

Hydrogen Program.) The selection team will consider many criteria, including and not limited to: (a) Scientific or technical expertise, knowledge, and experience; (b) stakeholder representation as described in the Act; (c) availability and willingness to serve; and (d) skills working in committees, subcommittees and advisory panels. Structured interviews with some candidates may also occur.

The selection team will make recommendations regarding membership to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE). The Assistant Secretary for EERE will submit a list of recommended candidates to the Secretary for review and selection of Committee members.

Candidates selected by the Secretary of Energy to serve as SGEs will be required to fill out the Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Department of Energy and other forms incidental to Federal appointment. The confidential financial disclosure form allows government officials to determine whether there is a conflict between the special Government employee's public responsibilities and private interests and activities, or the appearance of a lack of impartiality, as defined by statute and regulation. The form may be viewed from the following URL address: http://www.hydrogen.energy.gov/advisory_panels.html.

Issued in Washington, DC, on November 17, 2005.

Douglas L. Faulkner,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL06-2-000]

Coordinated Processing of NGA Section 3 and 7 Proceedings; Order Delegating Authority

Issued November 17, 2005.

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeene G. Kelly.

1. Section 313 of the Energy Policy Act of 2005 (EPA 2005)¹ amends section 15 of the Natural Gas Act

(NGA)² to provide the Commission with additional authority to ensure the expeditious processing of natural gas project proposals. The Commission anticipates initiating a rulemaking proceeding in the near future to promulgate regulations in response to the EPA 2005 amendments. In the interim, this order delegates to staff the authority to execute certain of the responsibilities vested with the Commission by EPA 2005 section 313.

Introduction

2. EPA 2005 section 313(c)(1) directs the Commission to establish a schedule for all federal permits, authorizations, certificates, opinions, or other approvals required for an NGA section 3 or 7 proposal.³ Section 313(b)(2) then declares that "[e]ach Federal and State agency considering an aspect of an application for Federal authorization shall cooperate with the Commission and comply with the deadlines established by the Commission." In addition, section 313(b)(1) designates the Commission "as the lead agency for the purposes of coordinating all applicable Federal authorizations and for the purposes of complying with the National Environmental Policy Act of 1969" (NEPA).⁴

3. Pending issuance of regulations implementing these provisions of EPA 2005, the Commission is delegating to the Director of the Office of Energy Projects (OEP) the authority to establish deadlines for all federal authorizations necessary for NGA section 3 and 7 proposals.

Background

4. Under NGA sections 3 and 7, the Commission grants or denies applications for proposed natural gas projects. The construction or operation of natural gas projects typically require additional permits, authorizations, certificates, opinions, and approvals issued by other federal agencies and by state agencies acting pursuant to delegated federal authority. Approval by the Commission to proceed with a proposal is contingent on favorable findings by these other agencies. EPA 2005 section 313(c)(1) directs the Commission to establish a schedule for all federal authorizations required with respect to an application under NGA section 3 or 7.

² 15 U.S.C. 717n (2000).

³ NGA section 3 applies to projects designed to import or export natural gas; NGA section 7 applies to projects designed to transport or sell natural gas in interstate commerce.

⁴ 42 U.S.C. 4321, *et seq.* (2000).

5. In this role, EPA 2005 section 313(c)(1)(A) compels the Commission to "ensure expeditious completion" of NGA section 3 and 7 proceedings, while section 313(c)(1)(B) directs the Commission to "comply with applicable schedules established by Federal law." Thus, the Commission is responsible for (1) coordinating the actions of those federal and state agencies with authority to issue federal authorizations for an NGA section 3 or 7 proposal, and (2) setting deadlines for decisions on federal authorizations which will "comply with applicable schedules established by Federal law."

6. Commission authorizations under NGA sections 3 and 7 normally trigger NEPA. NEPA aspires to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment."⁵ EPA 2005 section 313(b) clarifies the Commission's role in this collective, multi-agency effort, by designating the Commission as lead agency for the purpose of NEPA compliance for NGA section 3 and 7 proposals.

Commission Response to EPA 2005 Amendments to NGA Section 15

7. As noted, the Commission anticipates initiating a rulemaking to implement the EPA 2005 section 313 amendments to NGA section 15. However, the Commission believes that the processing of section 3 and 7 project proposals filed prior to the effective date of a final rule, including proposals filed prior to the enactment of EPA 2005, may benefit by the immediate application of the additional authority conferred by EPA 2005. Therefore, by this order, the Commission delegates the authority described below to the Director of OEP.

8. The Director of OEP is granted the authority to coordinate with federal and state agencies for the purpose of scheduling the completion of the analyses and decisionmaking necessary for federal authorization of section 3 and 7 proposals. Deadlines shall be no shorter than any applicable schedules established by federal law. For example, under section 401 of the Clean Water Act (CWA),⁶ an applicant for federal authorization for any activity that may result in a discharge to navigable waters must obtain certification from the state in which the discharge originates that the discharge will comply with the CWA. The CWA provides the state up

⁵ 42 U.S.C. 4332(2)(A) (2000).

