Regulatory Affairs Issue Paper – Pipeline Affiliate Rules

Of the current issues before the FERC, how to deal with the relationship between pipeline companies and their affiliates is perhaps most important in ensuring that competitive balance exists in today's gas marketplace.

The rules that govern the pipeline's relationship with its marketing affiliates were promulgated some fourteen years ago in an environment much different than today. The transportation and marketing of gas is now far more complex and offers much greater opportunities for pipelines to favor their own affiliates in relation to other market participants.

The FERC's marketing affiliate rules, as they exist today, are primarily directed at ensuring the separation of organizational structures and communications between the pipeline and its gas marketing affiliate. While the current rules have been somewhat effective, abuses of the relationship can still occur. These abuses may not only violate the current rules but, increasingly, also involve arrangements beyond the scope and applicability of those rules. This problem usually manifests itself in the ability of the affiliate to tie up large segments of firm capacity on its affiliated pipeline. This allows the pipeline and its affiliate, in concert, to control the availability of that capacity to others in ways that can drive up capacity costs or otherwise unduly benefit the economic interests of the corporation as a whole.

Fortunately, the Commission recently issued a Notice of Proposed Rulemaking in which one of its primary proposals was to expand the coverage of the affiliate rules to all affiliates of interstate pipelines that are involved in related gas and power energy businesses. This would close a major loophole in the existing set of regulations.

Some have expressed concern that the new coverage may be too pervasive and will negatively impact activities that are not pertinent to preventing affiliate abuse, or that the proposal may inhibit the efficient operation of pipelines. However, the Commission, with some adjustments and clarifications, should be able to address these concerns in a final rule without forfeiting the thrust of the overall proposal.

Besides expansion of the coverage of the affiliate code of conduct, in its proposal the Commission re-applies and re-emphasizes the importance of the independent functioning of employees of the pipeline and its energy affiliates, as well as the need to ensure that the pipelines' energy affiliates are not given preference with regard to information transfers or transactions with the regulated pipeline.

In its comments on the proposal, NGSA lauded the expansion of the rule's scope and purpose, and stressed that the Commission needed to carefully scrutinize pipeline/affiliate dealings through its upgraded market monitoring function. NGSA also stressed the importance for market participants to have access to appropriate, user-friendly information about affiliate transactions in the context of assuring full market transparency.

NGSA also emphasized the need for adequate penalties to deter affiliate transgressions and requested the Commission to clarify a number of points in the proposal.