

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
102 FERC ¶ 61,323

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Atlanta Gas Light Company

Docket No. RP98-206-008

ORDER ON SHOW CAUSE

(Issued March 27, 2003)

1. On July 18, 2002, in response to a petition for clarification filed by Indicated Marketers,¹ the Commission issued an order, among other things, directing Atlanta Gas Light Company (Atlanta) to show cause why it has not been in violation of the Natural Gas Act (NGA) with regard certain Parts 157 and 284 upstream interstate capacity it has used to provide service to marketers since April 1, 2001.² Specifically, the Commission required Atlanta to cease and desist from using its ANR Services and Cove Point LNG capacity in providing service under Atlanta's MARS (Marketer Accessible Retained Storage) program, and from using its Transcontinental Gas Pipe Line Corporation (Transco) and Cove Point LNG capacity in providing service under Atlanta's Rate Schedule PRS (Parking and Redelivery Service).³ Instead, the Commission granted limited-term certificate authority and temporary waiver of the shipper must have title policy to enable Atlanta to utilize the capacity under Rate Schedule IBSS (Incremental Bundled Storage Service), and directed Atlanta to refile the previously effective Rate Schedule IBSS. The certificate authority and waiver for Rate Schedule IBSS expires on March 31, 2003.

¹Indicated Marketers are comprised of ACN Energy, Energy America, Infinite Energy, New Power Company, SCANA Energy Marketing, Inc. (SCANA), and Southstar Energy Services dba Georgia Natural Gas.

²100 FERC ¶ 61,071 (2002) ("Show Cause Order").

³The MARS and Rate Schedule PRS programs were approved by the Georgia Public Service Commission (GPSC).

2. The Commission also, in the July 18, 2002 order, directed Atlanta, Southern Natural Gas Company (Southern), ANR Pipeline Company (ANR Pipeline), Great Lakes Gas Transmission, L.P. (Great Lakes), Transcontinental Gas Pipe Line Corporation (Transco), and South Georgia Natural Gas Company (South Georgia) to show cause under Section 5 of the NGA why the Commission should not direct that the Part 157 certificates used to provide service on behalf of Atlanta be converted to provide for service under Part 284.

3. Atlanta and the upstream pipelines have responded to the Commission's show cause order. In addition, SCANA has filed two motions to lodge and a motion for summary disposition, to which Atlanta has filed answers. As discussed below, the Commission finds that Atlanta violated the NGA in implementing the PRS Rate Schedule service, but did not violate the NGA in implementing MARS services. Further, the Commission has decided not to require conversion of the subject Part 157 services to Part 284. Finally, the Commission denies SCANA's motions. This order is in the public interest because it resolves outstanding issues and provides clarity with respect to Atlanta's use of its upstream interstate pipeline capacity under Georgia's restructuring program.

I. Background

4. In 1997, Atlanta, a Hinshaw pipeline, filed an application with the Georgia Public Service Commission (GPSC) to unbundle its distribution services from its merchant services and become solely a provider of transportation and storage services in the State of Georgia. Atlanta proposed to provide its transportation and storage capacity on upstream interstate pipelines⁴ to marketers by: (1) releasing its upstream Part 284

⁴At the time, Atlanta held either direct or indirect Part 157 and Part 284 transportation and storage rights on Southern, ANR Pipeline, ANR Storage Company (ANR Storage), Great Lakes, Transco, South Georgia, Washington Gas Light Company (Washington Gas), Tennessee Gas Pipeline Company, East Tennessee Natural Gas Company, and CNG Transmission Corporation. As is relevant to this case, Atlanta contracts with ANR Storage for storage service in Michigan under Part 284, and either directly or indirectly uses Part 157 transportation contracts with Southern Natural Gas Company (Southern), ANR Pipeline Company (ANR Pipeline), and Great Lakes Gas Transmission, L.P. (Great Lakes) to transport the gas to and from storage. Service under these contracts comprise the "ANR Services," and are further described in the discussion below. Transco provides Part 157 bundled transportation/storage services to Atlanta

(continued...)

capacity directly to marketers under the capacity release regulations via month-to-month, pre-arranged, short-term releases; and (2) combining and placing its Part 157 capacity (which cannot be released pursuant to the capacity release rules) and certain Part 284 capacity into a new bundled transportation and storage service, Rate Schedule IBSS service, and allocating it based upon the marketers' respective shares of the end-use market. Atlanta also proposed to retain a limited amount of interstate storage capacity and associated transportation rights for system balancing and no-notice service.

5. Atlanta sought waiver of the Commission's shipper must have title policy so that through the IBSS Rate Schedule, gas transported or stored under Atlanta's firm contracts on interstate pipelines could be owned by marketers on Atlanta's system, while Atlanta would remain the shipper under the contracts. On July 31, 1998, the Commission granted a limited, one-year waiver of the shipper must have title policy, and issued a limited jurisdiction blanket certificate to Atlanta to perform the interstate services set forth in Rate Schedule IBSS.⁵ The Commission required Atlanta to file the Georgia state IBSS Rate Schedule with this Commission. In July 1999, the Commission granted a 17-month extension of the waiver and certificate authority to March 31, 2001, and established a technical conference.⁶

6. As a result of the technical conference, parties identified a number of problems with converting the Part 157 interstate pipeline services to Part 284 services, such as higher pipeline rates and loss of pipeline operational flexibility. Atlanta stated that it would not seek any further extension of its waiver and limited jurisdiction certificate after March 31, 2001, but would instead terminate Rate Schedule IBSS and roll any Part 157 capacity remaining after conversion and the expiration of the contracts into the

⁴(...continued)

under Rate Schedules LSS, SS-1 (bundled Leidy storage services), LG-A, and GSS. The Cove Point LNG capacity is a Part 284 peaking storage service provided to Atlanta by Cove Point Limited Partnership LNG. The transportation services related to the injection and withdrawal of Atlanta's volumes to and from Cove Point are accomplished through an exchange agreement between Atlanta and Washington Gas.

