121 FERC ¶ 61,064
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

National Energy & Trade, LP,
Complainant

v. Docket No. RP07-473-000

Texas Gas Transmission, LLC,
Gulf South Pipeline Company, LP,
Respondents

ORDER ON COMPLAINT

(Issued October 18, 2007)

1. On June 4, 2007, National Energy & Trade, LP (NET) filed a complaint against Texas Gas Transmission LLC (Texas Gas) and its affiliate, Gulf South Pipeline, LP (Gulf South) alleging that, in awarding capacity to its affiliate, Gulf South, and Sequent Energy Management, LP (Sequent) in a capacity auction process completed February 5, 2007, Texas Gas acted in an unduly discriminatory and preferential manner, and failed to follow its FERC Gas Tariff, Commission policy and the requirements of Natural Gas Act and that in the process Texas Gas and Gulf South engaged in market manipulation in violation of the Energy Policy Act of 2005. For the reasons set forth below, the Commission dismisses the complaint.

Factual Background of the Complaint[1]

2. As related to this complaint, Texas Gas' system runs in a north-south direction from an interconnection with Gulf South near Monroe, Louisiana in the northern part of the state (Lonewa interconnect), to an interconnection with Florida Gas Transmission (FGT) near the town of Eunice in south-central Louisiana, and continues in a south-easterly direction until it

[1] Texas Gas and Gulf South filed a joint answer. Sequent filed comments, and Louis Dreyfus Energy Service LP (Dreyfus), a competitor in the bidding, filed a limited answer. The facts set forth are undisputed except where noted, and reflect all the pleadings filed.

divides near Morgan City, Louisiana. From Morgan City, one segment continues eastward to an interconnection with Transcontinental Gas Pipe Line Corporation at Thibodaux, Louisiana, (Transco-Thibodaux), while another segment continues southward to the Gulf of Mexico. (The parties refer to the system south of Eunice as the EUT System.) In response to a demand for additional transportation capacity on its system in southeast Louisiana, Texas Gas decided to physically reverse the flow on the EUT System from west to east.[2]

3. Prior to implementing the flow reversal, Texas Gas posted for bidding on January 17, 2007 additional firm capacity that it believed would become available as a result of the change. The posting stated that the availability of capacity varied depending on where deliveries would be made, and included but was not limited to 30,000 MMBtu/day on the EUT System from Eunice to Transco-Thibodaux.[3] The posting also listed the availability of 216,000 of pipeline capacity south of Morgan City; and receipt point capacity at the Lonewa interconnect consisting of 605 in the summer season and 790 in the winter season.

4. In response to the January 17, 2007 posting, Louis Dreyfus Energy Services, L.P. (Dreyfus) submitted a bid for 30,000 for FT service on the EUT System to Transco-Thibodaux from April 1, 2007 through March 31, 2008. On January 22, 2007, Texas Gas posted Dreyfus' bid, and directed that competing bids had to be submitted by January 29, 2007. On January 23, 2007, Texas Gas posted NET's bid for the same capacity. According to the bidding procedures included in Texas Gas' January 17, 2007 posting, Texas Gas treated the Dreyfus and NET bids as competing bids and initiated a final bidding period to end on January 30, 2007.

5. On January 24, Gulf South submitted a bid for 200,000 of capacity from the Lonewa receipt point to a proposed delivery point south of Morgan City, now designated as Kent Bayou. On January 24, Texas Gas informed Gulf South that it could not accept the bid because Texas Gas' posting did not show that amount of unsubscribed capacity to be available at Lonewa. Gulf South then informed Texas Gas that Gulf South had upgraded the facilities at Lonewa and the meter capacity was 654,200, thereby increasing the amount of available capacity at Lonewa from 605 (summer) and 790 (winter) to 132,390 (summer) as of April 1, 2007, and to 132,575 (winter) as of November 1, 2007.

6. Texas Gas states that after receiving this information, on January 26, 2007, Texas Gas posted on its website a "Posting of Additional Receipt Point Capacity, Extension of Bidding Period and Clarification of NPV Calculations."[4] This posting revised the January 17, 2007 posting by increasing the amount of available capacity at the Lonewa receipt point from 605 (summer) and 790 (winter) to 132,390 (summer) as of April 1,

[2] See map attached as Appendix A.

[3] Subsequent references to capacity will be for MMBtu/day.

[4] As used in this order, "NPV" means "net present value."

2007 and to 132,575 (winter) as of November 1, 2007. The posting also stated that the "final bidding period for Lonewa and the extended final bidding period for EUT-Thibodaux will end at 4 PM … February 2, 2007." The final bidding was thereby extended from January 30, 2007 to February 2, 2007. Also, on the same day, Texas Gas re-posted NET's bid for 30,000 of capacity from the Eunice-FGT interconnection to Transco-Thibodaux.

7. In response to the January 26, 2007 Notice, fourteen bids were submitted. Among these were Gulf South's January 30, 2007 bid for (i) 200,000 of FT-0 capacity from Lonewa (132,575 during the winter and 132,390 during the summer) for delivery to a "proposed interconnect south of Morgan City, LA," effective from April 1, 2007 through March 31, 2008 and (ii) 67,425 during the winter and 67,610 in the summer, to be received at a "proposed interconnect in Ouachita Parish, Louisiana." On February 2, 2007, Sequent submitted a competing bid for (i) 30,000 of FT-0 capacity to Transco-Thibodaux, effective April 1, 2007 for nine years, until March 3, 2016, and (ii) 20,000 of FT-0 capacity from Regency-Riverton to FGT, effective March 1, 2007 through February 28, 2009. Sequent stated the latter bid was "Conditional to being awarded the Firm Transportation to Thibodaux."[5]

8. On February 2, 2007, Dreyfus submitted a revised bid for the 30,000 of FT-0 capacity to Transco-Thibodaux effective April 1, 2007 through April 30, 2017.

