

GENERAL PRINCIPLES FOR UNBUNDLING THE NATURAL GAS INDUSTRY

by
Craig G. Goodman, Esq.
and
Rebecca Michael, Esq.

The following specific recommendations are submitted to the Massachusetts LDC Collaborative to ensure that its efforts address the important issues that can promote customer choice and true price competition.

1. START-UP ISSUES AND BARRIERS TO SERVICE

(a) Local Distribution Companies should be required to publish formal transportation manuals.

Currently, information provided by the local distribution companies at the city-gate is often not uniform and not well-documented. The Commission should impose a requirement for consistency in information dissemination and content. Specifically, the Commission should require utilities to file formal, published transport manuals to provide requisite information to customers and suppliers. This will facilitate efficient and effective dissemination of information necessary to make informed decisions on behalf of customers.

(b). Paperwork barriers should not be created.

Sales service customers should be able to order transportation service by telephone. Customers also should be able to ask an agent to take care of the details of arranging service.

(c). A supplier's upstream and downstream contracts and customers should remain confidential.

Competitors in most industries do not have access to competitor contracts. Local distribution companies should not be treated differently.

(d). Reasonable creditworthiness tests are acceptable.

Reasonable and objective credit measures are beneficial to the market. Upstream capacity credit tests should be incorporated.

(e). Boilerplate contract provisions should reflect reality.

Warranty-of-title and other "boilerplate" provisions should reflect market realities. Market realities should not have to change to meet outdated boilerplate provisions.

(f). Local distribution company affiliate standards of conduct and separation rules should be implemented

Organizational separation may not be sufficient. Permanent standards similar to Commission Order No. 497 should be developed and implemented.

(g). Access fees should not be permitted.

"Access" fees thwart competition. Accordingly, they should not be assessed.

(h). "Other" start-up charges can be anti-competitive.

Assessing charges for the exercise of choice among suppliers can prohibit the exercise of choice for many customers. Fees not applicable to customers choosing local distribution company sales service are inappropriate in transportation service rates.

(i). Ongoing customer charges/administrative fees should be approved only if they are cost-justified, involve tasks that are necessary and are not offset by savings to the local distribution company.

The lack of a commensurate fee for sales service should render a fee suspect.

(j). Requirements for telemetering equipment should not be permitted to discourage customers' access to transportation service.

If similarly-situated sales customers do not need telemeters, then special metering requirements should not be required by transportation customers. Most customers' usage is sufficiently predictable so that a local distribution company could simply require the customer's supplier to bring the predicated load to the city-gate. System integrity can be assured through failure-to-deliver penalties, scheduling and imbalance penalties, and other similar mechanisms.

(k). Transportation customers should be permitted to return to Local Distribution Company sales service.

Converting customers who switch to a marketer or back to sales service more than twice should have to pay a switching fee.

(l). All service must be provided pursuant to filed tariffs.

All local distribution company service must be performed pursuant to filed tariffs. Any rate flexibility desired by the local distribution company must be effectuated under a filed tariff rider. Rate discounts must be offered to all similarly-situated shippers who request the discount and should not be linked or limited to local distribution company or affiliate supply service.

2. UPSTREAM CAPACITY RELEASE

(a). Converting customers should have access to upstream capacity, including storage and Local Distribution Company peaking capacity.

All converting sales customers should have the option to take a usable, pro rata portion of upstream, firm, pipeline transmission and storage capacity, as well as local distribution company-peaking capacity used to provide firm sales service. Customers opting to take the capacity should get enough to serve their peak-day delivery obligation, including fuel and unaccounted-for gas.

Each customer also should have an option to elect various levels of firm delivery service, and the local distribution company should be required to confirm properly-nominated city-gate deliveries. Converting customers should have access to firm deliveries at the city-gate on a basis that can be relied upon.

(b). Generally, there should be no restrictions on customer use of released capacity.

A customer taking released capacity should have the same right to its use as the local distribution company.

3. OPERATIONS

(a). Monthly nomination deadlines:

Customers should be able to nominate deliveries as late as one day in advance of the upstream pipeline nomination date. Information necessary to provide nominations should be provided by the local distribution company at least a full business-day before shipper nomination deadlines.

