

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Natural Gas Supply Association,)	
American Forest and Paper Association,)	Docket No. RP11-1538-000
American Public Gas Association,)	
Independent Petroleum Association of America, and)	
Process Gas Consumers Group)	

Texas Eastern Transmission, LP)	Docket No. RP12-318-001
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**ANSWER OF
THE NATURAL GAS SUPPLY ASSOCIATION,
THE INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA,
THE PROCESS GAS CONSUMERS GROUP,
THE AMERICAN PUBLIC GAS ASSOCIATION AND
THE AMERICAN FOREST AND PAPER ASSOCIATION
TO
REQUEST OF THE INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA
FOR RECONSIDERATION**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or the “Commission”), 18 C.F.R. § 385.213 (2011), the Natural Gas Supply Association (“NGSA”), the American Forest & Paper Association, Inc. (“AF&PA”), the American Public Gas Association (“APGA”), the Independent Petroleum Association of America (“IPAA”), and the Process Gas Consumers Group (“PGC”) (collectively, the “Associations”) hereby file an answer to the Interstate Natural Gas Association of America (“INGAA”) March 29, 2012 letter requesting reconsideration of Commission orders in the above-captioned dockets (“Request for Reconsideration”) and urge the Commission to reject INGAA’s Request for Reconsideration.

I. BACKGROUND AND EXECUTIVE SUMMARY

On March 29, 2012, INGAA submitted a letter “urg[ing the Commission] to reconsider and revise the Commission's approach to reservation charge crediting, detailed in the Order on Petition issued April 21, 2011, in Docket No. RP11-1538- 000.”¹ The Commission issued its Order on Petition² in response to the petition submitted by the Associations on November 17, 2010 in the same docket. INGAA’s letter “further ask[ed] the Commission to cease issuing show cause orders of the type issued February 16, 2012, in Docket No. RP12-318-001 . . . and to retract the Texas Eastern show cause order.”³

The Associations urge the Commission to reject INGAA’s Request for Reconsideration. INGAA’s request simply rehashes prior arguments already made at length in the above-mentioned proceedings. These arguments were previously disposed of by the Commission after adequate, complete, and thorough discussion and consideration and there is no need to reconsider any of the Commission orders in these proceedings. INGAA’s attempt to re-litigate the issues of Docket No. RP11-1538 is inappropriate because it had every opportunity to advocate for its positions in that docket and is now seeking to reopen, on a narrow issue, a policy debate that it previously lost. In short, INGAA should not be allowed a second bite at the apple.

In addition, to the extent INGAA’s letter attempts to seek rehearing of the Commission’s February 16, 2012 order in Docket No. RP12-318-001, *Texas Eastern Transmission, LP*, 138 FERC ¶ 61,126 (2012) (“*Texas Eastern*”), such efforts are procedurally inappropriate and should be rejected.⁴

¹ Request for Reconsideration at 1.

² *Natural Gas Supply Ass’n, et al.*, 135 FERC ¶ 61,055 (2011) (“Order on Petition”).

³ *Id.*

⁴ INGAA apparently has not intervened in Docket No. RP12-318-001, but nonetheless filed its letter in that docket. To the extent necessary, the Associations seek leave to intervene in that docket for the limited purpose of
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II. ANSWER

As a threshold matter, the Associations wish to underscore their commitment to pipeline safety. As customers of interstate natural gas pipelines, the Associations and each of their member companies have a keen interest in promoting pipeline safety and nothing in this pleading should be interpreted as an effort to discourage legitimate investment in appropriate safety measures. Similarly, the Associations recognize that pipelines are allowed to recover, in rates, legitimate costs prudently incurred to enhance safety in compliance with applicable laws and regulations. The issue here, and where we disagree with INGAA, is the very simple issue of whether interstate pipeline transportation customers should be required to pay for a service that not only they did not receive, but a service that they could not receive due to an outage on the pipeline system.

Contrary to INGAA's contention, reservation charge credits are not meant as a penalty for "mismanagement." As the Commission has repeatedly stated, "scheduled maintenance is a necessary non-*force majeure* event within the control of the pipeline, and . . . because a pipeline is responsible for operating its system so that it can meet its contractual obligations, full reservation charge crediting is an incentive to perform maintenance with minimal service disruption."⁵ Therefore, despite the fact that a maintenance outage may be "*necessary*," whether due to safety mandates, environmental regulations, or otherwise, there remains a crucial need for an "incentive to perform maintenance with minimal service disruption." A pipeline's primary

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asking the Commission to reject INGAA's letter or, in the alternative, seek waiver of any applicable Commission regulation for the limited purpose of responding to INGAA in that docket.

⁵ *Florida Gas Transmission Co.*, 107 FERC ¶ 61,074 at P 29 (2004) citing *El Paso Natural Gas Company*, 105 FERC ¶ 61,262 at pp. 62,351-62,352 (2003).

purpose must be to serve its customers and it should not be allowed an absolute right to charge its customers for a service that it did not provide while it performs system enhancements.⁶

If the Commission is inclined to consider the merits of INGAA's request to modify the definition of *force majeure* to include "pipeline safety and environmental compliance,"⁷ the Associations request that the Commission broaden the scope of this inquiry and conduct a full-fledged review of the definition of *force majeure*. As we have noted previously, the definition of *force majeure* in many pipeline tariffs goes far beyond the typical *force majeure* definition found in a wide variety of other commercial contexts. In the context of reservation charge credits, overly broad definitions of *force majeure* are particularly troublesome as they serve to defeat the purpose of the Commission's policy on reservation charge credits and can provide significant "loopholes" that serve to limit a pipeline's requirement to provide demand charge credits for failure to provide service.

