

Request of Enterprise Texas Pipeline, L. P. to Cancel Order in Docket 500.

APPEARANCES:

FOR APPLICANT:

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Enterprise Texas Pipeline, L.P. (“Enterprise”)

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

PETITION FILED:	April 4, 2006
HEARING DATE:	June 15, 2006
HEARD BY:	John Chakales, Hearings Examiner
RECORD CLOSED:	July 10, 2006
PFD CIRCULATION DATE:	July 10, 2006

1. Overview of the Case

Enterprise Texas Pipeline, L.P. (“Enterprise”) seeks removal of the requirement that it sell gas based on its weighted average cost of gas. On April 4, 2006, Enterprise filed its petition to terminate the Railroad Commission of Texas’ (“Commission”) final order in Gas Utilities Docket 500 (“GUD No. 500”). The Commission approved a final order in GUD No. 500 approximately 27 years ago on September 4, 1979. GUD No 500 involved a request by Lo-Vaca Gathering Company (“Lo-Vaca”) to cancel its long term gas supply contracts due to rising gas prices which required Lo-Vaca to purchase gas at prices substantially higher than the utility could resell the gas. Ultimately, the Commission issued a final order in GUD No. 500 that set a gas sales price based on Lo-Vaca’s weighted average cost of gas (“wacog”) plus 15¢ per Mcf. The petitioner in this docket, Enterprise, is the successor-in-interest to Lo-Vaca and owns the pipeline transportation system which is subject to the GUD No. 500 final order. Enterprise seeks to have the order terminated so that Enterprise may compete in the present day market for gas sales in which gas sales are predominately based on fluctuating index prices of natural gas and not on pipeline transmission companies’ weighted average cost of gas.

The Examiner recommends that the Commission grant Enterprise’s Petition and terminate the order issued in GUD No. 500.

2. Procedural History and Notice

Enterprise filed a petition to have the order issued in GUD No. 500 terminated on April 4, 2006. Enterprise’s attorney of record certified in the petition that all customers potentially affected by Enterprise’s petition were served with copies of the petition via first class mail. On April 18, 2006, the Examiner mailed notice of a prehearing conference that was conducted in Austin, Texas on May 1, 2006. Notice of the prehearing conference was given to Enterprise and all potentially affected customers. A Notice of Hearing was issued in this Docket on May 15, 2006, and satisfied the requirements of 16 TEX. ADMIN. CODE § 1.45 and TEX. GOV’T CODE ANN. § 2001.052 (Vernon 2000 & Supp. 2004). Notice of the final hearing was mailed via first class mail to Enterprise and all potentially affected customers. The final hearing was conducted on June 15, 2006, in Austin, Texas. No other person filed a protest, moved to intervene, or otherwise participated in this proceeding. As such, this docket is non-protested. Enterprise filed its closing statement and brief on June 28, 2006. The Examiner closed the record on July 10, 2006. Enterprise timely served copies of its petition on all customers potentially affected by this docket. All of Enterprise’s customers potentially affected by this docket received timely notice of the prehearing conference and final hearing. All statutory and Commission requirements for notice of this proceeding were satisfied. TEX. GOV’T CODE ANN. §§ 2001.051 and 2001.052, 16 TEX. ADMIN. CODE § 1.45 (1991). There is no statutory deadline for Commission action on Enterprise’s request.

3. Jurisdiction

The Commission has jurisdiction over the matters at issue in this proceeding under TEX. UTIL. CODE ANN. §§ 102.001, 121.051, and 121.151 (Vernon 1998 & Supp. 2005). The statutes and rules involved include, but are not limited to TEX. UTIL. CODE ANN. §§ 104.001 *et seq.*, 121.001 *et seq.* (Vernon 1998 & Supp. 2005), especially § 121.153 (Vernon 1998 & Supp. 2005).

4. Enterprise Texas Pipeline, L.P.'s Request

Enterprise requests that the Commission terminate the final order issued in GUD No. 500. The GUD No. 500 final order mandates that Enterprise make gas sales at the pipeline's weighted average cost of gas plus 15 cents per Mcf. In its petition to terminate and closing brief Enterprise advances two main points as bases for terminating the GUD No. 500 final order. One, the GUD No. 500 final order was approved 27 years ago to address issues not relevant to the current natural gas market and is outdated. Two, the burdens and restrictions imposed by the GUD No. 500 final order essentially prohibit Enterprise from competing in the present day market for natural gas sales. Additionally, Enterprise states that it will not be abandoning its existing gas sales customers and they will continue to receive gas sales service.

History of GUD No. 500

GUD No. 500 was initiated in 1973 by Lo-Vaca Gathering Company ("Lo-Vaca"), a gas utility, to amend all of its gas sales contracts and to establish a uniform gas cost for its system, including a gas purchase adjustment clause. Lo-Vaca was a major intrastate gas gathering, processing and transmission pipeline company which had long-term contracts to provide gas supply to gas distribution companies serving cities such as Austin, San Antonio, Houston, Dallas, Ft. Worth and Corpus Christi as well as major electric generation facilities. Lo-Vaca also provided gas service to several smaller municipalities and industrial customers.

