

affiliated power marketer and an affiliated public utility are not at arms-length and present the situations in which affiliate abuse may be the most prevalent, the Commission requires that no sale of power occur unless the Commission approves the transaction in a separate rate filing under section 205.<sup>8</sup> In evaluating whether to approve a request to sell power to an affiliate where a traditional public utility, such as Aquila, makes sales to an affiliated power marketer, the Commission is concerned that such sales not be made at a rate that is too low (*i.e.*, below market price).<sup>9</sup>

9. In the instant case, Aquila filed under section 205 of the FPA for authority to make sales to its affiliated power marketer pursuant to the terms and conditions of the Agreement. However, Aquila submitted its proposal two days prior to the service commencement date and proceeded to transact under the Agreement without prior Commission approval. As noted, initiating such a sale before receiving our authorization is not consistent with our precedent.

10. Aquila submits that the sale price as established in the Agreement addresses the Commission's affiliate abuse concerns because it sets the sale price at the highest of: (1) \$32.00 per MWh; (2) 110 percent of the seller's incremental cost; (3) the seller's highest hourly priced sale during the hour or; (4) an hourly price tied to the "Into Cinergy" trading hub prices for that day, as published by Megawatt Daily. Although Aquila attempts to demonstrate why the pricing protections proposed in the Agreement would produce a sales price that is not below the market price, the more appropriate question at this point in time, given that the term of the Agreement has concluded, is what harm, if any, captive customers have experienced as a result of the transactions. In particular, the key issue is whether the price actually

charged for the sales in question under the Agreement satisfied the Commission's affiliate abuse concerns; *i.e.*, was not below the relevant market price.

11. Because we are unable to resolve this issue based on the record before us, we will require an evidentiary hearing. We encourage the parties to provide a diverse range of evidence for purposes of establishing relevant market prices. This should include benchmark evidence which shows the prices, terms and conditions of sales made by non-affiliated sellers or evidence of the prices that non-affiliated buyers were willing to pay for similar services from Aquila. Accordingly, we will accept the Agreement for filing, suspend it for a nominal period to become effective June 28, 2002, subject to refund, and establish an evidentiary hearing on the pricing issue. If Aquila is found to have transacted at a price below the relevant market price, the Commission will consider, among other remedies, requiring a surcharge up to the market price with interest.<sup>10</sup>

12. Finally, we reaffirm that sales of power between a traditional public utility and its affiliates are not permitted without first receiving Commission approval of the transaction under section 205 of the FPA.<sup>11</sup>

*The Commission orders:*

(A) The Agreement is hereby accepted for filing and suspended for a nominal period, to become effective June 28, 2002, subject to refund.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly Sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR chapter 1), a public hearing shall be held in Docket No. ER02-2170-001, as discussed in the body of this order.

(C) A Presiding Administrative Law Judge (ALJ), to be designated by the Chief Administrative Law Judge for that purpose, pursuant to 18 CFR 375.304 (2002), must convene a prehearing conference in this proceeding to be held within approximately fifteen (15) days after issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Such conference shall be held for the purpose of establishing a procedural schedule. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

(D) The Secretary is hereby directed to publish a copy of this order in the **Federal Register**.

By the Commission.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02-33093 Filed 12-31-02; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP96-200-090]

#### CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

December 26, 2002.

Take notice that on December 23, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective as of November 4, 2002:

Substitute Original Sheet No. 461.

Substitute Original Sheet No. 654.

CEGT states that the purpose of this filing is to comply with the Commission's order issued October 31, 2002 in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings.

<sup>8</sup> See, e.g., Heartland Energy Services, Inc., 68 FERC ¶ 61,223 at 62,064 (1994); Southern Company Services, Inc., 72 FERC ¶ 61,324 at 62,047 (1995); Tucson Electric Power Company, 81 FERC ¶ 61,131 at 61,623 (1997); Central and South West Services, Inc., 82 FERC ¶ 61,001 at 61,003 (1998), *reh'g denied*, 85 FERC ¶ 61,444 (1998).

