means to maintain a clear area of vision by requiring it to be effective at low speeds and precipitation rates as well as the higher speeds and precipitation rates identified in the current regulation. These are the only new or changed requirements relative to those in § 25.773(b)(1) at Amendment 25–108.

Applicability

As discussed above, these special conditions are applicable to the Model G150. Should GALP apply at a later date for a change to the type certificate to include other type designs incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Gulfstream Aerospace Limited Partnership (GALP) Model G150 airplane.

Pilot Compartment View—Hydrophobic Coatings in Lieu of Windshield Wipers. The airplane must have a means to maintain a clear portion of the windshield, during precipitation conditions, enough for both pilots to have a sufficiently extensive view along the flight path in normal flight attitudes of the airplane. This means must be designed to function, without continuous attention on the part of the crew, in conditions from light misting precipitation to heavy rain at speeds from fully stopped in still air, to 1.5 V_{SR1} with lift and drag devices retracted.

Issued in Renton, Washington, on June 21, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–12883 Filed 6–29–05; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket Nos. PL05–8–000 and RM04–4–000]

Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding

Issued June 16, 2005.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Proposed rule; withdrawal; policy statement.

SUMMARY: On February 2, 2004, the Federal Energy Regulatory Commission (Commission) issued a notice of proposed rulemaking (NOPR) proposing to amend its open access regulations governing capacity release and standards for business practices and electronic communications with interstate natural gas pipelines. The NOPR proposed to incorporate by reference ten creditworthiness standards promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB) and adopt additional regulations related to the creditworthiness of shippers on interstate natural gas pipelines. The Commission adopted the NAESB creditworthiness standards in Docket No. RM96–1–026 (70 FR 28204), and is now issuing a policy statement on creditworthiness. Therefore, the proposed rulemaking in Docket No. RM04–4–000 is withdrawn.

DATES: The withdrawal of the proposed rulemaking is made on the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: David Faerberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202)–502–8275, *david.faerberg@ferc.gov.*

Frank Karabetsos, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202)–502–8133, *frank.karabetsos@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

1. The Commission is issuing a policy statement setting forth its approach to credit issues relating to transportation on natural gas pipelines. The policy statement is intended to provide the industry with guidance on the Commission's policies with respect to credit and the way in which the Commission will evaluate future proceedings involving changes to the creditworthiness provisions of pipeline tariffs.

I. Background

2. In 2002, a number of interstate natural gas pipelines made filings with the Commission to revise the creditworthiness provisions in their tariffs. These pipelines claimed that, due to increased credit rating downgrades for many energy companies, industry attention has focused on issues relating to a pipeline's risk profile and its credit exposure. The pipelines argued that tariff revisions are needed to strengthen creditworthiness provisions and minimize the risk to the pipeline and its shippers in the event that a shipper defaults on its obligations.

3. In September 2002, the Commission issued orders that began to examine and investigate issues relating to a pipeline's ability to determine the creditworthiness of its shippers.[1] Several parties in these proceedings requested that the Commission develop uniform guidelines for pipeline creditworthiness provisions. The parties argued that generic guidelines would reduce the potential burden faced by customers who otherwise would need to comply with inconsistent and overly burdensome credit requirements.

4. The Commission concluded that developing generic standards for creditworthiness determination could be valuable since shippers would be able to provide the same documents to every pipeline to obtain capacity. The Commission encouraged the parties to initiate the standards development process at the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board (NAESB) to see whether a consensus standard could be developed for creditworthiness determinations. In June 2003, NAESB filed a progress report with the Commission in Docket No. RM96–1–000 stating that its Wholesale Gas Quadrant had adopted ten standards relating to creditworthiness. A number of parties filed comments with the Commission after NAESB filed its report.

5. On February 2, 2004, the Commission issued a Notice of Proposed Rulemaking (NOPR) in Docket

[1] See *Tennessee Gas Pipeline Co.,* 100 FERC ¶ 61,267 (2002); *Northern Natural Gas Co.,* 100 FERC ¶ 61,278 (2002); *Natural Gas Pipline Co. of America,* 101 FERC ¶ 61,269 (2002).

No. RM04–4–000 [2] that proposed to amend the Commission's open access regulations governing capacity release and standards for business practices and electronic communications with interstate natural gas pipelines. The NOPR proposed to incorporate by reference the ten creditworthiness standards promulgated by NAESB's WGQ and to adopt additional regulations related to the creditworthiness of shippers on interstate natural gas pipelines.[3] Forty-two comments were filed in response to the NOPR.[4]

II. Discussion

6. The Commission has determined not to go forward with a final rule on creditworthiness, but to issue this policy statement to provide the industry with guidance as to the Commission's credit policies and the way in which the Commission will examine future proceedings in which creditworthiness issues are considered. Since the issuance of the NOPR, filings by pipelines to revise their creditworthiness standards have declined markedly, and, in general, the circumstances in the energy industry that led to concern about shippers' credit status and their effect on pipeline risk profiles have improved. Based on the comments filed in the NOPR and changes in the financial picture of the natural gas industry, we conclude that standardizing the creditworthiness process beyond the business practices adopted by NAESB is not necessary at this time and that creditworthiness issues that arise in individual filings can be addressed on a case-by-case basis. The guidance provided here will assist the industry in evaluating the issues that may arise in individual cases.

