

FISDL service and aligns the FIS Policy with the ADS-B Link Decision.

Airborne Flight Information Services Policy

This policy statement replaces the Administrator's Airborne Flight Information Services (FIS) Policy Statement, dated May 1, 1998, and affirms FAA's objective to encourage the evolution of FIS data link services.

FIS is defined as the non-control, advisory information needed by pilots to operate more safely and efficiently within the National Airspace System (NAS). FIS includes weather and airspace status information applicable for preflight planning and en route decision-making. The FAA seeks to use digital data link technology to provide FIS information in a timely manner directly to the pilot, thereby enhancing flight safety and efficiency as well as increasing the general utility, efficiency, and capacity of the NAS. The timely provision of current and consistent FIS information is essential to support sound operational decisions by all NAS users.

FIS product for delivery to the cockpit include text and/or graphic presentations of information on the status of the NAS (e.g., Notices to Airmen, Temporary Flight Restrictions, Special Use Airspace) and meteorological information. This policy supports the inherent efficiency of providing FIS through automated data communications to complement voice communications.

The FAA policy is to promote all modes of FIS delivery appropriate for aviation use whether provided commercially or over the evolving FAA data link communications. This policy is consistent with FAA's Automatic Dependent Surveillance-Broadcast (ADS-B) Data Link Decision of July 1, 2002. Under the ADS-B Link Decision, the FAA chose to provide future FIS-Broadcast (FIS-B) services through the Universal Access Transceiver (UAT) 978MHz network; additional details are available at the FAA Web site (<http://www.faa.gov/asd/ads-b/>). Any transition to the UAT network will include an orderly phase-out of the existing Government-Industry Project Performance Agreement (G-IPPA) that set aside segments of the VHF spectrum for the broadcast of FIS. The FAA intends to temporarily extend the current VHF channels for FIS data link (FISDL) use during transition to a national UAT on 978 MHz and/or Next Generation Air/Ground Communications (NEXCOM) based FIS data link service. The current VHF spectrum supporting FISDL is required

for future airspace redesign requirements. Avionics based on the current VHF channels supporting FISDL will no longer receive FIS data when the VHF spectrum supporting this data link is no longer available.

FAA encourages public and private collaboration to provide users with new and affordable FIS products; and to offer opportunities for industry to participate in FIS product development, production and dissemination. The FAA also supports the evolution and use of private sector FIS data link capabilities using alternative media, such as satellite broadcast.

The FAA recognizes that effective pilot training is a critical element in the responsible use of FIS data link services. When used responsibly, FIS information can materially enhance a pilot's overall situational awareness and thus contribute to enhanced pilot judgment and better pilot decision-making. To ensure the maximum benefits from FIS data link services, the FAA encourages manufacturers to develop, and users (e.g., pilots and operators) to make use of appropriate training materials.

Under the framework provided by this policy statement, the roles and responsibilities of the government, industry, and the users are as follows:

Government

- Plans to develop and deploy an FAA FIS data link service using evolving NAS technologies, such as UAT and NEXCOM.
- Will temporarily extend the current use of VHF channels for FIS data link service through the existing government-industry agreement until transition to the above FAA service.
- Will work with other Government agencies, users, and industry to develop guidelines and standards for the display and training associated with the use of FIS products in the cockpit.
- Will make appropriate NAS status and Federal meteorological data accessible to aeronautical users and service providers.
- May acquire commercially developed and produced FIS products.
- Will lead and coordinate the establishment of certification and operational approval criteria, and national and international standards for delivery of FIS via data link; thereby promoting interoperability between various FIS providers, products and equipment suites.

Industry

- Will manufacture avionics for the processing and display of FIS products in the cockpit.

- May develop FIS products and/or deploy commercial networks for delivery of FIS data link services.
- Will develop pilot education and training materials and encourage their use, as well as assist the FAA in the publication of appropriate directives.

Users

- Will select their preferred FIS data link service from FAA and/or the marketplace, and will acquire the appropriate data link equipment.
- Will complete appropriate training and use FIS data link equipment and products in a responsible manner as described in FAA and industry publications.

Issued in Washington, DC, on May 31, 2005.