Lo-Vaca was obligated to supply gas under long-term contracts at prices which were not responsive to changes in its costs to acquire gas. Gas costs had risen substantially, Lo-Vaca could not acquire the gas needed to fulfill its contractual obligations and therefore sought Commission relief from its contractual obligations in order to prevent a shortage of gas and curtailment of gas supplied to distribution systems, electric generators and industrial customers during the winter heating season. Lo-Vaca filed its application to revise its contracts to increase the price it could charge for gas and to pass through gas costs needed to obtain gas supplies.

GUD No. 500 took six years of consideration by the Commission to reach a final order. In 1973 the Commission issued an Interlocutory Order establishing an interim sales rate of Lo-Vaca's gas cost plus 5 cents per Mcf for all of Lo-Vaca's gas purchases in order to allow Lo-Vaca to obtain the gas supplies needed to serve its existing customers. In 1977 the Commission entered an order denying all relief sought by Lo-Vaca, and required a refund of the difference between the original

contract prices and the money collected over the years pursuant to the Interlocutory Order. The refund was estimated to be \$1.6 billion, enough to bankrupt Lo-Vaca and its parent company, Coastal States. The Commission granted a rehearing and began hearings on a proposed agreement of the parties and settlement plan. On September 4, 1979, the Commission entered a Final Order approving the parties' settlement agreement and imposing certain restrictions and conditions on gas sales by Lo-Vaca. As part of the settlement, Lo-Vaca was spun off from its parent company Coastal States, re-named Valero Transmission Company, and its headquarters was moved from Houston to San Antonio.

Enterprise's justification for terminating the final order

Enterprise argues that the conditions and problems faced by Lo-Vaca during the 1970's "are long gone" and that the current natural gas market is substantially different today than at the time the GUD No. 500 final order was entered. Mr. Mark Pyburn, Vice President of Texas Natural Gas Pipelines for Enterprise Products, L.P., testified on behalf of Enterprise at the final hearing in this docket.

Mr. Pyburn testified how the current market for natural gas sales is substantially different from the market during the time when GUD No. 500 was entered. He testified that the market for gas in the late 70's and early 80's was characterized by pipelines buying all their gas at the wellheads and entering into long-term contracts. Gas was priced under NGPA¹ pricing rules and not on market prices for the commodity. Prices were controlled by the NGPA with maximum lawful prices at the wellhead. As a result, long-term sales were tied to long term supplies based on a pipeline's weighted average cost of gas ("wacog"). There were no commodities futures markets for natural gas, published indexes of gas prices and spot market sales for gas were rare.²

Mr. Pyburn testified that the current natural gas market is substantially different. His testimony is that in today's market, prices are based on location indexes and reported daily, sales are predominantly made in the spot market, and commodities futures markets for gas exist such as on the NYMEX.³ Mr. Pyburn testified that prices for the sale of gas are no longer based on a pipeline's wacog. He testified that the current gas market is more volatile and dynamic than the market of the 1970's.⁴

¹ National Gas Policy Act of 1978

² Transcript at 18-25.

³ New York Mercantile Exchange

⁴ Transcript at 22-25.

Enterprise also argues as a basis for terminating the Commission's order in GUD No. 500 that the restrictions substantially prohibit Enterprise from competing in the market for gas sales. Mr. Pyburn testified that there are two main restrictions in the GUD No. 500 final order that burden Enterprise the most and restrict the pipeline from competing in the market for natural gas sales. One, the pipeline is required to sell gas at its wacog plus 15cents per Mcf. Two, if the pipeline seeks a new gas sales customer it must give notice and have a hearing and get approval to make gas sales to that prospective new customer.⁵ Mr. Pyburn testified that Enterprise needs the ability to sell gas in Texas for two reasons. One, there are "operational needs that the pipeline has from the standpoint of buying compressor fuel, balancing, creating parking and lending services, working to keep their operational pressures right on the system. In addition we have storage. At times it would be nice to be able to supplement our supplies in storage to help customers maintain the deliverability that they have contracted for in the storage."⁶ Two, from a competitive standpoint Enterprise wants the ability to provide service to customers that want to buy bundled service, which may include purchasing gas from Enterprise.⁷

Mr. Pyburn testified that transportation services match the pathing of gas from specific receipt points and supply points to the individual markets and delivery points on the system. In order to provide a bundled commodity service, the pipeline obtains gas from specific locations to serve specific markets. The market price for gas is determined by prices at different locations. Mr. Pyburn testified that "Waha prices are at least 50 cents different on a daily basis than what the Houston Ship Channel is. Consequently gas in South Texas is as much as 25 cents less than what the Houston Ship Channel is. So when we would go in to make a sale to an individual customer, again we identify what particular supply that we would use and we would price that gas based off what we buy. We price the market price off the gas that we buy and what specific location based on the capacity that we have available to serve it."⁸ Mr. Pyburn testified that the pipeline's current requirement to price gas on its wacog does not allow the company to price gas based on the location and therefore prevents the company from selling gas competitively.⁹ Mr. Pyburn testified that, as an example, Enterprise's wacog in May of 2006 was \$7.85 whereas the current market price for gas is approximately \$5.75. Enterprise cannot effectively compete in the gas sales market under the restrictions of GUD No. 500 when it is prohibited from selling gas at the price the market will bear.¹⁰

Additionally, Enterprise pleads that its current gas sales customers will not be adversely affected by terminating the final order of GUD No. 500. Mr. Pyburn testified that Enterprise has seven small gas sales customers covered by the requirements of the GUD No. 500 order and that

⁵ Transcript at 13.

