, a shipper would not be able to use the new primary point on a reliable basis. Indicated Shippers asserts that this would put a shipper at a big competitive disadvantage as compared to the pipeline in its role as a marketer of primary capacity, and as compared to other shippers that are already using the new location on a primary firm basis.

13. Indicated Shippers argues that Natural's reason for not allowing a shipper to create additional primary points via segmentation, such as to prevent hoarding, have been rejected by the Commission both in the November 21 order, and in Order No. 637. [9] It further notes that nowhere does Natural assert that hoarding has been a problem on its system. Moreover,

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[8] Texas Eastern Transmission Company, 63 FERC ¶ 61,100 (1993); El Paso Natural Gas Company 62 FERC ¶ 61,311 (1993).

[9] 101 FERC at P 44; Order No. 637-A, ¶ 31,009,pg. 31,593,*order on reh'g*, Order No. 637-B, 92 FERC ¶ 61,062, pg. 61,167

continues Indicated Shippers, even if it were a problem, Natural could address the issue via a narrowly-tailored mechanism that solely addresses hoarding, instead of this proposal that degrades all segmented primary points.

Commission Ruling

14. The Commission denies Natural's request for rehearing, and will require it to revise the proposed tariff provision consistent with Commission policy. Natural misconstrues Commission policy on replacement shippers' ability to select primary points. As the Commission summarized in Order No. 637, since Order No. 636, its Texas Eastern/El Paso policy requires :

> the releasing and replacement shippers must be treated as separate shippers with separate contract demands. Thus, the releasing shipper may reserve primary points on the unreleased segment up to its capacity entitlement on that segment, while the replacement shipper simultaneously reserves primary points on the released segment up to its capacity on that segment.[10]

The purpose of the Commission's policy that replacement shippers should have the opportunity to obtain their own primary points is to enhance competition in the sale of capacity between the pipeline and shippers through segmentation and capacity release. As the Commission explained in Order No. 637-A,[11] if replacement shippers were limited to the use of segmented points on a secondary basis, the pipeline would still retain the right to sell that point capacity on a primary basis. The ability to sell points on a primary basis would provide the pipeline with a competitive advantage over segmented capacity release transactions.[12]

15. Indeed, Natural's own compliance proposal demonstrates that this policy is needed to ensure competition between released and pipeline capacity. Natural proposed that if the points chosen by the segmenting parties are not points under the original Agreement (or primary point changes that affect the Agreement), these additional primary points will be subject to Natural's subsequent award of firm capacity at the point to another original shipper. Thus, under this provision, a sale of firm capacity by Natural would be entitled to

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[10] Order No. 637, at 31,302.

[11] Id. at 31,594.

[12] Great Lakes Gas Transmission Limited Partnership, 101 FERC ¶ 61,206 at P 9 (2002).

priority over the capacity release transaction giving Natural the type of competitive advantage the Commission's policy is designed to prevent.

16. Natural also misunderstood the Commission's comments in Order No. 637-A regarding the potential for hoarding of capacity.[13] The hoarding discussion involved a discussion of whether pipelines should permit shippers to have primary point rights that exceed their individual contract demand. As the Commission explained: "on a fully subscribed pipeline where receipt point capacity exceeds mainline capacity fivefold, the pipeline can seemingly permit shippers to select primary receipt point rights well in excess of their mainline contract demand, since the pipeline has no capacity left to sell and, therefore, needs to reserve no receipt point capacity in order to sell unsubscribed capacity."[14] In this situation (where a shipper can obtain primary points exceeding its contract demand), the Commission recognized that the pipelines may need to take action to limit hoarding of capacity.[15]

17. But this situation is not at issue here because the Commission has not required Natural to provide any shipper with primary point rights that exceed its contract demand. The only issue here is the application of the Commission's long-standing policy that in capacity release situations releasing and replacement shippers are permitted to have primary point rights equal to (but not exceeding) their contract demand. Natural has not shown that allowing replacement shippers to obtain primary point capacity equal to their contract demand will result in hoarding of capacity.[16]

18. In addition, the Commission has established policies that ensure that pipelines retain a reasonable ability to market their capacity. These policies establish a reasonable balance between the need to enhance competition by providing replacement shippers with the right to obtain primary points and the pipeline's interest in selling available firm capacity. First, as discussed above, the Commission previously permitted the pipeline to limit the primary point capacity a shipper can reserve to its mainline contract demand, so that if a shipper does change to another primary path, the pipeline could require the shipper to give up an existing

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[13] Order No. 637-A, at 31,594.

[14] Id.

[15] Order No. 637-B, 92 FERC ¶ 61,062, at 61,167 (2000).