Richard J. Heuwinkel,

Manager, Weather Policy and Standards.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM05-17-000]

Information Requirements for Available Transfer Capability

May 27, 2005.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Energy Regulatory Commission seeks comments on: (a) The North American Electric Reliability Council's recent Long-Term AFC/ATC Task Force Report; (b) the advisability of revising and standardizing available transfer capability calculations; and (c) the most expeditious way to obtain an industry-wide standard for available transfer capability calculations. This Notice of Inquiry is the result of a review conducted by the Commission's Information Assessment Team (FIAT), to propose: (a) new information the Commission needs to promote greater market transparency in electricity markets; and (b) ways to reduce the reporting burden on industry through the elimination, reduction, streamlining or reforming of current information collections.

DATES: Comments on this Notice of Inquiry are due on August 15, 2005.

ADDRESSES: Comments may be filed electronically via the eFiling link on the

Commission's web site at <http://www.ferc.gov>. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC, 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Notice of Inquiry

1. In Order No. 889,¹ the Commission required transmission providers² to offer unused transmission capacity to the market by posting available transfer capability (ATC) on their Open Access Same-Time Information Systems (OASIS).³ In the years since the Commission issued Order No. 889, market participants have complained

¹ *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, 61 FR 21,737 (1996), FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 31,035 (1996), *order on reh'g*, Order No. 889–A, 62 FR 12,484 (1997), FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 31,049 (1997), *reh'g denied*, Order No. 889–B, 81 FERC ¶ 61,253 (1997).

² A transmission provider is the public utility (or its Designated Agent) that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce and provides transmission service under the Tariff. See *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21,540 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–June 1996 ¶ 31,036 Appendix D (Pro Forma Tariff) at 1.46 (1996), *order on reh'g*, Order No. 888–A, 62 FR 12,274 (March 4, 1997), FERC Stats. & Regs., Regulations Preambles July 1996–December 2001 ¶ 31,048 (1997), *order on reh'g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (DC Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002) (Order No. 888).

³ 18 CFR Part 37.

that variations in the way ATC is calculated provide opportunities for undue discrimination and create obstacles to doing business. The Commission believes that standardizing the way ATC is calculated will alleviate these obstacles. This Notice of Inquiry is the result of a review conducted by the Commission's Information Assessment Team (FIAT), to propose: (1) New information the Commission needs to promote greater market transparency in electricity markets; and (2) ways to reduce the reporting burden on industry through the elimination, reduction, streamlining or reformatting of current information collections.

2. The Commission has reviewed the final report of the North American Electric Reliability Council (NERC) on long-term available flowgate capability (AFC) and ATC,⁴ which addresses the calculation and coordination of AFC/ATC to increase market liquidity and enhance reliability. As discussed more fully below, NERC's LTATF Report provides useful guidance on how to achieve an industry-wide methodology for calculating ATC. The Commission encourages the electricity industry to work toward standardization and coordination of ATC and related terms, and requests comments on the recommendations put forth in the LTATF Report.⁵

Background

A. Definitions

3. The calculation of ATC involves a number of variables that require definition. The Commission will use the LTATF Report definitions for purposes of the discussion in this Notice of Inquiry. The Commission requests, however, that the industry comment on these definitions, as these variables determine the calculation of ATC.

4. For market participants, ATC is essentially a measure of unused transmission that a transmission provider can offer for sale pursuant to Order Nos. 888 and 889. Transmission providers sell transmission service to customers in the form of transfer capability. Transfer capability is the measure of the ability of the interconnected electrical system to move electric energy reliably from one point to another and is limited by, among other things, the capacity either

⁴ North American Electric Reliability Council, *Long-Term AFC/ATC Task Force Final Report* (2005) (LTATF Report).

⁵ The Commission recognizes the common interest of the United States, Canada and Mexico in maintaining a safe and reliable interconnected North American bulk power system. Any standards promulgated by the Commission would apply only to jurisdictional entities.

of equipment (such as transformers or transmission circuits) or interfaces (one or more circuits). ATC is the amount of transfer capability still available for sale after all existing uses are accounted for.⁶ Transmission providers calculate ATC by subtracting existing transmission commitments, transmission reserve margin, and capacity benefit margin from total transfer capability.⁷

5. A flowgate is the name given to a transmission element(s) and associated contingencies that may limit ATC. AFC is a measure of the capability remaining on a flowgate for future uses, after considering the effect of prior sales. AFC is measured as a flow limit on a flowgate, while ATC is measured as a transaction limit from a source to a sink.⁸

6. There may be multiple flowgates between source and sink that can limit a transaction. If the assumptions that underlie AFC and ATC do not reasonably conform to real-time operations, the transmission system will either be artificially constrained, or it will be underused, leading to lost transmission opportunities.

