

110 FERC ¶ 61,385  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeen G. Kelly.

Tennessee Gas Pipeline Company

Docket Nos. RP00-477-006  
RP00-477-007  
RP01-18-005  
RP98-99-010  
RP03-183-002

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued March 29, 2005)

1. Tennessee Gas Pipeline Company (Tennessee) and others requested clarification and/or rehearing of the Commission's August 9, 2004 Order (August 9 Order)<sup>1</sup> on Tennessee's compliance with Order No. 637, et seq.<sup>2</sup> On September 8, 2004, Tennessee also filed tariff sheets<sup>3</sup> in compliance with the August 9 Order. The Commission grants in part and denies in part the requests for clarification and/or rehearing, and accepts Tennessee's proposed tariff sheets as indicated in the Appendix to this order.

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<sup>1</sup> *Tennessee Gas Pipeline Company*, 108 FERC ¶ 61,177 (2004).

<sup>2</sup> *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, FERC Stats. & Regs. Regulations Preambles (July 1996-December 2000) ¶ 31,091 (2000) (Order No. 637); order on rehearing, Order No. 637-A, FERC Stats. & Regs, Regulations Preambles (July 1996-December 2000) ¶ 31,099 (2000) (Order No. 637-A); and Order No. 637-B, 92 FERC ¶ 61,062 (2000) (Order No. 637-B), *aff'd in part and remanded in part, Interstate Natural Gas Association of America v. FERC*, 285 F.3d 18 (D.C. Cir. Apr. 5, 2002), Order on Remand, 101 FERC ¶ 61,127 (2002).

<sup>3</sup> See the Appendix to this order for the list of proposed tariff sheets and effective dates.

## **Background**

2. On June 3, 2002, Tennessee filed, in Docket No. RP00-477-003, *et al.*, tariff sheets in compliance with Order No. 637, *et seq.* and an order on compliance issued April 3, 2002 (April 3 Order).<sup>4</sup> Tennessee and others filed requests for rehearing of the April 3 Order. In addition, Tennessee filed in compliance with the Commission's *Order on Remand*.<sup>5</sup> In an order issued July 11, 2003 (July 11 Order),<sup>6</sup> the Commission partially granted and denied rehearing, and found that Tennessee generally complied with the requirements of Order No. 637 and the April 3 Order, subject to certain modifications. Tennessee and others filed requests for rehearing of the July 11 Order. In the August 9 Order, the Commission partially granted and denied rehearing, and found that Tennessee generally complied with the requirement of Order No. 637 and the July 11 Order. Pertinent parts of the April 3 Order, the July 11 Order, and the August 9 Order are discussed below.

3. Tennessee, the KeySpan Delivery Companies (KeySpan), and the Municipals<sup>7</sup> request rehearing and/or clarification of the August 9 Order.

## **Rehearing Requests**

### **OFO and Hourly Flow Limitations**

4. In its Order No. 637 compliance filing, Tennessee proposed to revise its Operational Flow Order provisions to include a provision that would require any customer “to adjust their hourly quantities such that the customer will deliver and receive gas in uniform hourly quantities during the day.” The April 3 Order required Tennessee to either remove the proposed uniform hourly flow requirement from its OFO provisions or limit it to those services that are subject to the requirement under the terms of their rate schedules, and the July 11 Order clarified that Tennessee could not have any greater

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<sup>4</sup> *Tennessee Gas Pipeline Company*, 99 FERC ¶ 61,017 (2002) (April 3 Order).

<sup>5</sup> 101 FERC ¶ 61,127 (2002).

<sup>6</sup> *Tennessee Gas Pipeline Company*, 104 FERC ¶ 61,063 (2003).

<sup>7</sup> The Municipals are made up of the Cities of Clarksville, Springfield, and Portland Tennessee, the West Tennessee Public Utility District, the Greater Dickson Gas Authority, and the Humphreys County Utility District.

rights to require uniform hourly quantities than what is reflected in the rate schedule under which service is provided.