A. Shipper Information Provided to the Pipeline

7. The WGQ Executive Committee considered, but did not adopt, a proposed standard which would have established a uniform set of documents that shippers would have to provide to pipelines, distinguishing between the various customer groups that use pipeline services. The list of information under this proposed standard was as follows:

a. Audited Financial Statements;

b. Annual Report;

c. List of Affiliates, Parent Companies, and Subsidiaries;

d. Publicly Available Information from Credit Reports of Credit and Bond Rating Agencies;

e. Private Credit Ratings, if obtained by the shipper;

f. Bank References;

g. Trade References;

h. Statement of Legal Composition;

i. Statement of Length of Time Business has been in Operation;

j. Most recent filed statements with the Securities and Exchange Commission (or an equivalent authority) or such other publicly available information;

k. For public entities, the most recent publicly available interim financial statements, with an attestation by its Chief Financial Officer, Controller, or equivalent (CFO) that such statements constitute a true, correct, and fair representation of financial condition prepared in accordance with Generally Accepted Accounting Principles (GAAP) or equivalent;

l. For non-public entities, including those that are state-regulated utilities:

i. The most recent available interim financial statements, with an attestation by its CFO that such statements constitute a true, correct, and fair representation of financial condition prepared in accordance with GAAP or equivalent;

ii. An existing sworn filing, including the most recent available interim financial statements and annual financial reports filed with the respective regulatory authority, showing the shipper's current financial condition;

m. For state-regulated utility local distribution companies, documentation from their respective state regulatory commission (or an equivalent authority) of an authorized gas supply cost recovery mechanism which fully recovers both gas commodity and transportation capacity costs and is afforded regulatory asset accounting treatment in accordance with GAAP or equivalent;

n. Such other information as may be mutually agreed to by the parties;

o. Such other information as the pipeline may receive approval to include in its tariff or general terms and conditions.

In comments, Reliant argues that item ''o'', which makes the list non-exclusive, would create uncertainty as to exact requirements and could lead to discriminatory treatment of shippers.[5] Pipelines urge the Commission to include item ''o'' in the regulations.[6]

8. The Commission generally finds this list to be a reasonable compilation of information that, in most cases, will provide pipelines with sufficient data with which to evaluate shipper credit. Pipelines may, in appropriate cases, seek to require additional information, but they should be able to justify why the additional data is necessary in the particular case.

B. Criteria for Determining Creditworthiness

9. Several shippers recommend in their comments that the Commission require that pipelines have defined, objective criteria in their tariffs that detail when a customer is creditworthy.[7] Pipelines, as well as some shippers, maintain the Commission should not establish a defined set of criteria since pipelines need to take into account the individual circumstances and complexities of shipper relationships.[8]

10. The Commission's policy is that pipelines must establish and use objective criteria for determining creditworthiness.[9] However, the Commission recognizes that there may not be a defined set of criteria for evaluating the circumstances facing each shipper, and that pipelines need to take into account the individual circumstances and complexities of different shipper relationships in making their determinations. Pipelines, however, should promptly inform a shipper in writing of the reasons for any determination that the shipper is not creditworthy, so that the shipper can

[2] *Creditworthiness Standards for Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking,* 69 FR 8587 (Feb. 25, 2004), FERC Stats. & Regs., Proposed Regulations ¶ 32,573 (Feb. 12, 2004).

[3] On May 9, 2005, the Commission issued Order No. 587-S, in which the Commission incorporated by reference the most recent version, Version 1.7, of the consensus standards promulgated by the WGQ of NAESB. 111 FERC ¶ 61,203 (2005). Among other things, Version 1.7 contains the ten standards regarding creditworthiness which the Commission proposed to adopt in its NOPR in Docket No. RM04–4–000. The standards include procedures for the following practices: requesting additional information for credit evaluation; acknowledging and responding to requests and receipt of information; notice regarding creditworthiness and notice regarding contract termination due to credit-related issues; forms of communication; reevaluation of determinations that a Service Requester is not creditworthy; and awarding capacity release offers only after a service requester has been determined to meet the creditworthiness requirements applicable to all services.

[4] The commenters and the abbreviations for each commenter are listed in the Appendix.

[5] See Comments of Reliant at 6.

[6] See Comments of National Fuel; INGAA; El Paso; NiSource; NFGD.

[7] See Comments of PGC; Reliant; SEMCO; Tenaska; AGA; APS/PWEC; EPSA; Calpine.

[8] Comments of AGA; NYISO; NRECA; Peoples; Amerada Hess; Alliance; Northern Natural; Vector; Dominion; Duke Energy; Kern River; National Fuel; NiSource; Williston Basin; INGAA; El Paso.

