126 FERC ¶ 61,171
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Acting Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Tennessee Gas Pipeline Company Docket No. RP09-282-000

ORDER ACCEPTING REVISED TARIFF SHEETS SUBJECT TO CONDITIONS AND FURTHER REVIEW

(Issued February 25, 2009)

1. On January 26, 2009, Tennessee Gas Pipeline Company (Tennessee) filed revised tariff sheets[1] proposing modifications to its tariff to comply with the capacity release requirements promulgated by Order Nos. 712 and 712-A.[2] Tennessee also proposed certain tariff modifications pursuant to section 4 of the Natural Gas Act (NGA) unrelated to its compliance with Order Nos. 712 and 712-A. The tariff sheets listed in the Appendix to this order are accepted, subject to the conditions below and further review, effective February 26, 2009, as requested.

**Summary of the Proposal**

2. In Order Nos. 712 and 712-A, the Commission removed the maximum rate ceiling on capacity releases of one year or less that take effect within one year after the pipeline is notified of the release. The Commission also modified its regulations in order to facilitate asset management arrangements (AMAs) by relaxing the Commission's prohibition on tying and on its bidding requirements for certain capacity releases. The Commission further clarified that its prohibition on tying does not apply to conditions associated with gas inventory held in storage for releases of firm storage capacity. Finally, the Commission waived its prohibition on tying and bidding requirements for capacity releases made as part of a state-approved retail access program. Tennessee proposes several changes to the capacity release provisions in Article III of the General

---

[1] The tariff sheets are listed in the Appendix to this order.

[2] *Promotion of a More Efficient Capacity Release Market*, Order No. 712, 73 Fed. Reg. 37,058 (June 30, 2008), FERC Stats. & Regs. ¶ 31,271 (2008), *order on reh'g*, Order No. 712-A, 73 Fed. Reg. 72,692 (December 1, 2008), FERC Stats. & Regs. ¶ 31,284 (2008).

Terms & Conditions (GT&C) of its tariff to reflect the various changes in the capacity release regulations made by Order Nos. 712 and 712-A.

3. Tennessee also proposes several other modifications to Article III of its GT&C to clarify its capacity release provisions by: (1) describing releasing shipper and replacement shipper obligations with regard to tariff rate increases and rights with regard to tariff rate refunds; (2) clarifying that the replacement shipper's service under a release shall be subject to and governed by the terms of the releasing shipper's service agreement, the governing rate schedule, and the replacement shipper's service agreement; and (3) making several "clean-up" changes.

**Notice of Filing, Interventions, Comments, and Limited Protests**

4. Public notice of Tennessee's filing was issued on January 29, 2009. Interventions and protests were due February 9, 2009, as provided in section 154.210 of the Commission's regulations.[3] Pursuant to Rule 214,[4] all timely filed motions to intervene and any motions to intervene out-of-time before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties.

5. Tennessee Customer Group[5] filed a limited protest. The Dominion LDCs[6] filed a limited protest, as corrected on February 10, 2009. The National Grid Distribution Companies (National Grid)[7] filed a limited protest and request for modifications.

[3] 18 C.F.R. § 154.210 (2008).

[4] 18 C.F.R. § 385.214 (2008).

[5] Tennessee Customer Group consists of Centerpoint Energy Mississippi Gas; City of Clarksville Gas and Water Department, City of Clarksville; City of Corinth Public Utilities Commission; Delta Natural Gas Company, Inc.; Greater Dickson Gas Authority; Hardeman Fayette Utility District; Henderson Utility Department; Holly Springs Utility Department; Humphreys County Utility District; Town of Linden; Morehead Utility Plant Board; Portland Natural Gas System, City of Portland; Savannah Utilities; Springfield Gas System, City of Springfield; City of Waynesboro; and West Tennessee Public Utility District.

[6] The Dominion LDCs consist of East Ohio Gas Company d/b/a/ Dominion East Ohio and The Peoples Natural Gas Company d/b/a Dominion Peoples.