9. On February 2, 2007, NET submitted a revised bid for two contracts. The revised bid, at Texas Gas' maximum recourse rate, included the following transportation paths: (1) 200,000 to the "proposed interconnect south of Morgan City, LA," effective April 1, 2007 through March 31, 2008, 20,000 from Regency-Riverton, and 132,575 (winter), and 132,390 (Summer) from Lonewa (Contract A), and (2) 30,000 of FT-0 capacity from Regency-Riverton to Transco-Thibodaux, effective April 1, 2007 through March 31, 2010 (Contract B). The bid stated that NET was submitting contingent bids, and that Contract A is contingent upon the successful award of Contract B to NET.

10. On February 5, 2007, Texas Gas announced that Sequent's February 2, 2007 bids for firm capacity had been successful, and that Gulf South had been awarded a portion of its January 30, 2007 bid.

The Complaint

11. Among its allegations, NET alleges that Texas Gas violated both Commission policy and its own FERC Gas Tariff by combining the unrelated bids of two shippers. NET contends that Commission policy and Texas Gas' Tariff clearly set forth the procedures for

[5] Attachment E to Answer of Texas Gas.

determining the NPV of competing bids for available capacity, and NET's complaint is largely grounded in its position that these procedures were not followed by Texas Gas in this capacity auction.

12. NET cites to the following provision in Texas Gas' Tariff which it asserts was not followed:

> Texas Gas will post any of its available firm capacity on its Electronic Bulletin Board (EBB). All firm capacity available through Texas Gas will be subject to a bidding process, with capacity being allocated to the party(ies) with the best bid(s). The method to be used by Texas Gas in determining the best bid is described in Section 25 of the General Terms and Conditions of this Tariff (Texas Gas FERC Gas Tariff, Rate Schedule FT-SL, FT-1, FT-2, FT-3, and FT-4, § 1.2, Original Sheet No. 98).
>
> Best bid will be determined based on what will yield … the highest net present value, using a 10% discount factor, of the reservation charge (reservation charge x CD) the Replacement Customer is willing to pay for the term bid. (Texas Gas FERC Gas Tariff GTC § 25.3 (f)(ii), First Revised Sheet No. 251).

13. NET asserts that Texas Gas combined unrelated bids by Sequent and Gulf South to calculate the best bid. NET states that in response to Texas Gas' NPV Clarification Posting, NET included a condition in its bid that the two transportation paths were a package bid in order to ensure that NET's bid had a NPV higher than Gulf South's bid. NET stated that it included two transportation paths with a common point in its bid in order to comply with the NPV Clarification Posting's requirement that packaged bids include a common point. NET asserts that based on Texas Gas' Tariff, it should have been awarded the available capacity since NET's calculation of the NPV of the three relevant bids for the capacity are:

- NET: $7,307,051,
- Sequent: $6,223,817, and
- Gulf South: $5,054,311.

14. NET argues that while the Commission previously permitted Texas Gas to be exempt from the Commission's Standards of Conduct,[6] the circumstances originally relied on by the Commission no longer exist because there is significant potential for affiliate preference by Texas Gas, particularly with Texas Gas' affiliate, Gulf South, competing with non-affiliated shippers for capacity on Texas Gas.

[6] *See* Docket No. TS04-253 at 108 FERC ¶ 61,243 (2004).

15. NET states that Gulf South charges a higher firm transportation rate for Lonewa-Morgan City transportation (using Texas Gas' capacity) than does Texas Gas. NET alleges that the facts set forth establish that Texas Gas and Gulf South jointly arranged to transfer Texas Gas capacity to Gulf South through a misapplication of Texas Gas' capacity bid procedures in order to manipulate the market for natural gas transportation, and permit Gulf South to recover an incremental $15,983,350 annually above what Texas Gas could legally charge for that capacity.

16. NET concludes that Texas Gas and Gulf South violated statutory provisions prohibiting market manipulation under the Energy Policy Act of 2005 and the Commission's regulations.

17. NET requests that the Commission order: (i) Texas Gas to award to NET the capacity for which it bid in response to Texas Gas' January 17, 2007, and January 26, 2007 unsubscribed firm capacity notices; (ii) Texas Gas to grant NET all rights it would have had to the capacity it bid on pursuant to said notices; (iii) Texas Gas to cancel the unlawful award of the subject capacity to Sequent and Gulf South; (iv) Gulf South to disgorge all profits realized on the capacity it was improperly awarded, and to pay such profits to NET; and (v) Texas Gas and Gulf South to reimburse NET to the extent NET is deprived of the profits it would have received from the use of the Texas Gas capacity on which it bid.

Notice of Filing and Responsive Pleadings

18. Notice of NET's complaint was issued June 5, 2007. Texas Gas and Gulf South filed a joint answer. Sequent filed comments. Dreyfus filed a limited answer. Timely motions to intervene were filed by Conoco Phillips; PSEG Energy Resources & Trade LLC; Peoples Natural Gas Company d/b/a Dominion Peoples; Memphis Light, Gas and Water Division; Western Tennessee Municipal Group; and Key Span Delivery Corporation. Public Service Commission of New York filed a notice of intervention. United Municipal Distributors Group, and Crosstex Gulf Coast Marketing Ltd. filed out-of-time motions to intervene. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2007)), all timely, unopposed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding nor place additional burdens on existing parties.

Respondents' Answer

19. Texas Gas asserts that it followed the bid procedures set forth in its notices, and that NET was not awarded the capacity because NET was not the winning bidder. Texas Gas takes issue with NET's description of its bid, and states that NET submitted two separate, and contingent bids, not a package bid.