[9] See *Tennessee Gas Pipeline Co.*, 102 FERC ¶ 61,075 at P 41, *order on reh'g,* 103 FERC ¶ 61,275 at P 40–41 (2003), *PG&E Gas Transmission, Northwest Corp.*, 103 FERC ¶ 61,137 at P 67 (2003).

evaluate and challenge the determination.[10]

C. Collateral Requirements for Non-Creditworthy Shippers

11. Since Order Nos. 436 and 636, the Commission's general policy in order to ensure that open access service is reasonably available has been to permit pipelines to require shippers that fail to meet the pipeline's creditworthiness requirements for pipeline service to put up collateral equal to three months' worth of reservation charges.[11] The Commission has viewed a customer's on-going credit risk as a business risk of the pipeline that should be reflected in its rate of return on equity.[12] The Commission has also recognized that in cases of new construction, particularly project-financed pipelines,[13] pipelines and their lenders could require larger collateral requirements from initial shippers before committing funds to the construction project.[14]

12. In the NOPR, the Commission requested comment on these policies and, in particular, requested comment on whether pipelines should be permitted to take into account a shipper's credit status in determining the amount of collateral to be required when prospective shippers are bidding for available capacity. The pipelines generally maintain that the three months collateral may not be sufficient.[15] Pipelines and some shippers [16] support flexibility in setting collateral requirements based on contract term, volume, rate, and credit status. Pipelines also support the proposal for allowing pipelines to take into account credit status in determining collateral requirements when allocating capacity among bidders. Most shippers generally support the three-month period or less.[17] But some shippers support the proposal for considering creditworthiness as part of a non-discriminatory process for determining net present value when considering bids for new capacity.[18]

13. The termination of an existing shipper's service is abandonment under the Natural Gas Act,[19] and, accordingly, it is important to ensure that collateral requirements do not unnecessarily cause the termination of a shipper's service. The collateral requirement asked of existing shippers whose credit status has fallen below the pipeline's credit standards must be reasonable and directly related to the risks faced by the pipeline. In many if not most cases, the existing shipper is continuing to pay for service under its contracts even though its credit status has been lowered, and that shipper should not be pressed into default by overly onerous collateral requirements.

14. For existing shippers under contract, the Commission generally finds that its traditional policy of requiring no more than the equivalent of three months' worth of reservation charges reasonably balances the shippers' right to continued service with the pipelines' risk. Three months corresponds to the length of time it takes a pipeline to terminate a shipper in default and be in a position to remarket the capacity. Three months also is an appropriate measure of the pipeline's current remarketing risk. The amount of collateral advanced by a shipper under an existing contract does not directly reduce the current risk faced by the pipeline. When a shipper's credit rating has declined so that it is no longer creditworthy under the pipeline's tariff, the pipeline faces a risk no matter what the collateral requirement. If the shipper defaults, the pipeline is faced with remarketing the capacity. Similarly, if the shipper cannot meet a higher collateral requirement, and is terminated for that reason, the pipeline also would be faced with remarketing the capacity.[20] Further, requiring more collateral will increase the current risk of default from a shipper that cannot provide such expensive collateral.[21]

15. The Commission needs to consider on a case-by-case basis any pipeline proposal to take into account a shipper's credit status in determining whether more than three months collateral can be required when shippers are bidding for available capacity on the pipeline's existing system. In allocating available capacity, the pipeline is generally permitted to allocate capacity to the highest valued bidder.[22] A shipper's credit status may be a relevant factor in assessing of the value of its bid as compared with bids by more creditworthy shippers, and in determining the amount of collateral that a non-creditworthy shipper must provide to have its bid considered on an equivalent basis.

16. However, the Commission is concerned that any such proposal not impede open access as well as competition and market development by reducing the pool of potential shippers that can acquire capacity. Any pipeline that puts forth such a proposal must ensure that its method for evaluating credit status is objective, non-discriminatory, and results in collateral requirements that are reasonably related to the risk posed by the non-creditworthy shipper. In addition, the pipeline will need to ensure that its proposal reasonably reflects risks associated with contract term or volumes and may need to apply a reasonable limit on the amount of collateral a non-creditworthy shipper

[10] *Tennessee*, 102 FERC ¶ 61,075 at P 46; 103 FERC ¶ 61,275 at P 45.

[11] See *Florida Gas Transmission Co.*, 66 FERC ¶ 61,140 at 61,261 n.5&6, *order vacating prior order*, 66 FERC ¶ 61,376 at 62,257 (1994); *Southern Natural Gas Co.*, 62 FERC ¶ 61,136 at 61,954 (1993); *Valero Interstate Transmission Co.*, 62 FERC ¶ 61,197 at 62,397 (1993); *Texas Eastern Transmission Corp.*, 41 FERC ¶ 61,373 at 62,017 (1987); *Williams Natural Gas Co.*, 43 FERC ¶ 61,227 at 61,596 (1988); *Pacific Gas Transmission Co.*, 40 FERC ¶ 61,193 at 61,622 (1987); *Tennessee Gas Pipeline Co.,* 40 FERC ¶ 61,194 at 61,636 (1987); *Natural Gas Pipeline Co. of America*, 41 FERC ¶ 61,164 at 61,409, n.4 (1987); *Northern Natural Gas Co.*, 37 FERC ¶ 61,272 at 61,822 (1986).

[12] See *Ozark Gas Transmission Co.*, 68 FERC ¶ 61,032 at 61,107–108 (1994) (business and financial risk determine where the pipeline should be placed within the zone of reasonableness); *Williston Basin Interstate Pipeline Co.*, 67 FERC 61,137 at 61,360 (1994) (''Bad debts are a risk of doing business that is compensated through the pipeline's rate of return'').

[13] Project-financed pipelines are projects in which the lender secures its loans to the pipeline by the service agreements negotiated with the contract shippers. See *Kern River Gas Transmission Co.*, 50 FERC ¶ 61,069 at 61,145 (1990).