[7] The National Grid Distribution Companies are The Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corporation d/b/a National Grid; Boston Gas Company, Colonial Gas Company, and Essex Gas Company, collectively

(continued…)

6. Columbia Gas of Kentucky, Inc., Columbia Gas of Ohio, Inc., and Columbia Gas of Pennsylvania, Inc. (collectively NiSource Distribution Companies); Indicated Shippers;[8] Atmos Energy Corporation (Atmos); and PSEG Energy Resources & Trade, LLC (PSEG ER&T) filed comments.

7. On February 23, 2009, Tennessee filed an answer to the protests.[9] The comments, limited protests, and answer are discussed in detail below.

## Discussion

8. The Commission finds that Tennessee's proposed tariff revisions are generally consistent with Order Nos. 712 and 712-A and the Commission's capacity release policies. Accordingly, the Commission accepts Tennessee's filing, subject to conditions and further review, as discussed below.

### Refund Provisions

9. NiSource Distribution Companies, PSEG ER&T, and Dominion LDCs seek clarification related to the proposed tariff language in sections 11.11(k) and 12.11(f). Those sections provide that for releases that become effective on or after July 30, 2008, any rate paid by a replacement shipper in any capacity release transaction with a term of one year or less which is not subject to the maximum rate cap is deemed to be a final rate and is not subject to refund. NiSource Distribution Companies and Dominion LDCs seek a clarification of the tariff language to remove any suggestion that releasing shippers are not entitled to refunds where the capacity has been released. PSEG ER&T requests that the tariff be clarified to indicate that under no circumstances would Tennessee be able to retain rate case refunds because the capacity in question has been released and is not subject to a maximum rate cap. NiSource Distribution Companies request that Tennessee be required to add clarifying tariff language expressly requiring the pipeline to pay the

---

d/b/a National Grid; EnergyNorth Natural Gas Inc., d/b/a National Grid NH; Niagara Mohawk Power Corporation d/b/a National Grid; and The Narragansett Electric Company d/b/a National Grid, all subsidiaries of National Grid USA.

[8] In this case, the Indicated Shippers consist of BP Energy Company, BP America Production Company, Chevron U.S.A. Inc., ConocoPhillips Company, and Hess Corporation.

[9] The Commission's Rules of Practice and Procedure do not permit answers to protests (18 C.F.R. § 385.213(a)(2) (2008)). However, the Commission finds good cause to accept Tennessee's answer since it will not delay the proceeding, may assist the Commission in understanding the issues raised, and will ensure a complete record. Therefore, Tennessee's answer is accepted.

applicable rate refunds to the Releasing Shipper. In its answer, Tennessee noted that it expressly identified in its tariff filing an exception to rate refund eligibility and argues that delineating all of the transactions that are eligible for rate refunds is unnecessary.

10. In *Texas Eastern Transmission, LP*, 125 FERC ¶ 61,396 (2008) (*Texas Eastern*), the Commission found that it was consistent with Order No. 712 to deem rates paid by replacement shippers for terms of one year or less to be final and not subject to refund.[10] The Commission explained that, as a result of Order No. 712, the pipeline's maximum rates no longer apply to such short-term releases. Therefore, replacement shippers are not entitled to any refunds when the Commission finds that the maximum rates proposed by the pipeline in a section 4 rate case are too high. However, the Commission also stated that a releasing shipper paying a recourse rate higher than the maximum just and reasonable rate determined in a rate case would be eligible for refunds because Order No. 712 did not remove any maximum rates for the pipeline's sale of its own capacity.[11] Therefore, the refunds must be paid by the pipeline to the releasing shipper. The Commission finds that the discussion in *Texas Eastern* provides sufficient guidance on this issue and that the suggested tariff revisions to expressly require that Tennessee make such refunds to the releasing shipper are unnecessary.