5. However, based on Commission precedent and a pipeline's need to protect its system integrity, the August 9 Order granted rehearing and permitted Tennessee to refile its tariff to implement an hourly flow restriction in its OFO provisions applicable to all rate schedules, as it initially proposed.<sup>8</sup> The Commission found that this provision was within the scope of Tennessee's then-existing tariff provisions for action alerts, which states:

Requested Actions: Upon issuance of an Action Alert, Transporter can request that an OFO Recipient take any of the following actions, *or other similar actions*, to the extent that such actions would alleviate the situation:

- (i) increase or decrease injections into the system at specified receipt areas;
- (ii) begin withdrawals from system storage or decrease injections into system storage; and/or;
- (iii) bring the nominations at specified delivery areas within designated balancing tolerances, provided, however, that Transporter shall not require DDS service to take such actions unless Transporter also requires similar actions to be taken by its firm storage services.

## **Hourly Flow and FTA Customers**

### **Rehearing Request**

6. On rehearing KeySpan asks the Commission to grant rehearing and determine that a Rate Schedule FT-A shipper that is the subject of an OFO requiring the shipper to conform its receipts and deliveries to uniform hourly quantities is only required to do so "as nearly as practicable" as required by section 4.11 of Rate Schedule FT-A. This rate schedule provides that: "As nearly as practicable, Shipper shall deliver and receive gas in uniform hourly quantities during any day." KeySpan argues that Tennessee's proposed uniform hourly flow OFO provision would eliminate the protections provided by the "as nearly as practicable" clause in section 4.11. KeySpan states that the Commission determined that Tennessee's proposed OFO hourly flow provision is similar to Tennessee's current OFO authority to require shippers to bring nominations within

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<sup>8</sup> August 9 Order at P 6.

designated balancing tolerances. However, KeySpan insists that under Rate Schedule FT-A the designated balancing tolerance is the practicable level to which the shipper is able to conform its hourly receipts and deliveries. Therefore, KeySpan contends that FT-A shippers should not be either required to take actions which are not practicable, or required to bear OFO-related penalties for failing to comply with an hourly flow restriction where compliance is not practicable. KeySpan insists that requiring Tennessee to give effect to the "as nearly as practicable" language will not prevent Tennessee from issuing an hourly flow-related OFO to avoid serious operational difficulties on its system, but would ensure that penalties associated with an OFO are assessed only to shippers that practicably can comply with the OFO but fail to comply.

7. KeySpan asserts that its position is consistent with the Commission's finding in *Tennessee* that the hourly flexibility routinely afforded to certain customers in New England results from the reality of Tennessee's physical operational constraints and it is not claiming that FT-A shippers have a firm right to hourly flexibility.<sup>9</sup> KeySpan argues that the operational reality does not change because Tennessee issues an OFO, and FT-A shippers cannot and should not be required to do more than what is required by Rate Schedule FT-A to comply with an hourly flow OFO. KeySpan states that the Commission has ruled in this proceeding and elsewhere that an OFO is called to maintain system operations so that Tennessee can render firm service and an OFO should not include required actions that degrade firm service.<sup>10</sup>

8. Additionally, KeySpan argues that the Commission's decisions in other proceedings are irrelevant to whether Tennessee's OFO hourly flow provisions would degrade Tennessee's existing Rate Schedule FT-A service or permit Tennessee to unreasonably impose penalties on FT-A shippers. KeySpan maintains that requiring Rate Schedule FT-A shippers to comply with an OFO when it is not practicable is not reasonable and is not required to enable Tennessee to comply with Order No. 637. KeySpan notes that the Commission has not found that the current language of section 4.11 of Rate Schedule FT-A requiring uniform receipts and deliveries as nearly as practicable is unjust or unreasonable under section 5 of the Natural Gas Act (NGA).

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<sup>9</sup> 76 FERC ¶ 61,022 at 61,138 (1996).

<sup>10</sup> *Citing Tennessee*, 99 FERC ¶ 61,017 at 61,080-91 (2002) and *Midwestern Gas Transmission Co.*, 101 FERC ¶ 61,310 at P 141 (2002).

### **Commission Determination**

9. We deny KeySpan's request for rehearing. Tennessee's shippers are no worse off under the proposed OFO tariff language than under Tennessee's existing OFO tariff language. Under the existing OFO provision, Tennessee, as all other pipelines implementing Order No. 636, was given authority to take actions necessary to prevent the impairment of reliable service. While the tariff specified certain actions that Tennessee could take, it also included "other similar actions." As stated in the August 9 Order, in filings to comply with Order No. 636, the Commission permitted pipelines to include such catch-all provisions for OFOs, concluding that the pipeline "cannot reasonably forecast and place in its tariff all situations which would require issuance of an OFO."<sup>11</sup>

10. The limitations on hourly flexibility are sufficiently similar to the types of provisions listed in the tariff to qualify under the existing tariff as actions that can be required when necessary to alleviate serious operational difficulties on its system. For instance, Tennessee had the authority to require nominations at specific delivery areas to stay within designated balancing tolerances and requiring uniform hourly flows is certainly similar to this provision.