[14] *Calpine Energy Services, L.P.* v. *Southern Natural Gas Co.*, 103 FERC ¶ 61,273, *reh'g denied*, 105 FERC ¶ 61,033 (2003) (30 months' worth of reservation charges found to be reasonable for an expansion project); *North Baja Pipeline, LLC*, 102 FERC ¶ 61,239 at P 15 (2003) (approving 12 months' worth of reservation charges as collateral for initial shippers on new pipeline); *Maritimes & Northeast Pipeline, L.L.C.*, 87 FERC ¶ 61,061 at 61,263 (1999) (12 months prepayment); *Alliance Pipeline L.P.*, 84 FERC ¶ 61,239 at 62,214 (1998); *Kern River Gas Transmission Co.*, 64 FERC ¶ 61,049 at 61,428 (1993) (stringent creditworthiness requirements required by lenders); *Mojave Pipeline Co.*, 58 FERC ¶ 61,097 at 61,352 (1992) (creditworthiness provisions required by lender); *Northern Border Pipeline Co.*, 51 FERC ¶ 61,261 at 61,769 (1990) (12 months' worth of collateral for new project).

[15] *See, e.g.*, Comments of Alliance; Duke Energy; INGAA; National Fuel; NiSource; Northern Natural; Texas Gas; El Paso; Vector.

[16] *See* Comments of BP.

[17] *See* Comments of NWIGU; PG&E; PGC; PSEG; Reliant; SEMCO; Tenaska; APS/PWEC; Calpine.

[18] *See* Comments of BP; ConEd; O&R; Peoples.

[19] *American Gas Ass'n* v. *FERC*, 912 F.2d 1496, 1516–18 (D.C. Cir., 1990).

[20] Certainly, if the shipper could put up more collateral, the pipeline would be better protected for a potential future default, since it would have a longer period to try to remarket the capacity. But such a potential future benefit does not change the current remarketing risk to the pipeline.

[21] *See PG&E Gas Transmission, Northwest Corporation*, 105 FERC ¶ 61,382, at P 18–28 (2003).

[22] See *Tennessee Gas Pipeline Co.*, 76 FERC ¶ 61,101 at 61,518 (1996) (accepting net present value formula for allocating capacity), *aff'd, Process Gas Consumers Group* v. *FERC*, 292 F.3d 831 (D.C. Cir. 2002) (affirming no length of contract cap for NPV bids); *Texas Eastern Transmission Corp.*, 79 FERC ¶ 61,258 (1997), *aff'd on rehearing*, 80 FERC ¶ 61,270 (1997) (use of net present value to allocate capacity), *aff'd, Municipal Defense Group* v. *FERC*, 170 F.3d 197 (D.C. Cir. 1999) (finding use of NPV allocation method not unduly discriminatory when applied to small customers seeking to expand service).

would have to provide in order to have its bid considered equivalent to that of creditworthy bidders.

17. The Commission will continue its policy of permitting larger collateral requirements for construction projects. For new construction projects, pipelines need sufficient collateral from non-creditworthy shippers to ensure, prior to the investment of significant resources in the project, that it can protect its financial commitment to the project. For mainline projects, the pipeline's collateral requirement must reasonably reflect the risk of the project, particularly the risk to the pipeline of remarketing the capacity should the initial shipper default.[23] Because these risks may vary depending on the specific project, no predetermined collateral amount would be appropriate for all projects. However, the collateral may not exceed the shipper's proportionate share of the project's cost.

18. Issues relating to collateral for construction projects should be determined in the precedent agreements at the certificate stage, and collateral requirements for new construction projects should not ordinarily be included in the pipeline's tariff.[24] In the absence of any specified collateral requirement in the precedent agreement, the pipeline's standard creditworthiness provisions in its tariff would apply once the facilities go into service.

19. The collateral requirements in the precedent agreements would apply only to the initial shippers on the project, and would continue to apply to these initial shippers even after the project goes into service.[25] The pipeline also should reduce the amount of collateral it holds as the shipper's contract term is reduced.[26] Once the contractual obligation is retired, the standard creditworthiness provisions of the pipeline's tariff would apply. In addition, in the event of a default by an initial shipper, the pipeline will be required to reduce the collateral it retains by mitigating damages.[27]

20. For lateral line construction,[28] consistent with the Commission's current policy, the Commission will allow pipelines to require collateral up to the full cost of the project.[29] Unlike mainline projects, lateral lines are built to connect one or perhaps a few shippers, and the facilities may not be of significant use to other potential shippers. The likelihood of the pipeline remarketing that capacity in the event of a default by the shipper, therefore, is far less than for mainline construction. Because lateral line construction policies are part of a pipeline's tariff, collateral requirements for such projects should be included in the pipeline's tariff.

D. Forms of Security

21. Pipelines should accept reasonable forms of security. Such security could include cash deposits, letters of credit, surety bonds, parental guarantees, security in gas reserves, gas in storage, contracts or asset liens. A pipeline must not unreasonably discriminate in the forms of security it determines to accept from customers.

22. The Commission has held that a pipeline must provide its shippers with the opportunity to earn interest on collateral either by paying the interest itself, or giving the shipper the option to designate an escrow account to which the pipeline may gain access to payments for services provided, if needed.[30] Under either option, the shipper could retrieve any interest that accrued on the principal amount. If a pipeline holds the collateral, the applicable interest rate will be at least the same rate that the pipeline earns.[31] Moreover, in such situations, the Commission will require that the pipeline be responsible for any expenses related to the maintenance of this escrow account.