11. Dominion LDCs argue that Tennessee's refund provision should be revised to clarify that, where the release was made to a marketer participating in a state-regulated retail access program, Tennessee must make the refund to the replacement shipper/marketer. Dominion LDCs state that, in that circumstance, the marketer steps into the shoes of the releasing shipper, and therefore should be entitled to any refunds that would otherwise be made to the releasing shipper. Indicated Shippers similarly asserts that the denial of refunds attributable to capacity released as part of a state retail unbundling program will have detrimental consequences on the market, gas consumers, and competition. The Commission rejects these contentions. Order No. 712 removed the price ceiling on all capacity releases of one year or less, without regard to the purpose of the release, such as whether it was to a marketer in a retail access program. Therefore, the holding in *Texas Eastern* that the pipeline need not make refunds to replacement shippers in short-term releases applies to marketers in retail access programs in the same manner as it applies to any other short-term replacement shipper. However, section 284.8(b) of the Commission's regulations permits the releasing shipper to include terms and conditions in its releases. Such conditions may address the issue of the releasing shipper's disposition of any refunds it receives from the pipeline. Thus, if a state commission and the participants in a state retail access program wish to provide for a

[10] *Texas Eastern*, 125 FERC ¶ 61,396 at P 13.

[11] *Id.*

local distribution company (LDC) to pass through refunds it receives from the pipeline to the marketers in the program, they can do so through conditions in the LDC's releases to the marketers.

**Discounts**

12. Atmos asks the Commission to require Tennessee to include provisions allowing the "flow-through" of discounts from releasing shippers to their asset managers. Atmos states that it is unclear whether and to what extent Tennessee will permit a releasing shipper's asset manager to pay the same discounted usage and fuel rates that the pipeline provided to the releasing shipper. Atmos suggests that Tennessee should clarify (or propose) a policy allowing the asset manager/replacement shipper to receive the same discounted usage and fuel rates applicable to the releasing shipper, particularly since a general refusal to allow "pass-through" of such discounts would impede asset management transactions, contrary to Order Nos. 712 and 712-A.

13. Dominion LDCs and Indicated Shippers request that the Commission condition acceptance of Tennessee's proposed tariff sheets on the outcome of the Commission's ruling in *Texas Eastern* on the issue for which the Commission sought comments, i.e., whether the Commission should require pipelines to allow releasing shippers to pass through discounted or negotiated usage or fuel charges.

14. In its answer, Tennessee argues that the Commission should not require pipelines to give the same discounted usage and fuel charges to asset manager replacement shippers as to the releasing shipper, because such a requirement is beyond the scope of this proceeding and not consistent with Commission policy. Tennessee also argues that it is well settled Commission policy that the usage charge to be paid by a replacement shipper is a matter between the replacement shipper and the pipeline, and, accordingly, pipelines should not be required to give the replacement shipper the same discounted usage charge it gave the releasing shipper.[12] Tennessee further asserts that, to the extent the Commission wishes to revisit its existing policy, the Commission should institute a rulemaking proceeding.

15. The issue of whether a pipeline must provide an asset manager/replacement shipper the same discounted or negotiated usage and fuel rates as it has given the releasing shipper only arises to the extent that the pipeline has provided such discounts or negotiated rates to the releasing shipper. The Commission does not permit pipelines to offer discounts below their minimum rates, which are based on the variable costs allocated to the service to which the rate applies. 18 C.F.R. § 284.10(c)(4)(ii) and (5)(ii)(A) (2008). Therefore, only pipelines using a non-Straight-Fixed Variable (SFV) rate design which includes some fixed costs in their usage charges can discount their

[12] Tennessee answer, at 6.

usage charges. Tennessee is one such pipeline. The Commission has also held that pipelines may not discount their fuel retention rates, because fuel and lost and unaccounted for (LAUF) gas are variable costs.[13] However, pipelines with negotiated rate authority may enter into negotiated rate agreements which are not bound by their tariff maximum and minimum rates. Tennessee has negotiated rate authority, and thus does have authority to enter into negotiated rate agreements providing for fuel retention rates (and usage charges) that vary from those in its tariff.[14]

16. As Tennessee notes, the Commission has held that the usage charge to be paid by the replacement shipper is a matter between the replacement shipper and the pipeline, and the releasing shipper cannot bind the pipeline to accept any particular usage charge from the replacement shipper. Therefore, the pipeline "generally should not be required to give the replacement shipper the same discount" of the usage charge that it gave the releasing shipper.[15] In *El Paso*, the Commission explained that:

> …the discount in the usage charge negotiated between the releasing shipper and El Paso is related only to the contract between the releasing shipper and the pipeline and to the transportation services actually performed by El Paso for the releasing shipper under that contract and is not relevant to other contracts and services to other shippers, including replacement shippers.[16]

While pipelines are not subject to a blanket requirement that they must give replacement shippers the same usage charge discounts (or negotiated usage and fuel rates) given to the releasing shipper, pipelines are subject to the Commission's general policy that selective discounts must be given on a not unduly discriminatory basis to similarly situated shippers.[17]

---

[13] *Mississippi River Transmission Corp*., 98 FERC ¶ 61,119, at 61,352 (2002).

[14] Article III, section 11.11(e) of Tennessee's GT&C does provide that, unless otherwise agreed to in the underlying Transportation Agreement, when Tennessee discounts the rate for Rate Schedule IT (Interruptible Transportation) in a market below the maximum commodity rate for Rate Schedules FT-A or FT-G (Firm Transportation) in that market, then Tennessee will offer to discount the FT-A or FT-G commodity rate for released capacity in that market to a level equal to the discounted IT rate.

[15] *El Paso Natural Gas Co*., 61 FERC ¶ 61,333, at 62,309 (1992) (*El Paso*).

[16] *Id.*

[17] *See Williston Basin Interstate Pipeline Co*., 85 FERC ¶ 61,247, at 62,028-30 (1998), and cases cited, for a discussion of this policy.

17. Order No. 712 did not modify the Commission's existing policy concerning the pipeline's offering usage charge discounts to replacement shippers. [18] Nor did Order No. 712 address any issue concerning the offering of negotiated usage and fuel charges to replacement shippers. However, Order No. 712's modification of the Commission's regulations to facilitate AMAs does raise the following issues:

(1) whether it would be unduly discriminatory for Tennessee to deny an asset manager/replacement shipper the same discounted usage charge or negotiated usage and fuel and LAUF charge that was provided to the releasing shipper, at least during periods when the asset manager is using the released capacity to satisfy the delivery or purchase obligation contained in the release to the asset manager/replacement shipper;[19]

(2) if the discounted or negotiated rate agreement with the releasing shipper provides that the discounted or negotiated rate is only applicable at certain specified receipt or delivery points as permitted by Commission policy,[20] should the asset manager/replacement shipper's use of those points be considered to be within the usage contemplated by the pipeline when it granted the discount or negotiated rate to the releasing shipper? This then raises the question of whether the pipeline should be required to offer the same discounted or negotiated rate to the asset manager/replacement shipper at those points, but not at any other point;

(3) whether Tennessee should be required to include in its tariff a provision concerning the circumstances under which it would provide similar discounted or negotiated usage and fuel and LAUF charges to an asset manager/replacement shipper; or

(4) whether the circumstances of individual releases to asset managers are sufficiently case-specific that pipelines should be allowed to decide whether to grant discounted or negotiated usage and fuel and LAUF charges to the asset manager/replacement shipper on a case-by-case basis, subject to a general requirement of no undue discrimination.

18. Before deciding these issues, the Commission requires additional information from Tennessee, and will give the parties an opportunity to provide supplemental comments. In this regard, the Commission directs Tennessee to file the following information: (1) how many of Tennessee's existing firm shipper contracts include

---

[18] *Texas Eastern*, 125 FERC ¶ 61,396 at P 21.

[19] *See* 18 C.F.R. § 284.8(h)(3) (2008), as revised by Order No. 712-A, (defining a release to an asset manager).

[20] *Williston Basin Interstate Pipeline Co.*, 110 FERC ¶ 61,210, at P 5, 22, *reh'g denied*, 112 FERC ¶ 61,038, at P 19 (2005).

discounted or negotiated usage and fuel rates, (2) how many of any such contracts limit the discount or negotiated rate to specific points, (3) a general description of how it intends to determine whether to grant usage charge discounts or negotiated usage and fuel and LAUF charges to asset manager/replacement shippers, and (4) what factors it will consider in determining whether to grant such discounts or negotiated rates.

