Comments
07-G-0299

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UGI Energy Services, Inc.

May 17, 2007

<u>Via Overnight Delivery</u>

Hon. Jaclyn Brilling, Secretary
State of New York Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: CASE 07-G-0299 – In the Matter of Issues Associated with the Future of the Natural Gas Industry and the Role of Local Gas Distribution Companies – Capacity Planning and Reliability

Dear Secretary Brilling:

Enclosed for filing on behalf of UGI Energy Services, Inc. ("UGI Energy") are an original and ten (10) copies of its Initial Comments in the above-captioned proceeding.

All Parties on the Active Parties list are being served with a copy of UGI Energy's Initial Comments via e-mail.

Please contact Jodi Larison at (845) 353-7512 or Frank Markle at (610) 768-3625, if you have any questions concerning this filing.

Very truly yours,

Frank Markle /cs

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Attorney for UGI Energy Corporation

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STATE OF NEW YORK
BEFORE THE
PUBLIC SERVICE COMMISSION

CASE 07-G-0299 -- In the Matter of Issues Associated with the Future of the Natural Gas Industry and the Role of Local Gas Distribution Companies – Capacity Planning and Reliability

COMMENTS OF UGI ENERGY SERVICES, INC. ON STAFF WHITE PAPER ON CAPACITY PLANNING AND RELIABILITY

In response to the Commission's Notice of Comment Schedule issued on March 14, 2007, UGI Energy Services, Inc. ("UGI Energy") hereby submits its initial comments on the Department of Public Service Staff White Paper on Capacity Planning and Reliability (the "White Paper"). UGI Energy generally supports the Straw Proposal propounded by Staff in the White Paper as an effective balancing between competitive interests and reliability concerns. The proposal to require marketers to accept mandatory releases of pipeline transportation capacity from LDCs will provide LDCs with sufficient assets and operational control to maintain system reliability, while allowing marketers to continue to provide their own capacity at existing levels will afford reasonable flexibility for marketers to meet the needs of retail customers through a portfolio of supply assets in a cost-effective manner. However, UGI Energy believes that the Straw Proposal is more limiting than it needs to be in several key respects, and urges the Staff to clarify and revise the proposal, as described below.

I. IDENTITY OF UGI ENERGY

UGI Energy is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business in Wyomissing, Pennsylvania. UGI Energy sells natural gas commodity services to commercial and industrial consumers in nine (9) eastern states, including consumers behind seven of New York gas utility ("LDC") systems. UGI Energy has been an active participant in the Natural Gas Reliability Advisory Group and in the working group process of developing the Working Group Report, which was relied on by Staff in developing the White Paper. The responses and comments submitted below are based on UGI Energy's experiences serving small and large commercial and industrial gas customers in the states in which UGI Energy operates, and are reflective of what it sees as appropriate strategies to enhance competition while ensuring reliability in retail energy markets for these types of customers.

II. COMMENTS ON STRAW PROPOSAL

1. *There needs to be a clear definition of the specific classes of customers that are subject to mandatory capacity assignment*

Throughout the working group process, UGI Energy has consistently advocated that the critical starting point for any new capacity reliability standards is clearly establishing which categories of customers will be subject to the capacity programs and which are not. There is no reason to extend a mandatory capacity program to larger commercial and industrial customers, interruptible customers or dual fuel customers of any type at this time. These customers have been on transportation for many years, and often possess their own pipeline capacity or alternate means of energy supply. Unfortunately, while there is general agreement that the capacity program can be limited to those smaller firm customers that rely on the availability of natural gas supply, the precise definition for eligibility in a mandatory capacity program remains unclear in the White Paper.

The White Paper offers a cursory definition, stating (at page 4) that core customers are "those customers that do not have an alternative to the supply of gas." The White Paper goes on to say that essential human needs customers, such as hospitals, may be included in this category. This appears to be a different and somewhat broader definition then what appears in the Working Group Report, which limits the applicability of its recommendations to "Primary Delivery Point Capacity Customers" – customers for whom marketers must file with the LDC an affidavit affirming that primary delivery point capacity will be used to serve them.