E. Suspension and Termination of Service

23. Termination of service is an abandonment of service, and the Commission's regulations, therefore, require a pipeline to provide 30 days notice to the Commission prior to terminating service.[32] This notice ensures that the Commission has the opportunity to determine if termination is in the public convenience and a necessity.[33]

24. The Commission allows pipelines to suspend service on shorter notice than termination, since it allows the pipeline to protect itself against potential losses arising from the continuation of service to a non-creditworthy shipper, such as the incurrence of large imbalances that may be extinguished in bankruptcy. Pipelines that suspend service are making an election of remedies: they are determining that the risks of continued service outweigh the potential collection of reservation or other charges during the time of the suspension. Since the pipeline is making an election to suspend and is not providing the service required under the contract during suspension, the Commission has not permitted pipelines to impose reservation charges during the period of suspension.[34] At the same time, the Commission does not permit a suspended shipper to release or recall capacity.[35] This permits the pipeline to resell the capacity as interruptible or short-term firm.

25. The Commission recognizes that when a pipeline suspends a firm shipper's contract, it is still providing some value to the shipper by reserving the capacity for the shipper's use.[36] Pipelines may propose some lesser charge to reflect the value of reserving the capacity for a short period of time. Such a filing, however, must address the shipper's ability to release capacity or otherwise share in the pipeline's generation of revenue from the use of the capacity for which the shipper is paying.

26. Some of the pipelines contend that the Commission's suspension policy may result in pipeline's more quickly seeking to terminate service

[23] See *Calpine Energy Services, L.P.* v. *Southern Natural Gas Co.,* 103 FERC ¶§ 61,273 at P 31 (2003) (approving 30 month collateral requirement based on the risks faced by the pipeline).

[24] *North Baja Pipeline, LLC,* 102 FERC ¶ 61,239, at P 15 (2003).

[25] See *Northern Natural Gas Co.,* 103 FERC ¶ 61,276, at P 17.

[26] See *Natural Gas Pipeline Co. of America,* 102 FERC ¶ 61,355 at P 80–85; *PG&E Northwest Corp.,* 103 FERC ¶ 61,137 at P 33, n.18, *order on rehearing*, 105 FERC ¶ 61,382 at P 64 (2003).

[27] One method of mitigation would be for the pipeline to determine its damages by taking the difference between the highest net present value bid for the capacity and the net present value of the remaining terms of the shipper's contract. The pipeline could then retain as much of the collateral as necessary to cover the damages. Pipelines could also develop alternative measures for determining mitigation.

[28] A lateral line includes facilities as defined in 18 CFR 154.109(b) and 18 CFR 157.202 (2003).

[29] See *Natural Gas Pipeline Co. of America,* 102 FERC ¶ 61,355 at P 80–85 (2003) (allowing pipeline to request security in an amount up to the cost of the new facilities from its customers prior to commencing construction of new interconnecting facilities). See also *Panhandle Eastern Pipe Line Co.,* 91 FERC ¶ 61,037 at 61,141 (2000).

[30] *Tennessee Gas Pipeline Co.,* 102 FERC ¶ 61,075 at P 38 (2003).

[31] The pipeline will have the option, but is not required to, pay a higher interest rate if it chooses.

[32] See 18 CFR 154.602 (2003) (requiring 30 days of advance notice to the customer and the Commission prior to contract termination).

[33] *Northern Natural Gas Co.,* 103 FERC ¶ 61,276, at P 51 (2003).

[34] The Commission has not wanted to create an incentive for pipelines to suspend service by making this a more attractive alternative than contract termination.

[35] *Trailblazer Pipeline Co.,* 103 FERC ¶ 61,225, at P 53 (2003).

[36] In *Tennessee Gas Pipeline Co.* v. *FERC,* 400 F.3d 23 (D.C. Cir. 2005), the court affirmed the Commission's policy of not permitting a pipeline to recover full reservation charges during suspension. The court noted that the Commission had not yet considered whether the pipeline should be able to impose a lesser charge during suspension and left such an issue to the Commission when a case is properly filed.

rather than working with shippers to overcome financial difficulties.[37] The Commission's policy on suspensions and termination goes only to unilateral decisions by the pipelines to terminate or suspend service. The Commission encourages pipelines and shippers to mutually negotiate suspension or other provisions to apply during the period when the shipper is trying to work out financial issues.

27. The Commission has required that pipelines provide shippers that have become non-creditworthy with a reasonable period of time to obtain the requisite collateral, taking into account the amount of money that may be involved and that the shipper may be faced with requests from multiple pipelines to provide collateral. The Commission, for instance, found proposals to require shippers to provide the total amount of collateral required within five days to be unreasonably short.[38]

28. The Commission has developed a timeline that applies to suspension and termination procedures that it finds reasonable,[39] although pipelines may seek to justify alternative proposals. Under this timeline, when a shipper is no longer creditworthy, the pipeline may not terminate or suspend the shipper's service without providing the shipper with an opportunity to satisfy the collateral requirements. In this circumstance, the shipper must be given at least five business days within which to provide advance payment for one month's service, and must satisfy the collateral requirements within 30 days. This procedure would allow the shipper to have at least 30 days to provide the next three months of security for service. If the shipper fails to provide the required security within these time periods, the pipeline may suspend service immediately. Further, the pipeline may provide simultaneous written notice that it will terminate service in 30 days if the shipper fails to provide security. After a shipper either defaults or fails to provide the required collateral, pipelines would need to provide the shipper and the Commission with 30 days notice prior to terminating the shipper's contract.