⁵84 FERC ¶ 61,119, reh'g denied, 84 FERC ¶ 61,323 (1998).

⁶88 FERC ¶ 61,150 (1999). The purpose of the technical conference largely was to identify the issues involved in Atlanta's converting its Part 157 contracts with its upstream pipelines to Part 284 and other options to eliminate the need for waiver of the shipper must have title rule, as well as to examine the impact of the waivers on the interstate market, and potential affiliate abuse.

storage it retains for system operations. In its December 15, 2000 order following the technical conference, the Commission found that Atlanta's unbundling program and the waivers granted for Rate Schedule IBSS service did not have an adverse impact on the interstate gas market, and that no abuse between Atlanta and its marketing affiliate had been shown.⁷ However, the Commission urged parties to continue to work out arrangements to convert Atlanta's Part 157 upstream contracts to Part 284 contracts. In addition, the Commission stated "[t]o the extent Atlanta seeks to make its interstate assets available to Georgia retail marketers in the future, it must do so pursuant to Commission authorization."⁸

7. Prior to the expiration of Rate Schedule IBSS on April 1, 2001, Atlanta filed the PRS Rate Schedule with the GPSC to replace IBSS as a means of allocating the remaining upstream services to the marketers. Through this rate schedule, marketers could park gas with Atlanta, who in turn, would store the gas on upstream pipelines' facilities under its various storage contracts, and then later redeliver the gas to the marketers. In addition, Atlanta provided a balancing service (MARS) using certain of the subject upstream capacity.⁹ Despite the termination of its NGA certificate authority on April 1, 2001, the record reflects that Atlanta continued to utilize its upstream storage and transportation "assets" to provide PRS and MARS services to its customers.

8. On May 23, 2002, Indicated Marketers filed its petition seeking clarification that Atlanta may properly include the ANR Services capacity in the capacity available under

⁷93 FERC ¶ 61,288 (2000).

⁸93 FERC ¶ 61,288 at 61,968, n.13.

⁹While Atlanta proposed to use its Part 157 contracts with Transco to provide service under Rate Schedule PRS, it did not propose to utilize its ANR Services capacity to provide PRS service due to its concern that inclusion of the Southern transportation used as part of the ANR Services in Rate Schedule PRS would violate the NGA because the delivery point for the ANR Services injections are on Southern's system at Shadyside, Louisiana, remote from the Atlanta citygate. Atlanta instead proposed to place the ANR Services into the storage capacity it retains for system operations. Consequently, the GPSC approved Rate Schedule PRS in March 2001, but did not approve the inclusion of the ANR Services in Rate Schedule PRS. Instead, the GPSC approved a temporary plan which would roll the ANR Services and Cove Point LNG capacity into Atlanta's retained storage capacity (MARS) until Atlanta could resolve the issue with the Commission. Subsequently, by order of March 28, 2002, the GPSC required that the Cove Point LNG capacity be removed from MARS and placed into PRS.

the Georgia-approved PRS Rate Schedule without running afoul of the NGA or the Commission's open-access transportation policies.¹⁰

II. The Commission's July 18, 2002 Show Cause Order

9. On July 18, 2002, the Commission issued its "Order Addressing Petition, Issuing Limited-Term Certificate Authority and Waivers, and Directing Show Cause."¹¹ The Commission denied Indicated Marketer's request for clarification that the ANR Services capacity may be included in Rate Schedule PRS, finding that the ANR Services capacity is the same upstream interstate capacity that Atlanta used to provide service under Rate Schedule IBSS, and that Atlanta would be using these same upstream interstate pipeline contracts to provide local service in a manner that the Commission previously determined required Commission-approved certificates and waivers. The Commission stated that there did not appear to be any dispute that the Georgia marketers would be paying for the use of the ANR Services storage and transportation capacity under Rate Schedule PRS, and that Atlanta would not hold title to the gas being transported and stored on these upstream interstate assets.

10. The Commission held that the disposition or acquisition of rights to upstream capacity on interstate pipelines is subject to the Commission's jurisdiction, requiring Commission authorization, and that the GPSC has no jurisdiction to regulate access to capacity on interstate pipelines. Therefore, the Commission ruled that neither the Rate Schedule PRS nor MARS services can be implemented under GPSC authority to the extent they involve the reallocation of capacity that Atlanta holds on interstate pipelines. The Commission added that the "capacity release rules cannot be circumvented by the device of having Atlanta 'hold title' to the gas while it is in the interstate system if the clear purpose of the transaction is to allocate interstate capacity to a marketer."¹²

11. Accordingly, because it appeared to the Commission that since April 1, 2001, when Atlanta's certificate authorization and waivers to provide service under Rate Schedule IBSS expired, Atlanta had been utilizing its upstream interstate capacity to provide local storage and balancing services without the requisite authority, the

¹⁰In the alternative, Indicated Marketers requested NGA authorizations and waivers that would be necessary to permit the ANR Services to be included in Rate Schedule PRS.

¹¹100 FERC ¶ 61,071 (2002).

¹²*Id.* at 61,278.

Commission ordered Atlanta to cease and desist from using MARS to make the ANR Services capacity available to the marketers, and from using its upstream capacity on Transco and, as of March 28, 2002, its Cove Point LNG capacity, to provide service under Rate Schedule PRS, and to show cause why it had not been in violation of the NGA with regard to its use of such interstate capacity to provide service to marketers under MARS and Rate Schedule PRS.

12. However, to permit the injection of gas supplies into storage for the 2002/2003 heating season and to avoid frustration of Georgia's unbundling program, the Commission reinstated Rate Schedule IBSS, requiring Atlanta to refile the previously effective Rate Schedule IBSS, and reissuing to Atlanta the same temporary certificate authorizations and waivers that expired on March 31, 2001. The Commission stated that Atlanta could utilize the ANR Services, Transco, and Cove Point capacity under Rate Schedule IBSS, but that the certificate authority, waivers, and reinstatement of Rate Schedule IBSS would expire on March 31, 2003, when most of the ANR Services contracts expire.

