SUMMARY: This action corrects an error in the geographic coordinates of a Final Rule that was published in the **Federal Register** on April 20, 1998 (63 FR 19393), Airspace Docket No. 98–AWP–2. The final rule modified the Class E airspace area at Porterville, CA.

EFFECTIVE DATE: 0901 UTC August 13, 1998.

FOR FURTHER INFORMATION CONTACT:

Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 98–10303, Airspace Docket No. 98–AWP–2, published on April 20, 1998 (63 FR 19393), revised the geographic coordinates of the Class E airspace area at Porterville, CA. A typographical error was discovered in the geographic coordinates for the Porterville, CA, Class E airspace area. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates for the Class E airspace area at Porterville, CA, as published in the **Federal Register** on April 20, 1998 (63 FR 19393), (**Federal Register** Document 98–10303), are corrected as follows:

§ 71.1 [Corrected]

AWP CA 35 Porterville, CA [Corrected]

On page 19394, column 2, in line 9 of the Porterville Municipal Airport, CA, airspace area, correct ''lat. 35°47′30″W'' to read ''lat. 35°47′30″N''.

Issued in Los Angeles, California, on May 19, 1998.

Sherry Avery,

Assistant Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–14541 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket Nos. RM91–11–007 and RM87–34–073]

Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued May 28, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on Rehearing.

SUMMARY: This order denies requests for rehearing of Order No. 636–C published on March 6, 1997 (62 FR 10204). The Commission issued Order No. 636–C to resolve six issues remanded by the decision of the United States Court of Appeals for the District of Columbia Circuit in *United Distribution Cos.* v. *FERC*, 88 F. 3d 1105 (D.C.Cir. 1996), *cert. denied*, 117 S.Ct. 1723 (1997), concerning the Commission's rule restructuring services in the natural gas industry.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE, Room 2A, Washington, DC 20426.

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Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

On February 27, 1997, the Commission issued Order No. 636–C,[1] to comply with the Court's decision in *United Distribution Companies* v. *FERC* (*UDC*).[2] Timely requests for rehearing of Order No. 636–C were filed by thirteen parties.[3] The requests for rehearing are denied, and clarification is granted, as discussed below.

[1] 78 FERC ¶ 61,186 (1997).

[2] 88 F.3d 1105 (D.C. Cir. 1996), *cert. denied*, 117 S.Ct. 1723 (1997).

[3] These parties are American Public Gas Association and Decatur Utilities, City of Decatur Alabama, and Huntsville Utilities, City of Huntsville, Alabama (APGA); Coastal Companies (ANR Pipeline Co., ANR Storage Co., Colorado Interstate Gas Company and Wyoming Interstate Ltd.); East Tennessee Group; Interstate Natural Gas Association of America (INGAA); Missouri Public Service Commission (MoPSC); National Association of Gas Consumers (NAGC); National Association of State Utility Consumer Advocates and the Pennsylvania Office of Consumer Advocate; National Fuel Gas Supply Corporation; Noram Gas Transmission Company and Mississippi River Transmission Company; Pacific Gas Transmission Company; Tennessee Valley Municipal Gas Association; Texas Eastern Transmission Corporation, Panhandle Eastern Pipeline Company, Trunkline Gas Company, and Algonquin Gas Transmission Company (PanEnergy Companies); and Williams Interstate Natural Gas Company.

I. Background

In Order No. 636,[4] the Commission directed pipelines to restructure their services in order to improve the competitive structure of the natural gas industry. Specifically, the Commission required pipelines to unbundle the transportation from the sale of gas, to use a straight fixed variable rate design in developing their transportation rates, and to permit firm shippers to resell their capacity rights. In addition, the Commission took action to promote the growth of market centers, and adopted policies to govern the pipeline's recovery of the transition costs that would arise from the restructuring. In *UDC*, the Court affirmed the major elements of the Commission's restructuring rule, but remanded six issues to the Commission for further consideration.[5] In Order No. 636–C, the Commission addressed the issues remanded by the Court.