[16] In any event, as the Commission stated in Order No. 637-B, Natural should be able to craft tariff provisions that limit potential hoarding of capacity, without prohibiting altogether the pro-competitive policy of allowing replacement shippers from acquiring primary points equal to their contract demand. 92 FERC at 61,167.

primary point. Second, replacement shippers can obtain primary points only when those points are available and those points revert to the pipeline for sale at the expiration of the release. Third, if a replacement shipper obtains primary points by changing the releasing shipper's primary points, the change is permanent and the pipeline can sell the newly available capacity at the original primary points to new shippers. Finally, the Commission has allowed the pipeline to use the net present value (NPV) method to allocate point capacity and has treated the bid of an existing shipper (including a replacement shipper) to change to another primary point without increasing its reservation charge as having an NPV of zero, in contrast to the bid of a new shipper bringing new revenue to the pipeline.[17] This ensures that bids providing additional revenue to the pipeline will have priority over point changes by replacement or other existing shippers. All these factors adequately protect the pipeline's ability to market its capacity.

19. As discussed above, Natural's compliance filing does not coincide with the Commission's Texas Eastern/El Paso policy. We direct Natural to revise its tariff consistent with Commission policy and provide that a segmented primary point has the same priority as any other primary point.

20. Indicated Shippers requests rehearing on the Commission's approval of Natural's tariff provision that does not grant the releasing shippers reversionary rights to its primary points when the segmentation or capacity release agreement expires. Indicated Shippers contends that the Commission has repeatedly endorsed reversionary rights for the releasing shipper, citing Trailblazer Pipeline Company, 97 FERC ¶ 61,056 at 61,300 (2001), and requests the Commission reject Natural's tariff provision that includes this limitation.

21. We deny Indicated Shipper's request. Contrary to Indicated Shippers' contention, the November 21 Order correctly stated that Natural's tariff was consistent with Commission policy. The Commission has repeatedly approved this type of tariff provision,[18] and in fact the Trailblazer case cited by Indicated Shippers, approved that limitation. In Trailblazer, the Commission stated that when the released capacity reverts back to the releasing shipper it is entitled to its original primary point "if the releasing shipper has not agreed to any change in the segmentation or capacity release transaction that would result in the loss of a primary point." As the November 21 Order stated, if the releasing shipper wants to ensure that it will still have its original primary point, the releasing shipper may impose a condition in the

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[17] Process Gas Consumers Group v. FERC, 292 F.3d 831 (D.C. Cir. 2002), aff'g Tennessee Gas Pipeline Co., 94 FERC ¶ 61,097 (2001), 91 FERC ¶ 61,053 (2000); ANR Pipeline Co., 97 FERC ¶ 61,322 (2001).

[18] ANR Pipeline Company, 97 FERC ¶ 61,323 at 62,481 n.25 (2001) (citing Transwestern Pipeline Company, 63 FERC ¶ 61,138, at 61,911-12 (1993)).

release that the replacement shipper cannot change the primary points. This policy provides a means of protecting the pipeline's ability to market its capacity, and we see no reason to deviate from this policy.

22. Indicated Shippers states that Natural proposes the following revision to its tariff:

> The direction of flow for path segments must be same direction of flow as for the original path unless Shipper establishes new primary points which represent a flow reversal, which a Shipper may do so if operationally feasible and if the requisite capacity is available, applying the point change procedures in Section 5.1(c)(5) of these General Terms and Conditions.

23. Indicated Shippers requests that the Commission clarify that this provision does not preclude a shipper from doing a backhaul via segmentation on a secondary basis instead of on a primary basis. Indicated Shippers states that if instead the intent of the provision is to prohibit secondary reverse flows, then it protests the provision. This restriction on reverse flows would violate the Commission policy that allows a shipper to nominate secondary points as part of segmentation, including flow reversals.

24. In its January 17, 2003 letter, Natural states that it concurs with Indicated Shippers position that shippers can backhaul on a secondary basis through the nomination process. It states that Indicated Shippers cited tariff language that related to establishment of new primary points through reversal of flow of the primary path. Natural cites to language in Section 8.14 (e) which has not been revised, and which makes it clear that a shipper may exercise point flexibility to reverse flow on a secondary basis. In light of Natural's clarification, we see no need to further address Indicated Shippers' request.

25. On November 27, 2002, in Docket No. RP03-146-000, Natural filed a letter pursuant to the Commission's October 31, 2002, Order on Remand in Docket No. RM98-10-011, 101 FERC ¶ 61,127 (2002). That order required any pipeline that must permit segmentation on its system to revise its tariff to permit segmented transactions consisting of forwardhauls up to contract demand and backhauls up to contract demand to the same point at the same time. In the letter Natural stated that it believed that Section 8.14(e) of its GT&C proposed in this docket conforms to the Commission's Remand Order requirements so it was not filing any tariff sheets in Docket No. RP03-146-000. The Commission by letter order issued March 21, 2003 in Docket No. RP03-146-000, accepted Natural's November 27, 2002 filing subject to the outcome of this proceeding. We find that Natural's filing in this docket complies with the Remand Order.