13. In addition, the Commission expressed its concern about Atlanta's continued use of Part 157 certificated services, which were originally issued to support bundled service on Atlanta's system, for purposes unrelated to the original intent of the certificate. The Commission stated that Atlanta's use of the capacity under Rate Schedule PRS and MARS represents "an untenable use of interstate pipeline capacity in a fashion that is at odds with the Commission's open-access regulatory scheme, and that allows Atlanta to retain exclusive control of the disposition of interstate capacity, to the benefit of a select set of local Georgia marketers, one of whom is Atlanta's affiliate."¹³ Therefore, the Commission directed the related interstate pipelines and Atlanta to show cause why the Commission should not direct that those certificates be converted to provide for Part 284 open-access service.

III. Pleadings Filed Subsequent to the Show Cause Order

14. In August, 2002, Atlanta, ANR Pipeline, Great Lakes, Southern, and Transco responded to the show cause order. As discussed in more detail in the discussion below, Atlanta claims that the MARS and Rate Schedule PRS programs fully comply with Commission policies and the NGA, and that, therefore, there is no need for certificate authorizations, waivers, or the conversion of Part 157 contracts to Part 284. Similarly,

¹³Id. at 61,279-80.

the upstream pipelines argue that at this juncture, there is no need for the Commission to require the conversion of their Part 157 services to Part 284.

15. In addition, on September 16, 2002, the GPSC filed a motion to intervene out of time. In its motion, the GPSC states that the actions taken by the Commission in this proceeding may have a direct impact on actions the GPSC takes to implement Georgia's Natural Gas Competition and Deregulation Act.¹⁴ The GPSC indicates, for example, that once it is able to make certain determinations, the GPSC may issue an order eliminating Atlanta's responsibility for acquiring and contracting for interstate capacity assets.¹⁵ Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, the Commission finds good cause to grant the GPSC's motion for late intervention.¹⁶

16. By letter dated August 26, 2002, SCANA requested that the Commission issue data requests to Atlanta and attached to its letter its proposed set of data requests. On October 15, 2002, SCANA filed a motion to lodge, in this proceeding, information from GPSC proceedings involving Atlanta and an unregulated affiliate, Sequent Energy Marketing, LLC (Sequent). Specifically, SCANA seeks to lodge certain data responses filed by Atlanta relating to a petition SCANA filed with the GPSC regarding Atlanta's relations with Sequent. Atlanta filed an answer to this motion, responding that the issues raised by SCANA's motion are not relevant to this proceeding. Then, on October 29, 2002, SCANA filed a supplemental motion to lodge in which it seeks to lodge in this case additional information from the state case, and Atlanta filed another answer.

17. On February 7, 2003, SCANA filed a motion for summary disposition requesting that the Commission take two steps prior to March 31, 2003. SCANA requests that the Commission: (1) order Atlanta to cease all transactions with its affiliates (e.g., Sequent) in connection with the upstream interstate transportation and storage assets; and (2) require Transco to offer a limited Part 284 interstate storage service, to which Atlanta may subscribe in lieu of the Part 157 service Atlanta currently purchases from Transco and manages for the certificated marketers.

18. On February 24, 2003, Atlanta and Transco each filed a response stating that SCANA's motion for summary disposition is procedurally improper and irrelevant to the issues raised in the show cause, and is an attempt to circumvent the administrative law judge's initial decision in Transco's rate case rejecting SCANA's limited conversion

¹⁴O.C.G.A. § 46-4-150 et seq. (Georgia' restructuring act).

¹⁵GPSC Motion to Intervene Out of Time at 3.

¹⁶18 CFR § 385.214(d) (2002).

proposal, which is pending on exception before the Commission in Docket No. RP01-245-000. In addition, on March 13, 2003, the GPSC filed comments it states are intended to clarify and correct misstatements it claims SCANA made in its motion for summary disposition. In its comments, the GPSC states that Atlanta's management of the upstream resources is regulated by the GPSC, and that it has observed no evidence that there is a problem with such management. The GPSC raises its concern that SCANA's proposal, that the Commission order Transco to provide a limited Part 284 storage service, would restrict Atlanta's ability to provide adequate balancing services and would eliminate Atlanta's ability to ensure system integrity, especially on a peak day, by turning control of such capacity over to marketers. The GPSC further clarifies that it has not acquiesced to the Commission's jurisdiction over all interstate capacity issues relating to Georgia's restructuring.

19. Finally, on March 18, 2003, SCANA filed comments responding to Atlanta's, Transco's and the GPSC's pleadings addressing SCANA's motion for summary disposition. SCANA states that its comments seek to clarify and correct a number of inaccuracies and factual misstatements it claims the parties have made in their pleadings. SCANA takes issue with the GPSC's position on who should control the upstream storage assets, arguing that the marketers should be assigned this capacity. It asserts that the Commission's recent order issued March 17, 2003, in Docket No. IN02-1, finding a civil penalty regarding Transco's affiliate-abuse, highlights the need for prompt action. Accordingly, it requests action on its motion for summary disposition by March 31, 2003, when the IBSS authority terminates, asserting that the Commission should forstall what it characterizes as Atlanta's proposed use of interstate assets under the guise of local sales services in order to ensure that Atlanta cannot discriminate in favor of its affiliates like Sequent.

IV. Discussion

20. The issues raised by the Commission's July 18, 2002 Show Cause Order are:

- (1) whether Atlanta has violated the NGA by using its upstream interstate capacity on Transco and its Cove Point LNG capacity to provide service to the certificated marketers under Rate Schedule PRS;
- (2) whether Atlanta has violated the NGA by using the ANR Services capacity and its Cove Point LNG capacity to provide service to the certificated marketers through Atlanta's MARS program;

- (3) whether the Commission should direct that the Part 157 certificates used to provide service on behalf of Atlanta be converted to provide for open-access service under Part 284, and if not, whether and/or how Atlanta can utilize the upstream capacity at issue after March 31, 2003 in compliance with the NGA and Commission policies.