⁶ Transcript at 14.

⁷ Transcript at 15.

⁸ Transcript at 17-18.

⁹ Transcript at 18-20.

¹⁰ Transcript at 25.

they made about \$27,000 in gas sales to these customers in 2005. Mr. Pyburn testified and provided evidence as to the classification of these customers. He testified that one customer is an owner of a trailer park, that averages about 28 Mcf a month in gas sales, and that Enterprise is in the process of converting his service to propane.¹¹ He testified that the remaining customers are agricultural and industrial users.¹² Enterprise affirmatively pleads that it is not seeking to abandon service to these seven customers and that the effect of the requested relief is to allow any new contracts to be entered into without the restrictions imposed on sales by the final order of GUD No. 500.

5. Examiner's Analysis and Recommendation

The primary issue for consideration in this docket is whether the Commission should require Enterprise to continue to bound by the final order from Gas Utilities Docket No. 500. Although this final order has been slightly modified piecemeal over the years,¹³ the main impact of the order is to require Enterprise to sell gas priced on its systemwide weighted average cost of gas plus 15 cents per Mcf. The final order also places the additional burden of requiring Enterprise to seek Commission approval upon notice and hearing to make gas sales to potential new gas sales customers.¹⁴

The evidence in the record indicates that the current market for natural gas sales is substantially different from the market as it existed at the time the Commission entered its final order in GUD No. 500. Mr. Pyburn's testimony is that the natural gas market at the time the Commission entered the GUD No. 500 order was characterized by long-term supply contracts based on a pipeline's wacog and non-market based pricing with maximum wellhead prices established by Federal statutes and regulations. Mr. Pyburn's testimony is that the current market for natural gas is characterized by spot market transactions, short term supply agreements, and pricing based on the commodity price of gas which is typically tied to published indexes. The evidence indicates that the GUD No. 500 order requirement that Enterprise sell gas based on its systemwide wacog is not reflective of the current conditions in the natural gas market.

Further, the record evidence indicates that the pricing restrictions of the GUD No. 500 order effectively prevent Enterprise from competing in the market to sell gas. Mr. Pyburn's testimony indicates that gas sales are typically supplied and priced with the location of the supply and delivery points taken into account. The mandate that Enterprise sell gas at its wacog does not allow the pipeline to adjust prices for the geographical aspect of the current natural gas market. His testimony indicates that the requirement that Enterprise price gas based on its wacog can prevent the pipeline from competing in the gas sales market when the commodity price of gas is lower than Enterprise's wacog.

¹¹ Transcript at 26.

¹² Transcript at 26-30.

¹³ See GUD Nos. 2711, 2906, 3983, 5980, and 8957.

¹⁴ GUD No. 500 Final Order.

Enterprise has seven small customers that currently receive gas under the sales restrictions imposed by the GUD No. 500 final order. Enterprise argues that none are human needs customers. The one customer that might possibly be considered a human needs customer, Thomas Beauchamp, operates a trailer park. Mr. Beauchamp did not intervene, protest or participate in this hearing. The evidence indicates that Enterprise is in the process of converting his trailer park to propane service. Even if Mr. Beauchamp's trailer park is considered a human needs customer by the Commission, the evidence presented in this docket indicates he is likely to benefit from the Commission removing the requirement that Enterprise sell gas to his operation at wacog plus 15 cents per Mcf. Mr. Pyburns' testimony indicated that under certain circumstances, the market price for gas can be significantly less than the company's wacog.

The evidence indicates that Enterprise is unable to compete in the current market for gas sales due to the restrictions imposed by the final order in GUD No. 500. The Examiner recommends that the Commission grant Enterprise's requested relief and terminate the final order. Currently, Enterprise must make gas sales under restrictions that are not imposed on other intrastate gas pipelines. The result of the Commission taking this action is that Enterprise will be allowed to compete for gas sales under the same rules and regulations that govern other intrastate pipelines. There is no evidence that terminating the GUD No. 500 final order will adversely impact public safety and welfare. There is no evidence that removing the restrictions of the final order will adversely impact Enterprise's existing customers.

The Examiner recommends that the Railroad Commission of Texas approve the attached Proposed Final Order containing findings of fact and conclusions of law.

Respectfully submitted,

John Chakales
Hearings Examiner
Office of General Counsel