The requests for rehearing of Order No. 636–C raise issues concerning the term matching cap for the right of first refusal, the eligibility date for no-notice service, the appropriate rates for small customers of downstream pipelines who became direct customers of the upstream pipeline as a result of restructuring, and GSR costs. The only parties who sought rehearing of Order No. 636–C's holding that pipelines need not absorb a share of the GSR costs have withdrawn their rehearing requests. Therefore, that issue is now resolved. The requests for rehearing on the other three issues are discussed below.

II. Right of First Refusal

A. Background

Order No. 636 authorized pre-granted abandonment of long-term firm transportation contracts, subject to a right of first refusal for the existing shipper. Under the right of first refusal, the existing shipper can retain service by matching the rate and the term of service in a competing bid. The rate is capped by the pipeline's maximum tariff rate, and in Order No. 636, the Commission capped the term of service at twenty years. In *UDC*, the Court approved the concept of a right of first refusal with a term-matching cap as ''a rational means of emulating a competitive market for allocating firm transportation capacity,'' [6] but found that the Commission's explanation for selecting a twenty-year cap, as opposed to some other term, inadequate. The Court concluded that the Commission had failed to explain why the twenty-year cap ''adequately protects against pipelines' preexisting market power, which they enjoy by virtue of natural monopoly conditions;'' [7] and why the twenty-year cap will ''prevent bidders on capacity constrained pipelines from using long contract duration as a price surrogate to bid beyond the maximum approved rate to the detriment of captive customers.'' [8] The Court accordingly remanded this issue for further consideration.

On remand, in Order No. 636–C, the Commission reexamined the record of the Order No. 636 proceedings, as well as data concerning contract terms that had become available since restructuring. The Commission found that this information suggested that since the issuance of Order No. 636, the industry trend appeared to be contract terms of much less than twenty years. The Commission noted that many of the commenters in the Order No. 636 rulemaking had proposed a cap of five years, and found that five years was approximately the median length of long term contracts entered into since January 1, 1995. Therefore, in Order No. 636–C, the Commission established the contract matching term cap at five years, and directed pipelines to amend their tariffs accordingly, regardless of whether the issue was preserved in the individual restructuring proceedings. The Commission thought that the five–year cap would avoid customers' being locked into long-term arrangements with pipelines that they do not really want, and therefore was responsive to the Court's concerns, and that the five-year cap also has the advantage of being consistent with the industry trend of short-term contracts. The Commission stated that it would consider on a case-by-case basis whether any relief is necessary in connection with contracts that had been renewed since Order No. 636, and that it would entertain requests to shorten a contract term if a customer renewed a contract under the right-of-first-refusal process since Order No. 636, and can show that it agreed to a longer term renewal contract than it otherwise would have because of the twenty-year cap.

On rehearing, the pipelines object to the five-year cap. INGAA, National Fuel, Noram and MRT, PanEnergy, PGT, and Williams argue that the five year cap interferes with the market forces that Order No. 636 sought to encourage. They assert that because of the five year cap, it is unlikely that any existing shipper will renew a contract for a term longer than five years. Therefore, they argue, allocation will be determined not by the market, but by regulatory controls and by the status of a party as an existing customer or a new customer. They further assert that existing customers will be shielded from competition and given unwarranted control over pipeline capacity rights. The pipelines also argue that the five year cap creates an imbalance in the risks assumed by pipelines and shippers, and is too short to meet the legitimate needs of the pipeline industry.

In addition, the pipelines argue that the five year cap is not supported by substantial evidence, and that the Commission erred in establishing the cap based on recent data showing that the median length of contracts is five years. These parties argue that the use of a median, based on less than two years experience since January 1995, to determine the maximum contract length is not appropriate. They state that the long term average term of previously effective long term contracts is over 20 years, and the average term of all such contracts is over ten years.

Several pipelines also argue that the order is procedurally infirm because the Commission did not provide an adequate opportunity for interested partes to comment and develop a complete record before adopting this rule, and because the Commission failed to evaluate the alternatives to a five year cap. Several of these parties also argue that the five year renewal term conflicts with the Commission's decision in Order No. 888–A, where the Commission adopted a ROFR provision without a maximum renewal term. The pipelines also argue that Order No. 636–C is not responsive to the Court's remand, and that the twenty-year cap withstands the inquiries posited by the Court. They argue that the Commission should return to the rationale that it originally expressed in Order No. 636, *i.e.*, that under the ROFR, capacity rights should go to the party that values them most.

