

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

Coordination of the Scheduling Processes of)
Interstate Natural Gas Pipelines and) Docket No. RM14-2-002
Public Utilities)

**COMMENTS OF THE AMERICAN GAS ASSOCIATION,
THE AMERICAN PUBLIC GAS ASSOCIATION, AND
THE INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA**

The American Gas Association (AGA), the American Public Gas Association (APGA) and the Interstate Natural Gas Association of America (INGAA) (collectively, the Associations) filed a request for clarification on May 28, 2015,¹ as supplemented on June 26, 2015,² relating to capacity release recall rights in light of the transition from two to three intraday nomination cycles, established by Order No. 809.³ The Associations recognized that it is not unduly speculative to presume that long-term capacity releases consummated before the April 1, 2016 implementation date for Order No. 809 will contain recall provisions based on the obsolete scheduling timeline and may not function as intended after the new scheduling standards are implemented. Accordingly, the Associations proposed that the Federal Energy Regulatory Commission (FERC or Commission) establish default provisions for capacity release transactions with the right to recall capacity that span the April 1, 2016 implementation date. The Associations appropriately recognized that capacity release transactions with recall rights

¹ *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, Request for Clarification of AGA, APGA and INGAA, Docket No. RM14-2 (May 28, 2015).

² *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, Supplemental Request for Clarification of AGA, APGA, and INGAA (Supplemental Request for Clarification), Docket No. RM14-2 (June 26, 2015).

³ *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, Final Rule; Order No. 809, 151 FERC ¶ 61,049 (April 16, 2015).

may vary and that the parties to the transaction may want to come to an agreement as to the capacity release recall rights that will be available for the Intraday 3 cycle beginning April 1, 2016.

The Commission, in its July 31, 2015 order,⁴ requested comments on the Associations' default proposal. The Commission recognized that it "sees value in establishing a default interpretation of capacity release contractual recall provisions to assist parties in effectuating the transition between the two intraday and three intraday nomination schedules. While parties may vary such a default interpretation by agreement, a default may reduce the burden of negotiations on those parties satisfied with the default interpretation."⁵ Yet, the Commission stated that since the Associations' request "goes beyond merely clarifying the implementation date adopted in Order No. 809," it should be subject to notice and comment to establish that the default interpretation is reasonable.⁶

1. The Associations' Default Capacity Release Recall Rights Proposal Is Reasonable.

The Associations, representing a significant portion of the natural gas industry, carefully arrived at this reasonable default position and continue to believe that it should apply to all capacity release transactions with the right to recall capacity entered into prior to April 1, 2016, for periods that include April 1, 2016, and terminate thereafter. The Associations "believe that specifying default outcomes in the absence of the parties' agreement would assist the parties to these transactions in defining the capacity release recall rights that will be available [on April 1, 2016, and thereafter], and smooth the transition to the new scheduling timeline."⁷ The proposal

⁴ *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, Order on Request for Clarification and Notice of Comment Procedures (July 31 Order), 152 FERC ¶ 61,095 (July 31, 2015).

⁵ *Id.* at Par. 13.

⁶ *Id.* at Par. 14.

⁷ Supplemental Request for Clarification at 2.

appropriately balances the intent of parties that agree with the default recall rights with parties that disagree with the default recall rights. The proposal provides a process such that parties can notify the pipeline by way of a letter if they do not want the default rights to apply and indicate the mutual agreement of the releasing and replacement shippers.

2. Pipeline Operators Need to Know How to Process Capacity Release Transactions by April 1, 2016.

Pipelines, as operators of the capacity release program, administer tens of thousands of capacity releases each year.⁸ Pipelines will need to know how to process capacity releases that span April 1, 2016 on the April 1, 2016 implementation date, even if a releasing and a replacement shipper have not addressed or are disputing the issue of whether an Intraday 3 cycle recall right applies. If a dispute is resolved at a later time, pipelines can implement that resolution prospectively, but must know on April 1, 2016 the applicable recall rights throughout the intervening period. Pipelines must not be exposed to claims that the wrong party was allowed to use the released capacity. A default outcome is crucial for this reason.