A. Atlanta's Use of the Transco and Cove Point Capacity Under Rate Schedule PRS

21. In its response to the Show Cause Order, Atlanta states that any capacity that either was not released to marketers under the Part 284 capacity release regulations or was not retained by Atlanta for inclusion in MARS, was used to provide service under Rate Schedule PRS, a parking and redelivery service. The capacity used to provide Rate Schedule PRS service consisted of both: (1) Atlanta's Part 157 contracts with Transco under Rate Schedules SS-1, LGA, & LSS; and (2) as of March 28, 2002, the Part 284 Cove Point LNG assets, which the GPSC had ordered to be removed from MARS and placed into PRS as of that date.

22. Atlanta maintains that its Rate Schedule PRS service, and its use of Transco capacity under Rate Schedules SS-1, LGA, and LSS to provide this service,¹⁷ complies with Commission policies and the NGA because Atlanta does not allocate such capacity to the marketers. Atlanta explains in its response, that under the PRS tariff, the marketers purchase their own gas and utilize the Part 284 transportation capacity that was released to them to move their gas to Atlanta's citygate. Once the marketers' gas is delivered to the citygate, to the extent that the deliveries are greater than the marketers' end-use customers' estimated daily gas requirements, the gas can be parked for redelivery when needed. Atlanta states that it uses both its Part 157 bundled storage services with Transco and its system line pack to provide this PRS service. To the extent that the gas is stored, Atlanta nominates gas from its citygate into storage utilizing its capacity and nominates it back to its citygate when needed to support its PRS service.

¹⁷Atlanta did not address in its response the use of the Cove Point LNG capacity in providing Rate Schedule PRS service, since the Cove Point LNG capacity was included, instead, in Atlanta's MARS program from April 1, 2001 through March 27, 2002. However, since the Cove Point LNG capacity was included in Rate Schedule PRS from March 28, 2002 until the Commission's July 18, 2002 Show Cause Order, our discussion here applies equally to Atlanta's use of the Cove Point LNG capacity in providing Rate Schedule PRS service.

23. Atlanta asserts that the PRS program was modeled after a similar Baltimore Gas & Electric Company program.¹⁸ Atlanta states that its understanding of the Commission's policy, as reflected in the BG&E case, is that as long as marketers deliver their own gas utilizing their own transportation capacity all the way to the citygate, such parking and loan or balancing services provided behind the citygate do not violate the NGA or Commission policies. Atlanta further states, citing Northern Illinois Gas Company,¹⁹ that the Commission has held that a parking and redelivery service offered by a Hinshaw pipeline does not violate either the shipper must have title policy or the capacity release regulations, except to the extent that the redeliveries do not occur on the Hinshaw's system. Atlanta asserts it receives gas delivered to its system by the marketers using capacity released to them and redelivers the gas on its own system to balance the marketers deliveries on Atlanta's system.

24. As discussed below, the Commission finds that Atlanta's use of its upstream pipeline capacity on Transco and Cove Point to render service under Rate Schedule PRS is a jurisdictional use of interstate pipeline facilities, requiring certificate authorization – regardless of the fact that Atlanta does not "allocate" or "assign" the upstream capacity to the marketers, or of the location of the receipts and deliveries of the gas being parked and redelivered under Rate Schedule PRS.²⁰

25. The Commission found in the prior orders in this case that access to upstream pipeline capacity through Rate Schedule IBSS required waiver of the shipper must have title policy and certificate authorization under Section 7 of the NGA. Under Rate Schedule IBSS, the marketers' own gas was being transported and stored using Atlanta's capacity on upstream interstate pipelines. The purpose of Rate Schedule IBSS was to enable the Georgia marketers to use Atlanta's Part 157 bundled storage and transportation capacity and receive the benefits of the Part 157 contracts. By Atlanta's own admission,

¹⁸Atlanta cites Baltimore Gas & Electric Co., 93 FERC ¶ 61,059 (2000) (BG&E).

¹⁹90 FERC ¶ 61,308 at 62,002 (2000) (Northern Illinois).

²⁰See Zia Natural Gas Company v. Raton Gas Transmission Company, 102 FERC ¶ 61,249 (2003) (where the Commission held that a local distribution company transporting its customers' gas using its Part 157 interstate capacity without appropriate certificate authorization is illegally brokering its interstate capacity).

the PRS Rate Schedule is designed as a substitute for the IBSS Rate Schedule.²¹ Under Rate Schedule PRS, the marketers are parking gas that they own with Atlanta, who is using its jurisdictional upstream transportation capacity to store the marketers' gas using its upstream storage capacity and then redeliver it, again using its jurisdictional upstream transportation capacity. Atlanta has not adequately explained in its response to the Show Cause Order why the same use of the jurisdictional upstream transportation and storage capacity no longer requires a certificate or waiver of the shipper must have title policy. Although the upstream capacity is not being directly assigned or allocated to the marketers under Rate Schedule PRS, as it is under Rate Schedule IBSS, the marketers are still effectively obtaining the use of Atlanta's upstream capacity to transport and store their gas.

26. Further, Atlanta's interpretation of the Commission's ruling in Northern Illinois – that a parking and redelivery service offered by a Hinshaw pipeline does not violate either the shipper must have title policy or the capacity release regulations except to the extent that the redeliveries do not occur on the Hinshaw's system -- represents a gross misreading of that case. The material distinction between the transactions that were held permissible in Northern Illinois and those that were not was not whether receipts and deliveries occurred on- or off-system, but whether the shipper held title to the gas being transported. Specifically, in the approved transactions, the shipper held title to the gas. Unlike under the services approved in Northern Illinois, Atlanta does not hold title to the gas under Rate Schedule PRS.²²

27. Accordingly, the Commission finds that Atlanta has failed to demonstrate that it did not violate the NGA and Commission policies by using its Transco and Cove Point LNG capacity, without certificate authority or waiver of the shipper must have title policy, to provide service to the marketers under Rate Schedule PRS. However, in view of the circumstances, the Commission will take no further action against Atlanta.

