103 FERC ¶ 61,281

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Horizon Pipeline Company, L.L.C. Docket Nos. RP02-153-002 and
RP02-153-003

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued June 4, 2003)

1. This order addresses the request for rehearing and clarification filed by Horizon Pipeline Company, L.L.C. (Horizon) of the Commission's November 21, 2002 order on Horizon's filing to comply with Order Nos. 637, 587-G, and 587-L (the November 21 Order),[1] as well as Horizon'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 denies rehearing and finds that Horizon generally has complied with the November 21, 2002 Order, but requires Horizon to make certain further revisions, as discussed below.

---

[1] 101 FERC ¶ 61,195 (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., 2002), order on remand, 101 FERC ¶ 61,127 (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 Horizon's filing, but required Horizon to file revised tariff sheets with respect to a number of issues, including, among other things, segmentation, the rights of replacement shippers at points, discounting, and unauthorized overrun charges. The Commission directed Horizon to file, within 30 days of the date of the November 21 Order, revised actual tariff sheets. The Commission also stated that Horizon may not place the revised tariff sheets into effect before further order of the Commission. Horizon filed for rehearing and clarification.

4. On December 23, 2002, Horizon filed revised tariff sheets to comply with the November 21 order. In its transmittal letter, Horizon stated that the filing addressed the following items: segmentation, the rights of replacement shippers at points, discounting, unauthorized overrun charges, capacity release rate ceilings, and coordination of effectiveness of Horizon's order with Natural's Order No. 637 order. This order denies rehearing, and accepts Horizon's filing subject to the discussion below.

Discussion

A. Segmentation and Flexible Point Rights

5. Order No. 637 requires pipelines to permit a shipper to make use of the firm capacity that it has contracted 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.[3]

6. Paragraph 14 of the November 21 Order required Horizon to revise its tariff language to permit segmentation outside a shipper’s primary path. Also, Paragraph 17 of the November 21 Order required Horizon to clarify that in the case of a segmented release, the releasing shipper and the replacement shipper are treated as separate shippers with separate contract demands. This permits each to reserve primary points up to their respective contract demands and are not limited to points within the path of the original agreement. In

---

[3] 18 C.F.R. § 284.7(d) (2003).

its compliance filing Horizon has addressed the priority and implications of such point designations under various circumstances. Horizon seeks rehearing on this point.

7. In its rehearing request Horizon states that in the November 21 Order the Commission required Horizon to 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. Horizon 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. Horizon 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."[4] This must mean that point capacity must be consistent with, and cannot exceed, primary point rights under the contract.

8. Horizon 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. Horizon contends that this would force it to reserve additional primary point capacity that otherwise would be available to other shippers. Horizon asserts that this type of action is inconsistent with the Commission's efforts to further liquidity in pipeline capacity markets.

9. Horizon states that the Commission has repeatedly acknowledged the need to prevent shippers from using flexible point rights to hoard capacity.[5] In Order No. 637, et seq., the Commission recognized that flexible point changes may create circumstances that given 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,[6] shippers do not gain extra primary receipt or delivery point rights when they release primary point capacity.

10. In its compliance filing, Horizon provides that points outside the primary path of the original agreement may be requested pursuant to Horizon's generally applicable point

---

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

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

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

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. Additionally, Horizon's tariff in Section 7.14(c) states that "in the event a firm capacity path is segmented under this Section 7.14, the upstream path segment shall receive all secondary points upstream of the point of segmentation and the downstream path segment shall receive all secondary points downstream of the point of segmentation."

Commission Ruling

12. The Commission denies Horizon's request for rehearing, and will require it to revise the proposed tariff provision consistent with Commission policy. Horizon 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.[7]

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,[8] 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

---

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

[8]Id. at 31,594.

provide the pipeline with a competitive advantage over segmented capacity release transactions.[9]

13. Indeed, Horizon's own compliance proposal demonstrates that this policy is needed to ensure competition between released and pipeline capacity. Horizon 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 Horizon's subsequent award of firm capacity at the point to another original shipper. Thus, under this provision, a sale of firm capacity by Horizon would be entitled to priority over the capacity release transaction giving Horizon the type of competitive advantage the Commission's policy is designed to prevent.