[4] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol [Regs. Preambles Jan. 1991–June 1996] FERC Stats. & Regs. ¶ 30,939 (1992), *order on reh'g*, Order No. 636–A, [Regs. Preambles Jan. 1991–June 1992] FERC Stats. & Regs ¶ 30,950 (1992), *order on reh'g*, Order No. 636–B, 61 FERC ¶ 61,272 (1992), *reh'g denied*, 62 FERC ¶ 61,007 (1993).

[5] Specifically, the Court remanded to the Commission issues related to eligibility for no-notice transportation, the selection of a twenty-year cap in the right of first refusal process, SFV rate mitigation, eligibility of small customers on downstream pipelines for a small customer rate, the requirement that pipelines allocate 10 percent of GSR costs to interruptible customers, and the decision to exempt pipelines from sharing in GSR costs.

[6] UDC, 88 F.3d at 1140.

[7] Id.

[8] Id.

B. Discussion

The Commission has decided not to modify the five-year cap in this proceeding. The record in the Order No. 636 proceeding consists of data and arguments presented to the Commission in 1991 and 1992, before restructuring had been implemented, and some limited information regarding contract terms that became available after restructuring. Based on that record, the five-year cap is responsive to the Court's concern that a twenty year matching cap may not adequately protect consumers against the exercise of the pipelines' monopoly power. As the Court pointed out, most of the commenters in this proceeding advocated a term of less than twenty years, such as five years.[9] Further, the record in this case also shows that the trend in the industry in the months after restructuring was toward shorter contracts, and the five year cap is consistent with this industry trend. As the Commission explained in Order No. 636–C, the selection of a particular matching cap involves weighing several factors, and, as the Court recognized, is necessarily somewhat arbitrary. The record in this proceeding supports the finding that the five year cap reasonably protects captive customers from having to match competing bids that offer longer terms than the bidder would have to bid in a competitive market without the pipeline's natural monopoly. Therefore, the requests for rehearing are denied.

Nevertheless, the pipelines have raised legitimate concerns about the practical effects of the five year term matching cap on the restructured market as it continues to evolve. Information subsequent to the period covered in this record suggests that the five year cap results in a bias toward short-term contracts, with possible adverse economic consequences for both pipelines and captive customers. The Commission is currently analyzing these and other issues related to both short term and long term gas markets as part of a comprehensive review of its gas policies. This ongoing review will develop a record containing information on the pipeline industry in the post-restructured environment, and will provide an opportunity for interested parties to submit information and comments on future regulatory policies, including whether the term matching cap in the right of first refusal should be lengthened or removed altogether. In contrast, the record in this proceeding contains no information concerning current conditions in the natural gas industry. Therefore, any change that may be made in the Commission's current policy concerning the right of first refusal would be better addressed in the context of a new gas policy initiative, where all long-term issues can be considered and a new record can be developed concerning current conditions in the natural gas industry.

Several parties seek clarification of the mechanism for providing case-by-case relief to shippers who had already renewed their contracts pursuant to the right of first refusal prior to the issuance of Order No. 636–C. Coastal Companies asks the Commission to clarify that the Commission will not shorten the term of an already renewed contract if the renewal took place pursuant to a pipeline's tariff procedures that were established in an order that is non-appealable.[10] This is particularly important, Coastal argues, where, as in the case of CIG, the twenty year cap is part of a comprehensive settlement. If the Commission denies clarification and rehearing, Coastal asks the Commission to clarify that in addressing a shipper's request to shorten the term of a contract, the Commission will consider all pertinent factors, such as whether business decisions were made in reliance on that provision. Similarly, Noram argues that the Commission should not disturb matching caps established by individual pipelines. On the other hand, NAGC asserts that the Commission properly reduced the cap to five years, but erred in not requiring that all existing contracts under Order No. 636 for 20 years could be modified at the request of the adversely affected customers without the necessity of extensive proceedings before the Commission.[11]