²¹June 11, 2002 Answer of Atlanta to Indicated Marketer's May 23, 2002 Petition for Clarification or Limited Waivers at 3-4.

²²With respect to Atlanta's reliance on a purportedly similar Baltimore Gas & Electric Company (BG&E) parking and balancing service, the Commission's order in BG&E granting the BG&E a final extension of its waiver of the shipper must have title policy neither analyzed, nor approved, BG&E's program, which at the time was still being developed by BG&E. Moreover, the Commission notes that BG&E described its potential state tariff as one that would comply with the Commission's "shipper must have title program." 93 FERC at 61,157.

B. Atlanta's Use of the ANR Services and Cove Point LNG Capacity To Serve Marketers Through MARS

28. Since March 31, 2001, and until the show cause order, Atlanta was using the ANR Services capacity, and from March 31, 2001 until March 28, 2002, the Cove Point LNG capacity, to provide what Atlanta calls a "balancing/sales" service to marketers, which marketers have access to through the MARS program.²³

29. In the petition for clarification that initiated this proceeding, Indicated Marketers described Atlanta's use of the ANR Services as "Retained Storage" (otherwise known as "Marketer Accessible Retained Storage" or MARS):

[W]hen ANR services are in Retained Storage, all storage inventory is treated as a common 'pot' of gas supplies which includes (1) excess deliveries made by the marketers from time to time [and] (2) gas supplies purchased by AGL from time-to-time in its discretion (priced at whatever AGL negotiates) [footnote omitted]. The marketers do not have their own separate storage accounts in Retained Storage. Instead, each marketer is subject to the cost consequences of strategies adopted by AGL and other marketers. Thus, when gas is withdrawn from Retained Storage by AGL for a marketer, the gas is priced at the weighted average cost of all gas in Retained Storage, and does not reflect that marketer's own purchasing decisions. Each marketer does not decide what to withdraw and when. Instead, Retained Storage is automatically sold to each marketer when that marketer cannot meet all of its daily demand from other sources.²⁴

30. In its response to the show cause order, Atlanta essentially confirms this description of its MARS program. Atlanta maintains that MARS is a behind-the-citygate balancing/sales service, and not an allocation of interstate pipeline capacity to marketers. Atlanta states that under MARS, Atlanta, and not the marketers, holds the

²³Atlanta states that the ANR Services capacity could not be included in Rate Schedule PRS because it maintains that the receipts of gas for the ANR Services, *i.e.*, the receipts of the storage injection volumes, does not occur at Atlanta's citygate but at Shadyside, LA., and therefore would require transportation from the citygate to Shadyside.

²⁴Petition of Indicated Marketers for Clarification or Waiver at 9.

upstream capacity in order to balance over/under-deliveries that inevitably occur in normal daily system operations, and that all of the gas included in MARS is owned by Atlanta. Atlanta explains that it purchases the gas either at its citygate, or elsewhere and then transports it to the citygate using its own capacity. All of the storage inventory in MARS is treated as one supply, which is then sold to marketers when they cannot meet their daily demands, and priced at the weighted average cost of the inventory. Thus, Atlanta maintains that it is utilizing its interstate pipeline capacity to transport and store gas that it purchases and re-sells behind the citygate as part of a balancing service. Atlanta asserts that at all times, the interstate pipeline capacity is utilized for gas purchased, owned and controlled by Atlanta. Atlanta states that it controls the injections and withdrawals from storage and related transportation nominations.

31. As stated in the July 18, 2002 Show Cause Order, the Commission does not object to Atlanta's use of its MARS program for operational balancing. The parties appear to agree that the program as used by Atlanta is limited to the daily balancing of over- and under-deliveries by Atlanta's customers. The shippers have no control over the source or price of the gas, and no control over how much gas Atlanta decides to purchase or inject into storage. Given the complete lack of shipper control over how Atlanta uses its interstate capacity to provide MARS service, we find that the program, unlike the Rate Schedule PRS service discussed above, does not involve an allocation of interstate pipeline capacity to marketers and, therefore, does not require a transportation certificate. Nor does the MARS service require waiver of the shipper must have title policy, since Atlanta owns the gas. As long as the MARS service is provided using Atlanta's own gas supplies, as described, is limited to the stated purpose of operational balancing, and does not serve as a substitute for the Commission-approved IBSS program or for the PRS rate schedule discussed above, we find that it is being used by Atlanta as a part of its distribution function to retain system integrity and is not subject to the Commission's NGA jurisdiction and does not require certificate authorization.²⁵ Consequently, subject to the above caveat, we find that Atlanta has demonstrated that it was not in violation of the NGA or Commission policies by utilizing its ANR Services and Cove Point LNG

²⁵To implement the MARS program, Atlanta engaged in the sale of natural gas for resale in interstate commerce. However, Atlanta is a Hinshaw Pipeline under Section 1(c) of the NGA and, therefore, such sales are not subject to our jurisdiction as long as the gas is consumed in the state of Georgia. Further, to the extent such gas is not consumed in Georgia, as a Hinshaw Pipeline, Atlanta holds a blanket NGA certificate to make such sales of gas at negotiated rates pursuant to 18 CFR § 284.402 (2002). See *Citizens Gas Supply Corp., et al.*, 61 FERC ¶ 61,036 (1992).

upstream capacity to provide the MARS service and may resume MARS service as so described, subject to the jurisdiction of the GPSC.

C. Conversion of Upstream Part 157 Services to Part 284

1. ANR Services Capacity

32. As indicated, supra, Atlanta receives storage service from ANR Storage from its storage fields in Michigan under Part 284 Rate Schedule FS. Several Part 157 upstream transportation contracts are used to transport the gas from Atlanta's citygate into the ANR Storage fields. First, Atlanta holds a Part 157 contract with Southern under Rate Schedule STS-1 to deliver the gas to Shadyside, Louisiana. Next, Southern contracts with ANR Pipeline under Part 157 Rate Schedules X-115 and X-116 to transport the gas to Crawford County, Michigan. Then, ANR Pipeline has a Part 157 contract with Great Lakes under Rate Schedule T-9 to transport the gas into ANR Storage's fields.