If the Commission does not establish a default provision, and releasing and replacement shippers do not resolve the intent of how to treat the Intraday 3 cycle on April 1, 2016, must a pipeline interpret the “last cycle” as permitting recalls only up to the Intraday 2 cycle, since presumably that was the intent of the term “last cycle” for contracts entered into prior to Order No. 809? If so, limiting capacity releases that span April 1, 2016 by providing recall rights only up to the Intraday 2 cycle would undermine the Commission’s intent of Order No. 809 to provide shippers the opportunity for an additional intraday cycle – Intraday 3.

The Associations, therefore, request that the Commission adopt the Associations’ default capacity release recall rights proposal that clarifies how a pipeline should administer a capacity

⁸ For example, one INGAA member pipeline administers over 6,000 capacity releases per month.

release transaction should the recall rights issue not otherwise be resolved by the parties to the release prior to April 1, 2016.

3. The Default Interpretation Should Apply to All Capacity Releases that Span April 1, 2016.

In its July 31 Order, the Commission asked whether the default should apply to all agreements into which the parties have entered before April 1, 2016 (as proposed by the Associations), or whether it should only apply to releases entered into by an earlier date, such as the April 16, 2015 issuance of Order No. 809.⁹ The Associations urge the Commission not to establish an earlier cut-off date. Rather, the Commission should establish a default interpretation that applies to all capacity releases that span April 1, 2016. A very high percentage of releases that span April 1, 2016 will have been entered into after April 16, 2015. While it is known that the Intraday 3 cycle will be added as of April 1, 2016, this change has not yet been incorporated into pipeline business systems. Since the industry is not required to implement Order No. 809 until April 1, 2016, and pipelines have planned accordingly to meet this deadline, pipelines likely will not have their computer systems set up to implement Order No. 809 until the April 1, 2016 implementation date. Accordingly, pipelines and shippers are not yet prepared to enter electronically whether the recall rights of a capacity release transaction for Intraday 3 apply. Therefore, the Order No. 809 demarcation date – for determining whether to apply the default interpretation – is irrelevant.

For all capacity releases that span April 1, 2016, it is reasonable to expect shippers to advise their pipeline(s) by letter, indicating mutual agreement, if they do not want the default to apply. This is reasonable since a releasing shipper with recall rights that has not reached an agreement with its replacement shipper could resolve the matter itself by recalling the capacity

⁹ July 31 Order at Par. 14.

prior to April 1, 2016. Pipelines should not be left to wonder on April 1, 2016 how an unresolved dispute regarding recall rights will be later decided.

4. If the Commission Decides Not to Establish Default Capacity Release Recall Rights, It Will Create Unnecessary Administrative Burdens and Inefficiencies.

Without the default, many releasing shippers likely will decide to recall and re-release potentially thousands of capacity releases on the April 1, 2016 implementation date in order to establish Intraday 3 recall rights in a new release. April 1, 2016 already is a particularly busy time for pipelines and shippers since it coincides with the peak spring/summer seasonal capacity release date. Further, on April 1, 2016, pipelines and their shippers must implement the scheduling timeline in accordance with Order No. 809 and, most likely, implement the business practice standards adopted in NAESB Version 3.0. These additional capacity releases would result in an enormous burden for the pipeline administrator and shippers at this busy time, a burden that largely would be eliminated by the proposed default interpretation. Implementing the default interpretation would significantly reduce all pipelines' and shippers' administrative burdens regarding capacity releases, and enable the industry to focus on a smooth transition to a new scheduling timeline.

5. Conclusion

As stated above, the Associations continue to believe that the Associations' default capacity release recall rights reflect the intent of the parties to the majority of contracts entered into prior to April 1, 2016. The Associations strongly encourage the Commission to adopt their default capacity release recall rights proposal. The Commission also should strongly encourage shippers that disagree with the default provision to resolve all contractual disputes and notify the pipeline by letter as soon as possible, yet well in advance of the April 1, 2016 implementation date.

Respectfully submitted,

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