B. Discounting

26. In Order No. 637-A, the Commission stated that the current policy permitting pipelines to limit discounts to particular points needs reexamination in the compliance filings, as part of the review of restrictions on capacity release and segmentation.[19]

27. The November 21 Order directed Natural to revise its discounting provision to reflect the Commission's current policy. In CIG/Granite State,[20] the Commission adopted a new policy that permits a shipper to retain a discount when it moves to segmented points or secondary points through a streamlined request process in which the pipeline processes requests for discounts within 2 hours. The Commission reasoned that it can best balance its discount and segmentation policies by adopting a policy under which a shipper with a discounted rate that seeks to use an alternate receipt or delivery point (whether through segmentation, capacity release, or its own exercise of flexible receipt and delivery point rights) can continue to receive a discounted rate if the pipeline has granted a discount to a similarly situated transaction at the alternate point.[21] As the Commission explained in CIG, "this policy is an application of the general requirement that pipelines must not engage in undue discrimination,"[22] by ensuring that a shipper with a discounted contract can continue to receive a discount at points where it is similarly situated to other shippers receiving a discount. This policy allows a shipper to better compete with the primary capacity offered by the pipeline and with other shippers holding contracts for capacity at these points.

28. Under this policy, a rebuttable presumption exists that a shipper holding a discount at a point will retain a discounted rate if it chooses to segment, release capacity, or use its flexible receipt and delivery point rights to move gas to another point at which the pipeline has granted discounts for its firm or interruptible transportation services.[23] The pipeline can

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[19] Order No. 637-A, FERC Stats. & Regs. Regulations Preambles (July 1996-December 2000) ¶ 31,099, at 31,595.

[20] Colorado Interstate Gas Company, 95 FERC ¶ 61,321 (2001); Granite State Gas Transmission, Inc., 96 FERC ¶ 61,273 (2001) reh'g denied, 98 FERC ¶ 61, 019 (2002).

[21] See Paiute Pipeline Company, 96 FERC ¶ 61,167, at 61,750 (2001) (explaining that the CIG discount policy applies to the use of secondary points whether through capacity release transactions, segmentation, or the use of flexible receipt or delivery points).

[22] 95 FERC ¶ 61,321, at 62,121 (2001).

[23] The shipper seeking to move its point will pay the higher of its contractual rate or the discount rate being offered at the alternate point. See CIG, 95 FERC ¶ 61,321, at

(continued...)

rebut this presumption by demonstrating that the segmented or secondary point transaction is not similarly situated to the transactions receiving the discount at the secondary point. The Commission placed the burden on the pipeline to justify a denial of a discount, because of Commission concern that pipelines may not have the same incentive to offer discounts to segmented transactions or to secondary points that compete directly with their sale of primary capacity.

29. In order to comport with the Commission's requirement to ensure nomination equality,[24] the Commission further required pipelines to process requests for discounts within two hours of the time the shipper submits a request. [25] This processing requirement ensures that shippers requesting the continuation of discounts can submit nominations at each of the four standard nomination opportunities provided by the pipeline.[26]

30. Natural's compliance filing sets out a procedure for implementing the Commission's discount policy. Consistent with Commission policy, Natural provides for a two hour response time which is limited to Business Days and Natural need not respond to requests submitted at the end of the day until 8:30 a.m. the next day. Natural also defines other circumstances, involving negotiations of future discounts, where it would not require such an expedited response time and could hinder agreement on discounts. Where the discount applies, the rate at the alternate point will be the higher of the discount rate in the contract of the shipper requesting the discount or the discount rate paid by similarly situated shippers,

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[23](...continued)
62,121 n.38 (2001).

[24]18 C.F.R § 284.12 (b)(1)(ii) (2001).

[25]The Commissionfurther provided that "if a pipeline and its shippers can reach agreement on a standard processing period for discount requests that retains the nomination equality requirement of the Commission's regulations, such an agreement also could be an acceptable method of implementing the discount policy." Granite State Gas Transmission Inc, 98 FERC ¶ 61, 019 at 61,056 (2002).

[26]Pipelines, of course, can choose shorter periods for processing. Moreover, the Commission has recognized that pipelines may not have staff to process discount requests overnight. Therefore, pipelines must act on overnight requests to retain discounts received after 4:00 p.m. by no later than 8:30 a.m. CCT the next business day, and need not process requests on weekends. See National Fuel Gas Supply Corporation, 98 FERC ¶ 61,123 (2002). Pipelines providing for additional nomination opportunities after the 6:00 p.m. Evening Nomination cycle need not process corresponding discount requests for nominations coming after the 6:00 p.m. standard nomination time period until 8:30 a.m. the next business day.

except that the contract will govern if it specifies a discount rate at that alternate point. Natural seeks rehearing on the rebuttable presumption aspect of the Commission's policy.

Natural's Rehearing Request

31. Natural argues that the imposition of the Commission's discounting procedure is contrary to Order No. 637, et seq., lacks a basis of substantial evidence, and violates the procedural and substantive requirements of the NGA. Natural states that in Order No. 637-A, the Commission determined that the issue of whether a shipper holding firm capacity at a discounted rate would be able to segment its capacity without losing its discount would be considered in each pipeline's compliance filing.[27] Consistent with this approach, the Commission stated in Order No. 637-B that "[g]iven the increased use of discounted transportation by pipelines, it is important to explore in the compliance filings, the effect that allowing pipelines to restrict discount shippers' ability to segment and release capacity at alternative points would have on competition."[28] Natural asserts that the Commission did not explore the relationship between segmentation and discounting on its system. Rather it applied a "cookie cutter" approach to impose the CIG discounting procedures, contrary to the Commission's explanation of how it would apply the rule in Order Nos. 637, et seq.