33. In its response to the Show Cause Order, ANR maintains that there is no reason for the Commission to direct that the certificates used to provide the Rate Schedule X-115 and X-116 service to Southern be converted to Part 284, given the short period of time remaining on the contracts. The primary terms of Southern's X-115 and X-116 contracts with ANR Pipeline expire on March 31, 2003. Southern has already provided notice to ANR Pipeline that it elects to terminate service as of that date, and ANR Pipeline intends to abandon that service effective the same date. Thus, as of March 31 2003, the ANR Pipeline capacity used to provide that service will become generally available under Part 284 and Atlanta will no longer retain exclusive control over the capacity. If the Georgia marketers continue to access this service, they will have to obtain the capacity from ANR Pipeline pursuant to Part 284.

34. When the ANR Pipeline X-115 and X-116 contracts expire on March 31 2003, ANR Pipeline further states that it will no longer use its Rate Schedule T-9 contract with Great Lakes to provide transportation service into the storage fields for Atlanta or the Georgia marketers. However, the Rate Schedule T-9 capacity on Great Lakes is also used by ANR Pipeline to access or link its pipeline system to its own integrated storage network, consisting of the numerous fields in Michigan, and to provide no-notice service to its customers. ANR Pipeline states that in its Order No. 636 proceeding, the Commission permitted ANR Pipeline to continue to utilize this Part 157 Great Lakes agreement for the specific purpose of providing transportation related to storage.

35. In its response to the Show Cause Order, Great Lakes states that it does not resist conversion to Part 284 of its Rate Schedule T-9 service to ANR Pipeline, but recommends against it. Great Lakes asks the Commission not to require conversion because the services provided and the rate paid under T-9 cannot be duplicated under Part 284, and once Southern's service on ANR Pipeline expires, ANR Pipeline will only be using the T-9 capacity to provide Part 284 no-notice transportation and to access its integrated storage fields. Great Lakes as well as ANR Pipeline note that the Commission expressly approved ANR's use of the Great Lakes T-9 service to provide transportation related to storage in the post Order No. 636 era.

36. Atlanta's contract with Southern under Rate Schedule STS-1 expires on March 31, 2006. However, pursuant to a March 10, 2000 settlement of Southern's comprehensive rate proceeding in Docket No. RP99-496-000, the Southern Rate Schedule STS-1 service will be converted to Part 284 service no later than October 1, 2004. Under the settlement, Atlanta also has the option of electing to convert on or before April 1, 2003 to be effective October 1, 2003, but to date, has not yet elected to convert.

37. In its response to the Show Cause Order, Southern asserts that there is no need for the Commission to issue an order requiring Atlanta to convert to Part 284 its Rate Schedule STS-1 service with Southern, because Southern's settlement specifically sets forth Atlanta's rights and obligations to convert, as well as the mechanics of the conversion process. Southern notes that the Commission has already given Southern pre-granted abandonment authority to allow conversion of Rate Schedule STS-1 to 284 FT service. Southern argues that the Commission should preserve the terms of the settlement and not upset the economic balance of interests under the settlement by requiring the conversion of the service outside the terms of the approved settlement.

38. Atlanta states that it is opposed to conversion of the remaining Part 157 capacity to Part 284 for a number of reasons, including, specifically, the loss of abandonment protection, which it considers superior to the Part 284 right of first refusal. Atlanta points out that Commission regulations, policy and precedent establish that conversion is voluntary on the part of the capacity holder, Part 157 services cannot be converted without the shipper's consent, and nor can a third party force a conversion to Part 284. Atlanta also states that Commission policy is clear that Atlanta cannot be forced to release its capacity against its will, if that is the ultimate goal of the marketers in forcing conversion to Part 284. With respect to the Commission's concerns whether the continued use of the Part 157 certificates is consistent with the original intent of the certificates, Atlanta asserts that its use of the capacity is consistent with the purposes for which it was acquired and certificated, citing the Commission's Order following the

Technical Conference where the Commission found that Atlanta's unbundling program had no adverse effect on the interstate gas market.²⁶

39. Since Southern's Part 157 Rate Schedules X-115 and X-116 contracts with ANR Pipeline are expiring on March 31, 2003, and ANR Pipeline states it will no longer utilize its Rate Schedule T-9 contract with Great Lakes to transport gas into storage for Atlanta or the marketers after March 31, 2003, it appears that after March 31, 2003, only Atlanta's Part 157 Rate Schedule STS-1 contract with Southern will remain in effect, and that, therefore, Atlanta will no longer have the ability to move gas into the upstream storage capacity on ANR Storage, or at a minimum, will no longer be utilizing the ANR Services transportation and storage capacity. Moreover, Atlanta's Part 157 Rate Schedule STS-1 transportation service on Southern will be converted to Part 284 services by October 1, 2004, at the latest, and potentially as early as October 1, 2003, pursuant to Southern's Docket No. RP99-496-000 settlement. Therefore, since the Great Lakes Rate Schedule T-9 service will no longer be used for Atlanta or the marketers after March 31, 2003, and the Southern Rate Schedule STS-1 service is already scheduled to be converted to Part 284 pursuant to a settlement, the Commission will not require in this proceeding that such services be converted to Part 284 services.

2. Transco Services

40. At the time of the Show Cause Order, Transco provided Part 157 bundled transportation/storage services to Atlanta under Rate Schedules LSS, SS-1 (two bundled Leidy storage services) and LG-A.²⁷ As indicated below, Rate Schedule LG-A has already been converted to Part 284 service under Rate Schedules LNG and LNG-R, and Transco has provided its Rate Schedule SS-1 customers the option to convert to unbundled open-access service under Rate Schedules FT and SS-1.

41. In its August 2002 response to the Show Cause Order, Transco states that it already has converted Rate Schedule LG-A to Part 284. It states that in Docket No.