(b). Imbalance tolerance and penalty provisions: OFO and curtailment penalties should be equal and reciprocal.

There is no reason for transportation imbalance tolerances and penalties to be greater than curtailment payments or imbalance penalties applicable to comparable actions by local distribution companies.

i)."City-gate" balancing: These simple methods are recommended to ensure system integrity and fairness to customers with predictable loads.

- Local distribution companies should set target deliveries for suppliers each day (based on the suppliers' customer bases).
- Variances from the target should be penalized using no-penalty tolerance

levels, e.g., 10% daily and 5% monthly (similar to upstream pipelines).

- On Critical Days, the tolerances can appropriately be lowered and penalties increased.
- Actual burnertip versus city-gate imbalances should be rolled over monthly.
- No penalties should apply to variances unless the customer has failed to notify the local distribution company of a material event that would change its estimated usage.

(ii). **"Actual" balancing: daily matching of receipt and burnertip deliveries.** For customers that cannot use, or do not opt for, city-gate balancing, daily matching of city-gate deliveries and burnertip usage can be priced as a separate option.

(iii). **Aggregators should be permitted to manage imbalances.**

Like the local distribution companies, aggregators should be allowed to engage in imbalance netting and trading.

(iv). **Cash-out mechanisms should be fair.** Monthly cash-outs should be at an agreed-upon spot index, with no penalties for imbalances within a 10% tolerance. Outside this tolerance, add-ons and subtractions should be at the rates and tolerance levels used by the upstream pipeline. Penalty revenues should be credited back to all customers on a per-unit-of-throughput basis.

(c). Dealing with system exigencies - Operational Flow Orders ("OFO"):

(i). **The Commission should require the Local Distribution Companies to adopt a standardized OFO mechanism:** The local distribution companies should adopt a graduated system of operational controls.

(ii). **Communications are important:** Local distribution companies should publish an Annual Operating Plan informing customers what to expect in the coming year.

(iii). **Operational control sequence:** If a local distribution company perceives a threat to the operational integrity of its system, it should take the following graduated actions:

- **Advisory Actions:** The local distribution company should request voluntary actions to alleviate problems.
- **Operational Flow Orders:** OFOs should be issued delineating specific receipt and delivery obligations. These must be within a customer's MDQ and subject to the shipper's ability to use the gas it is ordered to flow.

- **Critical Periods:** Upon a notice of "Critical Day," penalties and tolerances are appropriately toughened.
- **Unilateral Actions:** As a last resort, the local distribution company should be permitted to take unilateral action to ensure system integrity.

(d). Operational controls must include various safeguards:

- (i). **Penalty Exemption:** Shippers who "help" the system by erring on the side of caution, thereby, being out of tolerance in the "right" direction, should be rewarded, not penalized.
- (ii). **Local Distribution Companies should apply objective standards:** Consistent and objective engineering and operational criteria should be stated and applied.
- (iii). **Local Distribution Companies must give adequate notice:** It is improper to penalize shippers that have not had sufficient time to comply with an order.
- (iv). **"No Harm, No Foul:"** If there is "no-harm," a variance should not result in a penalty.

4. SERVICE AGREEMENT CRITERIA

(a). Customers must be able to rely on transportation agreements.

Suppliers may enter into long-term contracts based on unbundling. Local distribution companies should not have unilateral rights to terminate transportation agreements without cause.

(b). Local Distribution Companies should be required to use "reasonable discretion." "Sole discretion" provisions in tariffs should be modified to provide for use of "reasonable discretion."

(c). Transition costs should be tracked and quantified at the end of each year until a complete unbundling has occurred. The costs should be reviewed for mitigation and accuracy. Once approved, the costs should be rolled forward to all customers in a manner similar to the current purchase gas adjustment mechanism

(d). Backup service should be optional.

Customers who are willing to be interrupted should not be required to have full backup service.

Respectfully submitted,

/s/

Craig G. Goodman, Esq.
Rebecca J. Michael, Esq.

3333 K Street, N.W.
Suite 425
Washington, D.C. 20007

(202) 333-3288
(202) 333-3266-Fax