7. Transmission providers use CBM and TRM in their ATC and AFC calculations to account for uncertainties or contingencies that are not explicitly modeled in the calculations. CBM is the amount of firm transmission transfer capability reserved by the transmission provider so that load serving entities, whose loads are located on that transmission provider's system, can access remote reserve generation from interconnected systems.⁹ TRM is the amount of transmission transfer capability necessary to ensure that the interconnected transmission network will be secure under a reasonable range of uncertainties in system conditions. The criteria used to determine TRM and CBM should be consistent with the transmission operator's planning and operating criteria.¹⁰

B. Evolution of Electricity Markets Since Order Nos. 888 and 889

8. In Order Nos. 888 and 889, the Commission required transmission providers to sell unused transmission capacity and post their ATC on OASIS. Market transactions depend on this

⁶ LTATF Report, Appendix A, page 4.

⁷ ATC equals Total Transfer Capability (TTC) minus Existing Transmission Commitments (ETC) minus Transmission Reserve Margin (TRM) minus Capacity Benefit Margin (CBM), or ATC=TTC–ETC–TRM–CBM.

⁸ "Source" and "sink" are points at which the transmission of electric energy begins (source) and ends (sink).

⁹ LTATF Report, Appendix F, page 2.

¹⁰ *Id.* at Appendix A, page 5.

critical transmission information. As the electric industry has evolved, the nature of the calculations of ATC, TTC, TRM and CBM and the interaction between neighboring transmission providers has changed substantially. In the years since the Commission established OASIS, independent system operators (ISOs) and regional transmission organizations (RTOs) have developed organized markets. Agreements among neighboring ISOs/RTOs and transmission service providers have led to increased coordination of operation and requests for transmission service, and have resulted in fewer variations in the calculation of ATC for those regions. In regions without an ISO/RTO, however, this may not be the case.

9. While the electric industry uses OASIS for posting ATC, there is as yet no industry-wide standard for calculating ATC. The Commission's OASIS II Advanced Notice of Proposed Rulemaking, issued in July 2000, contemplated detailed, standard communication protocols and associated business practices for ATC, TTC, and CBM¹¹ but these standards and protocols are not yet in place.

C. Problems With ATC Calculations

10. Transmission providers have incentives to understate ATC on those paths valuable to power sellers that are competitors to a transmission provider's own (or its affiliate's) power sales. The lack of clear and consistent methodologies for calculating ATC can allow transmission providers the discretion to control the transmission system to favor their own power sales or those of their affiliates. ATC can vary considerably depending on the criteria they use to calculate it and the order in which the calculations are made. Although the Commission has required transmission providers to post the formula for calculating ATC,¹² the transmission provider has sole responsibility for, and a great deal of discretion in, its calculation. More rigorous and consistent standards and procedures for ATC calculations would help ensure that transmission providers' exercise of discretion in their calculation of ATC does not result in undue discrimination with respect to interstate transmission.

11. Complainants have alleged that transmission providers misrepresent ATC, often using ATC calculations to inflate transmission needed to serve native load or to set aside capacity for their affiliates. In one instance, a

transmission provider reserved capacity on behalf of native load but failed to designate network resources as required by the open access transmission tariff. The company thus improperly increased the existing transmission commitment component of the ATC calculation, artificially reducing posted ATC.¹³ It is thus important that the ATC component (TRM and CBM) assumptions are stated and posted so that recalculated ATC values are transparent and not devised to produce an unduly discriminatory result.

12. The lack of standardization and coordination of ATC can not only result in unduly discriminatory behavior, but can also on occasion affect reliability. As the LTATF recognized, inaccurate ATC values can lead to Transmission Loading Relief actions [or curtailments in the Western Electricity Coordinating Council (WECC)] if they result in transmission flows that exceed line limits.¹⁴ In this regard, preceding the August 14, 2003 blackout, transmission operators calculated ATC values approximately seven days ahead using forecasted system conditions. This lag in real-time ATC values contributed to the blackout. The Final Blackout Report indicated that transmission operators should update ATC/TTC values as the forecast of system conditions changes.¹⁵

