131 FERC ¶ 61,131
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Tres Palacios Gas Storage LLC Docket Nos. RP09-260-001
RP09-260-003
RP09-260-004

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued May 10, 2010)

1. On August 24, 2009, NJR Energy Services Company (NJRES) filed a request for clarification or, in the alternative, rehearing of the Commission's order issued on July 24, 2009 (July 2009 Order).[1] The July 2009 Order accepted, subject to conditions, tariff sheets that Tres Palacios Gas Storage LLC (Tres Palacios) had filed to revise tariff language on secondary point rights and prohibit the use of firm storage service for the simultaneous injection and withdrawal of gas.[2] For the reasons discussed below, the Commission denies NJRES's request for clarification and denies rehearing. Further, on August 24, 2009, Tres Palacios filed revised tariff sheets[3] to comply with the July 2009 Order. We conditionally accept those tariff sheets effective July 25, 2009, subject to Tres Palacios filing revised tariff sheets setting forth the tariff changes discussed herein.

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[1] *Tres Palacios Gas Storage LLC*, 128 FERC ¶ 61,084 (2009).

[2] The July 2009 Order also accepted certain tariff sheets pertaining to Order No. 712 filed in compliance with the Commission's previous order in this docket, *Tres Palacios Gas Storage LLC*, 126 FERC ¶ 61,167 (2009) (February 2009 Order). Those tariff sheets, Substitute First Revised Sheet No. 115 and Substitute Original Sheet No. 115A, are no longer in dispute.

[3] First Revised Sheet No. 21, Original Sheet No. 137A, and Substitute First Revised Sheet No. 138 to its FERC Gas Tariff, Original Volume No. 1.

Background

2. Tres Palacios provides open access storage, park and loan, and interruptible wheeling services at market based rates.[4] It is not certificated to perform transportation services. On January 26, 2009, Tres Palacios submitted tariff sheets to comply with Order No. 712.[5] Additionally, Tres Palacios included tariff sheets pursuant to section 4 of the Natural Gas Act (NGA) containing three other proposed tariff revisions. These tariff provisions included proposals to: (1) streamline Tres Palacios's tariff procedures by moving individual contract parameters to exhibits attached to *pro forma* agreements; (2) modify its firm storage service to charge higher rates for those customers that want to access secondary receipt and delivery point rights compared to the rates paid by those customers that did not desire secondary point rights; and (3) clarify that customers may not nominate simultaneous injections and withdrawals from storage under a single contract or otherwise engage in any nomination pattern that would result in the customer receiving the equivalent of unbundled transportation, other than interruptible wheeling service under Rate Schedule IW.

3. The Commission's February 2009 Order accepted the tariff sheets containing the language applicable to Tres Palacios's compliance with Order No. 712, subject to Tres Palacios filing minor tariff clarifications. The Commission accepted and suspended the remainder of the tariff sheets for the full five months, subject to Tres Palacios providing additional information regarding the proposed revisions on secondary point rights and simultaneous injection and withdrawals from storage, in order to address protests raised by of Virginia Power Energy Marketing, Inc. (VPEM) and NJRES.[6]

4. In the July 2009 Order, the Commission accepted all of Tres Palacios's remaining proposed tariff sheets subject to two conditions. First, the Commission approved Tres Palacios's proposal to implement a firm storage service without secondary point rights, subject to Tres Palacios clarifying in its tariff that, for those shippers not interested in

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[4] *Tres Palacios Gas Storage, LLC*, 120 FERC ¶ 61,253 (2007) (Order Issuing Certificates).

[5] *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 (Dec. 1, 2008), FERC Stats. & Regs. ¶ 31,284 (2008), *order on reh'g*, Order No. 712-B, 127 FERC ¶ 61,051 (2009).