14. Horizon also misunderstood the Commission's comments in Order No. 637-A regarding the potential for hoarding of capacity.[10] 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."[11] In this situation (where a shipper can obtain primary points <u>exceeding</u> its contract demand), the Commission recognized that the pipelines may need to take action to limit hoarding of capacity.[12]

15. But this situation is not at issue here because the Commission has not required Horizon 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 <u>equal to</u> (but not exceeding) their contract demand. Horizon has not shown that

---

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

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

[11] <u>Id.</u>

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

allowing replacement shippers to obtain primary point capacity equal to their contract demand will result in hoarding of capacity.[13]

16. 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 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.[14] 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.

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

18. Finally, the limitation in Section 7.14(c) that the upstream segment will have all the upstream secondary point rights and the downstream segment will have all the downstream secondary point rights is contrary to Commission policy. The Commission stated in Order No. 637 that the releasing and replacement shipper can nominate outside the paths that were released or retained as long as the nominations did not exceed the contract demand for that

---

[13] In any event, as the Commission stated in Order No. 637-B, Horizon 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.

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

segment. Horizon has not justified why it cannot accommodate releasing and replacement shippers use of overlapping segments outside the path when such use does not exceed the contract demand for that segment. As long as contract demand is not exceeded, the use of segments outside the path will not impair the rights of other shippers. Accordingly, Horizon must revise its proposal consistent with Commission policy.

B. Discounting

19. In Order No. 637-A, the Commission stated that the current policy permitting pipelines to limit discounts to particular points needs to be reexamined in the compliance filings, as part of the examination of restrictions on capacity release and segmentation.[15]

20. The November 21 Order directed Horizon to revise its discounting provision to reflect the Commission's current policy. In CIG/Granite State,[16] 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 two 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.[17] As the Commission explained in CIG, "this policy is an application of the general requirement that pipelines must not engage in undue discrimination,"[18] 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.

---

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

[16]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).

[17]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).

[18]95 FERC ¶ 61,321, at 62,121.

21. Under this 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 services.[19] The pipeline can 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 the Commission was concerned 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.

22. In order to comport with the Commission's requirement to ensure nomination equality,[20] the Commission further has required pipelines to process requests for discounts within two hours of the time the request is submitted.[21] 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.[22]

23. Horizon's compliance filing sets out a procedure for implementing the Commission's discount policy in Section 7.14(g) of its GT&C. Consistent with Commission policy, Horizon provides a two hour response time which is limited to Business Days and Horizon

---

[19]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 62,121 n.38.

[20]18 C.F.R § 284.12 (b)(1)(ii) (2003).

[21]The Commission has further 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.

[22]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.

need not respond to requests submitted at the end of the day until 8:30 a.m. the next day. However, Horizon also proposes that if the discount is to be effective more than 24 hours in the future, Horizon will respond within two business days or two hours prior to when timely nominations are due, whichever is sooner. 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 being paid by similarly situated shippers, except that the contract will govern if it specifies a discount rate at that alternate point.

Horizon's Rehearing Request

24. Horizon 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. Horizon 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.[23] 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 no competition.'[24] Horizon 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 the rule would be applied in Order Nos. 637, et seq.

25. Horizon 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 Horizon's existing discounting procedures are unjust and unreasonable. In addition, Horizon asserts that the Commission failed to specifically find the CIG discounting procedures would be just and reasonable on Horizon's system.

