



# FEDERAL ENERGY REGULATORY COMMISSION

June 19, 2008

**Docket No.** RM08-1-000

**Item No.** G-4

**Commissioner Marc Spitzer**

## **Statement of Commissioner Marc Spitzer on Promotion of a More Efficient Capacity Release Market**

"Today, we issue a Final Rule that will enhance competition in the secondary capacity release market and will increase shipper gas supply options. I thank the team for their hard work in evaluating the comments and drafting a comprehensive rule.

The Final Rule lifts the price ceiling for short-term capacity release transactions of one year or less. We also exempt several transactions from the prohibition on tying and from the bidding requirements of Section 284.8 of the Commission's regulations. These transactions include: (1) releases of 31 days or less; (2) releases of more than one year at the maximum tariff rate; (3) releases to facilitate the use of asset management arrangements; and (4) releases made under a state-approved retail access program.

We also clarify that our prohibition on tying does not apply to a transaction where a shipper releases storage capacity and requires a replacement shipper to take title to any gas in the released storage capacity at the time the release takes effect and/or return the storage capacity to the releasing shipper at the end of the release with a specified amount of gas in storage. We were persuaded that storage capacity is inextricably attached to the gas storage. I agree that allowing the tying of storage capacity to storage inventory will provide benefits to the market by enabling more active release of storage capacity into the wholesale market.

Statoil and several other Liquefied Natural Gas (LNG) importers sought clarification that it is not impermissible to link an LNG terminal throughput agreement and/or sale of gas at the outlet of a Natural Gas Act Section 3 LNG terminal to be linked with a prearranged release of transportation capacity on a pipeline that is directly connected to the terminal. Statoil argued that LNG importers often hold firm capacity on interstate pipelines adjacent to the terminals. To avoid having gas stranded at LNG terminals, importers frequently must maintain on pipelines interconnecting to the terminals firm capacity that mirrors their send-out capability at the terminal. Statoil argued that capacity at an LNG terminal can be "virtually useless and even a liability unless accompanied by related pipeline capacity."

Today's order denies the requested clarification but indicates that the Commission is open to considering this issue on a case-by-case basis if presented with a fully justified proposal. I agree with the calls we make concerning tying LNG capacity with downstream interstate pipeline capacity. I recognize that there is an operational link between LNG terminal storage and regasification capacity and the immediate downstream capacity. I also recognize that LNG importers are competing with a global marketplace. However, I agree with the Final Order's ruling that the commenters did not provide adequate detail on the types of transactions for which they seek a tying exemption. I agree that the Commission needs more information on how far downstream the commenters seek for an exemption to apply. LNG importers, however, are not left without a remedy, they may enter into supply side AMAs and they may file a fully justified proposal with the Commission with the necessary facts for the Commission to make an informed ruling on a potential exemption.

Shippers and potential shippers are looking for greater flexibility in the use of capacity. I believe that the changes we adopt in this Final Order will further facilitate shippers' ability to compete with pipelines by





## STATEMENT

offering competitively-priced alternatives.

I also look forward to reviewing Staff's report on the performance of the capacity release program after the industry and Commission have had two years of experience under the new rule. Specifically, I look forward to reading whether there have been any allegations that a virtual pipeline, *i.e.*, a marketer controlling a significant percentage of capacity and supply on one of more pipelines, has used that power to discriminate. I also remind entities that our complaint process remains a viable tool if an entity believes that a shipper has used the capacity release rules in a discriminatory manner.

For these reasons I support the Final Order."