[6] NJRES requested rehearing of the February 2009 Order during the Suspension Period. NJRES March 5, 2009 Request for Clarification and Rehearing at 3 (NJRES Request). With the issuance of the July 2009 Order, that request is moot, leaving the Commission to resolve NJRES's August 2009 Request.

limiting their point flexibility, it will negotiate a rate with those shippers that includes the right to access secondary points.[7]

5. Second, the Commission accepted Tres Palacios's proposal to restrict simultaneous and offsetting injection and withdrawal nominations from firm storage on its system during the same nomination cycle, subject to one condition. The Commission found that, as Tres Palacios asserted, its certificate does not authorize it to provide transportation service. Rather, the Commission has only issued Tres Palacios a certificate to perform storage service and an interruptible wheeling service under Rate Schedule IW. Therefore, the Commission found reasonable Tres Palacios's proposed revision to its tariff to clarify that shippers may not nominate simultaneous storage injections at one point and withdrawals at another point to obtain the equivalent of unbundled transportation service. The Commission also pointed out that shippers who do want to nominate simultaneous injection and withdrawal quantities during the same nomination cycle may still accomplish such action by utilizing Tres Palacios' interruptible wheeling service under Rate Schedule IW.

6. However, the Commission also found that, while Tres Palacios had clarified that it only proposes to restrict simultaneous and offsetting nominations for injections and withdrawals in the same nomination cycle,[8] its proposal is not intended to have any effect on a shipper's ability to nominate same-day, different cycle injection and withdrawals. Therefore, the Commission accepted Tres Palacios's proposal, subject to Tres Palacios clarifying "that its proposed language is meant to prevent same-cycle simultaneous injection and withdrawal, but not same-day, different-cycle injection and withdrawal."[9]

<u>Request for Clarification</u>

7. NJRES requests that the Commission clarify its conditional acceptance of Tres Palacios's proposal to restrict simultaneous injection and withdrawal nominations. NJRES notes that the July 2009 Order states that "[f]irm storage shippers on Tres

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[7] July 2009 Order at P 28.

[8] Consistent with the NAESB standards, Tres Palacios' tariff provides shippers four opportunities to nominate service for a particular gas day. Gas nominated under the 11:30 a.m. Timely nomination cycle and the 6:00 p.m. Evening nomination cycle begins flowing at 9:00 a.m., the beginning of the following gas day. Under the 10:00 a.m. Intra-day 1 nomination cycle, gas begins flowing at 5:00 p.m. on the day the nomination is made, and for the 5:00 p.m. Intra-day 2 nomination cycle, gas begins flowing at 9:00 p.m. on the day the nomination was made.

[9] *Id*. at P 45.

Palacios's system would still be able to nominate injections and withdrawals on the same day as long as those nominations were not made within the same nomination cycle."[10] NJRES further argues that Tres Palacios's tariff grants customers the right to inject and withdraw their Maximum Daily Injection Quantity and Maximum Daily Withdrawal Quantity on any given day.[11]

8. NJRES expresses concern that Tres Palacios is administering its system in a manner that suggests an interpretation of the July 2009 Order that is erroneously strict towards simultaneous injection and withdrawal. In particular, NJRES claims that the July 2009 Order failed to resolve whether a customer could inject and withdraw simultaneously by using nomination cycles that, while being distinct cycles for nominating purposes, nevertheless refer to storage actions that could occur simultaneously. NJRES states that the July 2009 Order's ambiguity "establishes a distinction that has no practical effect because gas will ultimately flow simultaneously."[12]

9. As a result, NJRES urges the Commission to clarify that Tres Palacios must permit simultaneous injection and withdrawal on its system if the following three conditions are met: (1) the nominations for the simultaneous injection and withdrawal each use different nomination cycles; (2) the customer has spare inventory rights to accommodate the injection; and, (3) the customer has sufficient inventory to accommodate the withdrawal without relying upon the simultaneously-incoming gas. NJRES argues that, without this clarification, Tres Palacios's current policy would effectively reduce by half a customer's ability to use its contracted-for Maximum Daily Injection Quantity and Maximum Daily Withdrawal Quantity on any given day.