20. Texas Gas maintains that NET was not awarded any of the capacity it bid on for several reasons. First, no combination of bids involving the bids submitted by NET resulted in the highest NPV for the available capacity posted by Texas Gas.[7] Rather, Texas Gas asserts that the combination of bids creating the highest NPV were the two bids submitted by Sequent when combined with the bid submitted by Gulf South. In fact, Texas Gas states, there were at least five combinations of bids that were higher than any combination that included NET's bids. In addition, Texas Gas asserts that under the plain language of NET's bids, its bid for capacity at Kent Bayou was contingent on NET being awarded capacity at Transco-Thibodaux. When NET was not awarded the capacity at Transco-Thibodaux because its bid was tied for sixth place, Texas Gas states it did not consider NET's bid for capacity at Kent Bayou in the evaluation process. Finally, Texas Gas states, as detailed below, that it was authorized by the Commission to establish bidding procedures for capacity auctions in its notices of available capacity, and that its actions were consistent with such procedures.

21. Texas Gas points out that the Commission has ruled that it can place the terms and conditions applicable to bidding for available firm capacity in its capacity postings.[8] Thus, Texas Gas states that its longstanding practice has been to notify the market of bidding procedures by placing them in postings of Unsubscribed Firm Capacity. Furthermore, Texas Gas states that it routinely specifies in its capacity postings that its bid evaluation method will aggregate bids to determine the highest NPV. Texas Gas asserts that awarding capacity to the best bid or combination of bids with the highest NPV is an objectively stated method both permitted under the tariff and consistent with Commission policy. Texas Gas notes that both the January 17, 2007 and January 26, 2007 postings include this bid evaluation method. The postings stated at section 7 that "[w]here more than one acceptable offer is made during the final bidding period, if applicable, Texas Gas will award the available capacity to the *best bid or combination of bids* which yields the highest net present value" (emphasis added). There is nothing in any of the postings, Texas Gas asserts, that prohibits it from combining two or more packages of bids from different shippers for NPV evaluation purposes.

22. Thus, Texas Gas states that it permissibly aggregated Sequent's two bids, which contained a common receipt point and a partial transportation path, to ascertain the NPV of Sequent's bids. In addition, consistent with Texas Gas' practice, and as expressly provided in the January postings, Texas Gas evaluated various combinations of bids of different shippers to determine the highest overall NPV of the bids submitted for the capacity.

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[7] Attachment G to Texas Gas' Answer (Appendix B to this order) compares the NPVs of bids submitted by each shipper, and also compares the total NPV resulting from combining bids of shippers for the capacity in question. The hand written phrase on the attachment, "Reference should be to Gulf South," was on the filed document.

[8] *Citing Texas Gas Transmission Corp*., 64 FERC ¶ 61,083 at 61,799 (1993).

23. Texas Gas takes issue with NET's claim that its two bids should have been evaluated as a package, which NET believes would have resulted in its combined bids having the highest NPV of any bidder. Texas Gas, quoting the language of NET's February 2, 2007 bid, asserts that NET's bids included a contingency that prevented Texas Gas from evaluating them as a package:

> Contingent bids submitted by National Energy & Trade, LP
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> NET wishes to bid two contracts of transportation on TGT. Contract A: is for 200,000/d with a new delivery point upstream of Morgan City, La. Contract B: is for 30,000/d with a delivery point of Transco-Thibodaux 1). Contract A is contingent upon the successful award of Contract B, and 2). Contract A is conditioned upon the execution of a Reimbursement Agreement between TGRT, Gulf South Pipeline and National Energy and Trade.
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> Please note that Contract B is not contingent on Contract A, should NET not be awarded Contract A.[9]

24. Texas Gas asserts that NET's bid for the 30,000 capacity in Contract B was not the best bid for that capacity, and accordingly the contingency in NET's bid for Contract A was not satisfied. Texas Gas argues that while NET asserts it was the winning bidder for both the Transco-Thibodaux capacity and the Kent Bayou capacity, this contention is based on the fallacy that NET submitted a package bid. Texas Gas states that NET did not submit a "package bid" as it now claims, rather NET submitted "contingent bids."

25. With respect to the NET's market manipulation argument, Texas Gas states that the sole support for the allegation is a comparison of the maximum transportation rates each pipeline is authorized to charge for the capacity. Texas Gas asserts that there are a number of operational reasons why Gulf South sought that capacity, and why shippers on Gulf South would pay the higher rate.

26. Texas Gas concludes that it followed the posting and bidding procedures applicable to unsubscribed capacity. Moreover, it argues that the Commission should not overturn consummated transactions since there is a public interest in preserving market stability and all the actions were taken in good faith. Texas Gas also notes that NET did not file its complaint until more than four months after the capacity was awarded, and after the contracts became effective.

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[9] Dearing Affidavit, Attachment L to Complaint, last unnumbered page.

Dreyfus' Answer

27. Dreyfus was the first bidder on the 30,000 capacity listed in the January 17, 2007 notice. Dreyfus asserts that the procedure followed by Texas Gas was defective from the moment Texas Gas announced that it had determined that additional capacity was available within the path encompassed by the original Dreyfus and NET bids, and extended the bidding deadline. Dreyfus contends that when Texas Gas became aware of the additional capacity at the Lonewa receipt point, it should have proceeded with an award of the capacity on which Dreyfus and NET originally bid, noting that Dreyfus would have been the winner, and then Texas Gas should have posted the availability of additional capacity for bidding in a new, entirely separate process.

28. With respect to NET's claim, Dreyfus argues that if the process was flawed, as NET strenuously argues it was, then it was flawed from the beginning, and NET should not be placed in a better position than it would have occupied had Texas Gas conducted the process in accordance with its tariff. Thus, Dreyfus asserts, that granting the relief that NET seeks would upset commercial arrangements that have been in place for a number of months, and would favor one participant in a flawed process over others that likewise were adversely affected by the manner in which the process was conducted. Under these circumstances, Dreyfus states considerations favoring certainty and predictability and respect for settled expectations in the natural gas marketplace should lead the Commission to refrain from disturbing the results of the capacity auction as NET urges, and the Commission should deny the relief requested by NET.