11. Order No. 637 required pipelines to provide greater clarification as to the times at which they will use OFOs and to the OFO requirements the shippers must meet.<sup>12</sup> Tennessee's filing here complies with Order No. 637 by providing greater clarification of the steps it will take when OFOs are necessary, but does not change the authority already granted by Tennessee's tariff.

12. KeySpan's arguments regarding section 4.11 of Rate Schedule FT-A are unconvincing. Limitations contained in particular rate schedules do not limit the scope of a pipeline's authority to implement OFOs when necessary to preserve the integrity of the system. The reason the Commission permitted pipelines to establish OFO provisions is that if shippers continued to use all of the flexibility contained in their tariff, the operation of the pipeline would be compromised and no shipper would be able to obtain gas deliveries. While the Commission tried to build flexibility into pipeline services, the

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<sup>11</sup> August 9 Order at fn. 10, *citing Texas Gas Transmission Corp.*, 64 FERC ¶ 61,083 at 61,819 (1993).

<sup>12</sup> *Regulation of Short-Term Natural Gas Transportation Services*, Order No. 637, 65 FR 10156, FERC Stats. & Regs. Regulations Preambles, ¶ 31,091, at 31,312-14 (2000) (pipeline must set forth clear standards for when OFOs will begin and end and must state the steps and order of OFOs).

OFO provisions were intended to make sure that when operational integrity is at stake, the pipeline would have the control over its system to prevent system failure. No one shipper should be permitted to utilize its rights to flexibility in such a way as to compromise service to all shippers. As the Commission stated in Order No. 637-A:

the new OFO policy and requirement to establish OFO standards does not ban the use of OFOs and thereby remove pipelines' ability to control their systems. The Commission agrees that the reliability of service to all customers should be of greater concern than the reduction in one shipper's flexibility, where system reliability is a genuine or legitimate concern.<sup>13</sup>

13. By its action here, the Commission is not requiring a change in the language of section 4.11 or customer rights under section 4.11 and, therefore, does not need to take action under section 5 of the NGA, as asserted by Keyspan. Shippers are still entitled to the rights provided under section 4.11 subject, as they always have been, to the ability of the pipeline to declare OFOs when necessary to preserve the integrity of its system. As discussed above, Tennessee's filing clarified its tariff as required by Order No. 637, but did not change the scope of Tennessee's OFO authority. Limiting shippers' ability to exceed hourly flow limits is consistent with the purpose of allowing OFOs: to permit pipelines to take actions necessary to prevent serious operational difficulties on their systems. Under Tennessee's tariff provisions, OFOs are to be applied first to customers causing the operational problem and only if needed to protect system integrity. It is reasonable for FT-A shippers to be subject to OFO hourly flow restrictions if they are causing the problem. The Commission has permitted other pipelines to implement such hourly flow limitations in OFO provisions.<sup>14</sup> Keyspan has not demonstrated that the circumstances in Tennessee's case are sufficiently distinguishable from the circumstances in other pipeline cases to justify a different result in Tennessee's case.

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<sup>13</sup> Order No. 637-A, 65 FR 35706, FERC Stats. & Regs. Regulations Preambles, ¶ 31,099 at 31,605 (2000).

<sup>14</sup> See *Texas Gas Transmission Corp.*, 64 FERC ¶ 61,083 at 61,819 (1993); *United Gas Pipe Line Company*, 65 FERC ¶ 61,006 at 61,075 (1993); *Texas Eastern Transmission Corp.*, 63 FERC ¶ 61,100 at 61,474 (1993); *Dominion Transmission, Inc.*, 95 FERC ¶ 61,316 at 62,089 (2001); and *KO Transmission Company*, 98 FERC ¶ 61,093 at 61,286 (2002).