Answer of Tres Palacios

10. Tres Palacios requests leave to answer the request for clarification or rehearing of NJRES. While the Commission's rules prohibit answers to requests for rehearing, there is no similar prohibition on answers to requests for clarification. See Rule 213(a)(2) and (3) of the Commission's Rules of Practice and Procedure.[13] Therefore, no Commission authorization is necessary for Tres Palacios to answer the request for clarification. In any event, because NJRES's request for clarification or rehearing includes new assertions

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[10] *Id*. at P 43.

[11] NJRES Request at 4.

[12] *Id*. at 5.

[13] 18 C.F.R. § 385.213(a)(2) (2009).

concerning how Tres Palacios has been administering its system since the July 2009 Order, it is appropriate to permit Tres Palacios's answer.

11. Tres Palacios clarifies that the current dispute is a result of the following situation: since the July 2009 Order, NJRES has been unsuccessfully attempting to nominate simultaneous injections and withdrawals by using the Timely Cycle and Evening Cycle, which are nominated at separate times but refer to actions scheduled to take place at the same time. Tres Palacios argues that NJRES's understanding of the July 2009 "Order's use of the phrase 'different-cycle' is misplaced. The [July 2009] Order is clear that Tres Palacios may prohibit simultaneous injection and withdrawal nominations….Tres Palacios used the words 'different-cycle' to refer to a different cycle start time (i.e., Intraday 1 at 5:00 p.m. or Intraday 2 at 9:00 p.m.)."[14]

12. Tres Palacios asserts that the condition in the July 2009 Order was based on information that Tres Palacios provided in order to comply with the February 2009 Order's requirement that it clarify whether its proposal permitted such different-cycle injections and withdrawals. Tres Palacios states that in its March 26, 2009 compliance filing, it explained that its proposed prohibition of simultaneous injections and withdrawals would not affect a customer's ability both to inject and withdraw gas during the course of the same day. The customer would continue to be free to switch between injections and withdrawals, on an intra-day basis using different nomination cycles, if its needs changed and the customer has adequate quantities in storage to cover the withdrawals. For example, a marketer serving a power plant might schedule storage injections during the Timely nomination cycle for service to commence at 9:00 a.m., the beginning of a gas day when the plant was not expected to operate. However, it might submit an Intraday 1 nomination to switch to storage withdrawals as of 5:00 p.m. on that gas day, if a change in weather required the plant to operate, thus requiring the marketer to deliver plant fuel. Tres Palacios explained that switching between injections and withdrawals during the course of a gas day in this manner does not result in simultaneous injections and withdrawals, because the later nomination cancels or replaces the earlier nomination. Tres Palacios stated that its proposal was intended to prohibit shippers from scheduling simultaneous and offsetting injections and withdrawals, with the result being the functional equivalent of firm transportation between the nominated receipt and delivery points.

13. Tres Palacios interprets the July 2009 Order as accepting Tres Palacios's proposal, subject to the condition that it clarify the proposal consistent with the explanation in its March 26, 2009 compliance filing. Tres Palacios asserts that NJRES, however, has been

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[14] Tres Palacios September 8, 2009 Answer to Request for Clarification at 7 (citing NJRES Request at 16 and NAESB Standards No. 1.3.2).

seeking to submit a storage withdrawal nomination during the Timely Nomination Cycle and then submit an additional offsetting injection nomination in the Intraday 1 or 2 cycle, without cancelling the earlier withdrawal nomination, so that the withdrawals and injections would occur simultaneously. Tres Palacios asserts that this would accomplish precisely the functional equivalent of transportation between nominated receipt and delivery points which it has sought to prohibit.

14. Tres Palacios argues the Commission should reject the relief requested for the same four reasons that Tres Palacios presented the original tariff revision against simultaneous injection and withdrawal: (1) it goes against the purpose of storage; (2) it creates operational problems; (3) it risks air emission permit violations by overtaxing Tres Palacios's facilities; and, (4) it is effectively transportation service, which is not authorized under Tres Palacios's Commission certificate or tariff. Tres Palacios notes NJRES admitted that there is no practical difference between different-cycle, same-time nominations, and argues the Commission should focus on the operation of Tres Palacios's system rather than NJRES's creative reading of the July 2009 Order.