32. Natural states that the Commission also acknowledged in Order No. 637-A that, to require any change in discounting procedures, the Commission would have to act pursuant to Section 5 of the NGA. It contends that the Commission's actions here are unlawful because the Commission has no evidence or other basis supporting the decision, and has not made a finding that Natural's existing discounting procedures are unjust and unreasonable. In addition, Natural asserts that the Commission failed to specifically find the CIG discounting procedures just and reasonable on Natural's system.

33. Moreover, Natural states that in the November 21 Order the Commission rejected a provision which states that the contract controls if the application of the discount at an alternate point is contrary to the contract. Natural contends that this ruling seems to imply that the parties cannot negotiate the price at alternate points under any contract, but only at primary points. This is an unwarranted restriction on the ability of the parties to negotiate price. It also ignores the commercial reality. Natural states that primary points are often chosen under a contract to assure that the customer will maximize access to supply and to markets. In many contracts, the actual flow of gas will frequently, even predominantly, occur at alternate in-path points. Yet the Commission appears to preclude the parties from reaching effective agreement on the price of service at such alternate points, even though they may constitute the primary use of the contract. Natural asserts that the result does not

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[27] Order No. 637-A at 31,595.

[28] Order No. 637-B at 61,168.

conform to long-standing industry practice and to the Commission's broader discounting policies, which allows the parties to negotiate the price of service within the applicable maximum and minimum rates. Natural states that on this point at least, the November 21 Order must be clarified or modified to restore the ability of the parties to negotiate the basic pricing provisions of contracts.

Protests to Compliance Filing

34. Peoples states that in the compliance filing Natural proposes that in addition to the 2-hour processing requirement there are "also defined other circumstances, involving negotiations of future discounts, where such an expedited response time would not be required and could hinder agreements on discounts."[29] Thus, for transactions for which the discount would not take effect until more than 24 hours in the future, Natural would have two business days (but not less than the 2 hours prior to the timely nomination deadline) to act on the request.

35. Peoples contends that the distinction between discount transactions that begin in less than 24 hours and those that begin later is not supported by Commission's order or its policy, nor is Natural's rationale convincing. Therefore it requests that the Commission reject Natural's proposed exception to the two-hour processing requirement and direct Natural to adhere to the two-hour requirement for processing discounts.

36. Indicated Shippers also contends that Natural's implementation of the portable discount policy is flawed. Indicated Shippers contends that the portable discount policy should also apply if a flexing shipper accesses a new location that is in a different rate zone than the shipper's primary point since the similarly-situated standard takes into account the rate zones covered by the haul.

37. Indicated Shippers also objects to Natural's position that it will not provide a written explanation if it previously rejected a discount for the flexing shipper at the same location unless circumstances changes at the alternative point. Indicated Shippers asserts the Commission should require Natural to provide a written explanation whenever it rejects a portable discount. Also, Indicated Shippers contends that Natural did not define what constitutes changed circumstances, and does not describe the criteria it will use to determine if the flexing shipper is similarly-situated to the incumbent shipper.

Commission Ruling

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[29] Natural's Transmittal Letter, p. 4, P 3.

38. The Commission rejects Natural's argument that in adopting its discount policy, the Commission erred by departing from existing policy and precedent without providing a reasoned explanation. In Order No. 637-A, the Commission found that the interaction of its segmentation policies and its current policy of permitting pipelines to limit discounts to particular points needs reexamination. The Commission determined that placing restrictions on discounted transactions could interfere with competition created through released capacity.[30]

39. In Colorado Interstate Gas Company,[31] the Commission examined the effects of its existing discount policy on competition and found that if shippers with a discount would lose the discount and be subject to the maximum rate if they utilized their flexible point rights to move to a secondary point or segmented capacity which would use different points than the primary points contained in the contract, this would have the effect of restricting competition. The Commission, however, also recognized that if the discount were to apply automatically at secondary points, pipelines may give discounts for other than competitive reasons contrary to the discount policy. Therefore, the Commission found that it could best balance these interests by permitting the shipper to retain its discount when moving to secondary or segmented points, if the pipeline has granted a discount to a similarly situated shipper at the alternate point. This allows a shipper to better compete with primary capacity offered by the pipeline and with other shippers at the alternate points. This policy applied the general requirement that pipelines must not engage in undue discrimination by ensuring that a shipper with a discounted contract can continue to receive a discount at points where it is similarly situated to other shippers receiving a discount. Therefore, the above discussion s fully explains the reasoning behind the discount policy the Commission applies here.

40. With regard to Natural's issues concerning the determination of whether two shippers are similarly situated for purposes of the Commission's discount policy, the Commission denies clarification and rehearing of the proposition that the difference between firm and interruptible shippers remains, in most instances, a valid basis for finding that two shippers are not similarly-situated. Under the CIG/Granite State policy, there is a rebuttable presumption that a shipper holding a discount at a point will retain a discounted rate if it chooses to segment, release capacity, or use its flexible receipt and delivery point rights to move gas to another point at which the pipeline has granted discounts for its firm or interruptible transportation service. The pipeline can rebut this presumption by showing that the segmented or secondary point transaction is not similarly-situated to the transactions receiving the discount at the secondary point.

