

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

Bidding by Affiliates in Open Seasons)
for Pipeline Capacity) Docket No. RM11-15-000
)

**COMMENTS OF THE
AMERICAN PUBLIC GAS ASSOCIATION**

Pursuant to the Notice of Proposed Rulemaking (“NOPR”) issued by the Federal Energy Regulatory Commission (“Commission” or “FERC”) in the above-captioned proceeding on April 7, 2011, the American Public Gas Association (“APGA”) hereby submits its response to the Commission’s request for comments regarding the Commission’s proposal to: (1) prohibit multiple affiliates of the same entity from bidding in an open season for pipeline capacity in which the pipeline may allocate capacity on a *pro rata* basis, unless each affiliate has an independent business reason for submitting a bid and (2) prohibit affiliates from releasing capacity obtained in an open season pursuant to a *pro rata* allocation to another affiliate or otherwise allow an affiliate to obtain such capacity from another affiliate.

APGA is the national, non-profit association of publicly-owned natural gas distribution systems, with over 700 members in 36 states. Overall, there are some 950 publicly-owned systems in the United States. Publicly-owned gas systems are not-for-profit retail distribution entities that are owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution facilities.

EXECUTIVE SUMMARY

APGA commends the Commission's effort to prevent gaming of *pro rata* allocations of pipeline capacity resulting from an open-season. APGA supports the Commission's proposal to prohibit multiple affiliates of the same entity from bidding in an open season for pipeline capacity, unless each affiliate has its own business reason for bidding. APGA also supports the Commission's proposal to prohibit affiliates from consolidating pipeline capacity obtained in a *pro rata* allocation. The two proposals will work in tandem to prevent entities with multiple affiliates from engaging in anticompetitive practices when a pipeline allocates capacity on a *pro rata* basis following an open season. APGA suggests, moreover, that if affiliates do participate in an open season, they be required to identify themselves as affiliates so that the public is on notice that the subject rule is applicable and must be satisfied.

COMMENTS

As the Commission recognizes in the NOPR (at P 6), some shippers bid with multiple affiliates in the same pipeline capacity open season in order to defeat the *pro rata* allocation of otherwise over-subscribed capacity and obtain a greater share of available capacity than the shipper could have acquired for itself using a single bid. In a pipeline open season, the capacity is finite and the price is capped by the maximum tariff rate. If the pipeline addresses excess maximum rate bids by prorating capacity, shippers can game the system by bidding with multiple affiliates, thus, securing a larger portion of the prorated capacity.

This multiple affiliate bidding strategy reduces competition by distorting the allocation of available capacity. Bidders that do not engage in this behavior receive less capacity than they otherwise would, not because they value the capacity less than the shippers that game the allocation method but because they only submit economically meaningful bids. APGA's

members are publicly-owned natural gas distribution systems that do not operate with or through affiliates and hence, absent the proposed rule, would be particularly disadvantaged by the gaming tactics that the proposed rule seeks to prevent.

The Commission's proposal to add a new section 284.15 to its regulations, prohibiting multiple affiliates of the same entity from participating in an open season for capacity in which the pipeline may allocate capacity on a *pro rata* basis, is an appropriate response to capacity allocation gaming. Prohibiting bids by multiple affiliates in any open season where capacity may be allocated on a *pro rata* basis should deter manipulation and permit all players to participate on a level playing field.

The Commission's proposed exception, allowing multiple affiliates to bid in the same open season if each has its own independent business reason for submitting a bid, strikes a reasonable balance. The Commission's proposed "independent business reason" standard will allow it to weed-out manipulative affiliate bids with no economic substance from legitimate affiliate bids that each serve their own independent purpose. In this manner, the proposed rule will not hinder legitimate transactions or limit access to pipeline capacity by companies with independent affiliates. Pipelines, as well as the Commission, should remain vigilant when reviewing multiple bids from professedly independent affiliates to ensure that one is not acting on behalf of another as an "alter ego."

The Commission's additional proposal to prohibit the release of capacity obtained in a *pro rata* allocation between affiliates and to otherwise prohibit any affiliate from obtaining prorated capacity from another will further deter manipulative behavior and ensure that so-called independent affiliates only bid for capacity in keeping with their legitimate business purposes. As the Commission notes, companies that bid with multiple affiliates have used capacity release

as a final step to consolidate capacity in the one affiliate that actually has use for the capacity. (NOPR at 15). The Commission's complimentary proposal to prohibit the transfer of prorated capacity will deter manipulation as well as prevent ostensibly independent affiliates that may otherwise skirt the first prohibition from bidding for excess capacity and consolidating it later to the detriment of competing shippers.

APGA also recommends that proposed Section 284.15 of the Commission regulations be revised to require that, if affiliates of the same entity do participate in open seasons for pipeline capacity, each be required to identify itself as such in its bid and that any award of open season capacity likewise note that fact. Corporate names can be deceiving in that affiliation between and among entities is often not self-evident from the name of the entity,¹ so it is important that the fact of affiliation be known from the outset by all concerned.

CONCLUSION

In accordance with the comments above, APGA urges the Commission (A) to adopt its proposal to: (1) prohibit multiple affiliates of the same entity from bidding in an open season for pipeline capacity in which the pipeline may allocate capacity on a *pro rata* basis, unless each affiliate has an independent business reason for submitting a bid and (2) prohibit affiliates from releasing capacity obtained in an open season pursuant to a *pro rata* allocation to another affiliate or otherwise allow an affiliate to obtain such capacity from another affiliate; and (B) to amend its proposal to require self-identification of affiliates participating in open seasons for pipeline capacity. The Commission's proposal, as amended, will deter anti-competitive manipulation of pipeline capacity allocation and hence further the public interest.

¹ For example, and for illustrative purposes only, Florida Power & Light Company, a major shipper on interstate pipelines, has approximately 116 energy affiliates, 79 of which are not readily identifiable by their names as FPL affiliates. See <https://www.oatiosis.com/woa/docs/FPL/FPLdocs/CompanyEnergyAffiliate.pdf>.

Respectfully Submitted,

AMERICAN PUBLIC GAS ASSOCIATION

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