UGI Energy conceptually supports the definition contained in the Working Group Report. Unfortunately, the LDC requirements for certifying third-party capacity during the winter are not uniform. Some LDCs extend the capacity affidavit requirement to large firm commercial customers, while others do not. In order to achieve certainty, in capacity programs across all LDCs in the state, the Staff should recommend to the Commission that under whatever capacity program the Commission ultimately adopts, each LDC should be required make an implementing tariff filing. These individual tariff filings should include a system-specific definition of which service classifications are subject to the capacity programs for each LDC.

2. *Marketers should be permitted to meet incremental load with third party capacity to the same extent that they are using grandfathered capacity to serve existing load.*

The Straw Proposal includes the requirement that any new or incremental marketer loads must be served using a release of LDC capacity. This restriction may have the effect of creating a barrier for new marketers to enter retail programs and further, will inhibit the ability of existing marketers to pursue load-growth strategies in a cost-effective manner. As discussed in response to the Staff question areas, below, marketers entering a specific LDC market for the first time should have the right to utilize third-party capacity that is obtained from an existing marketer and is already grandfathered. In addition, every marketer should have the option to meet incremental loads with third-party capacity to the same extent that the marketer is using grandfathered capacity to meet existing customer requirements. So, for example, if a marketer is serving its existing customer book at the start of the mandatory capacity release program using 10% third-party capacity, it would have the option to bring additional third-party capacity to the LDC system to meet 10% of any increased usage requirements that results from the aggregation of new customers. The ability to use incremental third-party supplies to meet a portion of load growth would enable marketers to offer competitive retail services without adversely impacting the reliability of service to core customers.

3. *Marketers should only be required to certify that third party capacity is primary firm to the LDC citygate during the five winter months.*

The state-wide requirement for marketers to demonstrate that their third-party capacity has firm primary delivery point capacity at the LDC citygate during only the five winter months (November through March) has been in place since 1999. There is absolutely no discussion or conclusion in the Working Group Report that the reliability of marketer capacity has posed problems for any LDC in summer operations. Yet, inexplicably, Staff concludes in its Straw Proposal that marketers should be required to certify the firmness of primary capacity on a year-round basis. The only rationale for this determination is Footnote 19, which states that "Most LDCs require that marketers who take assignment of capacity do so all 12 months of the year."

There is no relationship whatsoever between how LDCs allocate capacity to marketers under the current regime and the restrictions that should be put on a marketer's use of its own capacity due to reliability concerns. While some LDCs require annual releases, others release capacity to marketers from month-to-month. From the standpoint of consistency, it is just as logical to loosen the capacity certification requirement to a monthly standard as it is to tighten it to an annual one. Moreover, the fact that some LDCs require year-round capacity release as part of largely voluntary capacity programs has much more to do with cost allocation than any reliability concern regarding summer operations. Upstream capacity is generally only available from the pipelines on a year-round basis in New York State, and is utilized at low load factors because LDC usage profiles are highly temperature sensitive. Annual capacity assignment is a way to make marketers, and ultimately their transportation customers, bear the cost responsibility for capacity that is needed to meet peak-day needs -- in exactly the same way as an LDC's sales customers absorb, in purchase gas cost mechanisms, the year-round cost of capacity that is used extensively in the winter but little in the summer. The annual allocation of pipeline capacity to marketers avoids cross-subsidization between sales and transportation customer classes. Summer season reliability has little to do with the structure of these programs.

Interruptible and secondary firm pipeline capacity flows freely in New York on virtually every day during the summer season. Imposing a year-round certification requirement for marketers using third-party capacity makes the capacity captive to the LDC and deprives marketers of realizing the full economic value of their firm capacity commitments -- with little or no corresponding benefit to service reliability for core customers. Absent a specific demonstration by individual LDCs that the current program of requiring marketers to demonstrate primary firm delivery point capacity only during the winter has created operational problems or resulted in increased costs, the current program should remain unchanged.