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[30] Order No. 637-A at 61,595.

[31] Colorado Interstate Gas Co., 95 FERC ¶ 61,321 at 62,120-21 (2001).

41. In CIG,[32] the Commission held that the rebuttable presumption applied to points where the pipeline has granted discounts for its firm or interruptible transportation services. In Gulf South[33] the Commission directed Gulf South to use criteria other than the fact that one shipper is firm and another is interruptible in determining whether shippers are similarly situated.

42. In Order Nos. 636 and 637, the Commission held that a primary purpose of its capacity release program is to promote increased competition by allowing firm shippers to release their capacity in competition with the pipeline's interruptible service. If the fact that a shipper in a capacity release receiving firm service would always mean that it was not similarly situated to a shipper receiving interruptible service from the pipeline, pipelines would never consider capacity release transactions similarly situated to the pipeline's interruptible service. That would mean that a releasing shipper with a discount at one point would always lose its discount when it sought to release capacity in competition with a pipeline's sale of interruptible service using another point. This would discourage such releases and undercut the Commission's competitive goals. There may be times when a capacity release is not similarly situated to the pipeline's interruptible service and the presumption of similarity can be rebutted. For example, if the releasing shipper sells capacity on a non-recallable basis for a full year on a portion of the pipeline where interruptible service is often interrupted, the two services may well not be similar. But if the releasing shipper sells capacity for a month, the release transaction may well be similar to interruptible service sold by the pipeline.

43. Natural also argues that the Commission erred in rejecting the provision in Natural's proposal which stated that the contract controls if the application of the discount at an alternate point is contrary to the contract. Under this provision, a discount would apply "only to the extent consistent with point or volume discount limits under the Agreement being segmented or released."[34] Although vague, Natural's rehearing request appears to argue that this rejection ignores the ability of pipelines and shippers to negotiate different prices that apply to secondary points than at primary points.

44. The Commission denies rehearing. Approval of Natural's provision would permit the pipeline to reconstruct the very non-competitive barriers that the Commission's discount policy seeks to remove. Under Natural's proposal, the pipeline could grant a discount at a

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[32] 97 FERC ¶ 61,011 at 61,048 (2001).

[33] 98 FERC ¶ 61,278 (2002).

[34] GT&C, § 8.14 (g), Pro Forma Original Sheet No. 252B.

primary point, but provide in the contract that the maximum rate applies at all alternate points. But as the Commission explained in Order No. 637-B:

> Once having granted a particular shipper a discount, some pipelines restrict the shipper's use of its capacity through capacity release or segmentation by requiring that shipper to pay the maximum rate for capacity in order to effectuate a segmented or release transaction. Placing such restrictions on discounted transactions could interfere with competition created through released capacity. Replacement shippers frequently need to use points different from those of the releasing shippers, and neither the releasing or replacement shipper may be willing to absorb the differential between the discounted and maximum rate.[35]

Indeed, the Commission previously rejected a similar proposal by Natural which would have permitted Natural to impose a condition in discount contracts that would suspend the discount in the event the shipper released capacity. Natural Gas Pipeline Company of America, 82 FERC ¶61,298 (1998). The Commission found that such a provision, like the one Natural proposes here, would inhibit the competition between capacity release and pipeline capacity by requiring the discount shipper to pay the maximum rate in order to release capacity.

45. Accordingly, the Commission reaffirms that the pipeline must consider discounts to both firm and interruptible shippers at a point in determining whether the presumption applies that the shipper using the alternate point is similarly situated and will retain its discount.

46. We deny Indicated Shippers' request that the discount policy should apply when the shipper accesses a new location that is in a different rate zone than the shipper's primary point. The discount policy applies to the contractual discount that the shipper currently enjoys. When the shipper seeks a secondary point in a different zone, there are different contractual considerations than when the new location is in the same zone as its primary point.

47. We also deny Indicated Shippers' protest to Natural's provision that it will not provide a written explanation if it previously rejected a discount for the flexing shipper at the same location unless circumstances have changed at the alternative point. Indicated Shippers asserts the Commission should require Natural to provide a written explanation whenever it rejects a portable discount. Natural's right not to provide a written explanation is limited to

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[35] Order No. 637-B, 92 FERC ¶ 61,062, at 61,168.

situations where circumstances have not changed. Since this limits its discretion, we have approved similar tariff provisions.[36]

48. We find merit in People's objection to Natural's proposal that the time requirement for processing transactions for which the discount would not take effect until more than 24 hours in the future would be two business days, but not less than the 2 hours prior to the timely nomination deadline. Under Natural's proposal, a shipper negotiating for a transaction to take effect in two days would receive notice only two hours prior to the nomination deadline. The Commission has explained that the two-hour requirement "will provide shippers with flexibility to determine how much advance notice of a pipeline's discount determination the shipper requires to structure the business transaction.'[37] For example, if a shipper wants 10 hours within which to make its decision, it would make its request to Natural at least 12 hours in advance. Natural's proposal conflicts with the Commission's policy because it deprives the shipper of its ability to determine how much advance notice of Natural's discount decision it will receive. In the example above, under Natural's proposal, if the shipper places its request 12 hours in advance it only receives two hours notice, rather than the 10 hours it requires. The Commission also has refused to grant exceptions to the 2-hour requirement unless a satisfactory reason has been shown.[38] Natural merely states that it needs this provision because the expedited processing requirement in that situation could hinder agreement on discounts, but Natural does not explain how it would cause that problem. In any event, if shippers negotiating for future transactions believe providing Natural with further time to consider the discount request would facilitate an agreement, they are free to grant Natural additional time. Accordingly, Natural must remove this provision from its tariff.