26. Moreover, Horizon 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. Horizon contends that this ruling seems to imply that the parties cannot negotiate the price at alternate points under any contract, but only at

---

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

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

primary points. This is an unwarranted restriction on the ability of the parties to negotiate price. It also ignores the commercial reality. Horizon 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 of the price of service at such alternate points, even though they may constitute the primary use of the contract. Horizon asserts that the result does not confirm to long-standing industry practice to the Commission's broader discounting policies, which allows the parties to negotiate the price of service within the applicable maximum and minimum rates. Horizon states that on this point at least, the Order must be clarified or modified to restore the ability of the parties to negotiate the basic pricing provisions of contracts.

Commission Ruling

27. The Commission rejects Horizon'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.[25]

28. In Colorado Interstate Gas Company,[26] 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

---

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

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

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.

29. Thus, the Commission has found that a pipeline's failure to provide a shipper's contract discount or the prevailing discount at a secondary point where the shipper is similarly situated to other shippers is discriminatory. The Commission has also found that it is unreasonable for a segmenting shipper with a discount to pay the maximum rate at alternative points regardless of market conditions. If the shipper has to pay the maximum rate at segmented points, the segmented transaction could not compete on an equal footing with pipeline capacity and competition would be unduly restricted. Thus, the Commission has found that failing to provide discounts at secondary points is discriminatory and that it is unjust and unreasonable.

30. However, Horizon's tariff would permit it to prevent shippers from retaining discounts at alternate points where they are similarly situated to other shippers receiving discounts. Accordingly, we have found, pursuant to NGA Section 5, that the tariff is discriminatory and unjust and unreasonable. Revising the tariff consistent with our <u>CIG/Granite State</u> policy will render the tariff just and reasonable and not unduly discriminatory. Also, since Horizon's contracts incorporate the terms and conditions in its tariff, this revision to its tariff will also render its existing contracts just and reasonable and not unduly discriminatory.

31. Section 7.14(g)(2) of Horizon's compliance filing provides "...if the Agreement of the Shipper requesting the discount (or related discount agreement) specifies the discount rate to be paid and related rate provisions at that alternate point, then the Agreement (or related discount agreement) shall control." This is contrary to Commission policy, and Horizon must remove this provision.

32. Approval of Horizon's provision would permit the pipeline to reconstruct the very non-competitive barriers that the Commission's discount policy seeks to remove. Under Horizon's proposal, the pipeline could grant a discount at a 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.[27]

Indeed, the Commission previously rejected a similar proposal by another pipeline which would have permitted it 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 Horizon 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.

33. We find that Horizon's proposal for the time requirement for processing transactions for which the discount would not take effect until more than 24 hours in the future is not contemplated by the Commission's order. Under Horizon'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."[28] For example, if a shipper wants 10 hours within which to make its decision, it would make its request to Horizon at least 12 hours in advance. Horizon's proposal conflicts with the Commission's policy because it deprives the shipper of its ability to determine how much advance notice of Horizon's discount decision it will receive. In the example above, under Horizon'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 two-hour requirement unless a satisfactory reason has been shown.[29] Horizon merely states that it needs this provision because the expedited processing requirement in that situation could hinder agreement on discounts, but Horizon does not explain how it would cause that problem. In any event, if shippers negotiating for future transactions believe providing Horizon with further time to consider the discount request would facilitate an agreement, they are free to grant Horizon additional time. Accordingly, Horizon must remove this provision from its tariff.

C. Unauthorized Overruns

---

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

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

[29] See, Reliant Energy Gas Transmission Company, 100 FERC ¶61,172 P 19 (2002) (extended contract not a basis for exception).

34. Horizon 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, Horizon applied the $10 charge plus scheduling or imbalance charges, if applicable. Horizon'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 Monthly Index Price (AMIP),[30] 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.

35. The November 21 order rejected Horizon's proposal. The order stated 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[31] if the unauthorized overrun does not cause operational problems. The Commission gave Horizon an option either: (I) to file for a UAOR rate not to exceed twice its Rate Schedule ITS rate; or (ii) to retain its current $10/Dth UAOR charge, provided its waives the penalty if the unauthorized overrun does not cause operational problems.