29. Dreyfus nevertheless suggests that the complaint highlights a fundamental problem that exists in the capacity allocation marketplace. Dreyfus notes that the capacity allocation tariff mechanisms in most cases have changed little in the nearly 15 years since the natural gas transmission industry was restructured. Dreyfus contends that these mechanisms were conceived when the natural gas marketplace was in its infancy, liquidity in natural gas capacity markets was limited, and trade far more limited than it is today. Accordingly, Dreyfus suggests that the Commission should institute a generic inquiry into the implementation of pipeline capacity bidding and allocation mechanisms.

Sequent's Comments

30. Sequent, the recipient of the capacity award on February 5, 2007, filed comments. Sequent states that it takes no position on the merits of NET's complaint. However, it states that it utilizes the capacity that it was awarded, and if the Commission cancelled that capacity, it would result in a significant disruption in Sequent's ability to provide service to its customers. Accordingly, Sequent urges the Commission to not cancel the capacity award from Texas Gas.

Subsequent Pleadings

31. After the parties unsuccessfully attempted to resolve their differences through the Commission's Alternative Dispute Resolution (ADR) process, NET filed a motion and response to Texas Gas' answer. Texas Gas filed an answer to NET's response. We will accept both pleadings under Commission Rule 213(a) because they assist in our decision-making process.[10]

32. NET contends that Texas Gas failed to follow the clear language of its tariff and capacity postings and inconsistently and in an unduly discriminatory fashion interpreted its tariff and posted bid evaluation criteria. Thus, while Texas Gas claims the right to aggregate the bids or the combination of bids of different bidders pursuant to its January 17 posting, NET asserts that GT&C section 25.3(f) of the tariff clearly refers only to the best bids or bids of an individual shipper. According to NET, the unambiguous meaning of the tariff is that the "bid or combination of bids" referred to in the auction posting is a reference to the bid or combination of bids of a single customer. Nowhere it argues is there any indication that Texas Gas could aggregate the bids or combination of bids of different shippers, and ignore the best bid or bids by individual bidders.

33. Furthermore, NET contends that Texas Gas conceded on several occasions that NET's combination of bids had the highest NPV of any individual shipper. NET also asserts that Texas Gas evaluated Sequent's bids differently from the way it evaluated NET's bids in order to prevent Gulf South's bid to Kent Bayou from losing to NET. NET explains that while both its own offer and Sequent's included a contingent bid, Texas Gas ignored the contingency in Sequent's bid for capacity to FGT in order to combine both of Sequent's non-best bids with Gulf South's bid to Kent Bayou. NET adds that, by contrast, Texas Gas wrongly interpreted the contingency stated in NET's bid to Kent Bayou in a way that would ensure that NET's Kent Bayou bid would be evaluated separately from its bid to Transco-Thibodaux. NET believes that Texas Gas did so to ensure that its Transco-Thibodaux bid, on its own, would lose and therefore its Kent Bayou bid would be eliminated from competing with the only other bidder to Kent Bayou - Gulf South. NET maintains that the contingent language of NET's bid to Kent Bayou was actually intended to ensure that its bid package, consisting of two transportation paths with a common receipt point, would be evaluated as having a single NPV.

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[10] On October 5, 2007, NET filed a Motion to Respond and Response, with affidavits, to Texas Gas' September 14, 2007 Answer to NET's August 31, 2007 Response. The Commission has reviewed this filing and finds it does not require any change in our determination. Furthermore, submitting affidavits at this stage is contrary to Rule 206 (b)(8) of our Rules of Practice and Procedure, 18 CFR § 385.206 (2007), which requires that a "complaint must include all documents that support the facts in the complaint…including, but not limited to, contracts and affidavits."

34. NET contends that Gulf South received unduly preferential treatment in the auction bidding and capacity award process. It asserts that after the end of the bidding period Texas Gas communicated with Gulf South and permitted Gulf South to revise its bid to enable Gulf South to become the winning bidder.

35. Finally, NET asserts that the increase in capacity at the Lonewa interconnect was centrally planned and managed by Gulf South and Texas Gas in order to award Gulf South the Texas Gas capacity. Specifically, NET challenges Texas Gas' assertion that it had been unaware of the increased Lonewa capacity until told of it by Gulf South. NET argues that Texas Gas would not have reversed certain gas flows or made certain new interconnects if it had lacked knowledge of the Lonewa expansion. Thus, there was no "surprise" reason for Texas Gas to re-post the added Lonewa capacity in the midst of an ongoing bidding process.

36. NET argues that the result of these coordinated actions by the affiliated companies, including Texas Gas' parent, Boardwalk Pipeline LP, was that Gulf South was enabled to acquire the posted January 17, 2007, capacity and charge shippers its firm transportation recourse rate on that capacity, which is higher than Texas Gas' recourse rate. NET claims that Texas Gas must have known of the upgrade at Lonewa before it started the auction process in January 2007, and utilized the procedure of a revised posting to ensure that Gulf South would be the winning bidder for the increased capacity at Lonewa. By awarding the capacity to Gulf South, Texas Gas restricted the ability of shippers to maximize their use of capacity to different markets through segmentation, and was intended to manipulate markets.

37. In its answer to NET's response, Texas Gas states that the award of capacity was fully consistent with Texas Gas' Tariff, posted bidding procedures, and Commission policy and precedent. Contrary to NET's allegation, no bid combination that included either or both of NET's bids generated the highest NPV for all of the capacity available in the auction.