C. Unauthorized Overruns

49 Natural proposed to revise its unauthorized overrun (UAOR) charge under which it waived scheduling and imbalance charges when it applied a $10 per Dth charge during non-critical periods for unauthorized overruns. During critical times and when OFO orders were in effect, Natural applied the $10 charge plus scheduling or imbalance charges, if applicable. Natural's proposal sets the maximum level of unauthorized overrun charges applicable (a) during ordinary times at the authorized overrun rate of the maximum rate for interruptible transportation plus a penalty of 200% of the specified index price as reflected in the Average

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[36] See Northern Natural Gas Co., 101 FERC ¶ 61,203 at P.55 (2002).

[37] Granite State Gas Transmission, Inc., 96 FERC ¶ 61,273 at 62,037 (2001).

[38] See, Reliant Energy Gas Transmission Company, 100 FERC ¶61,172 P19 (2002) (extended contract not a basis for exception).

Monthly Index Price (AMIP),[39] and (b) during critical times, or when an OFO is in effect, at the authorized overrun rate plus a penalty of 200% of specified index gas price in addition to the current $10 penalty.

50. The November 21 Order rejected Natural's proposal. The order stated that for non-critical times pipelines should only apply a nominal penalty for unauthorized overruns not to exceed twice the pipeline's IT rate or pipelines can charge a substantial penalty but waive the penalty[40] if the unauthorized overrun does not cause operational problems. The Commission gave Natural an option either: (I) to file for a UAOR rate not to exceed twice its Rate Schedule ITS rate during non-critical periods; or (ii) to retain its current $10/Dth UAOR charge, provided its waives the penalty if the unauthorized overrun does not cause operational problems. The order also rejected Natural's proposal to increase the overrun penalty charge during critical times since Order No. 637 was not an opportunity for pipelines to file to increase penalties or make their penalty provisions more stringent. The order stated that Natural could file under NGA Section 4 to implement equivalent market related penalty levels should it find it necessary to prevent gaming.

Natural's Rehearing Request

51. Natural states that the Commission acted improperly in rejecting its UAOR proposal. Natural contends that the Commission's rejection was not based on reasoned decisionmaking and therefore not consistent with the NGA. Natural asserts that the action undermines the basic contractual relationships in the industry. Also, Natural contends that to mandate a change of the existing UAOR fails to satisfy the requirements of Section 5 of the NGA.

52. Natural states that the maximum daily quantity (MDQ) is one of the most fundamental parameters of any firm transportation contract and that the effect to change it would dilute the significance of the contract MDQ by allowing overruns without authorization at very little consequence to the offending shipper. In rejecting Natural's proposal, the Commission simply referred to a general policy on penalties. The Commission did not engage in any analysis on how a specific penalty would operate. Natural states that application of a general Commission policy to a particular factual situation requires that the Commission analyze

[39]Section 13.3(C) of the GT&C. The Unauthorized Overrun Rate may be discounted to any level between zero and the maximum rate so calculated.

[40]This penalty would be in addition to the charge for the service provided; i.e. the rate for authorized overruns.

whether the policy applies to that situation.[41] Natural asserts that the Commission failed to perform that analysis. As a result, the Commission's action did not constitute reasoned decisionmaking. Natural states that it may not have the physical ability to control overruns, at least in the short term, so an overrun may subvert the service priorities and harm other shippers. Natural states that the Commission should look at this issue again.

53. Natural states that in order to require modification of an existing tariff provision, the Commission must comply with Section 5 of the NGA and find that the provision is no longer just and reasonable and that the modification would be just and reasonable and substantiated by evidence. Natural contends that the Commission failed to apply the Section 5 requirements and should eliminate the requirement that it change its existing UAOR charge.

Commission Ruling

54. Natural has complied with the order by retaining its existing authorized overrun charge of $10/Dth and added language which would waive the unauthorized overrun penalty if the unauthorized overrun does not cause operational problems.