The problem of shippers exercising the right of first refusal during the time period between the issuance of Order No. 636 and Order No. 636–C has not been significant. The issue has been raised in only three proceedings.[12] The Commission clarifies that any case specific relief from contract terms will be dependent on a factual finding that the party entered into a longer term contract than it otherwise would have because of the 20 year cap, consistent with the Commission's approach in *Horsehead Resource Development Co., Inc.* v. *Transcontinental Gas Pipeline Co.*,[13] and *Williams Natural Gas Co.*[14] The Commission further clarifies that in determining whether a contract term should be reduced under this standard, the Commission will consider all pertinent factors, including whether the term was part of a settlement package.

III. Eligibility Date for No-Notice Service

The Commission held in Order No. 636 that pipelines were required to provide no-notice service only to those customers that were bundled sales customers on May 18, 1992, the effective date of Order No. 636. In *UDC*, the Court held that the Commission had not adequately explained why former bundled firm sales customers who had converted to transportation before issuance of Order No. 636 should not also have a right to receive no-notice service. Accordingly, the Court remanded the issue to the Commission for a further explanation of which customers should be eligible for no-notice service. In Order No. 636–C, the Commission modified its no-notice policy on a prospective basis and held that if a pipeline offers no-notice service, it must offer that service on a non-discriminatory basis to all customers that request it. The Commission explained that at the time of Order No. 636, there was considerable uncertainty as to whether pipelines would be able to perform no-notice service on a widespread basis, but that post-restructuring experience had not realized these concerns.

No party seeks rehearing of the Commission's requirement that pipelines offering no-notice service must do so on a nondiscriminatory basis. Only NAGC requests rehearing, and only on the issue of retroactivity.

[9] Id. at 1141.

[10] Coastal states that the Commission took a similar approach in Order No. 528, 53 FERC ¶ 61,163 at 61,594 (1990).

[11] In addition, APGA and Cities ask the Commission to clarify that those pipeline customers whose long term firm transportation contracts expire before the end of the 180-day period for complying with Order No. 636–C will not be required to match bids of longer than five years to retain their capacity during the right-of-first refusal process. Alabama-Tennessee Natural Gas Co. (now Midcoast Interstate Transmission) filed an answer to APGA and Cities. Issues concerning the exercise of the right of first refusal on Alabama-Tennessee by these parties were addressed in several complaint proceedings, and need not be addressed here. *See, e.g.*, Decatur Utilities v. Midcoast Interstate Transmission, 81 FERC ¶ 61,034 (1997).

[12] *Horsehead Resource Development Co., Inc.* v. *Transcontinental Gas Pipeline Co.*, 81 FERC ¶ 61,293 (1997); Williams Natural Gas Co., 81 FERC ¶ 61,350 (1997); and Utilicorp United Inc., Docket No. RP98–189–000 (filed April 17, 1998).

[13] 81 FERC ¶ 61,293 (1997). In *Horsehead Resources*, the Commission found that the specific facts in that case supported a finding that the shipper agreed to a longer term than it otherwise would have because of the twenty year cap requirement, and therefore, granted the requested relief subject to the outcome of the requests for rehearing of Order No. 636–C. The Commission then stated that it would be preferable to wait until it had acted on the requests for rehearing of Order No. 636–C to reduce the term of the contract. That term can now be reduced.

[14] 81 FERC ¶ 61,350 (1997).

NAGC asserts that the Commission erred in denying refunds to customers who, in the past, were not eligible for no-notice service. NAGC argues that, although the Commission's authority under section 5 of the NGA is only prospective, the courts have held that refunds effective at the time of the original error by the Commission are permissible in a case like this where, NAGC asserts, the Commission's order never became final and has been overturned by a reviewing court.[15] NAGC asks the Commission to revise Order No. 636–C insofar as it limits the effectiveness of this ruling to prospective periods, and order refunds to put petitioners in the same position they would have occupied had the alleged error not been made.

