

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
)	
DOCKET NO. G-9, SUB 728)	
)	
Application of GESS International North)	
Carolina, Inc., for Approval to Participate)	COMMENTS OF
in Alternative Gas Pilot Program and for)	PIEDMONT NATURAL
Approval of Receipt Agreements)	GAS COMPANY, INC.
)	
DOCKET NO. SP-13243, SUB 0)	
)	
Application of GESS International North)	
Carolina, Inc., for Declaratory Rulings)	
)	

Piedmont Natural Gas Company, Inc. (“Piedmont” or “the Company”) through counsel and pursuant to the April 9, 2021 *Order Requesting Additional Information and Comments* (“April 9 Order”) issued by the North Carolina Utilities Commission (“Commission”) in the above-indicated dockets, respectfully submits the following Comments.

PROCEDURAL HISTORY OF THIS DOCKET

1. On June 19, 2018, in Docket No. G-9, Sub 698, the Commission issued an Order Approving Appendix F and Establishing Pilot Program (“Appendix F Order”). Appendix F to Piedmont’s Service Regulations sets guidelines for the Company’s acceptance of natural gas received into its system that is not transported on an interstate pipeline (“Alternative Gas”), and the Company’s delivery of Alternative Gas to its customers during a three-year pilot program. With regard to

participants in the pilot program, the Appendix F Order stated that Alternative Gas suppliers could participate in the pilot program if they could demonstrate to the Commission that their participation would be useful in gathering information and data sought by the Commission.

2. On August 30, 2018, in Docket No. G-9, Sub 728, GESS International North Carolina, Inc. (“GESS NC”) filed an application requesting to participate in Piedmont’s pilot program (“Pilot Program Application”). GESS NC’s Pilot Program Application detailed its plans to construct five anaerobic digestion facilities to produce and deliver Alternative Gas to Piedmont at several injection points, and indicated that it had submitted applications to Piedmont for receipt interconnect agreements to effectuate those deliveries.

3. Also on August 30, 2018, in Docket No. SP-13243, Sub 0, GESS NC filed an application requesting declaratory rulings on several aspects of its proposed renewable gas operations (“Declaratory Ruling Application”).

4. On September 6, 2018, in Docket No. G-9, Sub 728, Piedmont filed a Statement of Position to clarify the Company’s position with respect to a number of assertions contained in GESS NC’s Pilot Program Application.¹ Piedmont’s Statement of Position clarified that the Company had not designated injection points for receipt of any quantity of Alternative Gas from GESS NC’s project sites. Piedmont’s Statement of Position also explained that the Company had not engaged in extensive contract negotiations with GESS NC for receipt of Alternative Gas and

¹ Piedmont’s Statement of Position also noted that a number of the assertions the Company was contesting were repeated in GESS NC’s Declaratory Ruling Application. Piedmont stated that it believed clarification of those same assertions in GESS NC’s Declaratory Ruling Application were necessary for the same reasons set forth in its Statement of Position.

that Piedmont did not represent to GESS NC that it had no objection to GESS NC's participation in Piedmont's pilot program. Finally, Piedmont's Statement of Position clarified that there are no existing contractual or tariff mechanisms or physical connections in place that would allow delivery of GESS NC's Alternative Gas to customers off of Piedmont's North Carolina distribution system. Rather, Piedmont's Statement of Position explained that Appendix F anticipates the delivery of Alternative Gas to a Piedmont customer.

5. On January 2, 2019, in Docket No. G-9, Sub 728, GESS NC supplemented and amended its Pilot Program Application ("First Amended Pilot Program Application").

6. On January 31, 2019, in Docket Nos. G-9, Sub 728 and SP-13243, Sub 0, the Commission issued an Order Requesting Additional Information that required GESS NC to provide information about its First Amended Pilot Program Application in response to fifteen questions. On March 1, 2019, GESS NC filed its responses to the Order Requesting Additional Information. Also on March 1, 2019, Piedmont filed responses to four of the Commission's questions explaining that it was better situated than GESS NC to respond to these questions since they pertained to the operation of Piedmont's system.

7. On March 1, 2019, in Docket No. SP-13243, Sub 0, GESS NC supplemented and amended its Declaratory Ruling Application ("First Amended Declaratory Ruling Application"), amending its requests for declaratory rulings on several aspects of its Alternative Gas operations.

8. On March 11, 2019, in Docket No. G-9, Sub 728, the Commission issued an Order Approving Participation in Pilot Program with Conditions (“Pilot Program Participation Order”). The Pilot Program Participation Order approved GESS NC’s participation in Piedmont’s pilot program, subject to GESS NC and Piedmont entering into a receipt and interconnect agreement to be approved by the Commission.

9. On February 15, 2021, in Docket Nos. G-9, Sub 728 and SP-13243, Sub 0, GESS NC and GESS RNG Biogas USA, LLC (“GESS RNG”), the successor in interest to GESS NC, filed a motion to amend the Pilot Program Participation Order (“Second Amended Pilot Program Application”). In the Second Amended Pilot Program Application, GESS RNG requested that the Commission issue an amendment to the Pilot Program Participation Order to: 1) confirm that GESS RNG, as successor in interest to GESS NC, is approved to participate in Piedmont’s pilot program in accordance with the Pilot Program Participation Order; and 2) approve GESS RNG’s participation in Piedmont’s pilot program to include an additional seven anaerobic digestion facilities.