D. The LTATF Report

13. NERC created the LTATF to develop a report and specific recommendations for the calculation and coordination of AFC/ATC to increase market liquidity and enhance reliability. NERC's Market Committee directed the LTATF efforts and the LTATF also coordinated its efforts with representatives from the North American Energy Standards Board (NAESB). The LTATF Report builds upon NERC's "Version 0" reliability standards, which the Commission incorporated into its *Policy Statement on Matters Related to Bulk Power System Reliability* in February 2005.¹⁶ The Version 0 reliability standards attempt to state reliability goals clearly and provide a means by which to

measure the progress toward their attainment. The Commission's *Supplement to the Policy Statement* makes clear that the term Good Utility Practice as used in the open access transmission tariff (OATT) includes compliance with NERC's Version 0 reliability standards.¹⁷

14. The LTATF Report outlines existing ATC practices in the Eastern Interconnection and the WECC. It also proposes a method of exchanging AFC/ATC data between entities and summarizes the minimum requirements of modeling techniques to facilitate proper calculation and coordination of AFC/ATC.

15. The LTATF Report details three groups of issues: (1) Communication and coordination of AFC/ATC; (2) calculation process for AFC/ATC; and (3) consistency between planning criteria and the attributes of AFC/ATC calculations (over both planning and operating horizons).

Communication and Coordination of AFC/ATC—Respecting Third Party Constraints

16. The objective of AFC/ATC coordination is to ensure that neighboring entities exchange relevant information to facilitate: (a) A reasonable representation of external entities for modeling purposes; (b) the ability of each calculator¹⁸ to adequately represent the values of flowgates on third party transmission systems; and (c) the ability of each calculator to translate data from neighboring entities and make meaningful use of the data in its calculations.

17. The LTATF documented the existing coordination processes for the major regions in the Eastern Interconnection and the WECC. The report proposes a method of exchanging AFC/ATC data between entities and provides the minimum requirements for flowgate exchange and modeling techniques needed to ensure proper calculation and coordination of transfer capability.

Calculation Process for AFC/ATC

18. The LTATF agreed that transmission service providers need to provide better documentation and greater transparency for their AFC/ATC calculation processes. The LTATF Report contains a number of recommendations to achieve more consistency among AFC/ATC calculations.

¹⁷ Supplement at P 23. Version 0 Standards MOD 001-0 through 009-0 are specifically relevant here.

¹⁸ The calculator prepares and updates ATC values for the transmission provider.

¹³ See *Aquila Power Corporation v. Entergy Services, Inc.*, 90 FERC ¶ 61,260 at 61,859-60 (2000).

¹⁴ LTATF Report, page 1.

¹⁵ U.S.-Canada Power System Outage Task Force, *Final Report on the August 14th Blackout in the United States and Canada: Causes and Recommendations* 31 (April 2004) (Final Blackout Report).

¹⁶ Supplement to *Policy Statement on Matters Related to Bulk Power System Reliability*, 110 FERC ¶ 61,096 (2005) (Supplement); see *Policy Statement on Matters Related to Bulk Power System Reliability*, 107 FERC & 61,052 (Policy Statement), clarified, 108 FERC ¶ 61,288 (2004).

¹¹ *Open Access Same-Time Information System Phase II*, 92 FERC ¶ 61,047 at 61,126-27 (2000).

¹² 18 CFR 37.6.

19. The LTATF proposed a Standard Authorization Request (SAR) that contains recommendations to achieve more consistency among AFC/ATC calculations. The SAR would change the existing modeling standard(s) by adding a requirement for transmission providers to coordinate the calculation of ATC and incorporate specific reliability practices into the ATC calculation and coordination methodologies.¹⁹

20. The LTATF found that the way in which various regions calculate and use ATC, TTC, TRM and CBM varies widely.²⁰ As the LTATF Report explains, some transmission providers first calculate TTC, and then derive ATC. Others first calculate ATC, and then derive TTC. Some transmission providers first calculate AFC, and then derive ATC. Some only calculate TTC. Some transmission providers use CBM; some do not use CBM. The scope of CBM varies by footprint. Nearly all transmission providers use TRM.²¹

21. The LTATF noted that consistency is important in the calculation of CBM and TRM and recommended revising applicable standards. The LTATF proposed a SAR to modify the current methodology for calculating CBM and TRM.²²

22. The LTATF also used the LTATF Report and recommendations to develop a proposed NAESB business practice standard. The LTATF Report proposes that a single business practice standard be developed related to both: (a) The processing and evaluation of transmission service requests which use TTC/ATC/AFC and CBM/TRM; and (b) the processing and evaluation of requests to schedule against approved transmission service reservations.²³

Consistency Between Planning Criteria and the Attributes of the AFC/ATC Calculations (Over Both Planning and Operating Horizons)