38. Texas Gas asserts that NET's contention that its bid, individually, or as a package, had the highest NPV is baseless and completely without merit. Texas Gas reiterates that the bids submitted by NET clearly stated that NET's bid for capacity to Kent Bayou (south of Morgan City) was contingent on NET being awarded its bid for capacity to Transco-Thibodaux. Thus Texas Gas asserts that when NET's bid for capacity to Transco-Thibodaux was not the winning bid because it tied for sixth place, referring to the Summary of Bid analysis, (Appendix B to this order), it did not consider NET's bid for capacity at Kent Bayou under the plain language of NET's submission. The bid combination yielding the highest NPV included the two Sequent bids and a pro-rated portion of the Gulf South bid. NET's bids were not competitive on either an individual or a combined basis.

39. Moreover, Texas Gas rejects, as unsupported, NET's contention that Texas Gas "has conceded on several occasions that NET's combination of bids had the highest NPV of any individual shipper," (NET response at 12) and refers to its answer to the complaint where it stated, at 19-20, "NET's claim that its 'bid' had the highest NPV…is fundamentally flawed and must be rejected."

40. Texas Gas repeats that it did not treat the bids of Sequent and NET differently. It refers to its answer where it explained that the NPV analysis considered a number of factors, including how awarding capacity at one point would affect Texas Gas' ability to award capacity at other points, *i.e.*, how different bid combinations would maximize capacity utilization, considering operational requirements, constraints based on the volumes and receipt and delivery points specified in the bids, bidder-imposed conditions, and whether shippers were willing to be pro-rated. Texas Gas contends that under this analysis, the combination of bids with the highest NPV consisted of Sequent's bids for capacity to Transco-Thibodaux and to the Eunice-FGT interconnection and a pro-rated portion of Gulf South's bid for capacity to Kent Bayou. The bid analysis shows that NET's bid to Transco-Thibodaux had an NPV of $2,229,265, which placed it tied for sixth with two other bidders. Moreover, the best NPV resulting from combining NET's bids with others' bids was far lower than the combination of bids of Sequent and Gulf South.

41. Texas Gas also asserts that, notwithstanding NET's inferences concerning Texas Gas' foreknowledge of the Lonewa expansion, the actions of Texas Gas upon learning of the additional meter capacity at Lonewa were the antithesis of market manipulation since it gave notice of this additional capacity to all, so interested parties could evaluate the new information and submit bids on the entirety of the capacity available.

Discussion

42. NET contends that Texas Gas did not properly post the correct amount of available capacity on the system by not initially posting all the capacity that was available at Lonewa. According to NET, advance knowledge of the available Lonewa capacity gave Gulf South an advantage over other bidders and constitutes the information not disclosed to unaffiliated parties. Texas Gas' response was that it was unaware of the additional capacity at Lonewa when Texas Gas posted the January 17, 2007 notice. Texas Gas states that Gulf South is the operator at that point, and it was only on January 24, 2007, that Texas Gas became aware of that capacity by a communication from Gulf South. Upon learning of this, Texas Gas states it revised the Lonewa capacity and issued the revised notice on January 26, 2007. Texas Gas states that once it became aware of the actual capacity at Lonewa, it faced a choice: either to complete the existing bid process on the portion of the capacity originally posted, or to apprise all bidders of the newly available capacity, and extend the bidding. For its part, NET disputes that Texas Gas suddenly became aware of the total Lonewa capacity, and argues that the pipeline knew all along of the total Lonewa capacity that was available.

43. We decline, on the record before us, to infer advance knowledge of the Lonewa expansion to Texas Gas, and find that Texas Gas acted reasonably by issuing the January 26, 2007 notice, which increased the previously posted Lonewa available capacity as part of the on-going auction; and extending the auction's bidding period. Texas Gas appears to receive significant quantities of gas at the Lonewa interconnection that could be delivered at various locations on the capacity being auctioned. Therefore, it was reasonable for Texas Gas to

conclude that information on the availability of capacity at Lonewa could be a factor influencing the course of bidding on the remainder of the EUT capacity, and thus be included in the on-going auction.

44. Even assuming, *arguendo*, that one could infer such advance knowledge of the Lonewa expanded capacity at the time of the initial posting, the revised bidding process Texas Gas established in the revised posting disclosed all material facts relevant to bidders for capacity. The process was consistent with Texas Gas'capacity bidding procedures. Specifically, the length of the extended bidding period, seven days from January 26 until the close of bidding on February 2, would have eliminated the possibility that Texas Gas gave Gulf South an undue advantage over other bidders as a result of their both having advance knowledge of the additional Lonewa capacity, because the extended auction period was the same length as the original auction period posted on January 17.[11]

45. Turning to the award of capacity, NET asserts that it submitted a package and not a contingency bid with the highest NPV, and it should have been awarded the capacity on which it bid. NET maintains that its last bid was a package bid and the NPV should have been calculated by including both its bid on the 30,000 capacity to Transco-Thibodaux and its bid for 200,000 to the Kent Bayou point. Further, NET maintains that Texas Gas improperly combined the bids of two shippers, Sequent and Gulf South, to arrive at a NPV higher than the NPV for NET's bid.

46. Contrary to NET's assertion, the copy of NET's bid submitted by Texas Gas clearly shows that NET's bid could be evaluated as a package only if the contingency NET attached to its bid was satisfied. As quoted above, the bid stated:

> Contingent bids submitted by National Energy & Trade, LP
> NET wishes to bid two contracts of transportation on TGT
>
> * * *
>
> (1) Contract A is contingent upon the successful award of Contract B.

47. Contract B was the bid for the 30,000 capacity to Transco-Thibodaux. Texas Gas states that it determined that among the fourteen bidders in response to the January 26, 2007 notice, NET did not submit the highest NPV bid for Contract B. Texas Gas states that Sequent's bid for the Transco-Thibodaux capacity had a term extending to 2016, compared to the bid submitted by NET, which had a term extending only to 2010. Consequently, the NPV of NET's bid for the Transco-Thibodaux capacity was substantially lower than the NPV of Sequent's bid for capacity to that point. Further, Texas Gas points out, the NPV of NET's bid was lower than the bids of five other shippers who also bid for capacity at

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[11] By comparison, the seven-day bidding period was twice as long as the three-day auction period prescribed in Texas Gas' Tariff for capacity releases over one year in length.