10. On February 16, 2021, in Docket Nos. G-9, Sub 728 and SP-13243, Sub 0, GESS RNG supplemented and amended its First Amended Declaratory Ruling Application (“Second Amended Declaratory Ruling Application”). GESS RNG’s Second Amended Declaratory Ruling Application added seven additional anaerobic digestion facilities, as described in the Second Amended Pilot Program Application, and requested declaratory rulings on several aspects of GESS RNG’s Alternative Gas operations.

11. On February 17, 2021, in Docket Nos. G-9, Sub 728 and SP-13243, Sub 0, Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (together, “Duke Utilities”) filed a letter advising the Commission that certain statements contained in GESS RNG’s Second Amended Declaratory Ruling Application were inaccurate and required clarification (“Duke Utilities Letter”). The Duke Utilities Letter stated that in November 2019, DEC terminated two contracts with GESS NC due to GESS NC’s failure to meet contract assurances. The Duke Utilities Letter explained that the two contracts were part of GESS NC’s previously-approved pilot program projects in Wilson and Union Counties, North Carolina. The Duke Utilities Letter stated that GESS NC or GESS RNG owes DEC substantial monetary damages from the failed projects and that there had been no communication from GESS NC or GESS RNG since November 2019. Additionally, the Duke Utilities Letter stated that contrary to GESS RNG’s assertions in its Second Amended Declaratory Ruling Application, DEC has not been contacted by GESS RNG regarding any purchase by DEC of Alternative Gas. The Duke Utilities Letter also stated that the Duke Utilities are unlikely to use the GESS RNG Alternative Gas due to the contract dispute and that contracts with other reliable developers have been secured to help the Duke Utilities meet their animal waste compliance goals. The Duke Utilities Letter contended that prior to the Commission’s ruling on GESS RNG’s Second Amended Declaratory Ruling Application, GESS RNG should be required to bring current its past due accounts for the Wilson and Union County contracts.

12. On March 12, 2021, in Docket No. G-9, Sub 728, Piedmont filed a letter reiterating that Appendix F requires that all Alternative Gas delivered to Piedmont must be nominated for use by, and allocated to, a Piedmont customer (“March 12 Letter”). Piedmont’s March 12 Letter stated that if the Duke Utilities are not GESS RNG’s customers, which appeared to be the case, then the current record may not be sufficient to support Piedmont’s receipt of Alternative Gas from GESS RNG.

13. In the April 9 Order, the Commission stated that good cause existed to require GESS RNG to provide additional information about its Second Amended Pilot Program Application and Second Amended Declaratory Ruling Application. Accordingly, the April 9 Order required GESS RNG to respond to twelve requests for information by May 10, 2021.

14. On May 10, 2021, GESS RNG filed its responses to the April 9 Order (“GESS RNG’s Response”). GESS RNG’s Response also indicated that it was intended to respond to the Duke Utilities Letter and Piedmont’s March 12 Letter. In relevant part, GESS RNG’s Response disagreed with Piedmont’s position in the March 12 Letter that the record may not be sufficient to support Piedmont’s receipt of Alternative Gas from GESS RNG’s facilities. GESS RNG’s Response stated that the original injection amount proposed by GESS NC was 550,000 MMBtus per site per year, of which only 150,000 MMBtus per year were expected to be purchased by the Duke Utilities. As such, GESS RNG’s Response states that it appears that the Pilot Program Participation Order approved the sale of 400,000 MMBtus to third parties. Accordingly, GESS RNG’s Response argues that since neither the Duke Utilities or

Piedmont were ever going to purchase all of the Alternative Gas proposed to be produced, the changed circumstances regarding the Duke Utilities' position as to its purchase of Alternative Gas should not prohibit the Commission from granting the requests of GESS RNG.

15. Piedmont hereby submits the following Comments in response to the April 9 Order and GESS RNG's Response to reiterate that Appendix F requires the delivery of Alternative Gas to a Piedmont customer.

COMMENTS

16. As Piedmont stated in its Statement of Position and March 12 Letter, Appendix F requires that Alternative Gas be sold to a Piedmont customer. With the exception of the Duke Utilities, who will not be purchasing Alternative Gas from GESS RNG, GESS RNG has not identified *any* specific Piedmont customer in any of its filings in Docket Nos. G-9, Sub 728 or SP-13243, Sub 0. Instead, GESS RNG only lists Element Markets as an Alternative Gas purchaser. In its Pilot Program Application, GESS RNG noted that Element Markets buys biogas in bulk and resells it into mostly out-of-state markets.

17. Piedmont included the language in Appendix F and in its form Receipt Interconnection Agreement limiting Alternative Gas receipts to the use of serving its customers because Piedmont is a North Carolina local distribution company whose facilities in North Carolina lie entirely within the borders of this State. As such, it is literally impossible for Piedmont to physically deliver Alternative Gas to an entity that is not its customer. It is also noteworthy that gas marketers that operate on Piedmont's system do so not as customers of Piedmont but as agents for Piedmont's

actual customers. Under these arrangements, which are built into Piedmont's existing tariff structures, the limitation on Alternative Gas being directed to a Piedmont customer, or agent of a Piedmont customer, is completely rational and appropriate.