55. Natural has not raised any new arguments in its request that undermine the reason why we rejected Natural's proposal. As previously stated, under § 284.12 (b)(2)(v), a pipeline's penalties must be necessary to prevent the impairment of reliable service, and must be narrowly designed to deter only conduct that is actually harmful to the system.[42]

56. The Commission finds that Natural's existing overrun provision as well as its proposed revision are unjust and unreasonable when applied to contract overruns during non-critical periods. As the Commission explained in Order No. 637, penalties, including unauthorized contract overrun penalties, can limit the ability of shippers to use their capacity and can cause market distortions. Therefore, the Commission required that penalties must be imposed only when necessary to prevent the impairment of reliable service. See Order No. 637-B, 92 FERC ¶ 61,062, at 61,171. As the Commission explained, during normal operating conditions, the pipeline should have sufficient capacity that a shipper who schedules overrun service would presumably receive the requested service. In that situation a shipper that takes overrun service "is receiving interruptible service and should pay the maximum rate for that service, but should not be charged a penalty, since its use of interruptible service does not threaten system reliability or deliveries to other shippers." Order No. 637-B, 92 FERC ¶ 61,062, at 61,171. Imposing a penalty many times higher than the authorized overrun rate for failure to request service is excessive when the conduct would not likely harm the

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[41] Interstate Natural Gas Association v. FERC, 285 F.3d 18 (D.C. Cir., 2002).

[42] Order No. 637 at 31,314.

system. The Commission's policy, therefore, is that for non-critical times there should only be a nominal penalty for unauthorized overruns not to exceed twice the pipeline's IT rate or pipelines can charge a substantial penalty but waive the penalty[43] if the unauthorized overrun does not cause operational problems. The nominal charge is permitted in order to provide shippers an incentive to correctly nominate overrun volumes, and not run the risk of incurring the overrun penalty.

57. As to penalties during critical times, the Commission, in previous orders addressing other Order No. 637 compliance filings, has rejected new penalty proposals because such increases are "beyond the scope of the instant Order No. 637 proceeding" which was instituted "to examine whether existing pipeline penalties remain just and reasonable....". Columbia Gas Transmission Corp., 100 FERC ¶ 61,084 at P 204 (2002), or lacked a relationship to the operational harm caused by shipper behavior.[44] Natural has not shown why there was a need for it to increase its penalty during critical periods. Consistent with our previous rulings, the Commission denies Natural's request for rehearing.

D. Variance Penalty

Indicated Shippers' Request for Rehearing

58. Natural proposed to relabel its existing imbalance penalty provisions as "Imbalance Services Charges," only credit revenues from the charge for imbalances during ordinary times in excess of 50%, reduce the level of charges during ordinary times for the tier for imbalances of 20% to 50% from 50 cents to 30 cents, and retain the other charges, which include the charge of $1 per Dth for variances in excess of 50%. The November 21 Order approved the level of the charges, but considered all the charges as penalties, and required Natural to treat all the charges, both above and below the 50% tier, as penalty revenue and credited to the shippers.

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[43] This penalty would be in addition to the charge for the service provided; i.e. the rate for authorized overruns.

[44] See Colorado Interstate Gas Co., 95 FERC ¶ 61,321 at 62,124-5 (2001); Canyon Creek Compression, 96 FERC ¶ 61,006 at 61,020-1 (2001); Steuben Gas Storage Co., 96 FERC ¶ 61,004 at 61,013 (2001); Gulf States Transmission Corp., 96 FERC ¶ 61,150 at 61,696 (2001); ANR Storage Co., 96 FERC ¶ 61,162 at 61,709 (2001); Iroquois Gas Transmission System, Inc., 97 FERC ¶ 61,164 at 61,746 (2001); Texas Eastern Transmission, L.P., 98 FERC ¶ 61,215 at 61,842-3 (2002); Southern Natural Gas Co., 99 FERC ¶ 61,042 at 61,163 (2002); and Cove Point, LNG, 99 FERC ¶ 61,142 (2002).

59. On rehearing Indicated Shippers requests that the Commission restrict the application of Natural's daily variance penalty, which is the discrepancy between scheduled and actual deliveries, to critical conditions. Indicated Shippers defines critical condition as when there are constraints that threaten system operations, including when Natural issues an advisory action anticipating that it will soon strain system resources.

60. Indicated Shippers contends that the policy of restricting penalties to critical conditions applies with special force to a daily penalty. Indicated Shippers states that it could be difficult for a shipper to exactly match its confirmed nominations and deliveries on a daily basis. For example, a third party might control the allocations of quantities at the delivery point. Therefore, it contends a daily penalty is unreasonable.

61. The November 21 Order approved Natural's daily penalty stating that Natural has many imbalance services to offset the need for penalties. Indicated Shippers assert that imbalance management tools are of little value when the penalty is assessed on a daily basis. Moreover, imbalance management tools cannot be used to cure variances from scheduled quantities which the instant penalties address; instead, these tools are targeted at imbalances, which is the difference between a shipper's receipts and deliveries.

62. Indicated Shippers contends that Commission policy is that daily penalties should only apply during critical periods. Indicated Shippers state that the Commission previously rejected daily penalties that would apply during non-critical periods.[45] Therefore, Indicated Shippers asserts the Commission should determine that the daily variance penalty can apply only during critical periods.

Commission Ruling

63. The Commission grants rehearing in part. In reexamining Natural's "Imbalances Services Charges" provision, the Commission recognizes that although Natural used the term Imbalances, the provision actually establishes penalties for scheduling variances.[46] This provision establishes penalties for scheduling variances during non-critical periods. The Commission's policy is that for non-peak periods a daily scheduling penalty should be no

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[45] Indicated Shippers cite Colorado Interstate Gas Co., 94 FERC ¶ 61,088 at 61,386 (2001); Paiute Pipeline Co., 96 FERC ¶ 61,167 at 61,753 (2001).