²⁶93 FERC ¶ 61,288 at 61,968 (2000).

²⁷Transco also provides service to Atlanta under Rate Schedule GSS, but according to Transco, that capacity has not been used in Rate Schedules IBSS or PRS. Transco has previously indicated that Atlanta retains the Rate Schedule GSS capacity to manage daily swings on its system and to support its unbundling program in Georgia. Transco's April 28, 2000 Data Responses to Staff's March 16, 2000 "Questions for Interstate Pipelines Concerning Conversion Issues" at 2.

RP99-291-000, it filed and the Commission approved terms and conditions to convert from the Part 157 bundled service under Rate Schedule LG-A to Part 284 bundled services under Rate Schedules LNG and LNG-R.²⁸ Transco states that it is now providing Part 284 LNG storage service to certain customers under those Part 284 rate schedules subject to Commission-approved conditions that address reliability of service and operational integrity issues.

42. Transco also states that issues regarding conversion and/or unbundling of Transco's Part 157 service under Rate Schedule LSS are currently being examined in Transco's ongoing general rate case proceeding in Docket No. RP01-245-000.²⁹ Transco asserts that the conversion of Rate Schedule LSS, particularly if it includes unbundling, presents genuine issues of material fact, that have not been fully developed on the record in this case and which can be resolved only through a hearing. It argues that this record does not support the Section 5 findings that the Commission would have to make to direct conversion. Further, Transco notes that Rate Schedule LSS is included in a joint proposal by SCANA and South Carolina Pipeline Corp. in Docket No. RP01-245-000 for a conversion to Part 284, subject to conditions intended to address the adverse operational consequences that conversion (and unbundling) would entail.³⁰ As a result, Transco argues that this proceeding is not the proper forum to address the issue of conversion of Transco's Part 157 services, and that the Commission should let the litigation of SCANA's proposal in Docket No. RP01-245-000 run its course.

43. Further, Transco indicated in its response that it intended to file tariff sheets in the near future in Docket No. RP95-197-000 to unbundle its Rate Schedule SS-1 storage service (as required by prior Commission orders in Docket No. RP95-197-000), as well as to convert, if requested by the customer, its Rate Schedule SS-1 storage service to Part 284. On November 20, 2002, Transco filed tariff sheets in Docket No. RP93-84-000 offering existing Rate Schedule SS-1 customers the option to convert to open-access Part 284 storage and transportation service under Transco's existing Rate Schedule FT and under a new Rate Schedule SS-1 Open Access Storage Service. The Commission

²⁸Transcontinental Gas Pipe Line Corp., 92 FERC ¶ 61,145 (2000).

²⁹The conversion of Rate Schedule GSS to Part 284 service is also being addressed in Docket No. RP01-245-000.

³⁰Subsequent to Transco's filing of its response to the Show Cause Order, the presiding ALJ issued an initial decision in Transco's general rate case rejecting SCANA's limited conversion proposal. 101 FERC ¶ 63,022 (2002). The initial decision is currently pending before the Commission on exceptions.

accepted the Transco's tariff sheets for optional, unbundled, Part 284 SS-1 storage and transportation service effective January 1, 2003.³¹

44. Because conversion of Atlanta's Part 157 services with Transco to Part 284 either has already been effectuated (Rate Schedule LG-A), is permissible at the shipper's (Atlanta's) option (Rate Schedule SS-1), or has been fully litigated in Transco's general rate proceeding, which is currently pending Commission action (Rate Schedules LSS and GSS), the Commission will not order mandatory conversion of these Part 157 services to Part 284 in this proceeding.

D. Atlanta's Use of ANR Services, Transco, and Cove Point Capacity After March 31, 2003

45. On March 31, 2003, the limited-term certificate authority and temporary waiver of the shipper must have title policy for the reinstated Rate Schedule IBSS will expire. Once that occurs, Atlanta may not use the subject upstream pipeline capacity to provide service under Rate Schedule IBSS service, since it will no longer have the requisite authority to do so. Nor may Atlanta resume its use of such capacity to provide service under Rate Schedule PRS, for the reasons explained above.³²

46. Atlanta has neither requested an extension of its Rate Schedule IBSS authorization, nor specifically sought certificate authorization to implement Rate Schedule PRS. Instead, Atlanta has indicated that if the Commission does not permit it to reinstate Rate Schedule PRS, it will seek authorization from the GPSC to implement

³¹Transcontinental Gas Pipe Line Corp., 101 FERC ¶ 61,298 (2002). In its March 18, 2003 answer, SCANA asserts that under this option to convert, Atlanta will not have an option to convert to a Part 284 service that replicates the current Transco service, and will not be able to use Rate Schedule SS-1 on an unbundled basis, because the unbundled Part 284 service does not provide transportation between the city gate and the storage field, and Atlanta, unlike other Rate Schedule SS-1 shippers, does not hold mainline FT capacity to Zone 6. SCANA is incorrect. In its order issued November 4, 2002, the Commission specifically directed Transco to unbundle its SS-1 service and provide the same service to its existing customers, which includes Atlanta, as provided under the SS-1 rate schedule. 101 FERC ¶ 61,154 (2002).

³²Atlanta, however, may continue to use its remaining ANR Services capacity (the Rate Schedule STS-1 contract with Southern), as well as its Transco and Cove Point LNG capacity, to provide system balancing under MARS, consistent with the discussion supra.

new local sales services using its limited remaining interstate services and its own gas. It describes the services as a no-notice peaking sales service to certificated marketers for their firm requirements customers, and a sales service that may be used by the certificated marketers to serve either their firm or interruptible customers' demands. Atlanta states that all of the parties in this proceeding, except SCANA, are presently working to create the new sales services, pursuant to GPSC-approved tariffs, that will be consistent with the NGA, Commission policies, and the Georgia restructuring model.³³ While SCANA contends in its March 18, 2003 answer that Atlanta requires Commission authorization to provide the proposed sales services, and that such services would violate the Commission's prohibition against buy-sell arrangements, Atlanta states that it is confident that a sales service provided by Atlanta using its own capacity and its own gas raises no jurisdictional issues, since it holds a blanket certificate to engage in sales of gas for resale.