II. RESPONSE TO STAFF QUESTION AREAS

1. *If marketer load being served with capacity not released by the LDC is not "grandfathered," how will the retail access program be affected?*

The adoption of a fully mandatory capacity release program with no ability for marketers to continue to use the third party supply that they already hold would invoke a severe economic hardship on those marketers that have made upstream capacity commitments in reliance on the continuing ability to use this supply to meet customer loads. A marketer may be able to release this "stranded" capacity at maximum rates through the pipelines bulletin boards. However, marketers may incur losses, either because the capacity cannot be re-marketed on a year-round basis or cannot be re-marketed at maximum rates. To the extent that marketers lose money on capacity investments that are invalidated by the implementation of a mandatory release program, the marketers will be forced to either pass those losses on to customers in the form of higher prices, or to absorb those losses. Retail competition will be harmed under either scenario. The grandfathering of existing marketer capacity entitlements is essential to a balanced capacity program.

2. *How will local production be affected by this straw proposal?*

Local Production should not be affected one way or the other. Local production is generally the most reliable and least expensive source of supply to the LDC gate. As such, this gas will generally flow regardless of whether it is the LDC or a marketer that holds the capacity. If the LDC is releasing upstream capacity used to transport local production it has under contract as part of its mandatory capacity release program, then the LDC should assign or re-sell to its marketers, at cost, the local supply corresponding to the released capacity.

3. *What should happen if a marketer that is grandfathered exits the LDC service territory without selling its entire book to a single entity? For example, should a marketer who takes on some of the exiting marketer's book of customers be allowed to bring in its own capacity to serve those customers? Should those customers be considered incremental load and only served by released capacity from the LDC?*

The disposition of third party capacity held by a marketer exiting an LDC system should be subject to private negotiations between the exiting marketer and the marketer (or marketers) acquiring the customer book. To the extent that the exiting marketer agrees to assign or release its grandfathered capacity to a successor, that capacity should continue to be grandfathered and available for use by the successor marketer. If the exiting marketer elects not to assign or release its third party supply to a successor, then mandatory capacity release should be made available from the LDC to the succeeding marketer to meet the load requirements of its customers. The exiting marketer should not be required to pass on its grandfathered rights when its sells its customer book to another marketer – any more than it should be required to transfer its third party capacity to the LDC if it elects to exit the market.

4. *How is reliability assured in upstate and western parts of the State by grandfathering the marketer's capacity brought to the citygate?*

By the Staff's own acknowledgement, system reliability is less problematic for the LDCs in western New York. The existence of local natural gas production, multiple natural gas storage reservoirs and the web-like grid of multiple interstate pipeline facilities that criss-cross this portion of the state create an inherent natural advantage for supply security and portfolio diversification. Attachment B to the White Paper shows that the LDCs in the western parts of the state have excess deliverability relative to peak day needs, and thus can place greater reliance on third-party capacity. The grandfathering of relatively higher percentages of marketer provided capacity should have no adverse impact on reliability in this region because replacement capacity is more readily available in the event of marketer default.

5. *What could be done to improve marketer access/use of storage assets?*

The pipeline storage contracts held by LDCs should be released to marketers under the mandatory release program in the same manner that transportation contracts are released. LDCs are adequately protected in meeting system requirements by retaining recall rights in the storage capacity. LDCs should only be permitted to retain storage entitlements to the limited extent demonstrably necessary for reliability and system balancing purposes and to serve PGC needs.

IV. CONCLUSION

UGI Energy appreciates the opportunity to provide these comments regarding the Staff's proposed Straw Proposal and potential changes to the Commission's policies. UGI Energy supports the hybrid approach to capacity management advocated by Staff. However, UGI Energy respectfully requests that the Staff clarify the definition of core customers subject to the proposed capacity program and that it incorporate the described modifications to the Straw Proposal in order to enhance marketer flexibility and provide meaningful, cost-effective supply alternatives to customers without undermining system reliability.

Respectfully submitted,

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