

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

Texican N. La. Transport, LLC	)	
Complainant	)	
v.	)	
	)	Docket No. RP09-1086-000
Southern Natural Gas Company	)	
Respondent	)	

**MOTION TO ACCEPT COMMENTS AND COMMENTS  
OF THE AMERICAN PUBLIC GAS ASSOCIATION**

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),<sup>1</sup> the American Public Gas Association (“APGA”) files this motion to provide the comments set forth below on pleadings filed in this proceeding—specifically, the September 30, 2009 complaint (“Complaint”) filed by Texican N. La. Transport, LLC (“Texican”) and the separate answers filed on October 20, 2009 by Southern Natural Gas Company (“Southern”) and by Shell Energy North America US (“Shell”). In support, APGA shows as follow:

**I. MOTION**

On October 20, 2009, APGA filed a timely motion to intervene in response to the Complaint in which Texican alleged that Southern had awarded pipeline capacity to Shell based on an auction methodology that no pipeline had previously employed. APGA’s motion reserved the right to provide additional comments after answers had been filed in response to the Complaint to allow APGA to provide its views based on a review of the pleadings on both sides of the issue.

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<sup>1</sup> 18 C.F. R. §385.212.

As discussed below, the resolution of the Complaint will be precedent setting, as it will determine the appropriateness for the natural gas industry of a new methodology which would allow a pipeline to aggregate portions of bids in awarding capacity based on a net present value (“NPV”) analysis. The comments set forth below demonstrate the importance of the issue and provide the reasons why the Commission should take action in this proceeding to announce to the industry that the methodology employed by Southern may not be used in the future.

The Commission has allowed pleadings in similar situations to assist the Commission in rendering a decision.<sup>2</sup> APGA submits that such action is fully appropriate here.

## II. COMMENTS

The Complaint and the answers filed by Southern and Shell raise a number of factual issues on the specific actions of Southern in awarding capacity to Shell on which APGA takes no position. One issue, however, is not fact-specific, but can and should be resolved based on the application of Commission policy. As demonstrated below, the new methodology Southern used to award pipeline capacity is unprecedented, contravenes the fundamental principle of allocative efficiency, and undermines the intended transparency and logic of an auction process. However the Commission resolves the specific factual allegations raised by the Complaint, it should clearly reject the use of the new methodology in any future auction of pipeline capacity for the reasons discussed below.

The Complaint specifically and repeatedly alleges that Southern used a new methodology in its award of capacity to Shell, which was to aggregate *portions* of bids received to determine the *portions* of bids that provide the highest NPV to the pipeline and which hence should be

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<sup>2</sup> See e.g. *Texas Eastern Transmission, LP*, 129 FERC ¶61,014 at P. 11 (2009); *Florida Gas Transmission Co.*, 125 FERC ¶61,032 at P. 6, n.3 (2008).

awarded the pipeline capacity. According to the Complaint, no pipeline has previously used portions of bids to award capacity based on the highest NPV. Rather, the custom and practice of the industry is to aggregate entire bids to determine which bids should be awarded pipeline capacity. Notably, in their Answers, neither Shell nor Southern are able to cite cases in which the Southern methodology has been approved by the Commission. The resolution of the Complaint will establish important precedent for the entire industry as to whether a pipeline may employ this new methodology.

The new methodology contravenes the principle of allocative efficiency and should be rejected on that basis. The Rate Design Policy Statement,<sup>3</sup> which has been applied by the Commission numerous times to determine the appropriateness of NPV valuation criteria,<sup>4</sup> clearly defines the principle of allocative efficiency: “Allocative efficiency simply means that those who value the product or service the most should be the ones to have it.”<sup>5</sup>

Allowing the pipeline to award capacity on the basis of portions of multiple bids eliminates the critical nexus between the award of capacity and the bidder that values the capacity the most. Under the new methodology a bid that places the highest value on the auctioned capacity may be virtually entirely disregarded if the pipeline can cobble together portions of bids that provide even more revenues to the auctioning pipeline.

As the Commission has made clear in numerous decisions,<sup>6</sup> while it may provide flexibility to a pipeline as to how it determines the bid with the highest NPV, it has done so on the assumption that the pipeline will generally seek the highest rate from prospective purchasers

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<sup>3</sup> *Rate Design Policy Statement*, 47 FERC P61,295, *order on reh'g*, 48 FERC P61,122 (1989), *appeal dismissed without order sub nom. Wisconsin Public Service Commission v. FERC*, 966 F.2d 702 (D.C. Cir. 1992).

<sup>4</sup> *See e.g., Tennessee Gas Pipeline Co.*, 121 FERC ¶61,149 (2007); *Northern Natural Gas Co.*, 118 FERC ¶61,053 (2007).

<sup>5</sup> *Rate Design Policy Statement*, *supra* 47 FERC at 62,053.

<sup>6</sup> *See e.g., Tennessee Gas Pipeline Co.*, *supra*, 121 FERC at P.23; *Northern Natural Gas Co.*, *supra*, 118 FERC at P.51.

during an auction process, consistent with the allocative efficiency principle underlying the Rate Design Policy Statement. The new methodology employed by Southern does not comply with this assumption, because, as the facts in this case illustrate, it will not necessarily award capacity to the highest bidder, and thus it must be rejected.

Southern and Shell cite a number of decisions where the Commission has accepted an aggregation of a number of bids that in combination reflect the highest NPV.<sup>7</sup> APGA readily agrees with the precedents as they allow shippers with relatively small capacity purchase requirements to have their bids aggregated *in their entirety* with other bids. However, these precedents do not address, much less support, a methodology that would award capacity not on bids a prospective shipper actually submitted, but based on piecemeal selection of portions of those bids, the end result of which may be to provide the bulk of the capacity to a bidder whose NPV was lower than another bidder's. The "Commission has consistently stated that its policy is for pipelines to award capacity to the highest bidder,"<sup>8</sup> and the subject methodology conflicts with and undermines this stated policy.

Allowing the new methodology used by Southern would also play havoc with the intended logic and transparency of the bidding process. Transparency requires that bidders know the criteria that the pipeline will use to determine the NPV of bids, so that they can submit bids to maximize their chance of obtaining capacity. Yet, as Texican has demonstrated in the Complaint, allowing a pipeline to accept portions of bids makes it impracticable, if not impossible, for a bidder to shape a bid based on the criteria presented by a pipeline to maximize the chance that its bid will be successful. This is precisely because the acceptance of partial bids severs the nexus between the value of the bid (or combination of bids) and the award of capacity.

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<sup>7</sup> See e.g. *National Energy & Trade v. Texas Gas Transmission*, 121 FERC ¶61,064 (2007); *Mississippi River Transmission Corp.*, 89 FERC ¶61,067 (1999); and *Texas Eastern Transmission Corp.*, 80 FERC ¶61,270 (1996).

<sup>8</sup> *Mississippi River Transmission Corp.*, *supra* 89 FERC at 61,220.

In doing so, the new methodology is fundamentally at odds with the underlying logic of the auction process, which is to provide incentives to bidders to maximize the value of their bids.

### **III. CONCLUSION**

Despite protestations to the contrary, the methodology used by Southern to award capacity to Shell and Texican in this proceeding is a new methodology not previously sanctioned by the Commission, and further it violates established Commission policy on awarding capacity in an auction process. The Commission should make clear that such new methodology will not be permitted by it.

Respectfully submitted,

AMERICAN PUBLIC GAS ASSOCIATION

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October 26, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each of the parties in this proceeding in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Washington, D.C., this 26<sup>th</sup> day of October 2009.

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