Horizon's Rehearing Request

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

37. Horizon 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 a very little consequence to the offending shipper. In rejecting Horizon'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. Horizon states that application of a general Commission policy to a particular factual

---

[30]Section 10.2(1) of the GT&C. The Unauthorized Overrun Rate may be discounted to any level between zero and the maximum rate so calculated.

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

situation requires that the Commission analyze whether the policy applies to that situation.[32] Horizon asserts that the Commission failed to perform that analysis. As a result, the Commission's action did not constitute reasoned decisionmaking. Horizon states that it may not have the physical ability to control overruns, at least in the short term, so an overrun may be subverting the service priorities and harms other shippers. Horizon states that the Commission should look at this issue again.

38. Horizon 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. Horizon 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

39. Horizon has complied with the order by electing to assess a UAOR rate equal to twice its Rate Schedule ITS rate.

40. Horizon has not raised any new arguments in its request that undermine the reason why we rejected Horizon'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.

41. The Commission finds that Horizon's existing overrun provision as well as its previously 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. [33] 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

---

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

[33] See Order No. 637-B, 92 FERC ¶ 61,062, at 61,171.

system reliability or deliveries to other shippers."[34] 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 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[35] 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.

42. 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.[36] Horizon 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 Horizon's request for rehearing.

D. Computer Modification - Effectiveness of the Compliance Filing

43. Horizon states in its compliance filing that it is operated by Natural Gas Pipeline Company of America (Natural) which was concurrently making a compliance filing in Docket No. RP00-409-002, et al., in which Natural indicates that it will require six (6) months to make the requisite systems changes for implementation of Order No. 637 after the final order approving its Order No. 637 tariff changes. Horizon claims that the same system will be utilized for implementing Order No. 637 on Horizon. Therefore, Horizon, requests that the effective date of Horizon's Order No. 637 compliance filing should be coordinated with that for Natural's Order No. 637 compliance plan.

---

[34] Id.

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

[36] 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).

Commission Ruling

44. In light of the inherent complexities that are required to set up and operate a computer system, the Commission accepts Horizon's request to coordinate the effectiveness of its implementation of Order No. 637 with that for Natural's Order No. 637 compliance plan. By order issued on May 14, 2003, the Commission accepted Natural's proposed implementation date of the first day of the month which is six months from the date of the order or November 1, 2003.[37] Accordingly, Horizon is directed to implement its Order No. 637 compliance filing on November 1, 2003.

The Commission orders:

(A) Horizon's request for rehearing is denied.

(B) Horizon's revised tariff sheets listed in the appendix are conditionally accepted to be effective on November 1, 2003.

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

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

[37] Natural Gas Pipeline Company of America, 103 FERC ¶ 61,174 P 69 (2003).

APPENDIX

Horizon Gas Pipelines Company of America

Docket Nos. RP02-153-002 and RP03-153-003

FERC Gas Tariff, Third Revised Volume No. 1

First Revised Sheet No. 23
First Revised Sheet No. 24
First Revised Sheet No. 33
First Revised Sheet No. 135
Original Sheet No. 135A
Original Sheet No. 135B
Original Sheet No. 135C
Original Sheet No. 135D
First Revised Sheet No. 140
First Revised Sheet No. 141
First Revised Sheet No. 145
Second Revised Sheet No. 149
Original Sheet No. 149A
Second Revised Sheet No. 153
Original Sheet No. 153A
Original Sheet No. 153B
First Revised Sheet No. 173
Second Revised Sheet No. 174
Original Sheet No. 174A
First Revised Sheet No. 230
First Revised Sheet No. 231
Second Revised Sheet No. 232
First Revised Sheet No. 233
Second Revised Sheet No. 234
First Revised Sheet No. 235
First Revised Sheet No. 236
First Revised Sheet No. 237