Transco-Thibodaux. Texas Gas stated that since NET's bid for the 200,000 capacity to Kent Bayou was contingent upon its being awarded the Transco-Thibodaux capacity, when NET did not win that capacity, Texas Gas did not consider NET's bid for capacity to Kent Bayou. Inasmuch as Gulf South was the only other bidder for the Kent Bayou capacity, Texas Gas awarded that capacity to Gulf South.

48. In support of its position, Texas Gas submitted the "Summary of Bid Analysis, February 2, 2007 Bid." This analysis shows the value of the various bids and confirms that NET did not have the highest bid for the Transco-Thibodaux capacity. In its response to Texas Gas' answer, NET did not offer any rebuttal to this analysis of the bids.

49. NET also argues that regardless of the calculation of the various bids, Texas Gas improperly combined the bid of its affiliate, Gulf South, and a third party to arrive at the desired result. NET contends that Texas Gas was prohibited from combining the bids of Sequent and Gulf South because Texas Gas' Tariff refers only to the bids of an individual shipper and does not contain explicit language providing for the aggregation of bids of multiple shippers. NET argues that the Commission permits a pipeline to aggregate bids of multiple shippers only if the pipeline's tariff contains "explicit bid aggregation language."

50. There is no such Commission requirement. Texas Gas' practice is to set forth the terms and conditions applicable to bidding for unsubscribed capacity in capacity postings, as the Commission has authorized it to do.[12] The Commission permits such aggregation because aggregating bids by different shippers enables smaller bids to compete with larger bids and permits a pipeline to maximize its revenues. Here, section 7 in both the January 17, 2007 and January 26, 2007 bid postings specifically provide for Texas Gas to "award the available capacity to the best bid or *combination of bids* which yield the highest net present value" per GT&C section 25.

51. None of the cases cited by NET require that the aggregation procedure can only be set forth in the pipeline's tariff, and not elsewhere. In *Mississippi River Transmission Corp.*, 89 FERC ¶ 61,067 at 61,220 (1999), the Commission rejected a tariff provision that removed an existing provision requiring that the pipeline aggregate multiple bids to determine the highest incremental revenues, and replaced it with language giving the pipeline discretion to aggregate bids. The Commission rejected the offending provision, and that case cannot be cited to support the claim that a pipeline must have tariff authority expressly authorizing it to combine bids for NPV purposes. Rather, it required the pipeline to do exactly what Texas Gas did here, namely combine bids so capacity is awarded to the bid or combination of bids that places the highest value on that capacity.

52. In its response to Texas Gas' answer, NET asserts that Texas Gas violated its bid evaluation procedures by treating Sequent's bids differently from NET's bids when,

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[12] *Texas Gas Transmission Corporation*, 64 FERC ¶ 61,083 at 61,799 (1993).

according to NET, Texas Gas "in evaluating Sequent's bid for Transco-Thibodaux capacity . . . included Sequent's contingent bid for capacity to the Florida market." NET's position is that Sequent's bid was not the best bid for the Transco-Thibodaux capacity and Sequent should not have been allowed to bootstrap its Transco-Thibodaux bid into an award on the basis of its bid for capacity at the Eunice-FGT interconnection, just as NET was not able to bootstrap its Transco-Thibodaux bid on the basis of its Kent Bayou bid.

53. However, NET ignores the fact that Sequent was the only bidder for the FGT capacity, and if Texas Gas had not awarded the Transco-Thibodaux capacity to Sequent, it would not have been able to award the FGT capacity to any shipper, thereby depriving itself of an additional $1,048,489 in annual revenue. While neither Sequent's nor NET's bids to Transco-Thibodaux were determined to be "best bids" under the NPV evaluation methodology described in section 25 of Texas Gas' Tariff, we do not find that Texas Gas treated Sequent and NET differently with respect to the contingency of their respective bids.

54. Although Sequent's FGT bid had a contingency as did NET's Kent Bayou bid, the award to Sequent was not evidence of different treatment of contingency language. Rather, it is the result of the simple fact that Sequent's contingency was met and NET's contingency was not met because its bid for capacity to Transco-Thibodaux was not the winning bid. Texas Gas' actions in this regard were consistent with previous Commission authorization, and its bid evaluation procedures. Moreover, even if Texas Gas had considered NET's two bids together, NET's bids still would not have yielded the highest NPV for Texas Gas, as shown on the Summary of Bid Analysis, attached hereto as Appendix B.

55. With respect to NET's allegation that Gulf South received preferential treatment, NET asserts that Texas Gas allowed Gulf South to revise its bid after the close of the bidding period. However, Gulf South did not revise its bid as NET charged. Rather, NET's allegation is related to advice given by Texas Gas to all bidders that Gulf South's bid for capacity at Kent- Bayou would not reduce the 30,000 capacity at Transco-Thibodaux, and Gulf South's agreement that it would take a pro-rated amount at Kent-Bayou. Texas Gas states that before the close of the bid period Gulf South notified Texas Gas that it would accept less than the 200,000 amount in its bid. The communications referred to by NET merely confirm those prior communications. We do not find this constitutes preferential treatment.

56. NET's complaint states that Texas Gas manipulated the market by transferring Texas Gas' capacity at Lonewa to Gulf South's control, thereby enabling Gulf South to charge other shippers its much higher rates than Texas Gas' rates. Based on this evidence, and inferring advance knowledge of the Lonewa expanded capacity to Texas Gas, NET concludes that the two pipelines manipulated Texas Gas' capacity posting process to ensure that Gulf South would win the capacity and be able to charge its maximum rate and earn higher revenues than the amount Texas Gas receives for that capacity.