23. The LTATF emphasized that the assumptions used in the calculation of AFC/ATC and CBM/TRM should be consistent with those used in the planning and operating horizons. The LTATF noted that transmission service providers should document these calculations and make them transparent

to all who use the transmission network.²⁴

24. The LTATF suggested that transmission providers ensure consistency between their ATC calculations and their internal planning processes. For example, the LTATF recommended that both the internal planning processes and the ATC calculations reflect the same counterflows and the same components of TRM. Discrepancies between the internal planning processes and ATC calculations can result in inaccurate calculations of transmission available to the market.²⁵

Discussion

25. As noted above, problems in the way AFC and ATC are calculated can create and have created obstacles to ensuring that the provision of interstate transmission service is not unduly discriminatory or preferential. The Commission believes that standardizing the way AFC and ATC are calculated will help mitigate this potential, and enhance system performance.

26. The LTATF Report contains proposals that appear to go a long way toward refining and standardizing these calculations. By developing a business practice standard and revisions related to reliability standards, the LTATF Report would also take such calculations beyond NERC's Version 0 reliability standards.

27. NERC also has long encouraged regions to promote a common methodology for determining TRM and CBM.²⁶ Appendix C to the LTATF Report²⁷ recommends that the regions adopt written regional methodologies for calculating CBM and TRM. The LTATF Report also sets forth areas in which CBM and TRM standards could be more specific. The Commission requests comments on these recommendations and whether they go far enough in promoting a common TRM and CBM methodology within each region. The Commission also invites comments on whether there should be common TRM and CBM methodologies among regions.

28. More specifically, the Commission seeks industry comment on: (a) The definitions of AFC, ATC, CBM and TRM used in this order; (b) the advisability of revising and standardizing AFC, ATC, TRM and CBM values; (c) the advisability of developing

interconnection-wide standards for the Eastern Interconnection and the WECC; (d) the contents of the LTATF Report; and (e) the most expeditious way to obtain industry-wide standards for ATC calculations.

29. While the LTATF Report is a start, the Commission recognizes that more work is needed before there can be industry-standard AFC and ATC calculations.

The Commission notes that the LTATF coordinated its efforts with NAESB and applauds NERC's efforts to work with NAESB in developing comprehensive business practice and reliability standards. The Commission urges that these efforts continue.

Comment Procedures

30. The Commission invites interested persons to submit comments on these matters and any related matters or alternative proposals that commenters may wish to discuss. Comments are due August 15, 2005. Comments must refer to Docket No. RM05-17-000, and must include the commenter's name, the organization they represent, if applicable, and their address.

31. Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: The Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC, 20426.

32. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters commenting on this proposal are not required to serve copies of their comments on other commenters.

Document Availability

33. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

¹⁹ LTATF Report, Attachment A, SAR-1.

²⁰ LTATF Report at page 3.

²¹ *Id.* at page 2. The LTATF reviewed ATC calculators in the Midwest have been replaced by the Midwest Independent Transmission System Operator and the PJM Interconnection, LLC. The LTATF found 50 to 60 ATC calculators nationwide, with most of those in the West (30 to 40). *Id.* at page 3.

²² *Id.* at Attachment B, SAR-1.

²³ *Id.* at Attachment C, page 2.

²⁴ *Id.* at page 3.

²⁵ *Id.* at Appendix E, page 2.

²⁶ See *North American Electric Reliability Council, Transmission Capability Margins and Their Use in ATC Determination 3* (1999).

²⁷ Appendix C is entitled: Review of Current NERC Standards on CBM and TRM.

34. From the Commission's Home Page on the Internet, this information is available in its eLibrary. The full text of this document is available in the eLibrary both in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number of this document, excluding the last three digits, in the docket number field.

35. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866)208-3676, or for TTY, contact (202) 502-8659. E-Mail the Public Reference Room at public.referenceroom@ferc.gov or (202) 502-8371.

By direction of the Commission.

Linda Mitry,

Deputy Secretary.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM05-2-000]

Order Reaffirming Discount Policy and Terminating Rulemaking Proceeding

June 7, 2005.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Reaffirming Discount Policy and Terminating Rulemaking Proceeding.

SUMMARY: On November 22, 2004, the Federal Energy Regulatory Commission (Commission) issued a Notice of Inquiry (NOI) seeking comments on its policy regarding selective discounting by natural gas pipeline companies. The Commission has determined that it will take no further action in this proceeding and, therefore, it terminated Docket No. RM05-2-000.