## **Small Customer Rate Schedules**

### **Rehearing Request**

14. The Municipals also request rehearing of the August 9 Order's finding that Tennessee may implement the uniform hourly flow OFO restrictions for all firm rate schedules. The Municipals state that they include many small firm transportation customers that take service under Tennessee's small customer rate schedules - Rate Schedules FT-G and FT-GS. The Municipals explain that members of the Municipals have exercised their option to take the no-notice service offered under Rate Schedules FT-G and FT-GS to accomplish daily balancing through automatic swings on storage to ensure that Tennessee would be able to match their temperature-sensitive residential and commercial loads, particularly during peak days and peak hours. They argue that those loads are threatened by the uniform hourly flow limits authorized by the August 9 Order. The Municipals contend that Order No. 637 mandated that pipelines in their implementation proceedings were to revise their existing tariff provision "to ensure that the imposition and adverse impact of OFOs are reduced to the maximum extent practicable"<sup>15</sup> and this mandate is set forth in section 284.12(b)(2)(iv) of the Commission's regulations.<sup>16</sup>

15. The Municipals state that the finding in the August 9 Order imposes a potentially huge adverse impact on Tennessee's small firm customers without demonstrating any need to do so. The Municipals assert that they have unpredictable high priority residential and commercial requirements that vary widely throughout the day because the requirements are temperature sensitive and such loads cannot be served within the constraints of uniform hourly flow limits. They also assert that unlike large Rate Schedule FT-A customers, subject to uniform hourly flow limits, the Commission has rejected the applicability of uniform hourly flow limits to the small firm customers' rate schedules.<sup>17</sup>

16. The Municipals argue that the imposition of OFO uniform hourly limits on no-notice small firm rate customers is particularly unjustified. They contend that in Order No. 636, the Commission created no-notice service to prevent the imposition of uniform

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<sup>15</sup> Order No. 637 at 31,312.

<sup>16</sup> 18 C.F.R. § 284.12(b)(2)(iv) (2004).

<sup>17</sup> *Tennessee*, 64 FERC ¶ 61,020 at 61,251 (1993).

hourly flows on customers taking such service.<sup>18</sup> The Municipals claim that the Commission stressed that no-notice service would meet the needs of small customers and enable the small customers to receive gas when needed to serve their customers on a reliable basis. The Municipals insist that the uniform hourly flow limits the August 9 Order allowed in emergency situations are inconsistent with the guarantees provided no-notice service customers in Order No. 636.

17. The Municipals assert that the Commission cannot apply its ruling in *Columbia*,<sup>19</sup> which allows the imposition of OFO uniform hourly flow restriction in emergency conditions to Tennessee's small firm customers, particularly those with no-notice service. The Municipals claim that Order No. 637 mandated that to include OFO provisions in its tariff a pipeline must demonstrate that such action is required to protect the reliability of its system and in this proceeding there is no factual basis for Tennessee to impose OFO hourly flow limits on its small firm customers. The Municipals add that the ruling in the August 9 Order was in response to Tennessee's request for rehearing of the July 11 Order, and Tennessee specifically limited its arguments regarding the OFO uniform hourly flow restrictions to Rate Schedule FT-A customers. The Municipals insist that: there is very little capacity associated with small firm customer service; Tennessee has not argued that it needs to impose uniform hourly flow limits on its small customers to protect system integrity; Tennessee has argued that it has contracted to provide all of its firm service based on the assumption that it can impose uniform hourly limits on Rate Schedule FT-A customers; and since the issuance of the April 3 Order Tennessee has not attempted to impose such restrictions on its small firm customers.

18. Assuming *arguendo* that Tennessee can impose OFO uniform hourly flow limits on small firm customers, the Municipals request that the Commission direct Tennessee to revise its tariff to indicate that Tennessee will exhaust all actions that it may take under other firm rate schedules, including the imposition of uniform hourly flow limits, before Tennessee considers imposing OFO uniform hourly flow limits on its small firm customers, particularly small customers with no-notice service. The Municipals insist that Tennessee's imposing the limits on all firm service customers at the same time will

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<sup>18</sup> *Citing* Order No. 636, FERC Stats. & Regs. Regulations Preambles ¶ 30,939 at 30, 421 and 30,424 (1992) and Order No. 636-A, FERC Stats. & Regs. Regulations Preambles ¶ 30,950 at 30,539, 30,545 and 30,570-72 (1992).