**Posting and Information**

19. Tennessee Customer Group asserts that in Order No. 712, the Commission ruled that releases that were not subject to bidding are still subject to the requirements in section 284.13 of the Commission's regulations that the pipeline post certain information about the releases no later than the first nomination for service. Tennessee Customer Group further asserts that sections 11.3 and 12.3 of Tennessee's GT&C as proposed, concerning non-biddable releases of transportation and storage capacity, respectively, do not appear to comply fully with these rulings. Tennessee Customer Group contends that sections 11.3(a) and (b) and 12.3(a) and (b), exempting short-term releases (31 days or less) and maximum rate long-term releases (longer than one year) from bidding**,** do not require the pipeline to post any information about those releases. Tennessee Customer Group argues that the Commission should require Tennessee to modify these provisions to require that these categories be posted.

20. The Commission rejects this protest. As Tennessee points out in its answer, sections 11.3(a)(i), 11.3(b)(i), 12.3(a)(i), and 12.3(b)(i) of its GT&C require that releasing shippers qualifying for the relevant exemptions from bidding nevertheless provide Tennessee with the information it must post pursuant to section 284.13 of the Commission's regulations. Specifically, each of those sections requires the releasing shipper to provide Tennessee the information listed in section 11.1(a) through (l) of Tennessee's GT&C, except for those items that are solely related to bidding.

21. Tennessee Customer Group contends that Order No. 712 only requires limited information to be posted concerning releases implementing qualified AMAs, i.e., the name of asset manager, and obligation to deliver or purchase gas to or from the releasing shipper. However, Tennessee Customer Group further contends that section 11.3(c) of the GT&C requires that a shipper releasing transportation capacity that implements an AMA must provide to Tennessee the information required by section 11.1(l) of the GT&C, which includes all conditions of the release, including provisions of related agreements, such as agency agreements. Tennessee Customer Group requests that the Commission require Tennessee to revise this section to ensure that the only information on an AMA that the releasing shipper must provide Tennessee is the limited information set forth in Order No. 712.

22. In its answer, Tennessee states that it is not opposed to modifying its proposed tariff language to eliminate the requirement that releasing shippers in non-biddable releases provide the information required by 11.1(l). The Commission accepts this proposal.

**Rate Ceiling**

23. Tennessee Customer Group contends that Order No. 712 eliminates all rate caps for released capacity that have a term of one year or less. Tennessee Customer Group further states that existing section 11.11(j) appears to limit the usage rate that may be charged to any replacement shipper to the maximum commodity rate, which appears to be the maximum tariff rate for the usage charge. Tennessee Customer Group requests that Tennessee be required to revise section 11.11(j), as well as any other tariff provision, as necessary, so that its tariff uniformly provides that capacity releases of one year or less are not subject to any rate cap.

24. The Commission rejects Tennessee Customer Group's assertion that Tennessee should be required to remove any price cap on the usage charge. Tennessee Customer Group is correct that Order No. 712 removed the rate cap for all short-term capacity release transactions of one year or less. Order No. 712, however, only removed the price cap on the rate the releasing shipper may seek for a release of its capacity. That rate is limited to the reservation charge component of the pipeline's rate. As the Commission held in *El Paso*, [21]

> Under Order Nos. 636 and 636-A, the bids requested by the releasing shipper relate only to the reservation charge portion of El Paso's rate. The usage charge to be paid by the replacement shipper is a matter between El Paso and the replacement shipper, and the releasing shipper cannot bind El Paso, through the competitive bidding process, to accept any particular usage charge from the replacement shipper.

25. In addition, the releasing shipper is not entitled to any credits for usage charge amounts paid by the replacement shipper in excess of the usage charge amounts that would have been paid by the releasing shipper. The pipeline retains the entire usage charge amount paid by the replacement shipper, and only credits to the releasing shipper reservation charge amounts paid by the replacement shipper.[22] Order Nos. 712 and 712-A refused to remove the maximum recourse rate applicable to pipeline short-term capacity services, holding among other things that maintenance of the recourse rate for pipeline short term transactions is necessary to protect against the potential exercise of market power.[23] That holding is equally applicable to the usage charge negotiated solely

[21] 61 FERC ¶ 61,333, at 62,293.