F. Capacity Release

29. The Commission will clarify its policies relating to creditworthiness and capacity release in two areas: creditworthiness requirements for replacement shippers; and rights of releasing and replacement shippers upon contract termination or suspension.

1. Creditworthiness Requirements for Replacement Shippers

30. Since Order No. 636, the Commission has held that in capacity release situations, both the releasing and replacement shippers must satisfy a pipeline's creditworthiness requirements.[40] The Commission further found that releasing shippers could not establish creditworthiness provisions for released capacity different from those in the pipeline's tariff.[41] As the Commission explained, the same criteria should be applied to released capacity and pipeline capacity in order to ensure that all capacity, including released capacity, is available on an open access, non-discriminatory basis to all shippers.[42]

31. Most commenters favor the continuation of the Commission's current policy, although EPSA maintains that the releasing shipper should be permitted to set lower collateral requirements than the pipeline's requirements. Since the replacement shipper has obligations to the pipeline (usage charges, penalties, imbalance cash outs, etc.) that are not covered by the releasing shipper's underlying contract, the pipeline does have a legitimate independent interest in assuring sufficient creditworthiness (or collateral) to cover the replacement shipper's obligations. The Commission, therefore, would not require a pipeline to permit a releasing shipper to establish a lesser collateral requirement. However, a pipeline can propose a tariff change to permit a releasing shipper to establish a lower collateral requirement.

2. Termination and Suspension

32. Pipelines will be permitted to terminate a release of capacity to the replacement shipper if the releasing shipper's service agreement is terminated, provided that the pipeline provides the replacement shipper with an opportunity to continue receiving service if it agrees to pay, for the remaining term of the replacement shipper's contract, the lesser of: (1) The releasing shipper's contract rate; (2) the maximum tariff rate applicable to the releasing shipper's capacity; or (3) some other rate that is acceptable to the pipeline.[43]

33. This policy establishes a reasonable balance between the pipeline and replacement shippers in the event a releasing shipper's contract is terminated. Although the replacement shipper has a contract with the pipeline, the releasing shipper, not the pipeline, has established the rate for the release. Under a release transaction, the contract of the releasing shipper serves to guarantee that the pipeline receives the original contract price for the capacity. Once the releasing shipper's contract has been terminated, the pipeline may no longer wish to continue service to the replacement shipper at a lower rate, and should have the opportunity to remarket the capacity to obtain a higher rate.[44] On the other hand, the replacement shipper also has an investment in the use of the capacity, and should, therefore, have first call on retaining the capacity if it is willing to provide the pipeline with the same

[37] See Comments of INGAA; NiSource.

[38] *Northern Natural Gas Co.,* 102 FERC ¶ 61,076, at P 49 (2003); *Tennessee Gas Pipeline Co.,* 102 FERC ¶ 61,075 at P 18 (2003).

[39] See *Northern Natural Gas Co.,* 102 FERC ¶ 61,076, at P 49 (2003); *Tennessee Gas Pipeline Co.,* 102 FERC ¶ 61,075 at P 18 (2003); *Natural Gas Pipeline Co. of America,* 102 FERC ¶ 61,355 at P 52 (2003); *Gulf South Pipeline Co., LP,* 103 FERC ¶ 61,129 at P 49–52 (2003).

[40] See *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol,* Order No. 636–A, FERC Statutes and Regulations, Regulations Preambles, January 1991–June 1996 ¶ 30,950 at 30,588 (1992). Under the capacity release regulations, 18 CFR § 284.8(f) (2003), the releasing shipper remains obligated under its contract to the pipeline, and must, therefore, satisfy the creditworthiness and other obligations associated with that contract, regardless of how many subordinate releases take place. For example, even if a replacement shipper is creditworthy, it may default and the releasing shipper would be responsible for payment. Moreover, given the ability of releasing shippers to recall and segment releases, both the releasing and replacement shippers need to be creditworthy to ensure their respective obligations.

[41] See *El Paso Natural Gas Co.,* 61 FERC ¶ 61,333 at 62,299 (1992); *Panhandle Eastern Pipe Line Co.,* 61 FERC ¶ 61,357 at 62,417 (1992); *Texas Eastern Transmission Corp.,* 62 FERC ¶ 61,015 at 61,098 (1993); *CNG Transmission Corp.,* 64 FERC ¶ 61,303 at 63,225 (1993).

[42] See *Tennessee Gas Pipeline Co.,* 102 FERC ¶ 61,075 at P 62 (2003) (a releasing shipper cannot impose creditworthiness conditions on a replacement shipper that are different from the creditworthiness conditions imposed by the pipeline.)

[43] *Tenaska Marketing Ventures* v. *Northern Border Pipeline Co.,* 99 FERC ¶ 61,182 (2002). See *Texas Eastern Transmission, L.P.,* 101 FERC ¶ 61,071 at P 6 (2002); *Trailblazer Pipeline Co.,* 101 FERC ¶ 61,405 at P 32 (2002); *Northern Border Pipeline Co.,* 100 FERC ¶ 61,125 (2002); *Natural Gas Pipeline Co. of America,* 100 FERC ¶ 61,269 at P 7–19 (2002); *Canyon Creek Compression Co.,* 100 FERC ¶ 61,283 (2002); *Kinder Morgan Interstate Gas Transmission LLC,* 100 FERC ¶ 61,366 (2002).