In Order No. 636–C, the Commission made a prospective change in its policy on this issue based on then current circumstances in the gas industry showing that early concerns about the pipelines' ability to provide no-notice service to a broader group of customers were unfounded. Order No. 636–C did not find, as NAGC suggests, that the original holding in Order No. 636 was in error. Moreover, the Commission explained in Order No. 636–C that it cannot retroactively change Order No. 636's limitation on the pipeline's obligation to provide no-notice service because it is impossible to change past service. Because no notice service, as a premium service, is generally more expensive than the alternatives, issues concerning refunds to customers who did not receive no notice service before Order No. 636–C should not arise in most instances.[16]

In any event, even if the Commission had erred in Order No. 636 by limiting no notice service, refunds would not be an appropriate remedy in these circumstances. Refunds would be difficult to determine because if the class of no notice customers had been larger, both the no notice and non-no notice rates would likely have been different, and it would be impossible to determine what service choices other customers would have made if the rates had been different. Further, unless the Commission were to order surcharges to counterbalance the refunds, the pipelines would suffer losses simply for complying with the Commission's order. It is for this reason that the Commission does not order refunds for rate design changes if the pipeline made a good faith effort to implement the Commission's rate design goals.[17] Nothing in the cases cited by NAGC suggests that refunds must be ordered for a change in rate design directed by the Commission in a rulemaking proceeding where pipelines complied with the Commission's directive pending judicial review.[18] No-notice service is now available on a non-discriminatory basis to all shippers on any pipeline that offers no-notice service. Refunds are a discretionary remedy, and the Commission concludes that refunds are not appropriate in these circumstances. The request for rehearing is therefore denied.

NAGC also asks the Commission to clarify Order No. 636–C by expressly eliminating the language in Order No. 636 that limits the eligibility to no-notice service. The Commission has clearly removed the restriction on no-notice service and has held that no-notice service must now be offered on a nondiscriminatory basis. Since there is no regulation text at issue, nothing further is needed to effect this change.

IV. Small Customer Rates for Customers of Downstream Pipelines

In Order No. 636, the Commission required pipelines to offer a one-part small customer transportation rate to their customers that were eligible for a small customer sales rate on the effective date of restructuring. On rehearing of Order No. 636–A, the issue arose as to whether the Commission should require upstream pipelines to offer their small customer rate to the small customers of downstream pipelines who became direct customers of the upstream pipelines as a result of unbundling. In Order No. 636–B, the Commission held that this issue should be considered on a case-by-case basis in the individual pipeline restructuring proceedings. In *UDC,* the Court found that the Commission had made an arbitrary distinction between former indirect small customers of an upstream pipeline and small customers who were direct customers of the upstream pipelines, and remanded this issue for further explanation.

In Order No. 636–C, the Commission again concluded that downstream customer eligibility for a one-part rate should be determined on a pipeline-by-pipeline basis, rather than in a generic rulemaking. The Commission explained that the determination of the small customer class size and eligibility criteria requires consideration of the individual circumstances present on each pipeline system because changes in the eligibility requirements for the small customer rate upset the prior cost allocation among the classes of customers. Order No. 636–C discussed the circumstances on Tennessee Pipeline Co. (Tennessee) to illustrate some of the factors that should be taken into account with respect to determining small customer class and eligibility. In Tennessee's restructuring proceeding,[19] the Commission held that the eligibility level for Tennessee's former downstream customers should be 5,300 Dth/day or less,[20] while the eligibility level for its directly connected small customers would remain at Tennessee's pre-existing eligibility level of 10,000 Dth/day or less.

The only parties seeking rehearing of Order No. 636–C on this issue are the

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[15] *NAGC cites U.S. Improvement Co.* v. *Callery Properties,* 382 U.S. 223, 229 (1985); Consumer Counsel, *State of Ohio* v. *FERC,* 826 F.2d 1136, 1138–39 (D.C.Cir. 1988); *Mid-Louisiana Gas Co.* v. *FERC,* 780 F.2d 1238, 1247 (5th Cir. 1986); and *Tennessee Valley Municipal Gas Ass'n.* v. *FPC,* 470 F.2d 446, 452 (D.C.Cir. 1972).