[46] An imbalance is the difference between the amount of gas injected for a shipper and the amount the shipper withdraws. In contrast, a scheduling variance is the difference between the amount scheduled and the amount either injected or withdrawn. For example, a shipper that schedules 200 Dth but injects and withdraws 100 Dth would have a scheduling variance of 100 Dth, but not an imbalance.

greater than the IT rate.[47] During non-critical periods, a scheduling variance will not have operational effects on the pipeline. Establishing a scheduling penalty at the IT rate for non-critical periods is intended to provide an incentive for shipper's to schedule accurately, and to compensate the pipeline for its lost opportunity costs.[48] Natural's scheduling penalties below 50% are comparable with the rates for its IT service, and therefore the Commission denies rehearing with respect to these charges. However, we reject Natural's penalty of $1.00 for variances above 50% since it significantly exceeds Natural's IT rate. Accordingly, we grant rehearing in part, and require Natural to revise the charge for variances in excess of 50% during non-critical periods.

E. Computer Modification - Timing

64. The Commission, in Paragraph 114 of the November 21 Order, directed Natural to submit a plan, including dates, for implementation of Order No. 637.

65. Natural states that the changes required by the November 21 Order with respect to segmentation, in particular the expansion of secondary points on segmentation and the ability of both releasing and replacement shippers to designate primary points on a segmented release, considerably complicate the scheduling and billing process. For example, the potential for overlapping paths increases and requiring review of operating systems to monitor such overlaps.

66. Natural states that its information technology personnel reviewed the functions that its Interactive web site and internal gas management systems must support, given the requirements of the Order. The original estimate of 4 months has been revised to 6 months. Therefore, Natural states that the proposed implementation date is 6 months from the final order accepting tariff sheets which will ultimately define the Order No. 637 requirements as applicable to Natural.

67. In light of the November 21 Order, Natural states that it will require the following system changes for Order No. 637 implementation :

- Permitting access to all points in a zone of segmentation for both releasing and replacement shipper(s) and monitoring related priorities.

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[47] Panhandle Eastern Pipeline Company, 97 FERC ¶ 61,046 (2001); Discovery Gas Transmission 99 FERC ¶ 61,145 (2001).

[48] If a shipper schedules 200 Dth, but takes delivery of only 100 Dth, the pipeline may have lost the opportunity to sell the remaining 100 Dth as interruptible service.

- Allowing both releasing and replacement shippers to select their own primary points (in some cases secondary points) in the zone of segmentation. This procedure significantly impacts the existing recall process and Natural's capacity management process. Given the complexities already inherent in capacity release and rerelease, those processes are extremely complicated.

- Developing tools to determine quickly the discount that is appropriate and nondiscriminatory for shippers submitting to Natural discount requests at alternate points.

- Revising scheduling and overrun processes to implement proper scheduling of segmented nominations in situations where capacity is segmented at the time of nomination and within the family of contracts where capacity is segmented through capacity release.

- Revising overrun calculations to provide tools which Natural and its shippers can use in overrun analysis and which Natural can use in invoice preparation.

- Capturing and refunding penalty revenues.

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68. Natural states that with the exception of the penalty refund process, all the system changes need to become fully operational prior to the implementation of its Order No. 637 tariff provisions. Work on systems cannot effectively or efficiently begin prior to a receipt of a final order in the instant docket, since additional or changed tariff provisions can have a dramatic impact on the work that must be done. Natural states that if work were begun prematurely, a drastic change in direction could result from subsequent orders. That situation could result in an extended development period, because any changes made prior to the final order would need to be reversed or modified.

Commission Ruling

69. The Commission will accept Natural's proposed time line and will accept the proposed implementation date of the first day of the month which is 6 months from the date of this order.

The Commission orders:

(A) Natural's revised tariff sheets listed in the appendix are conditionally accepted to be effective on the first day of the month which is six months from the date of this order.

(B) Natural is directed to file, within 30 days, revised tariff sheets consistent with the discussion in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX

Natural Gas Pipeline Company of America
Docket No. RP00-409-002, et al.

FERC Gas Tar1ff, Third Revised Volume No. 1

Third Revised Sheet No. 85C
Fourth Revised Sheet No. 100
Second Revised Sheet No. 116A
Second Revised Sheet No. 129
Fourth Revised Sheet No. 139
Original Sheet No. 252A
Original Sheet No. 252B
Original Sheet No. 252C
Original Sheet No. 252D
Original Sheet No. 252E
Original Sheet No. 252F
Fifth Revised Sheet No. 264
Tenth Revised Sheet No. 264A
First Revised Sheet No. 267B
Original Sheet No. 267C
Fifth Revised Sheet No. 294
Fifth Revised Sheet No. 328
Original Revised Sheet 328A
Third Revised Sheet No. 329
Third Revised Sheet No. 330
Original Sheet No. 330A
Fourth Revised Sheet No. 331
Second Revised Sheet No. 333
Fifth Revised Sheet No. 334
Fifth Revised Sheet No. 335