

February 16, 2001

To: GISB BPS and GISB EC Members

From : GISB Pipeline Segment

Subject: FERC Issue with Proposed Standard 5.3.2

Members of the Pipeline Segment have actively participated in the development of GISB standards to address the new regulations set forth in Order No. 637. This work included proposed standards to address scheduling equality between capacity release and pipeline service offerings. In December 2000, the GISB Executive Committee adopted a revised Standard No. 5.3.2 which provided a capacity release timeline for each nomination cycle. This standard has not yet been sent to the full GISB membership for ratification. At issue is whether GISB should reconsider the recently adopted standard based upon FERC staff feedback concerning such standard.

At a February 5, 2001 GISB Executive Committee call, Jay Costan, general counsel of GISB, described a conversation in which a FERC staff person expressed the following concerns with Standard No. 5.3.2:

- Order No. 637 requires that capacity release deals should be able to be nominated instantaneously; and
- That no contract needs to be executed before the acquiring shipper should be able to nominate.

On this same phone call, the GISB EC decided to send the Standard No. 5.3.2, as revised by the Executive Committee, back to the Business Practices Subcommittee to address these issues.

Certainly, the Pipeline Segment does not wish to adopt GISB standards that conflict with any FERC regulation. We would of course support modifications to the proposed standards to ensure no conflict exists. We recognize that the phrase “contract executed” may need to be eliminated from the proposed standard if GISB determines that such language is in direct conflict with Order No. 637. But, we believe that it is critically important for GISB to distinguish between such plain conflicts and matters of interpretation. All of the Pipeline Segment members have pending proceedings in which FERC will address matters of interpretation in the context of their specific Order No. 637 filings.

The Pipeline Segment shares the goal of all GISB members in promoting scheduling equality for capacity release, consistent with the FERC’s rules for capacity release. We want to make certain that other GISB members understand why we believe that Standard No. 5.3.2 as recently approved is indeed consistent with Order No. 637.

- Proposed GISB Standard No. 5.3.2 adds an opportunity to engage in capacity release at each nomination cycle. This is the same nomination opportunity that is

available to shippers using pipeline firm and interruptible service. We believe this to be consistent with the principle of scheduling equality.

- It has been suggested that Order No. 637 requires that pipelines provide instantaneous nomination capability for capacity release transactions and that contracts should not be required prior to nominations. From the Pipeline Segment perspective, this is clearly an interpretive position. If the Commission intended to mandate a capacity release program without contracts, then they would not have written a one-hour contracting provision into the regulation. Order No. 637 did say that if a pipeline could not process contracts within an hour, then they would need to provide an alternative method to accept nominations. Proposed GISB Standard No. 5.3.2 assumes compliance within the one-hour contract regulation. Pipelines that cannot meet this one-hour contracting regulation will likely be addressing alternative nomination methods as part of their 637 filing.
- If the Commission intended to mandate master contracts they would have done so in the Order. In fact, they expressly said that they were not imposing master contracts. (See Order No. 637-A, p. 108 – 109.)
- The Commission specifically said that capacity release posting and bidding rules were to remain the same. Accordingly, the proposed GISB standard keeps the biddable release process the same. (See e.g., Order No. 637-B, p. 3.)

Together with the other members of GISB, we have worked hard on the standards adopted on December 14. We support revisions of this work where the adopted standards are in conflict with FERC regulation, but we believe it is a mistake to withhold adoption of these standards that add intra-day capacity release timeframes, so that parties can fight interpretive Order No. 637 matters which are better left to ongoing FERC proceedings.