15. Tres Palacios also counters NJRES's argument that the Commission must allow simultaneous injections and withdrawals because the tariff grants customers the right to inject and withdraw their Maximum Daily Injection Quantity and Maximum Daily Withdrawal Quantity on any given day. Tres Palacios points out that the tariff already restricts hourly use to 1/24th of the Maximum Daily Injection Quantity or Maximum Daily Withdrawal Quantity, so NJRES should have been aware that its rights were subject to other constraints.

Discussion

16. The Commission declines to clarify its July 2009 Order as requested by NJRES. NJRES states the July 2009 Order is unclear because it "establishes a distinction that has no practical effect because gas will ultimately flow simultaneously."[15] The Commission finds the intent of the July 2009 Order was to permit Tres Palacios to prohibit simultaneous and offsetting injections and withdrawals by the same shipper on Tres Palacios's system under Tres Palacios's Rate Schedule FSS, regardless of whether the shipper nominates such simultaneous injections and withdrawals during different scheduling nomination cycles for the same gas day. As all parties agree, such simultaneous and offsetting injections and withdrawals result in the functional equivalent of transportation service, which Tres Palacios is not certificated to perform. This is true, regardless of whether the injections and withdrawals were nominated during the same, or different, scheduling nomination cycles.

[15] NJRES Request at 5.

17. The Commission clarifies that Tres Palacios's interpretation of the condition in the July 2009 Order is correct. The Commission's intent in that order was to require Tres Palacios to clarify, consistent with its explanation in its March 26, 2009 compliance filing, that a shipper, which submitted a nomination for withdrawals during a gas day, may, in a subsequent scheduling nomination cycle for that gas day, replace the withdrawal nomination with an injection nomination (or vice versa). Such switching between injections and withdrawals during a gas day because of the shipper's changing needs does not result in the functional equivalent of transportation and is appropriately permitted.

18. If a shipper on Tres Palacios's system desires to simultaneously inject and withdraw gas through Tres Palacios's header system, it may do so, but would have to pay the corresponding wheeling charge Tres Palacios assesses under Rate Schedule IW of its tariff. As Tres Palacios asserts, while it is certificated to provide interruptible wheeling service, it is not certificated to provide firm transportation service through its system.

Request for Rehearing

19. NJRES further requests that if the Commission declines to grant the requested clarification, it find the July 2009 Order's holding on simultaneous injection and withdrawal nominations is in error. NJRES specifies six errors for the Commission to consider. First, NJRES argues the Commission failed to consider the substantive arguments raised by parties to this proceeding. Failing to respond meaningfully to arguments, NJRES argues, renders a decision arbitrary and capricious.[16]

20. Second, NJRES faults the Commission for adopting restrictions on storage services absent any support, or any demonstration of operational reasons or practical considerations, justifying such restrictions. NJRES claims to have "demonstrated that Tres Palacios's ability to net the injections and withdrawals for its multiple customers exposed the illegitimacy of the so-called 'legitimate operational reasons' for rejecting," NJRES's requests.[17] NJRES claims that if Tres Palacios's operational concerns were legitimate, then Tres Palacios would have needed to impose operating restrictions to prevent customers from submitting nominations that offset another customer's nomination, and would instead require all customers to inject or withdraw gas in sync with each other.[18]

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[16] NJRES Request at 8.

[17] *Id.* at 22.