[22] *Id.*, at 62,309-10.

[23] Order No. 712-A, at P 17-20.

between the pipeline and the replacement shipper, as to the pipeline's direct sales of their capacity. Therefore, Tennessee Customer Group's request to remove the maximum rate limit on Tennessee's usage charge is denied.

**Creditworthiness**

26. National Grid asserts that pursuant to section 11.3(a)(iii) of Tennessee's tariff, (proposed to be renumbered as section 11.3(a)(ii)), releasing shippers are afforded the option to act as agent and remain liable for their replacement shippers' capacity release charges with regard to releases of 31 days or less. National Grid requests that Tennessee be required to modify its tariff to afford this option to releasing shippers under capacity releases governed by (1) section 11.3(b), which applies to releases over a year at maximum rates, (2) section 11.3(d), which applies to releases to marketers under a state retail access programs, (3) section 12.3(a), which applies to short-term storage releases, (4) section 12.3(b), which applies to long-term storage releases at maximum rates; and (5) section 12.3(d), which applies to releases to marketers under state retail access programs. National Grid argues that Tennessee has provided no reason why the rights afforded in section 11.3(a)(ii) should not be afforded to releasing shippers in other release circumstances.

27. National Grid also requests that Tennessee be required to modify its tariff to explicitly provide that a releasing shipper may elect to agree to assume responsibility for its replacement shipper's charges from the pipeline, in lieu of any requirement that such replacement shipper satisfy Tennessee's creditworthiness standards. Specifically, National Grid requests that Tennessee be required to include in its tariff language, similar to that set forth in Dominion Transmission Inc.'s tariff, which states:

> Upon mutual agreement between Pipeline and Releasing Customer, Pipeline will not bill Replacement Customer but will bill Releasing Customer for charges under this Section, and Releasing Customer may bill Replacement Customer; provided, however, that: (1) Releasing Customer must post such arrangement in its Release Notice; and (2) Releasing Customer is liable for all charges owed to Pipeline to the extent of its agreement with Replacement Customer, and Replacement Customer has no liability to Pipeline for such charges.[24]

28. National Grid argues that one of the benefits of including such a provision in Tennessee's tariff is that local distribution companies would have more flexibility to release capacity to small marketers in state retail unbundling programs. National Grid contends that in its experience, certain small marketers may find it extremely burdensome

[24] *Citing* Dominion Transmission, Inc., FERC Gas Tariff, Third Revised Volume No. 1, Substitute Second Revised Sheet No. 1153.

to comply with pipeline creditworthiness requirements and enabling releasing shippers to opt to be responsible for replacement shippers' charges would further the Commission's policy of facilitating capacity releases entered into pursuant to state retail access programs.

29. National Grid contends that while Commission policy requires replacement shippers to satisfy pipeline creditworthiness standards, the Commission has determined that pipelines "could give the releasing shipper the option of . . . assuming liability for the usage charge in the event of the replacement shipper's default."[25] National Grid further asserts that given the Commission's support for retail unbundling as evidenced by Order No. 712 and elsewhere, there is no reason why the Commission should not require Tennessee and other pipelines to permit releasing shippers to agree to assume responsibility for pipeline charges where such a provision will afford LDC shippers greater flexibility to arrange capacity releases for the benefit of small marketers operating on their systems.

30. Tennessee, in its answer, responds that National Grid's requests are unrelated to the regulatory changes promulgated in Order Nos. 712 and 712-A and, therefore, should be denied.