<sup>19</sup> *Columbia Gas Transmission Corp.*, 100 FERC ¶ 61,084 at P250 (2002), *reh'g* denied, 104 FERC ¶ 61,168 at P 29 (2003). The Municipals also imply that the Commission should overturn *Columbia* which is an impermissible collateral attack on the order.

radically degrade the quality of firm service to Tennessee's small firm customers. The Municipals submit that Tennessee is entitled to impose uniform hourly flow limits in non-emergency situations under its other firm rate schedules and imposing the limits on customers under its other firm rate schedules will almost certainly eliminate the need to impose the limits on its small firm customers.

### **Commission Determination**

19. The Commission denies the Municipals request for rehearing and its request that Tennessee be required to impose uniform hourly flow restriction on customers receiving service under other firm rate schedules before imposing such restriction on small firm customers. As stated above, Tennessee's existing tariff provided Tennessee with the ability to impose hourly flow limitations on all customers when necessary to protect the operational integrity of its system. While no-notice customers ordinarily are not subject to hourly flow limitations, such limits can be imposed when needed to ensure the operational integrity of the pipeline. In contrast to the Municipals' contention, Order No. 636 did not exempt no-notice customers from OFOs.<sup>20</sup>

20. The Municipals also contend that, under Order No. 637, Tennessee must limit OFOs to the maximum extent possible and request that imposition of OFOs on small customers will be used as Tennessee's last resort. The Commission has found that Tennessee's tariff contains appropriate safeguards to limit the use of OFOs only to those situations where they are required. Article VIII, section 2.2 of Tennessee's GT&C requires that:

Transporter shall make an OFO as localized as is reasonably practicable based on Transporter's good faith and reasonable judgement concerning the situations requiring remediation such that an OFO will be directed (a) first to OFO Recipients causing the problem necessitating the OFO or transporting gas in the area of the system in which there is an operational problem, and (b) second to those OFO Recipients transporting gas in the area of the system where action is required to correct the problem necessitating the OFO.

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<sup>20</sup> *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation*, Order No. 636-A, FERC Stats. & Regs. Regulations Preambles, ¶ 30,950, at 30,575 (1992) (pipeline can impose OFOs on no-notice shippers); *Texas Eastern Transmission Corporation*, 64 F.E.R.C. ¶ 61,305 at 63,287 (1993) (no exemption from OFOs for no-notice shippers); *Texas Eastern Transmission Corporation*, 62 FERC ¶ 61,015 at 61,803-04 (permitting OFOs to apply to no-notice service).

21. Thus, Tennessee's tariff requires it to demonstrate the need for an OFO and to impose OFOs on those customers causing the problem first. The Municipals assert that given their small volume, Tennessee will have little need to impose OFOs on their hourly flows. If this is the case, then Tennessee's tariff already provides protection against the issuance of such OFOs, as is indicated by the Municipals' own statement that Tennessee has not imposed such an OFO on them. However, in those cases where a Municipal customer, is the cause of, or in the best position to remediate, an operational issue, it is appropriate for Tennessee's tariff to impose an OFO on that customer. Tennessee has set forth clear standards for imposition of an OFO and has also mitigated any harm to its customers from the imposition of an OFO by including four levels of an OFO in its tariff. Tennessee will impose only the level of OFO necessary to resolve the system's operational problem. This complies with the mitigation requirements of Order No. 637 and section 284.12(b)(2)(iv) of the Commission's regulations. Moreover, the fact that Tennessee's justification for its need for OFO uniform hourly flow limitations focused on FT-A shippers does not mean that it may not sometimes need to impose OFO uniform hourly flow restrictions on other firm customers to protect system integrity.

### **Limits on Segmentation**

22. In the August 9 Order the Commission determined that there is no basis for Tennessee to deviate from the Texas Eastern/El Paso policy (under which the releasing and replacement shippers in segmented releases are both able to choose primary points consistent with their mainline contract demand).<sup>21</sup> The August 9 Order also rejected Tennessee's proposal to charge additional reservation rates for the elevation of secondary points to primary points because such a policy would be inconsistent with the Texas Eastern/El Paso policy, since it would impose costs on release transactions that are not imposed on pipeline transactions.<sup>22</sup> In its rehearing petition, Tennessee does not reiterate its arguments why the Texas Eastern/El Paso policy should not be applied to its system, but it reserves all rights to seek review of the Commission's orders applying the policy to Tennessee. However, the August 9 Order addressed Tennessee's proposed conditions on segmenting primary point capacity and Tennessee seeks clarification of the August 9 Order's determinations regarding two limitations.