DATES: The termination of this docket is made on June 14, 2005.

FOR FURTHER INFORMATION CONTACT: Ingrid Olson, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; (202) 502-8406. ingrid.olson@ferc.gov

SUPPLEMENTARY INFORMATION:

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

Policy for Selective Discounting by Natural Gas Pipelines

Issued May 31, 2005

1. On November 22, 2004, the Commission issued a Notice of Inquiry (NOI) seeking comments on its policy regarding selective discounting by natural gas pipeline companies.¹ The Commission asked parties to submit comments and respond to specific inquiries regarding whether the Commission's practice of permitting pipelines to adjust their ratemaking throughput downward in rate cases to reflect discounts given by pipelines for competitive reasons is appropriate when the discount is given to meet competition from another natural gas pipeline. The Commission also sought comments on the impact of its policy on captive customers and on what changes to the policy could be considered to minimize any impact on captive customers. Comments and responses to the inquiries were filed by 40 parties.

2. As discussed below, after reviewing the comments, the Commission finds that its current policy on selective discounting is an integral and essential part of the Commission's policies furthering the goal of developing a competitive national natural gas transportation market. The Commission further finds that the selective discounting policy provides for safeguards to protect captive customers. If there are circumstances on a particular pipeline that may warrant special consideration or additional protections for captive customers, those issues can be considered in individual cases. This order is in the public interest because it promotes a competitive natural gas market and also protects the interests of captive customers.

Background

3. In the NOI, the Commission detailed the background and development of the selective discount policy. As explained in the NOI, in providing for open access transportation in Order No. 436, the Commission adopted regulations permitting pipelines to engage in selective discounting based on the varying demand elasticities of the pipeline's customers.² Under these regulations, the pipeline is permitted to discount, on a nondiscriminatory basis, in order to meet competition. For example, if a fuel-switchable shipper were able to obtain an alternate fuel at a cost less

than the cost of gas including the transportation rate, the Commission's policy permits the pipeline to discount its rate to compete with the alternate fuel, and thus obtain additional throughput that otherwise would be lost to the pipeline. In Order No. 436, the Commission explained that these selective discounts would benefit all customers, including customers that did not receive the discounts, because the discounts would allow the pipeline to maximize throughput and thus spread its fixed costs across more units of service. The Commission further found that selective discounting would protect captive customers from rate increases that would otherwise ultimately occur if pipelines lost volumes through the inability to respond to competition.

4. Further, in the 1989 Rate Design Policy Statement,³ the Commission held that if a pipeline grants a discount in order to meet competition, the pipeline is not required in its next rate case to design its rates based on the assumption that the discounted volumes would flow at the maximum rate, but may reduce the discounted volumes so that the pipeline will be able to recover its cost of service. The Commission explained that if a pipeline must assume that the previously discounted service will be priced at the maximum rate when it files a new rate case, there may be a disincentive to pipelines discounting their services in the future to capture marginal firm and interruptible business. In order to obtain a discount adjustment in a rate case, the pipeline has the ultimate burden of showing that its discounts were required to meet competition. The policy of permitting discount adjustments is consistent with the discussion of the court in *Associated Gas Distributors v. FERC (AGD I)*⁴ suggesting that discount adjustments should be permitted.

5. In Order No. 636, the Commission began to move away from the monopolistic selective discounting model to a competitive model,

³ Interstate Natural Gas Pipeline Rate Design, 47 FERC ¶ 61,295, reh'g granted, 48 FERC ¶ 61,122 (1989).

⁴ 824 F.2d 981, 1012 (D.C. Cir. 1987). As explained in the NOI, the court addressed an argument presented by some pipelines that the Commission's policy permitting pipelines to offer discounts to some customers, might lead to the pipelines under-recovering their costs. The court set forth a numerical example showing that the pipeline could under-recover its costs, if, in the next rate case after a pipeline obtained throughput by giving discounts, the Commission nevertheless designed the pipeline's rates based on the full amount of the discounted throughput, without any adjustment. However, the court found no reason to fear that the Commission would employ this "dubious procedure," and accordingly rejected the pipelines' contention.

¹ 109 FERC ¶ 61,202 (2004).

² See *Regulations of Natural Gas Pipelines After Partial Wellhead Decontrol*, FERC Stats. & Regs., Regulations Preambles (1982-1985) ¶ 30,665 at 31,543-45 (1985).