Though far from clear, it appears as though these overly broad definitions may have crept into tariffs over time and over numerous rate cases that have settled or otherwise been resolved without a close review of the *force majeure* definition contained in the pipelines' tariffs. A further piecemeal approach such as that advocated by INGAA to add one more element to the definition would only serve to continue this unfortunate trend. However, if INGAA's letter is

⁶ The Associations note that INGAA's request has the effect of switching the full burden of safety and environmental enhancements to customers who have no say in pipeline management decisions. INGAA's request would also result in charging customers for services not provided even where the outage is due to the pipeline's negligence or willful misconduct in managing the outage. INGAA is essentially asking the Commission to allow a blanket violation of Commission policy as long as an outage is related to safety or the environment. The Associations submit that a blanket license to violate Commission policy is unwarranted and is contrary to the culture of compliance that is essential for the proper functioning of the Commission's regulatory framework.

⁷ See, e.g., Request for Reconsideration at 2. Periodic legislative review of the pipeline safety program is a fact of life for pipelines and their customers. In fact, the legislative effort that resulted in the recent passage of legislation reauthorizing the pipeline safety program was well underway when the Commission ruled on the Association's Petition in 2011. Therefore, INGAA should not be allowed to argue that Congressional reauthorization of the pipeline safety program constitutes "changed circumstances" that necessitate a review of the outage crediting policy.

read as a request to review the definition of *force majeure*, that review should not be confined to whether additional events should be added to the list of *force majeure* events, but should also encompass a review of what events should be omitted from the definition. In addition, the resulting standardized definition should be applied to all interstate natural gas pipelines and incorporated into their tariffs.

Further, the Associations note that the Commission allows two different methods to determine the credit to customers during *force majeure* outages: the No-Profit and the Safe Harbor methods. Pursuant to the No-Profit method, “the pipeline provides for partial refunds starting on the first day of the interruption in service, covering the portion of the pipeline’s reservation charge that represents the pipeline’s return on equity and associated income taxes.”⁸ Pursuant to the Safe Harbor method, “reservation charges must be credited in full to the shippers after a short grace period when no credit is due the shipper (*i.e.*, 10 days or less).”⁹ As stated above, the Associations strongly request that the Commission deny INGAA’s Requests for Reconsideration. However, to the extent that the Commission does decide to reconsider its policy on reservation charge credits for outages caused by *force majeure* events, the Associations believe that such a reassessment should also include which crediting method would be most appropriate, Safe Harbor or No-Profit. The Associations remain concerned that if INGAA’s prediction comes true and instances of outages rise, the Safe Harbor method could be abused or incorrectly applied by dividing outages into blocks of 10 days or less, thereby evading the requirement to provide any credits at all. Therefore, if the Commission does reconsider its policy on outage credits, the Commission should also ensure that pipelines use the No-Profit

⁸ Order on Petition at P 17, citing *Tennessee Gas Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022 (1996), *reh’g*, Opinion No. 406-A, 80 FERC ¶ 61,070 (1997).

⁹ *Id.*, citing *Texas Eastern Transmission Co.*, 62 FERC ¶ 61,015 (1993); *Natural Gas Pipeline Company of America*, 106 FERC ¶ 61,310, at P 20-24, *reh’g*, 108 FERC ¶ 61,170, at P 10-11 (2004).

method of crediting reservation charges instead of the Safe Harbor method because it is less susceptible to potential abuses and it more fairly provides at least some credit when service is not being provided.

In reality, INGAA's request brings nothing new to the discussion of pipeline outages except a vague expectation that pipeline outages will increase due to anticipated increased regulations.¹⁰ In fact, if outages increase as INGAA predicts, it becomes more important than ever for the Commission to be more vigilant in ensuring that its crediting policies are adhered to strictly. Pipeline transportation customers bear significant costs when they have to find alternate transportation services during pipeline outages. It would be adding insult to injury if customers would also be forced to pay for pipeline services that they did not, and could not, receive.

¹⁰ See, e.g., Request for Reconsideration at 1 (INGAA states that "[t]he level of pipeline safety and environmental work that will be performed in the immediate future is enormous.")

III. CONCLUSION

Wherefore, for the foregoing reasons, the Associations respectfully request that the Commission reject INGAA's Request for Reconsideration. Additionally, while reiterating their commitment to pipeline safety, the Associations urge the Commission to vigorously enforce its reservation crediting policy and ensure that customers are protected from overly broad "*force majeure*" definitions as well as from abuses of the Safe Harbor crediting method.

Respectfully submitted,

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April 16, 2012.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Commission Secretary in these proceedings.

Dated at Washington, DC this 16th day of April, 2012.

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