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<sup>21</sup> August 9 Order at P 12.

<sup>22</sup> August 9 Order at P 21.

### **Segmentation at Non-Physical Points**

23. Tennessee proposed that;

Segmented Primary Point Capacity is only available at an existing physical point that is classified by Transporter as a receipt or delivery point on its system.

24. The August 9 Order stated that, "Tennessee does not offer an explanation of why segmentation should not be permitted at economically and operationally significant points on its system."<sup>23</sup> Tennessee requests that the Commission clarify that segmented primary point capacity may only be available at an existing physical or non-physical point available as a primary receipt or delivery points on its system. Tennessee asserts that the purpose of the proposed limitation was not to prohibit segmentation at economically or operationally significant points on its system, but that the purpose was to ensure that conversions of secondary points to primary points do not give holders of segmented primary point capacity rights far in excess of those held by parties requesting primary firm capacity. Tennessee explains that prior to posting receipt or delivery points as available, especially non-physical points, Tennessee must determine whether it can effectuate transactions at such points, and to make the virtual point a viable point, there must be sufficient flows across the system to ensure primary flows.

25. Tennessee argues that, by virtue of elevation, segmented primary point capacity holders should not have a right to request primary point capacity on segments of Tennessee's system that are unavailable to other shippers or have the right to access non-physical points as primary points where other shippers are unable to do so. Tennessee asserts that under section 3.5 of Rate Schedule SA, quantities nominated from receipt points to supply aggregation service agreements shall have the same scheduling priority as firm transportation services utilizing secondary receipt points and Article III, Section 5(b) of its GT&C ranks supply aggregations services using receipt points under Rate Schedule SA have secondary priority only. Tennessee contends that by accepting Tennessee's motion filing to put its Rate Schedule SA into effect the Commission approved "Tennessee's motion filing which placed the scheduling of pooling at the same level as firm secondary receipt points."<sup>24</sup> Tennessee states its belief that the Commission did not intend, and the cite to Order Nos. 637-A and Order No. 637-B does not support, that segmented primary point capacity holders are entitled to point capacity where

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<sup>23</sup> August 9 Order at P 37.

<sup>24</sup> *Tennessee*, 73 FERC ¶ 61,278 (1995).

capacity did not exist before or to a primary priority level that does not exist for any other shipper. Alternatively, Tennessee requests rehearing. No other party requested rehearing on this issue.

26. The Commission grants the clarification request. As stated in the August 9 Order,<sup>25</sup> the Commission found in Order Nos. 637-A and 637-B that shippers should be able to segment capacity at market centers, pooling points, and other virtual points on the system.<sup>26</sup> The Commission's intent in the August 9 Order was to ensure that holders of segmented primary point capacity have the same right to request primary point capacity, including primary point capacity at non-physical points, on segments of Tennessee's system as other shippers requesting primary firm capacity on Tennessee's system. If points are not available as primary points to shippers purchasing capacity from Tennessee, they need not be made available on a primary basis to shippers segmenting capacity.

27. In compliance with the August 9 Order, Tennessee proposed revised tariff language stating, "Segmented Primary Point Capacity is only available at an existing physical or non-physical point that is available as a primary receipt or primary delivery point on Transporter's system." We accept this revised tariff language as in compliance with the August 9 Order.

**Segmented Point Capacity in the Same Direction as the Releasing Shipper's Contract**

28. In the August 9 Order the Commission granted rehearing and approved the proposed limitation stating that:

The Releasing or Replacement Shipper may only create Segmented Primary Point Capacity in the same direction as the Releasing Shipper's contract.

29. The order also stated that, "Tennessee, however, does not sell backhaul service under its firm FT-A rate schedule, but has a firm backhaul rate schedule (Rate Schedule FT-BH) with different rates than forward haul service. Thus, any attempt to change primary points to effectuate a backhaul on Tennessee is not simply a change in primary

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<sup>25</sup> August 9 Order at P 37.