[44] The pipeline is not required to terminate the replacement shipper's contract. It could decide to continue to provide service under that contract at the rate prescribed in the release. In that event, the replacement shipper would not have the right to terminate its contractual obligation since it is receiving the full service for which it contracted. See *Tenaska Marketing Ventures* v. *Northern Border Pipeline Co.,* 99 FERC ¶ 61,182 (2002) (replacement shipper could not cancel release contract upon bankruptcy of releasing shipper).

revenue as the releasing shipper. Under this policy, the replacement shipper is given the opportunity to retain the capacity by paying the releasing shipper's contract rate or the maximum rate for the remaining term of the contract.

34. With respect to segmented releases, the Commission will apply the same general policy. A replacement shipper will have the right to continue service if it agrees to take the full contract path of the releasing shipper at the rate paid by the releasing shipper. The Commission will not require the pipeline to permit the replacement shipper under a segmented release to retain its geographic segment of capacity. The pipeline did not negotiate the release of the segment and should not be held to that segmented release agreement once the releasing shipper's contract terminates. The replacement shipper in that instance should be required to pay for the full capacity path of the defaulted shipper at the lower of the rate the defaulted shipper paid or the maximum rate applicable to the defaulted shipper's full capacity path.[45] In the case of multiple replacement shippers with geographically segmented releases, a pipeline would have to propose a reasonable method of allocating capacity among them if they each matched the full rate under the releasing shipper's contract.[46]

35. AGA requests that upon suspension of a replacement shipper's contract, the capacity will revert to the releasing shipper. The Commission agrees that capacity will revert to the releasing shipper upon the suspension or termination of the replacement shipper, since the releasing shipper remains liable for reservation charges under its contract with the pipeline even if the replacement shipper's service is suspended, and the releasing shipper will no longer be receiving credits during the time the replacement shipper is suspended.[47] In addition, the releasing shipper also can reserve recall rights that will permit it to recall capacity.[48]

The Commission orders:

The Notice of Proposed Rulemaking in this docket is withdrawn.

By the Commission. Commissioner Brownell dissenting with a separate statement attached.

Magalie R. Salas,

Secretary.

COMMENTS FILED IN RESPONSE TO THE NOPR ON CREDITWORTHINESS STANDARDS FOR INTERSTATE NATURAL GAS PIPELINES IN DOCKET NO. RM04–4–000

Commenter	Abbreviation
Alliance Pipeline L.P	Alliance.
Amerada Hess Corporation	Amerada Hess.
American Gas Association	AGA.
American Public Gas Association	APGA.
Aquila, Inc. d/b/a Aquila Networks	Aquila.
Arizona Public Service Company and Pinnacle West Energy Corporation	APS/PWEC.
BP America Production Company and BP Energy Company	BP.
Calpine Corporation	Calpine.
CenterPoint Energy Gas Transmission Company and CenterPoint Energy—Mississippi River Transmission Corporation	CEGT/MRT.
Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc	ConEd/O&R.
Dominion Resources, Inc	Dominion.
Duke Energy Gas Transmission Corporation	Duke Energy.
El Paso Corporation's Pipeline Group	El Paso.
Electric Power Supply Association	EPSA.
EnCana Marketing (USA) Inc	EnCana.
Energy America LLC and Direct Energy Marketing, Inc	Direct Energy.
Gulf South Pipeline Company, LP	Gulf South.
Interstate Natural Gas Association of America	INGAA.
Kern River Gas Transmission Company	Kern River.
KeySpan Delivery Companies	KeySpan.
Memphis Light, Gas and Water Division	MLGW.
National Fuel Gas Distribution Corporation	NFGD.
National Fuel Gas Supply Corporation	National Fuel.
National Rural Electric Cooperative Association	NRECA.
New York Independent System Operator, Inc	NYISO.
NiSource, Inc	NiSource.
Northern Municipal Distributors Group and Midwest Region Gas Task Force Association	NMDG/MRGTF.
Northern Natural Gas Company	Northern Natural.
Northwest Industrial Gas Users	NWIGU.
Pacific Gas and Electric Company	PG&E.
Peoples Gas Light and Coke Company, North Shore Gas Company and Peoples Energy Wholesale Marketing, LLC	Peoples.
Process Gas Consumers Group, American Forest & Paper Association, American Iron and Steel Institute, Georgia Industrial Group, Industrial Gas Users of Florida and Florida Industrial Gas Users.	PGC.
PSEG Energy Resources & Trade LLC	PSEG.
Public Service Commission of the State of New York	New York.
Reliant Resources, Inc	Reliant.
SEMCO Energy Gas Company	SEMCO.
Sempra Energy Global Enterprises and Sempra Energy International	Sempra.
Steuben Gas Storage Company	Steuben.
Tenaska Marketing Ventures	Tenaska.
Texas Gas Transmission, LLC	Texas Gas.
Vector Pipeline L.P	Vector.

[45] *National Fuel Gas Supply Corp.,* 101 FERC ¶ 61,063 at P12 (2002).

[46] In the event of such multiple bids by replacement shippers, regardless of the allocation method used by the pipeline, the shippers should be able to replicate their geographically segmented capacity by releasing segments of capacity to each other.

[47] See *Tennessee Gas Pipeline Co.,* 103 FERC ¶ 61,275, at P 99 (2003).

[48] *Id.* at P 74.