⁶ 33 U.S.C. 1341 (2000).

¹ Pub. L. No. 109-58, 119 Stat. 594 (2005).

to a year to act on a request for certification. Consequently, this time frame will be recognized in any schedule that the Director of OEP may set.

9. With respect to the revisions to NGA section 15, we expect to request public comments on rules of general applicability on how best to coordinate and schedule agencies' efforts in processing requests for federal authorizations. In the meantime, the Commission expects the Director of OEP to exercise the authority delegated herein on a flexible, case-by-case basis, to section 3 and 7 proposals filed prior to the effective date of a final rule, including proposals filed prior to the enactment of EPAct 2005. The Director of OEP need not intervene to establish deadlines for federal authorizations in every pending proceeding. For example, the Director of OEP may find it serves no purpose to establish deadlines in proceedings that are relatively close to completion. Agencies or parties to a proceeding that object to decisions of the Director of OEP under the authority delegated herein may request Commission review of the Director's actions.

The Commission orders:

The Commission delegates to the Director of OEP the authority provided by EPAct 2005 to establish a schedule for all federal authorizations necessary for NGA section 3 and 7 proposals.

By the Commission.

Magalie R. Salas,

Secretary.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM05-2-001]

Policy for Selective Discounting by Natural Gas Pipelines; Order Denying Rehearing

November 17, 2005.

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly.

1. On May 31, 2005, the Commission issued an order (May 31 Order)¹ in this proceeding reaffirming the Commission's current policy on selective discounting. Timely requests for rehearing of that order were filed by the Illinois Municipal Gas Agency (IMGA) and, jointly by Northern

Municipal Distributor Group and the Midwest Region Gas Agency (Northern Municipals). For the reasons discussed below, the requests for rehearing are denied.

Background

2. The prior orders in this proceeding set forth the background and development of the Commission's selective discounting policy.² Generally, as explained in those orders, the Commission's regulations permit pipelines to discount their rates, 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 regulations permit the pipeline to discount its rates to compete with the alternate fuel, and thus obtain throughput that would otherwise be lost to the pipeline. As the Commission has explained, these discounts benefit all customers, including customers that do not receive the discounts, because the discounts allow the pipeline to maximize throughput and thus spread fixed costs across more units of service. Further, as the Commission has explained, selective discounting protects captive customers from rate increases that would otherwise occur if pipelines lost volumes through the inability to respond to competition. The Commission's regulations permitting selective discounting were upheld by the court in *Associated Gas Distributors v. FERC (AGD I)*.³

3. The prior orders also explained the rationale behind the Commission's policy of allowing a discount adjustment and stated that the adoption of the discount adjustment resulted from the court's discussion in *AGD I*. In *AGD I*, the court addressed arguments raised by pipelines that the selective discounting regulations 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.⁴ However, the court found no reason to fear that the Commission would employ this

"dubious procedure,"⁵ and accordingly rejected the pipelines' contention.

4. In response to the court's concern, the Commission, in the 1989 *Rate Design Policy Statement*,⁶ 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.

5. Since *AGD I* and the Rate Design Policy Statement, the issue of "gas-on-gas" competition, *i.e.*, where the competition for the business is between pipelines as opposed to competition between gas and other fuels, has been raised in several Commission proceedings.⁷ In these proceedings, certain parties have questioned the Commission's rationale for permitting discount adjustments, *i.e.*, that it benefits captive customers by allowing fixed costs to be spread over more units of service. These parties have contended that, while this may be true where a discount is given to obtain a customer who would otherwise use an alternative fuel and not ship gas at all, it is not true where discounts are given to meet competition from other gas pipelines. In the latter situation, these parties have argued, gas-on-gas competition permits a customer who must use gas, but has access to more than one pipeline, to obtain a discount. But, if the two pipelines were prohibited from giving discounts when competing with one another, the customer would have to pay the maximum rate to one of the pipelines in order to obtain the gas it needs. This would reduce any discount

⁵ *Id.*

⁶ *Interstate Natural Gas Pipeline Rate Design*, 47 FERC ¶ 61,295, *reh'g granted*, 48 FERC ¶ 61,122 (1989).

⁷ IMGA raised this issue in a petition for rulemaking in Docket No. RM97-7-000. In the NOI, the Commission stated that it would consider all comments on this issue in Docket No. RM05-2-000 and terminated the proceeding in Docket No. RM97-7-000. The Commission explained that the issues included in Docket No. RM05-2-000 include all the issues raised in the Docket No. RM97-7-000 proceeding. IMGA did not seek rehearing of the Commission's decision to terminate Docket No. RM97-7-000 proceeding and did not in its comments object to the procedural forum offered to it in Docket No. RM05-2-000.

² 109 FERC ¶ 61,202 at P 2-10; 111 FERC ¶ 61,309 at P3-8.

³ 824 F.2d 981, 1010-12 (D.C. Cir. 1987).

⁴ *Id.* at 1012.

¹ 111 FERC ¶ 61,309 (2005).