[18] *Id.*

21. Third, NJRES argues the Commission departed from precedent supporting a storage customer's ability to simultaneously inject and withdraw gas from storage. NJRES argues that the Commission in *Arkla Energy Resources Co.*[19] "analogized storage service to a bank … to support the practical reality that customers must have the ability to simultaneously inject and withdraw gas from storage."[20]

22. Fourth, NJRES faults the Commission for disregarding NJRES's arguments and practical considerations demonstrating that simultaneous injection and withdrawal is a legitimate exercise of storage service rights. NJRES claims it "demonstrated that Tres Palacios mischaracterized" simultaneous injection and withdrawal as transportation.[21] NJRES argues "the issue that is, and always has been, the focus of this proceeding is whether nominations resulting in simultaneous injections and withdrawals are valid storage services that FSS customers are entitled to under Tres Palacios's Tariff."[22]

23. Fifth, NJRES faults the Commission for requiring FSS customers to incur additional services even though Tres Palacios already includes such services in the customers' existing contracts. Tres Palacios's proposed tariff sheets would explicitly require customers to use Interruptible Wheeling service to transport gas across its system. NJRES argues that the "sole limitation on injection is … its Maximum Storage Quantity" and "the sole limitation on withdrawal is that NJRES must have a [sufficient] quantity of Gas in its firm Storage Inventory."[23]

24. Sixth, NJRES argues the Commission failed to recognize that simultaneous injections and withdrawals are part of the firm storage service Tres Palacios is certificated to provide under Rate Schedule FSS.

Discussion

25. We deny NJRES's request for rehearing. The Commission finds NJRES's contention that the July 2009 Order failed to consider the substantive arguments raised by parties is without merit. Several of the issues raised by NJRES in the instant rehearing are new issues not in its initial protest, are factually inaccurate, or are irrelevant.

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[19] 64 FERC ¶ 61,166 at 62,443 (1993).

[20] NJRES Request at 9.

[21] *Id.* at 25.

[22] *Id.* at 26.

[23] *Id.* at 23.

Nevertheless, in the instant case the Commission will respond with specificity to the issues raised by NJRES.

26. All tariffs under the NGA are subject to the conditions under which the Commission certificated the service. The Commission considers simultaneous injection and withdrawal to be transportation. The Commission did not certificate Tres Palacios to perform firm transportation service.[24] Thus, it is irrelevant whether, as NJRES argues at great length, Tres Palacios's previous tariff could be read to allow simultaneous injections and withdrawals under Rate Schedule FSS.[25] Tres Palacios cannot provide services that the Commission has not certificated. Therefore, it cannot permit firm transportation in the form of simultaneous injection and withdrawals through Rate Schedule FSS.[26]

27. NJRES claims Tres Palacios's ability to net injections and withdrawals among its customers means that Tres Palacios's system can handle transportation services. However, this argument also misses the point. Tres Palacios was never certificated to perform firm transportation.

28. Finally, NJRES's reading of the Commission's analogy between banks and storage facilities in *Arkla Energy Resources Co*. is unsustainable. The Commission did not state that customers must have a universal right on any storage system to simultaneously inject and withdraw gas from storage. In fact, the Commission stated, "AERCo cannot limit those points *without explicit tariff language governing such*

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[24] In the Order Issuing Certificates, the Commission stated, "Tres Palacios is proposing to provide only natural gas storage service, and no stand-alone transportation services." Order Issuing Certificates at P 11.

[25] While NJRES discusses the *previous* Tres Palacios tariff at great length, under section 4 of the NGA, the Commission reviews the *revised* tariff sheets. In its tariff, Tres Palacios reserves the right to make "changes in said Rate Schedule, Tariff or General Terms and Conditions as may from time to time be filed and made effective," provided that the Commission finds the revised tariff just and reasonable. Rate Schedule FSS, Article IV, First Revised Sheet No. 201.

[26] Tres Palacios is authorized to allow shippers to perform simultaneous injections and nominations through the header system, but shippers must use its interruptible service provided through its Rate Schedule IW , and pay the applicable wheeling charge set forth in the tariff. *See* Order Issuing Certificates at P 36-43.

limitations."[27] Tres Palacios is introducing such explicit tariff language, and therefore it may, by this precedent, limit injections and withdrawals accordingly.