18. If Alternative Gas is not sold to a Piedmont customer, an Alternative Gas producer could potentially sell Alternative Gas to a marketer operating on Piedmont's system who then could notionally sell the gas to some party off of Piedmont's system, potentially including a customer in another state. Such a sale could be effectuated through a mechanism known in the industry as displacement, where gas in North Carolina is essentially "traded" for flowing gas in some other location. Since gas is fungible, the balancing of the two deliveries on the transmission pipelines involved is all that is necessary to effectuate the trade. These displacement transactions are entirely notional in nature as gas does not physically flow off Piedmont's system.

19. A potential problem with these transactions is that they threaten the jurisdictional status of Piedmont and could potentially result in the loss of Piedmont's Hinshaw exemption under the Natural Gas Act ("NGA") for its intrastate transmission facilities.² The logic is as follows. Under the NGA, FERC has jurisdiction over the facilities used to transport gas in interstate commerce as well as the gas itself flowing in interstate commerce.³ Without the Hinshaw exemption, Piedmont's transmission (but not distribution) of natural gas that is otherwise flowing

² Section 1(c) of the NGA exempts from the Federal Energy Regulatory Commission's ("FERC") jurisdiction those pipelines that transport natural gas in interstate commerce if (1) they receive natural gas at or within the boundary of a state, (2) all the gas is consumed within that state, and (3) the pipeline is regulated by a state commission. *See* 15 U.S.C. § 717(c) (2018). This exemption is referred to as the "Hinshaw exemption" and pipelines operating under this exemption are known as "Hinshaw pipelines."

³ *See* 15 U.S.C. § 717 (2018).

in interstate commerce would be subject to exclusive FERC regulation – thereby depriving the Commission of jurisdiction over a significant portion of Piedmont’s facilities in North Carolina. FERC’s regulations define the transportation of gas to include deliveries by displacement.⁴ FERC routinely regulates displacement transactions under the NGA where a transactional “path” – even a notional one – spans the border of one or more states.⁵ Piedmont’s Hinshaw exemption from FERC NGA jurisdiction requires that Piedmont receive all gas flowing in interstate commerce in one state within the borders of that state, that all gas so received be consumed within the border of that state, and that Piedmont be regulated by a state public service commission.⁶

20. If Piedmont were to permit notional displacement transactions involving Alternative Gas to occur where gas received by Piedmont was received in North Carolina and delivered to an end user in another state, Piedmont could be construed to be engaging in the interstate transportation of natural gas and to be in violation of the requirements of its Hinshaw Exemption – thereby subjecting its intrastate transmission facilities and functions to exclusive FERC jurisdiction.⁷

⁴ See 18 C.F.R. § 284.1(a) (2021) (defining transportation to include “storage, exchange, backhaul, displacement, or other methods of transportation”).

⁵ See, e.g., *Nat’l Fuel Gas Supply Corp.*, 70 FERC ¶ 61,162, at 61,499 (1995) (“*National Fuel*”) (holding that a pipeline did not satisfy the Hinshaw exemption where it delivered gas to an interstate pipeline in New York who then delivered an equivalent volume of gas by displacement as part of an exchange to a delivery point in Pennsylvania because the transaction amounted to transportation in interstate commerce, even though no actual molecules of gas delivered to the interstate pipeline were commingled into the interstate system or physically crossed a state line).

⁶ See 15 U.S.C. § 717(c).

⁷ See, e.g., *National Fuel*, 70 FERC ¶ 61,162, at 61,499; see also *Boston Gas Co.*, 57 FERC ¶ 61,054, at 61,2015 (1991) (explaining that in exchange agreements, “[e]ach part of the transaction is dependent on the other and the transaction must be regulated as a whole”), *order on reh’g*, 58 FERC ¶ 61,180 (1992), *order denying reh’g*, 59 FERC ¶ 61,075 (1992), *remanded sub nom.*, *Mass. Dept. of Pub. Utils. v. FERC*, (D.C. Cir. 1993), *order on remand*, 70 FERC ¶ 61,121 (1995).

Piedmont believes this is an unacceptable risk and therefore strongly recommends that the Commission require GESS RNG to specify a specific Piedmont customer, or the approved agent acting on behalf of a specific Piedmont customer or group of Piedmont customers, before approving GESS RNG's Second Amended Pilot Application and Second Amended Declaratory Application.

CONCLUSION

Wherefore, Piedmont respectfully requests that the Commission accept its Comments as set forth herein.

Respectfully submitted, this the 29th day of June, 2021.

Piedmont Natural Gas Company, Inc.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the attached is being served this date upon all of the parties to this docket electronically or by depositing a copy of the same in the United States Mail, First Class Postage Prepaid, at the addresses contained in the official service list in this proceeding.

This the 29th day of June, 2021.

/s/ Richard K. Goley
Richard K. Goley