FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426
107 FERC ¶ 61,097
April 30, 2004

In Reply Refer To:
Tennessee Gas Pipeline Company
Docket No. RP04-233-000

Tennessee Gas Pipeline Company
9 E Greenway Plaza
Houston, TX 77046

Attention: Dawn A. McGuire, Attorney

Reference: Capacity Release Tariff Provision

Dear Ms. McGuire:

1. On March 29, 2004, Tennessee Gas Pipeline Company (Tennessee) filed a revised tariff sheet[1] to set forth the conditions under which it may terminate a replacement shipper's agreement after the termination of the releasing shipper's agreement. The tariff sheet is accepted effective May 1, 2004, subject to modification, as discussed below.

2. Tennessee proposes to modify section 11 of its General Terms and Conditions, Releases or Assignments of Firm Transportation Services, to incorporate the following tariff language:

> 11.11(p) Upon thirty days written notice to Replacement Shipper that Releasing Shipper's contract will be terminated, Transporter may elect to terminate Replacement Shipper's Agreement if (1) the rate stated in the effective Replacement Shipper's Agreement is less than the maximum Reservation Rate and Commodity Rate for the contracted for Service and (2) the Replacement Shipper has not, prior to the expiration of the notice period, executed an amendment to such Replacement Shipper's Agreement, agreeing to pay, beginning the first day after the end of the notice period and for the remainder of the term of the Replacement Shipper's Agreement, the lesser of

[1] First Revised Sheet No. 339C to FERC Gas Tariff, Fifth Revised Volume No. 1.

> (a) the Releasing Shipper's contract rate (b) the maximum tariff rate for the service, or (c) a mutually agreed upon rate.

3. Tennessee states that the proposed tariff language is in accordance with the Commission's policy set forth in Tenaska Marketing Ventures v. Northern Border Pipeline Company[2] and Northern Border Pipeline Company.[3] Tennessee states that the new section will also clarify a replacement shipper's right to retain the capacity obtained through a capacity release transaction in the event of the termination of the releasing shipper's contract.

4. Public notice of the filing was issued on March 30, 2004. Interventions and protests were due as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2004)), all timely filed motions to intervene and any motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. A limited protest was filed by Duke Energy Trading and Marketing, L.L.C. and Duke Energy Marketing America, L.L.C. (collectively, Duke Energy).

5. Duke Energy states that Commission precedent clearly requires that in capacity release situations, the pipeline must first terminate the releasing shipper's contract before it can seek to terminate the replacement shipper's contract.[4] Duke Energy argues that Tennessee's filing would allow Tennessee to require a replacement shipper to renegotiate its contract while the releasing shipper's contract is still in effect. Accordingly, Duke Energy requests that the Commission require Tennessee to revise its proposed tariff language to comport with this precedent.

6. The Commission agrees with Duke Energy and directs Tennessee to file a revised tariff sheet, within 15 days of the issuance of this order, to revise its tariff language to

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[2] 99 FERC ¶ 61,182 (2002).

[3] 100 FERC ¶ 61,125 (2002).

[4] See CenterPoint Energy Gas Transmission Co., 102 FERC ¶ 61,223 at P 6-7 (2003), citing, Tenaska Marketing Ventures v. Northern Border Pipeline Co., 99 FERC ¶ 61,182 at 61,709 (2002).

comport with Commission policy that the releasing shipper's contract must be terminated before it seeks to terminate the replacement shipper's contract.

By direction of the Commission.

Linda Mitry,
Acting Secretary.

cc: All Parties