



FERC Issues a Notice of Inquiry Considering Natural Gas Pipelines' Packaging of Noncontiguous Capacity in Auctions

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At its March Open Meeting, the Federal Energy Regulatory Commission (“Commission”) issued a Notice of Inquiry (“NOI”) seeking comment on whether to modify its policy of allowing natural gas pipelines to package non-contiguous segments of capacity together in single capacity auctions. The Commission issued the NOI in response to a 2022 petition for rulemaking from groups of pipeline customers alleging that pipelines were packaging high-value and low-value capacity together in single auctions, and that this practice distorts market pricing and has resulted in unjust and unreasonable rates. The NOI seeks information on the extent to which this practice is occurring and how it impacts the natural gas transportation market. The NOI also seeks comment on whether the Commission should change its current policy of permitting this practice, and what regulatory, economic, or policy goals would be achieved by modifying the policy.

Potential Implications

Ultimately, the NOI could portend restrictions on pipelines’ flexibility in how they auction their capacity. Changes also could drastically affect the economics and viability of certain segments of capacity. At the Commission’s open meeting, Commissioners acknowledged the breadth and diversity of comments in response to the Petition, and expressed interest in the consequences of the practice in question and how changes to Commission policy might affect the natural gas transportation market. Submission of comments with specific responses to the Commission’s questions will be critical to ensuring that any changes to Commission policy are fully informed.

Comments on the NOI, detailed below, are due 90 days after the date of publication in the Federal Register and reply comments are due 30 days later. In light of the Senate Committee on Energy & Natural Resources’ recent hearing considering nominations for three new Commissioners, it is likely that the Commission will have new members who ultimately decide this issue.

Background

The Commission’s long-standing capacity allocation policy provides interstate natural gas pipelines flexibility in setting their auction terms for available capacity to ensure that the capacity is sold in a non-discriminatory way to the customers who value it the most, provided that the pipelines evaluate bids for capacity on a transparent and objective assessment of the bids’ net present value (“NPV”). The Commission allows pipelines to include multiple segments of capacity, including non-contiguous and/or operationally unrelated segments, together in an open season for the purposes of accepting and aggregating bids to determine the NPV

and award the capacity to the highest bidder. However, shippers must not be required to bid on segments of capacity that they do not want, and must have an opportunity to obtain the portion of the capacity they seek. As the NOI points out, the Commission has previously found that this practice benefits all shippers on the pipeline in the long run by increasing billing determinants and thereby lowering unit fixed costs in pipelines' rate cases.

The Petition

Nearly two years ago, the American Gas Association, American Public Gas Association, Process Gas Consumers Group, and Natural Gas Supply Association (collectively, the "Petitioners") filed a Petition asking the Commission to initiate a rulemaking to consider changing this policy to prohibit pipelines from aggregating bids of non-contiguous and operationally unrelated tranches of capacity in determining the highest bid for purposes of awarding capacity. Petitioners argued that this practice (1) results in unjust and unreasonable rates, (2) distorts market pricing, (3) removes the incentive for pipelines to build more capacity where needed, and (4) constitutes illegal tying of capacity. In addition, Petitioners contended that this practice denies many shippers access to needed capacity and, as a practical matter, results in undue discrimination against industrial gas consumers, municipal gas systems, and local distribution companies ("LDCs"), and results in higher prices for gas consumers.

Request for Comments

In response to the Petition the Commission issued this NOI seeking comments on four general topics:

1. How Often Non-Contiguous Segments are Aggregated in Capacity Postings

The Commission requests examples of pipeline postings that have paired desirable, high-value capacity with unwanted, low-value capacity, and asks whether there has been a change in the frequency of such postings since the Petition was filed. The Commission is also asking how, why, and in what market conditions such capacity has been packaged in auctions, and to what extent shippers have been able to obtain capacity that has been packaged despite having bid on only a portion of the posted capacity.

2. Impacts of Bid Aggregation on Pipeline Rates

The Commission is seeking comment on how the bid aggregation practice impacts transportation rates, including whether and how the practice leads to rate reductions in rate cases by increasing billing determinants and revenues. The Commission is also seeking comment on whether the practice allows pipelines to collect revenues that exceed their maximum tariff rates, and if so, what alternative methods for awarding capacity pipelines should employ.

3. Customers and Operational Need

The NOI points out that the examples cited in the Petition involve only short-term contracts. The Commission seeks comment on how these short-term contracts would affect LDCs, municipal gas systems, and industrial customers' strategies for

meeting long-term load growth and supply needs. The NOI also asks how these shippers might be prevented from bidding on non-contiguous and/or operationally unrelated capacity packages.

4. Potential Policy Changes

The Commission seeks comment on whether it should change its policy and what issues it should consider in making this determination. It also asks for guidance on what changes it should make, how it would administer any such changes, and how these changes would affect capacity auctions and the natural gas transportation market.

For More Information

Van Ness Feldman's nationally recognized Pipeline & LNG practice actively monitors potential regulatory changes affecting the natural gas and oil pipeline industries. If you have questions or are interested in submitting comments on this NOI, please reach out to [Michael Diamond](#), [Mosby Perrow](#), [Michael Pincus](#), [Travis Malesky](#), [Xena Burwell](#) or any member of our Pipeline & LNG practice at 202-298-1800.

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