<sup>9</sup> See, e.g., Pinnacle West Capital Corp., *et al.*, 91 FERC 61,290 (2000); *reh'g denied*, 95 FERC ¶ 61,300 (2001). See also Detroit Edison Co., 80 FERC ¶ 61,348 (1997) (*Detroit Edison*), where the Commission allowed sales by a public utility to its affiliated power marketer subject to the following conditions: (1) The sale must be at a rate that is no lower than the rate it charges non-affiliates; (2) the public utility must make the same offer to unaffiliated entities at the same time through its electronic bulletin board; (3) the public utility must simultaneously post the actual price charged to its affiliate for all transactions. *Id.* at 62,198.

<sup>10</sup> We note that we have the statutory authority to order such remedies as we may deem appropriate. 16 U.S.C. 825h (2000).

<sup>11</sup> See *supra* ¶ 7 & 9.

See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Protest Date:* January 6, 2003.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02-33058 Filed 12-31-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00-329-003]

#### Great Lakes Gas Transmission Limited Partnership; Notice of Compliance Filing

December 26, 2002.

Take notice that on December 23, 2002, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheets, proposed to be effective October 1, 2002:

Substitute First Revised Sheet No. 14A.

Substitute First Revised Sheet No. 15.

Substitute Fourth Revised Sheet No. 39A.

Substitute First Revised Sheet No. 39B.

Seventh Revised Sheet No. 40A.

Great Lakes states that these tariff sheets are being filed in compliance with the Commission's November 21, 2002 Order on Clarification and Rehearing in Docket No. RP00-329-002 (November 21 Order), wherein the Commission denied rehearing and clarified that shippers may add or change to primary points within the zones for which they are paying, to the extent there is available capacity. Great Lakes was directed to file revised tariff sheets within thirty (30) days of the November 21 Order consistent with the modifications set forth in that Order. The tariff sheets included in this compliance tariff filing reflect those required modifications.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be

viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Protest Date:* January 6, 2003.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02-33059 Filed 12-31-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP02-530-001]

#### Guardian Pipeline, L.L.C.; Notice of Compliance Filing

December 26, 2002.

Take notice that on December 20, 2002 Guardian Pipeline, L.L.C. (Guardian), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the revised tariff sheets, as listed in Appendix A attached to the filing, to be effective February 1, 2003.

Guardian states that in the Order issued November 29, 2002, the Commission generally accepted Guardian's filing, including pro forma tariff sheets, made on September 3, 2002, in Docket No. RP02-530-000 in compliance with Order No. 637 (Order No. 637, Regulations of Short Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, FERC Stats. & Regs. (CCH) 31,091, Order No. 637-A, FERC Stats. & Regs. (CCH) 31,099, Order No. 637-B, 92 F.E.R.C. (CCH) 61,062 (2000), aff'd in part and remanded in part sub nom., *Interstate Natural Gas Ass'n of America v. FERC*, 285 F.3d 18 (DC Cir. 2002)) and directed Guardian to file actual tariff sheets, consistent with the directives in the Order, to implement Guardian's Order No. 637 compliance filing. Guardian states that this filing is to comply with the directives set forth in the Order.

Guardian states that copies of this tariff filing are being served on its shippers, the Wisconsin and Illinois public service commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Protest Date:* January 2, 2003.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02-33063 Filed 12-31-02; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP03-210-000]

#### Guardian Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

December 26, 2002.

Take notice that on December 20, 2002, Guardian Pipeline, L.L.C. (Guardian), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheets as listed in Appendix A attached to the filing, to be effective February 1, 2003.

Guardian states that the purpose of this filing is to two fold. First, Guardian is proposing to modify its cash-out mechanism to include a weekly pricing mechanism. Second, Guardian is proposing to strike certain language from its Pro Forma Service Agreement that prevents shippers that receive service at negotiated rates under Section 26.2 of the GT&C from protesting or otherwise contesting any filing by Transporter to adjust its rates and charges.