57. We find that NET has not demonstrated that Texas Gas engaged in manipulative conduct in connection with its award of capacity to Gulf South. The mere fact that a rate charged was higher than another possible rate for capacity is not, by itself, sufficient evidence of deceptive or manipulative conduct.

58. Based on the pleadings and responses of Texas Gas, we find that Texas Gas awarded the re-posted capacity in a manner consistent with the procedures governing bidding for capacity, and that Texas Gas disclosed all relevant material facts to bidders for capacity.

59. The Commission takes seriously allegations of market manipulation, and reviews all such allegations on a case-by-case basis. In this case, the pleadings make plain that there is no basis for NET's charge that Texas Gas' engaged in any deceptive or manipulative conduct in connection with its award of capacity to Gulf South. When a case is unsupported by facts and circumstances satisfying the elements of a bona fide manipulation claim as specified in Order No. 670,[13] we will, as here, dismiss the complaint.

60. As stated in Order No. 670, "the Commission will act in [manipulation] cases where an entity: (1) uses a fraudulent device, scheme or artifice, or makes a material misrepresentation or a material omission as to which there is a duty to speak under a Commission-filed tariff, Commission order, rule or regulation, or engages in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any entity; (2) with the requisite scienter; (3) in connection with the purchase or sale of natural gas or electric energy or transportation of natural gas or transmission of electric energy subject to the jurisdiction of the Commission."[14] To bring a claim of market manipulation, a complainant must plead these elements and must do more than make mere unsubstantiated allegations.[15] Unsubstantiated allegations without more do not provide the basis, either in law or in fact, for ordering a hearing or a Commission-initiated investigation.[16]

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[13] *Prohibition of Energy Market Manipulation*, Order No. 670, FERC Statutes & Regulations ¶ 31,202 (2006), *reh'g denied*, 114 FERC ¶ 61,300 (2006).

[14] *Id*. at P 49.

[15] 18 C.F.R. § 385.206(b)(2) (2007) (A complaint must explain how the action or inaction violates applicable statutory standards or regulatory requirements).

[16] *E.g.*, *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,108 at P14 n.16; *PJM Interconnection, LLC*, 115 FERC ¶ 61,052, at P12 n.10 (2006); *Duke Energy Corp.*, 87 FERC ¶ 61,249, at 61,966 n.4 (1999); *Central Maine Power Co.*, 60 FERC ¶ 61,285, at 61,965 n.17 (1992); *Philadelphia Electric Co.*, 58 FERC ¶ 61,060, at 61,132 n.2 (1992); *Georgia Power Co.*, 52 FERC ¶ 61,321, at 62,278 n.5 (1990).

61. In this case, the complaint must fail because it does not satisfy the first element, fraud. In Order No. 670, we defined fraud to “include any action, transaction, or conspiracy for the purpose of impairing, obstructing or defeating a well-functioning market.”[17] We also stated that “[f]raud is a question of fact that is to be determined by all the circumstances of a case.”[18] NET’s charge of market manipulation is an unsubstantiated allegation devoid of facts and circumstances evidencing a fraud. This is so because, as discussed above, Texas Gas fairly disclosed to all market participants the information regarding the additional capacity available at Lonewa as part of its revised bidding process. Because we find no fraud, we need not address NET’s complaint as it relates to the other elements necessary to make out a colorable claim of market manipulation.

62. We also dismiss, as inappropriate to this proceeding, Dreyfus’ suggestion that the Commission initiate a generic inquiry into pipeline capacity allocation mechanisms and the capacity marketplace as a whole. This case appears to be *sui generis*, and turns on the judgment call of whether to add additional capacity to an already commenced bidding process. There is no evidence of a pattern of disputed capacity awards that would warrant a generic inquiry. Clearer evidence is needed of a widespread failure of the capacity award process, which Dreyfus or others may provide if they wish to make a case for such an inquiry.

<u>The Commission orders:</u>

NET’s complaint is dismissed.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.

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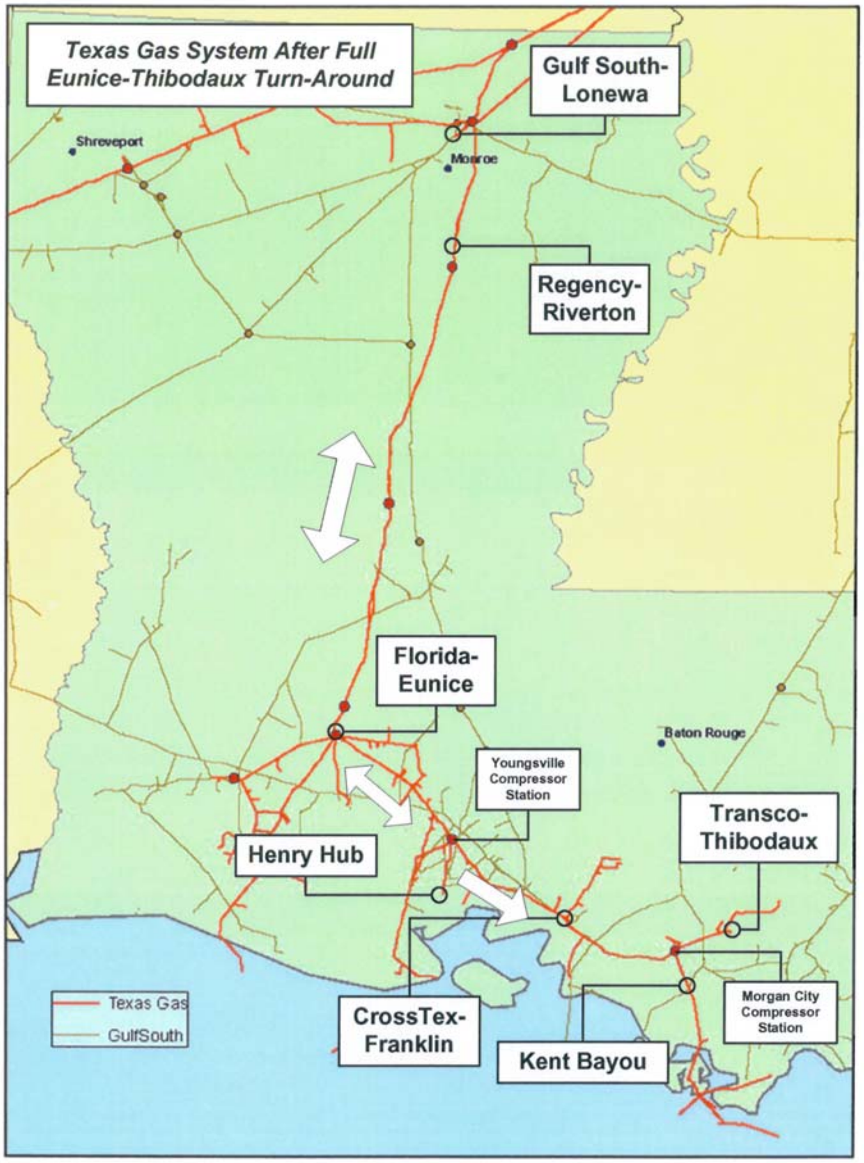
[17] Order No. 670 at P 50.