[16] The Commission is aware of only one pipeline where the issue of refunds arose. Kansas Cities, one of the municipal customers included in NAGC, filed a complaint against Williams Natural Gas Company alleging that Williams was engaging in unlawful discrimination by giving converting sales customers preferential access to no-notice service. The Commission denied Kansas Cities' complaint in large part because it was a collateral attack on Order No. 636.65 FERC ¶ 61,221 (1993), *reh'g,* 66 FERC ¶ 61,315 (1994). Kansas Cities appealed the Commission's denial of its complaint in *Kansas Municipals* v. *FERC* (D.C.Cir. No. 93–1656), and argued to the Court that it should receive refunds. On May 12, 1998, the Court found that the petition was not ripe for review and remanded the case to the Commission for further consideration in light of the decision in the instant proceeding. The Commission will address the application of its ruling in this proceeding to Kansas Municipals in the remanded proceeding in Williams Natural Gas Co., RS92–12–008, *et al.*

Also, in Williams Natural Gas Co., 80 FERC ¶ 61,158 (1997), Kansas Cities argued that it had been harmed by its ineligibility to receive no notice service because, Kansas Cities alleged, it was required to pay more on an annual basis than it would have paid if it had received no notice service. The Commission denied the request for refunds, and Kansas Cities did not appeal the Commission's decision.

[17] Williams Natural Gas Co., 80 FERC ¶ 61,158 at 61,692 (1997); Opinion No. 369–A, Panhandle Eastern Pipe Line Co., 59 FERC ¶ 61,244 at pp. 61,845, 61,849 (1990; ANR Pipeline Co., 50 FERC 61,091 at p. 61,257 (1990), reh'g denied, 51 FERC 61,038 at p. 61,075; Mississippi River Transmission Corp., 50 FERC ¶ 61,092, reh'g denied, 51 FERC ¶ 61,111 at p. 61,259 (1990); Trunkline Gas Co. 50 FERC ¶ 61,085 (1990).

[18] Further, NAGC's characterization that in *UDC,* the Court found that the restriction in Order No. 636–B on no-notice service was unlawfully discriminatory, and that in Order No. 636–C, the Commission agreed with the Court that its action in promulgating that restriction was unlawful, is inaccurate. The Court remanded the issue to the Commission for further consideration, and in Order No. 636–C, the Commission removed the restriction based on experience with no-notice service.

[19] Tennessee Pipeline Co., 65 FERC ¶ 61,224 (1993), *reh'g. denied,* 66 FERC ¶ 61,317 (1994)(*Tennessee*), *remanded, TVMGA* v. *FERC,* (D.C. Cir. April 21, 1998).

[20] The highest criteria used in the tariffs of Tennessee's downstream pipelines was 5,300 Dth/day.

East Tennessee Group (East Tennessee) and the Tennessee Valley Municipal Gas Authority (TVMGA), downstream small customers of Tennessee. This issue therefore has now been narrowed solely to the treatment of downstream customers on Tennessee. On rehearing of Order No. 636–C, East Tennessee and TVMGA argue that the Commission failed to remove the arbitrary distinction between the two classes of small customers or to support the distinction with substantial evidence. Further, TVMGA argues that the Commission erred in Order No. 636–C by using the *Tennessee* case as an example because the Commission misapplied its own review standard in *Tennessee*. TVMGA asserts that while Order No. 636–C states that the Commission should review the economic impact and cost shift of granting small customer rate treatment to newly qualifying small customers, in *Tennessee*, the Commission considered only their contract demand entitlement as a percentage of the total system. TVMGA alleges that this caused the Commission to substantially overestimate the economic impact of allowing the indirect downstream customers to qualify for small customer status on Tennessee based on Tennessee's 10,000 Dth/day or less standard. TVMGA asserts that if the Commission had actually examined the economic impact of any cost shift of according equal treatment to all small customers in *Tennessee*, as it states in Order No. 636–C that it will do, it would have concluded that any effect would be de minimis.