COMMENTS FILED IN RESPONSE TO THE NOPR ON CREDITWORTHINESS STANDARDS FOR INTERSTATE NATURAL GAS PIPELINES IN DOCKET NO. RM04–4–000—Continued

Commenter	Abbreviation
Williston Basin Interstate Pipeline Company	Williston Basin.

Nora Mead Brownell, Commissioner *dissenting*:

I have previously expressed my conviction that establishing mandatory creditworthiness principles will promote consistent practices across markets and service providers and provide customers with an objective and transparent creditworthiness evaluation. Such an approach would lessen the opportunity for applying these provisions in an unduly discriminatory manner. Therefore, I cannot support the majority's decision to issue mere guidance, as opposed to a binding final rule.

The majority concludes that standardizing the creditworthiness process beyond the business practices adopted by NAESB is not necessary. Unfortunately, the NAESB business practices provide only the scantest of customer protections, for example, requiring a pipeline to state the reason it is requesting credit evaluation information from existing shippers and to acknowledge receipt of that requested information.[1] Further, comments from all segments of the transportation market that use interstate pipeline services generally support the issuance of a final rule. The Electric Power Supply Association asserts that electric generators need consistent credit terms to facilitate infrastructure investment.[2] The associations for local utilities argue that the proposed regulations reflect a balanced approach in providing the pipelines with protection against the risks of non-creditworthy shippers while at the same time assuring that pipelines can not impose unreasonable burdens on the shippers.[3] Peoples Gas Light and Coke Company and EnCana Marketing (USA) Inc. point out that the proposed regulations reflect Commission's credit policy as it has evolved in several individual proceedings and declare that at this point it is appropriate to codify that policy and apply it to all pipelines.[4] The Northwest Industrial Gas Users argue that, without consistent credit requirements, their ability to purchase unbundled service through interstate pipelines could be restricted.[5] The Process Gas Consumers Group, the American Forest & Paper Association, the American Iron and Steel Institute, the Georgia Industrial Group, the Industrial Gas Users of Florida and the Florida Industrial Gas Users (Industrials) support the overwhelming majority of the proposed regulations as a fair balance between the needs of the pipelines and their shippers.[6] Finally, even the New York Independent System Operator acknowledges that standardization is generally beneficial and suggests that a comprehensive credit program can serve as a rational, workable model for the electric industry.[7]

The majority concludes that creditworthiness issues should be addressed on a case-by-case basis. This conclusion seems premised on the fear that mandatory principles will lead to institutionalizing a ''one-size-fits-all'' approach. Let me be clear, I agree that such an approach is hazardous and I would not support it. What I am saying is that creditworthy provisions need to be more systematic, transparent, and non-discriminatory with sufficient flexibility to adapt to specific situations but with customer safeguards such as written explanations. Promulgation of a final rule would have accomplished the goal of providing objective credit principles in every pipeline tariff while retaining the necessary flexibility to adapt to particular situations.

Commenters from all segments of the interstate transportation market supported the rulemaking approach and, I believe, the market would have been better served had we promulgated a final rule. As I stated in my dissent to the policy statement on electric creditworthiness,[8] the non-binding effect of this policy statement seems to result in a known problem still wanting a remedy, and therefore, I dissent.

Nora Mead Brownell.

[1] See Order No. 587–S, 111 FERC ¶ 61,203 (2005).

[2] See Comments of Electric Power Supply Association at 2–3.

[3] See Comments of American Gas Association at 1–2 and American Public Gas Association at 1.

[4] See Comments of Peoples Gas Light and Coke Company at 3 and EnCana Marketing (USA) Inc. at 3.

[5] See Comments of The Northwest Industrial Gas Users at 2.

[6] See Comments of Industrials at 1 and 4–6.

[7] See Comments New York Independent System Operator at 4.

[8] *Policy Statement on Electric Creditworthiness*, 109 FERC ¶ 61,186 (2004).

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BILLING CODE 6717–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 19

RIN 2900–AL97

Board of Veterans' Appeals: Clarification of a Notice of Disagreement

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations governing appeals to the Board of Veterans' Appeals (Board) to clarify the actions an agency of original jurisdiction must take to determine whether a written communication from a claimant that is ambiguous in its purpose is intended to be a Notice of Disagreement with an adverse claims decision.

DATES: Comments must be received on or before August 29, 2005.

ADDRESSES: Written comments may be submitted by: mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; e-mail to *VAregulations@mail.va.gov;* or, through *http://www.regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AL97.'' All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals (012), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–565–5978).

SUPPLEMENTARY INFORMATION: The Board is the component of VA that decides appeals from denials of claims for veterans' benefits rendered by VA agencies of original jurisdiction. The Board is under the administrative control and supervision of a Chairman directly responsible to the Secretary of Veterans Affairs. 38 U.S.C. 7101.

An agency of original jurisdiction (AOJ) makes the initial decision on a claim for VA benefits. An AOJ is typically one of VA's 57 regional offices in the case of benefits administered by the Veterans Benefits Administration (VBA), or a VA Medical Center in the case of benefits administered by the Veterans Health Administration (VHA). A claimant who wishes to appeal the AOJ's decision to the Board must file a timely Notice of Disagreement (NOD) with the AOJ that decided the claim. We propose an amendment to the rules governing NODs to clarify the actions an AOJ must take to determine whether a written communication received from a claimant, which is ambiguous in its purpose, is intended to be an NOD.