31. The Commission denies National Grid's requests. National Grid's request to require Tennessee generally to permit releasing shippers to act as an agent for replacement shippers is outside the scope of Order No. 712. There is nothing in Order No. 712 that would require Tennessee to make the requested tariff revisions. Moreover, Tennessee itself does not propose to modify section 11.3(a)(iii) with regard to the existing provisions allowing the releasing shipper to act as the agent for the replacement shipper with regard to releases of 31 days or less. Accordingly, it is incumbent on National Grid to provide the support to demonstrate that the current provision is unjust and unreasonable and that National Grid's proposal is just and reasonable. National Grid has made no such showing here. Contrary to National Grid's comments, Tennessee does not need to provide any reason to support its existing tariff. We note, however, that it seems reasonable that Tennessee may have legitimate business purposes for allowing a releasing shipper to act as an agent in the limited circumstance of a 31 day or less capacity release and not for all capacity releases.

32. Likewise, National Grid's request that Tennessee be required to afford releasing shippers the right to assume responsibility for a replacement shipper's charges is outside the scope of Order No. 712 and unsupported by National Grid. While such an option may provide local distribution companies with more flexibility in releases to marketers in state unbundling programs, the Commission has already provided support for such

---

[25] *Citing Dominion Cove Point LNG, LP*, 104 FERC ¶ 61,184, at P 7 (2003) (*Dominion Cove Point*).

programs in Order No. 712 by exempting releases to marketers participating in state regulated unbundling programs from the prohibition against tying and bidding requirements. The fact that such a requirement may provide more flexibility for local distribution companies is not compelling as a reason to impose the requirement on pipelines. As National Grid notes, the Commission has previously allowed pipelines to provide releasing shippers the option to assume liability for a replacement shipper's usage charge in the event of a replacement shipper's default.[26] National Grid provides no compelling reason, however, why the Commission should require the pipeline to provide such an option. Therefore, National Grid's requests are denied.

**Miscellaneous Proposed Tariff Language**

33. Dominion LDCs contend that the proposed revisions to sections 11.11(d) and 12.11(c) of the GT&C of Tennessee's tariff erroneously omit the language "if the release is to take effect on or before one year from the date on which the pipeline is notified of the release." Dominion LDCs argue that the identified language should be added to both of the referenced tariff provisions pursuant to section 284.8(b)(2) as revised by Order No. 712-A.

34. In Order No. 712-A, the Commission revised its regulations so that the lifting of the price cap for short-term releases would only apply to releases that take effect within one year of the date the pipeline is notified of the release to prevent shippers from releasing units of capacity in a manner designed to circumvent the price ceilings remaining in effect.[27] Tennessee has agreed to modify its tariff language to be consistent with this requirement of Order No. 712-A. Therefore, the Commission directs Tennessee to file revised tariff sheets to reflect this requirement of Order No. 712-A.

35. National Grid contends that GT&C section 12.1(g) provides that storage capacity release notices should state any conditions for recall or reput of released capacity, and section 12.1(k) of the GT&C provides that a releasing shipper may include reasonable and non-discriminatory conditions concerning, *inter alia*, the disposition of storage balances on the termination of a release. National Grid argues that these conditions are not properly referenced in other GT&C sections that set forth requirements for storage capacity release notices. National Grid requests that the Commission direct Tennessee to revise its tariff to include the storage capacity release conditions contained in sections 12.1(g) and (k) in section 12.3(a)(i) for a release of one month or less, section 12.3(b)(i) for long-term releases at maximum rates, and section 12.3 (d) for releases to a marketer under state retail access programs.

---

[26] National Grid protest, at 6, citing *Dominion Cove Point*, 104 FERC ¶ 61,184 at P 7.

[27] Order No. 712-A, at P 62.

36. In its answer, Tennessee asserts that National Grid has presented no regulatory basis for its request. Tennessee further asserts that its compliance filing did not modify the type of information required from releasing shippers related to short-term releases and maximum rate releases. Tennessee argues that, while section 12.3(d) is a direct result of Order Nos. 712 and 712-A, the information being sought was not required by the Commission, and Tennessee believes that such an obligation would now be inappropriate.

37. National Grid's request is denied. Sections 12.1(g) and (k) of the GT&C of Tennessee's tariff provide the details that must be included in a releasing shipper's request that the pipeline post a biddable firm storage capacity release. National Grid requests that Tennessee also be required to include the same storage inventory disposition options in section 12.3, which applies to releases that are permitted without prior posting and bidding. While the Commission in Order No. 712 permitted releasing shippers to condition a release of storage capacity on the subsequent sale or repurchase of storage inventory or on there being a certain amount of gas left in storage at the end of the release, we find no reason to require Tennessee to specify that option in a tariff provision applicable to non-posted, non-biddable releases.