[18] *Id*.

Appendix A


Texas Gas System After Full Eunice-Thibodaux Turn-Around
Gulf South-Lonewa
Shreveport
Monroe
Regency-Riverton
Florida-Eunice
Baton Rouge
Youngsville Compressor Station
Transco-Thibodaux
Henry Hub
Texas Gas
GulfSouth
CrossTex-Franklin
Kent Bayou
Morgan City Compressor Station

Appendix B – Attachment G to Answer

Texas Gas Transmission, LLC
Summary of Bid Analysis
February 2, 2007 Bid

9481 - TRANSCO/THIBODAUX

Bidder	Chevron	NET	L. Dreyfus	Sequent	Constellation
Contract Term	4/1/07-3/31/08	4/1/07-3/31/08	4/1/07-3/31/08	4/1/07-3/31/08	4/1/07-3/31/10
Contract Demand	30,000	30,000	30,000	30,000	30,000
Rate	$ 0.0794	$ 0.0794	$ 0.0794	$ 0.0794	$ 0.0794
Revenues	$ 871,812.00	$ 871,812.00	$ 871,812.00	$ 871,812.00	$ 2,610,672.00
Net Present Value	$819,557.40	$819,557.40	$819,557.40	$819,557.40	$2,229,265.45
Date Posted	2/1/07	2/1/07	2/1/07	2/2/07	2/2/07

Bidder	Sequent	Sempra	Occidental	Chevron	ConocoPhillips
Contract Term	4/1/07-3/31/16	4/1/07-9/30/14	4/1/07-3/31/10	4/1/07-3/31/10	4/1/07-3/31/13
Contract Demand	30,000	30,000	30,000	30,000	30,000
Rate	$ 0.0794	$ 0.0794	$ 0.0794	$ 0.0794	$ 0.0794
Revenues	$ 7,832,016.00	$ 6,526,680.00	$ 2,610,672.00	$ 2,610,672.00	$ 5,221,344.00
Net Present Value	$5,108,926.65	$4,541,516.17	$2,229,265.45	$2,229,265.45	$3,882,648.55
Date Posted	2/2/07	2/2/07	2/2/07	2/2/07	2/2/07

Bidder	Total Gas & Power	L. Dreyfus	NET	CIMA Energy
Contract Term	4/1/07-10/31/11	4/1/07-4/30/17	4/1/07-3/31/10	4/1/07-4/30/08
Contract Demand	30,000	30,000	30,000	20,000
Rate	$ 0.0794	$ 0.0794	$ 0.0794	$ 0.0794
Revenues	$ 3,989,850.00	$ 8,772,906.00	$ 2,610,672.00	$ 628,848.00
Net Present Value	$3,163,933.96	$5,468,462.14	$2,229,265.45	$588,786.07
Date Posted	2/2/07	2/2/07	2/2/07	2/2/07

8059 - FRANKLIN

Bidder	CrossTex
Contract Term	4/1/07-3/31/08
Contract Demand	50,000
Rate	$ 0.0794
Revenues	$ 1,453,020.00
Net Present Value	$1,365,929.00
Date Posted	2/1/07

PROPOSED DP S. OF MORGAN CITY

Bidder	Gulf South	NET
Contract Term	4/1/07-3/31/08	4/1/07-3/31/08
Contract Demand	191,000	138,000
Rate	$ 0.0794	$ 0.0794
Revenues	$ 5,550,536.40	$ 4,010,335.20
Net Present Value	$5,217,848.80	$3,769,964.05
Date Posted	1/30/07	2/2/07

8040 FLORIDA

Bidder	Sequent
Contract Term	3/1/07-2/28/09
Contract Demand	20,000
Rate	$ 0.0794
Revenues	$ 1,160,828.00
Net Present Value	$1,048,469.38
Date Posted	2/2/07

SUMMARY

	Capacity	NPV
Combination #1		
NET	30,000	$ 2,229,265.45
* NET	191,000	5,217,848.80
Total	221,000	$ 7,447,114.25
Combination #2		
NET	30,000	$ 2,229,265.45
NET	138,000	3,769,964.05
CrossTex	50,000	1,365,929.00
Total	218,000	$ 7,365,158.51
Combination #3		
Louis Dreyfus	30,000	$ 5,468,462.14
Gulf South	191,000	5,217,848.80
Total	221,000	$ 10,686,310.94
Combination #4		
Sequent	30,000	$ 5,108,926.65
Sequent	20,000	1,048,469.38
Gulf South	191,000	5,217,848.80
Total	241,000	$ 11,375,244.82

* Reference should be to Gulf South.