Compliance with July 2009 Order

29. In its July 24 Order, the Commission accepted Tres Palacios's proposed tariff sheets subject to two conditions. First, the Commission approved Tres Palacios's proposal to implement a firm storage service without secondary point rights, subject to Tres Palacios clarifying in its tariff that, for those shippers not interested in limiting their point flexibility, it will negotiate a rate with those shippers that includes the right to access secondary points. Second, the Commission accepted Tres Palacios's proposal to restrict simultaneous injection and withdrawal nominations from firm storage on its system during the same nomination cycle, subject to Tres Palacios clarifying that its proposal prevents same-cycle simultaneous injections and withdrawals, but not same-day, different-time, different-cycle injections and withdrawals.

30. On August 24, 2009, Tres Palacios filed the revised tariff sheets listed in footnote 3[28] in Docket No. RP09-260-004 to comply with the Commission's July 2009 Order. To comply with the first directive on secondary points, Tres Palacios proposes to incorporate into section 2.2 of Rate Schedule FSS tariff language clarifying that firm storage shippers will have the right to negotiate for use of secondary points. Tres Palacios states its proposal was not intended to deny any shipper the opportunity to obtain service that includes access to secondary points.

31. To comply with the second directive, Tres Palacios proposes the following tariff language as section 8.3 of its General Terms and Conditions:

> The prohibition against simultaneous injection and withdrawal nominations shall not be deemed to limit a Customer's right during a Day, subject to the priorities of service provisions of Section 5 of these General Terms and Conditions, to submit intra-day nominations in different nomination cycles that would result in a switch from injections to withdrawals or from withdrawals to injections; provided that the Customer shall not nominate both injections and withdrawals under a single Service Agreement during any time period within a Day.

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[27] *Arkla Energy Resources Co.*, 64 FERC at 62,443 (emphasis added).

[28] First Revised Sheet No. 21, Original Sheet No. 137A, and Substitute First Revised Sheet No. 138 to its FERC Gas Tariff, Original Volume No. 1.

Notice and Responsive Pleadings

32. Public notice of Tres Palacios's compliance filing in this proceeding issued on August 26, 2009, allowing for protests to be filed on or before September 8, 2009. NJRES protests the section 8.3 language, and requests the Commission to find Tres Palacios's filing does not comply with the July 2009 Order and reject it. NJRES asserts the July 2009 Order required Tres Palacios to permit FSS shippers to nominate injections and withdrawals on the same day as long as nominations are not made within the same nomination cycle. It asserts Tres Palacios instead proposes to prohibit all same-day injections and withdrawals.

33. VPEM filed adverse comments agreeing with certain assertions that NJRES makes. VPEM argues that Tres Palacios's compliance tariff language conflicts with the Commission's July 2009 Order directives by preventing any simultaneous physical injections and withdrawals, including those that occur as a result of nominations for injections and withdrawals that occur in different nomination cycles. It contends Tres Palacios fails to explain how its prior "100 percent load factor" operational justification remains valid in light of the July 2009 Order, and should offer such explanation.

34. VPEM also identifies two ambiguities in Tres Palacios's proposed tariff language. It is unsure whether Tres Palacios's use of the word "intra-day" is intended to restrict subject nominations to the Intra-day 1 and Intra-day 2 cycles, or whether any nomination cycle after a Timely nomination would be eligible under the proposed language. It also states the Commission should clarify that the proviso added to the end of the proposed language ("provided that Customer shall not nominate both injections and withdrawals under a single Service Agreement during any time period with a Day") cannot be read to restrict nominations for injection and withdrawal quantities under a single service agreement in *different* NAESB nomination cycles, consistent with the July 2009 Order.

Tres Palacios Answer

35. Tres Palacios filed an answer on May 4, 2009 to NJRES and VPEM. VPEM filed on May 8, 2009 to oppose the answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[29] prohibits an answer to a protest unless otherwise ordered by the decisional authority. Pursuant to this rule, the Commission grants Tres Palacios's motion to accept its answer to both NJRES and VPEM because it provides information that assisted us in our decision-making process.

36. In its answer, Tres Palacios states that NJRES and VPEM mischaracterize the Commission's directives in the July 2009 Order. It asserts the order does not require Tres

[29] 18 C.F.R. § 385.213(a)(2) (2009).