47. As we observed earlier, Atlanta is a Hinshaw Pipeline whose sales of gas for resale are not subject to our jurisdiction provided the gas is consumed in the state of Georgia. Atlanta also holds a blanket NGA certificate to make sales of gas for resale at negotiated rates for gas consumed in other states. Therefore, although we take no position here on the specific proposal pending before the GPSC, as a general matter, Atlanta may use its upstream interstate capacity to implement a local sales service, provided that such service does not amount to buy-sell transactions or otherwise involve Atlanta's brokering of the interstate capacity.

E. SCANA's Motion for Summary Disposition

48. In its motion for summary disposition, SCANA first requests that the Commission order Atlanta to cease all dealings with its affiliates in connection with the upstream interstate transportation and storage assets. SCANA states that on May 1, 2001, Atlanta entered into a "Bailment Agreement" with its corporate affiliate, Sequent Energy Marketing, LLC (which is not a certificated marketer on Atlanta's system), under which Atlanta transferred control over all of the upstream resources to Sequent, Sequent agreed to pay Atlanta a flat \$2 million fee per year for the service, and Sequent would retain any trading profits from its use of the upstream resources. SCANA asserts that although the Bailment agreement was rescinded as of the date of its inception by the GPSC, under a subsequent letter agreement dated March 20, 2002, Sequent agreed to continue to

³³In its March 18, 2003 answer, SCANA asserts that, on March 7, 2003, Atlanta filed new tariff sheets with the GPSC in Docket No. 14311-U to implement local sales services.

provide to Atlanta certain contracting functions, operational functions, and off-system sales functions in connection with the upstream resources.

49. SCANA argues that Atlanta has not only managed the upstream resources without authorization, as the Commission has already determined, but it has compounded that violation by turning over at least some of that management to an unregulated affiliate, thereby seeking to escape GPSC regulation as well. SCANA argues that Atlanta has acted through an unregulated affiliate – without FERC authorization – in administering, utilizing, and exploiting the upstream resources. SCANA asserts that Sequent profits from this management of the upstream resources and fails to compensate the certificated marketers for the use of the upstream resources for which they pay in two respects.

50. First, SCANA alleges that Sequent uses the storage capacity paid for by the certificated marketers to park "Arbitrage Gas" (defined as "gas which has been purchased and stored for the purpose of Atlanta's asset manager taking advantage of arbitrage opportunities."). Second, SCANA claims that Atlanta purchased bundled peak-day supply and transportation from Sequent to meet winter peak demand, and that the marketers were charged \$10 million of the reservation charges under the Sequent contract for the 2001-2002 winter season. SCANA argues that Sequent does not appear to have FERC authorization to sell this gas to the certificated marketers under Order No. 547,³⁴ since interstate pipelines (which SCANA maintains Atlanta is acting like) and marketing affiliates of such interstate pipelines are not eligible for blanket sales authorizations.

51. In its response to SCANA's motion for summary disposition, Atlanta argues that Sequent's only connection to the remaining interstate assets is in Sequent's role as Atlanta's asset manager. Atlanta argues that, contrary to SCANA's claims, the Part 157 assets are not released to Sequent. Atlanta also asserts that SCANA's motion raises issues that are beyond the scope of this proceeding.

52. The Commission denies SCANA's request that we require Atlanta to cease all dealings with Sequent with respect to the upstream interstate capacity. According to Atlanta, Sequent is merely Atlanta's agent, and on that basis, may only perform such services as the Commission has found herein that Atlanta may provide. Accordingly, to the extent that Sequent was managing the Rate Schedule PRS service for Atlanta, it, like Atlanta, had to cease and desist any such services effective July 18, 2002, pursuant to the directives of the Show Cause Order. To the extent that Sequent manages the MARS

³⁴Regulations Governing Blanket Marketer Sales Certificates, 57 Fed. Reg. 57,952 (Dec. 8, 1992), [1991-1996 Preambles] FERC Stats. & Regs. ¶ 30,957 (1992).

program for Atlanta, that is within the jurisdiction of the GPSC, and is no longer subject to the cease and desist directive of the July 18, 2002 order.

53. Second, SCANA requests that the Commission direct Transco to offer Atlanta a right to convert its Part 157 services to Part 284 services on what it calls a "limited" basis. SCANA states that the "limited" Part 284 service would have the following aspects: (1) the right to release capacity only at current delivery points (city gates); (2) the release by shippers of their Transco capacity to replacement shippers such as the certificated marketers, including SCANA; and (3) a right of first refusal upon contract expiration in lieu of abandonment protection. Under this proposal SCANA points out that while the service would not have receipt and delivery point flexibility, the Part 157 rates would carry forward after the conversion.

54. The Commission rejects SCANA's request that the Commission order Transco to offer to convert Atlanta's Transco Part 157 contracts to Part 284, upon request, since, as discussed above, the ALJ's rejection of this very same proposal for limited conversion is currently pending before the Commission in Docket No. RP01-245-000.³⁵

The Commission orders:

(A) The cease and desist directive issued by the July 18, 2002 Show Cause Order is modified to cover only the Rate Schedule PRS service, and not the MARS program.

(B) The proceeding in Docket No. RP98-206-008 is terminated.

(C) SCANA's motions are denied.

³⁵In its March 18, 2003 answer, SCANA argues that the fact that its proposal for the conversion of Transco's Part 157 services is being addressed in another proceeding (Docket No. RP01-245-000) does not preclude the Commission from considering its conversion proposal in this case. Accordingly, it requests that the Commission take official notice of the evidence on this issue in Docket No. RP01-245-000 and resolve the issue here. We agree that we could address issues raised by its proposal here, but decline to do so as that issue has been fully litigated in Docket No. RP01-245-000.

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(D) The motion to intervene out of time of the Georgia Public Service Commission is granted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.