East Tennessee and TVMGA also appealed the Commission's decision on this issue in the *Tennessee* restructuring case to the D.C. Circuit.[21] In their appeal, East Tennessee and TVMGA made arguments very similar to their arguments on rehearing in this proceeding. On April 21, 1998, the Court issued its decision in *TVMGA* v. *FERC*,[22] and remanded the portion of the Commission's order in *Tennessee* dealing with the small customer rate to the Commission. The Court recognized that the issues before it on appeal of the *Tennessee* decision were essentially the same as those before the Commission on rehearing of Order No. 636–C, and therefore directed the Commission to consider this aspect of the case in light of the order on rehearing of Order No. 636–C.

The Commission continues to believe that the small customer issue should be decided on a case–by–case basis for the reasons explained in Order No. 636–C. The Commission can better address concerns regarding eligibility and discrimination in the context of a proceeding that takes into account the specific circumstances of the pipeline. The requests for rehearing on this issue indicate that the parties' general concerns cannot be adequately addressed without reference to the specifics of the *Tennessee* proceeding. For example, a key issue raised in the requests for rehearing involves the cost shifts that would result from allowing indirect customers to qualify for Tennessee's 10,000 Dth/day limit. That issue is more appropriately addressed in the *Tennessee* proceeding than in this generic rulemaking. Therefore, the Commission upholds the general proposition that issues related to small customer rates should be decided in specific rate proceedings. The Commission will address the issues raised in the requests for rehearing concerning downstream small customer on Tennessee, including the allegations of discrimination, in its order on remand in the *Tennessee* proceeding.

V. Recovery of GSR Costs

In *UDC*, the Court did not question the basic principle that pipelines should be able to recover their GSR costs, but remanded two aspects of the Commission's recovery policy for further consideration. First, the Court found that the Commission had failed to explain adequately its decision to allocate 10 percent of the GSR costs to the pipeline's interruptible transportation customers. Second, the Court held that the Commission had not adequately explained it decision to exempt pipelines altogether from the absorption of any GSR costs.

In Order No. 636–C, the Commission provided a further explanation of its conclusion that pipelines should be able to recover 100 percent of prudently incurred GSR costs, and reaffirmed that conclusion. MoPSC and NASUCA/POCA sought rehearing of this ruling, but subsequently withdrew their requests for rehearing. This issue is therefore resolved.

With regard to the issue of the recovery of GSR costs from IT customers, in Order No. 636–C, the Commission determined not to require that the percentage of GSR costs allocated to IT customers be 10 percent for all pipelines. Instead, the Commission required each individual pipeline, whose GSR proceeding had not been resolved, to propose the percentage of the GSR costs that its interruptible customers should bear in light of the circumstances on its system. Therefore, the Commission directed pipelines that had filed to recover GSR costs before the date Order No. 636–C was issued, and whose GSR recovery proceedings had not been resolved by settlement or final and non-appealable Commission order, to file proposals for allocation of costs to IT customers in their respective proceedings within 120 days of the issuance of Order No. 636–C.

No party seeks rehearing of the basic policy that determination of the appropriate allocation of GSR costs to IT customers should be done on a case-by-case basis, but the Coastal Companies seek clarification of the order. The Coastal Companies request the Commission to clarify that where the provisions in a pipeline's tariff that set forth the allocation of GSR costs to interruptible transportation were approved by a final, non-appealable Commission order, any change from the existing ten percent allocation will be applied prospectively from the date of an order approving a subsequent tariff sheet that incorporates the new allocation percentage. The Coastal Companies also ask the Commission to clarify that the calculations[23] in Order No. 636–C were merely illustrative, and that the Commission will consider all pertinent factors in determining the appropriate level of GSR costs to allocate to IT. These clarifications are consistent with the intent of Order No. 636–C and are therefore granted.

The Commission Orders

The requests for rehearing are denied, and the requests for clarification are granted and denied, as set forth in this order.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14676 Filed 6–2–98; 8:45 am]

BILLING CODE 6717–01–P

[21] *Tennessee Valley Municipal Gas Ass'n* v. *FERC*, (D.C. Cir. No. 93–1566).

[22] *Id*.

[23] In Order No. 636–C, the Commission provides examples to comparing the percentage of interruptible throughput to overall throughput for several pipelines. Order No. 636–C, slip op. at 76n.170.