Palacios to modify its tariff to provide for the acceptance of nominations for simultaneous injections and withdrawals from storage. Rather it states the order simply directs Tres Palacios to incorporate into its tariff language indicating that, in precluding nominations for simultaneous injections and withdrawals from storage, Tres Palacios has not prohibited something quite different – nominations made on the same day, but during different cycles, seeking a switch from injection to withdrawal mode, or *vice versa*. It argues that the pleadings upon which the July 2009 Order is based clearly distinguish between same-day, different cycle nominations and nominations seeking simultaneous injections and withdrawals.

37. Tres Palacios addresses two scenarios that NJRES offers in the proceeding which involve same-day injection and withdrawals. One is where a marketer serving a power plant may need to inject gas at the beginning of the day, but later withdraw gas for plant fuel if changes in the weather require different operations. Another is where a marketer using storage withdrawals to serve an industrial load needs to switch to injections if it were to lose its buyer and wanted to maintain purchases from its producers. Tres Palacios asserts these examples do not describe situations where simultaneous injections and withdrawals are required, as NJRES asserts, but rather describe situations in which, due to changing circumstances, a customer needs to switch between injections and withdrawals over the course of a gas day. According to Tres Palacios, its tariff proposal allows the switching between injections and withdrawals.

38. Tres Palacios adds the Commission accepted its assertion that simultaneous injections and withdrawals from storage could cause significant system operation problems if it were required to transport significant quantities of gas to accommodate the nominations. It states this could require it to operate its compressors for more hours than assumed in the facilities design, and could cause it to exceed permissible air emissions. It asserts these operational constraints do not allow it to offer the simultaneous injections and withdrawals that NJRES and VPEM seek.

Discussion

39. Tres Palacios's proposed tariff language in section 2.2 of Rate Schedule FSS regarding secondary point rights satisfactorily complies with the Commission's directive in the July 2009 Order, and no party protested or otherwise objected to this provision. Accordingly, we accept First Revised Sheet No. 21 effective July 25, 2009, as proposed.

40. As explained in the discussions on clarification and rehearing above, the July 2009 Order authorizes Tres Palacios to incorporate into its tariff a provision preventing shippers from scheduling simultaneous injections and withdrawals on its system, regardless of whether the shipper nominates such simultaneous injections and withdrawals during different scheduling nomination cycles for the same gas day. The

Commission also instructed Tres Palacios to clarify in its tariff that shippers can still switch from injections to withdrawals, or *vice versa*, over the course of the gas day if needed.

41. The Commission finds that Tres Palacios's revised tariff sheets comply with these requirements, subject to one condition. Tres Palacios's proposed tariff language expressly states that shippers may "submit *intra-day* nominations in different nomination cycles [emphasis supplied]" to switch from injections to withdrawals or *vice versa*. Tres Palacios's use of the word "intra-day" creates an ambiguity as to whether a shipper could submit a nomination in the Evening nomination cycle to replace an injection nomination for the next gas day with a withdrawal nomination for that day or *vice versa*. Permitting such a switch would be consistent with our clarification above that the July 2009 Order required Tres Palacios to clarify that a shipper, which submitted a nomination for withdrawals during a gas day, may, in a subsequent scheduling nomination cycle for that gas day, replace the withdrawal nomination with an injection nomination (or *vice versa*). Such switching between injections and withdrawals because of the shipper's changing needs does not result in the functional equivalent of transportation and is appropriately permitted. Accordingly, we direct Tres Palacios to file revised tariff sheets, within 15 days of the date this order issues, clearly stating in its tariff that a shipper can switch its nomination at the Evening nomination opportunity, in addition to the two Intra-day opportunities.

<u>The Commission orders</u>:

(A) The request for clarification and rehearing is denied.

(B) First Revised Sheet No. 21 is accepted effective July 25, 2009, as proposed.

(C) Original Sheet No. 137A and Substitute First Revised Sheet No. 138 are accepted, subject to Tres Palacios filing revised tariff sheets within 15 days of the date this order issues, in accordance with the above discussion.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.