38. Dominion LDCs assert that in proposed sections 11.3(a)(iii) and (iv), Tennessee has addressed rollover limitations pertaining to releases of 31 days or less. Dominion LDCs claim that Tennessee has failed to acknowledge that under section 284.8(h)(2) of the new regulations rollover limitations and the 28-day hiatus do not apply to re-releases to the same replacement shipper for a release that is posted for bidding or that qualifies for the exemptions from bidding. Dominion LDCs further assert that the same omission is evident in the storage release language in section 12.3(a)(iii) and (iv). Dominion LDCs assert that Tennessee should be required to add appropriate tariff language to the referenced sections "clearly reflecting the non-applicability of the 28-day hiatus and rollover limitations for a release that is posting for bidding or qualifies for the exemptions from bidding, consistent with Order No. 712's requirements."[28]

39. In its answer, Tennessee states that while it disagrees with Dominion LDCs' proposition in part, Tennessee concedes that its proposed tariff language fails to adequately include all of the exceptions to the 28-day hiatus requirement. Accordingly, Tennessee further states that it is not opposed to modifying its proposed tariff language as follows to address Dominion LDCs' concerns:

> Section 11.3(a)(iii)
> a re-release to the same Replacement Shipper under this Section 11.3(a) may not commence until 28 days after the first release period has ended.

[28] Dominion LDCs protest, at 5.

Section 11.3(a)(iv)
Eliminate.

Section 12.3(a)(iii)
a re-release to the same Replacement Shipper under this Section 12.3(a) may not commence until 28 days after the first release period has ended.

Section 12.3(a)(iv)
Eliminate.

40. Tennessee has agreed to clarify its proposed tariff language to address Dominion LDCs' concerns. Therefore, the Commission directs Tennessee to file revised tariff sheets containing these revisions.

41. Finally, Dominion LDCs assert that sections 11.3(c) and 11.3 (d) appear to contain a typographical errors, an extra "and (1)," which should be corrected to avoid confusion. In its answer, Tennessee asserts that the reference in both places is to the letter "L" and not the number "1." The Commission finds that Tennessee has adequately answered Dominion LDCs concern. In any case, when Tennessee files the modifications ordered herein, the references in sections 11.3(c) and 11.3(d) to subsection (l) will be removed. Therefore, there is no need to further clarify these provisions. [29]

The Commission orders:

(A) The Commission accepts the tariff sheets listed in the Appendix to this order to be effective on February 26, 2009, subject to conditions and further review, as discussed above in the body of this order and in the ordering paragraphs below.

(B) Tennessee is directed to file additional information, as discussed in the body of this order, within 30 days of the date of this order. Parties may file additional comments within 20 days of the date of Tennessee's compliance filing.

---

[29] In addition, in proposed section 11.3(d), Tennessee references section 248.8(h)(4) of the Commission's regulations. It appears that Tennessee intended to reference section 284.8(h)(4) of the Commission's regulations. Tennessee is directed to correct this reference.

(C) Tennessee is directed to file revised tariff sheets, within thirty days of the date of this order, consistent with the discussion above in this order.

By the Commission. Commissioner Kelliher is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,
Deputy Secretary.

## **Appendix**

Tennessee Gas Pipeline Company
FERC Gas Tariff, Fifth Revised Volume No. 1
Tariff Sheets to be Conditionally Effective February 26, 2009

Fourth Revised Sheet No. 325
Fourth Revised Sheet No. 327
Fifth Revised Sheet No. 328
Tenth Revised Sheet No. 329
Fourth Revised Sheet No. 336
Fifth Revised Sheet No. 338
Third Revised Sheet No. 340
Fourth Revised Sheet No. 342
Third Revised Sheet No. 342A
Tenth Revised Sheet No. 347
Eighth Revised Sheet No. 348
Third Revised Sheet No. 349