<sup>26</sup> Order No. 637-A, FERC Stats. & Regs. Regulations Preambles ¶ 31,099 at 31,591-92 (2000) and Order No. 637-B, 92 FERC ¶ 61,062 at 61,165 (2000).

points under an existing contract, but would require the execution of a new contract for a different service...."<sup>27</sup>

30. Tennessee explains that currently it does provide firm backhaul service under Rate Schedules FT-G, FT-GS, and FT-A, as well as Rate Schedule FT-BH. Therefore, Tennessee requests that the Commission clarify that Tennessee does offer firm backhaul service under firm transportation Rate Schedules FT-G, FT-GS, and FT-A, as well as Rate Schedule FT-BH. Tennessee submits that the clarification does not interfere with the Commission's overall finding approving the limitation, since whether or not a pipeline offers backhaul service under a stand alone rate schedule was not a determinative factor in Commission precedent approving similar conditions.<sup>28</sup>

31. We grant Tennessee's requested clarification. Whether Tennessee provides firm backhaul service under Rate Schedules FT-G, FT-GS, and FT-A as well as Rate Schedule FT-BH does not affect the Commission decision in the August 9 Order to accept Tennessee's proposed limitation that the releasing or replacement shipper may only create segmented primary point capacity in the same direction as the releasing shipper's contract. This is consistent with Commission precedent accepting tariff language with similar conditions but affirming that a segmenting shipper may reverse flow on a secondary basis.<sup>29</sup>

### **Compliance Filing**

32. On September 8, 2004, Tennessee filed in compliance with the August 9 Order. Tennessee states that, while it is filing in compliance with the Commission's orders, it continues to reserve its rehearing and appeal rights. Details of the compliance filing are described below. We find that Tennessee has complied with the August 9 Order.

33. Notice of Tennessee's compliance filing was issued on September 10, 2004, providing for the filing of protests by September 20, 2004 in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.211 (2004). The East Ohio Gas Company d/b/a Dominion East Ohio, and the Peoples Natural Gas

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<sup>27</sup> August 9 Order at P 39.

<sup>28</sup> *Citing Natural Gas Pipeline Company of America*, 103 FERC ¶ 61,174 at 61,645-46 (2003).

<sup>29</sup> *Natural Gas Pipeline Company of America*, 103 FERC ¶ 61,174 at P 22-24 (2003).

Company, d/b/a Dominion Peoples (jointly Dominion) filed a limited protest of Tennessee's compliance filing. The protest raises issues discussed below.

### **Discount Provisions**

34. To address the Court of Appeals for the District of Columbia Circuit's order<sup>30</sup> vacating the application of the *CIG/Granite State*<sup>31</sup> discounting policy to Williston Basin Interstate Pipeline Co. (Williston) and the Commission's concerns regarding the appropriate relationship between its selective discounting policy and the competitive measures adopted in Order Nos. 636 and 637, the Commission established a generic proceeding to examine its discounting policy in Williston Docket No. RP00-463-006.<sup>32</sup> In the August 9 Order the Commission directed Tennessee to submit data responses to certain questions to determine the appropriateness of applying the *CIG/Granite State* policy to Tennessee.<sup>33</sup>

35. In compliance with the August 9 Order Tennessee submitted the required data responses. In the instant filing, Tennessee also removed Article XXIX, section 29.2 from its tariff which Tennessee included to comply with the *CIG/Granite State* policy. Consistent with the Second Order on Remand in Williston Docket No. RP00-463-006,<sup>34</sup> the Commission will not require Tennessee to implement the *CIG/Granite State* policy on its system. In the order, the Commission concluded that it cannot, at this time, satisfy its burden under section 5 of the Natural Gas Act to require pipelines to modify their tariffs to incorporate the *CIG/Granite State* policy. The Commission stated that it will return to its preexisting policy of permitting pipelines to limit the selective discounts they offer to shippers to particular points. The Commission found that the Commission's discount policy as set forth in *El Paso Natural Gas Company*,<sup>35</sup> more appropriately balances the

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<sup>30</sup> *Williston Basin Interstate Pipeline Co. v. FERC*, 358 F. 3d 45 (D.C. Cir. 2004).

<sup>31</sup> *Colorado Interstate Gas Company*, 95 FERC ¶ 61,321 (2001) and *Granite State Gas Transmission, Inc.*, 96 FERC ¶ 61,273 (2001), *reh'g denied*, 98 FERC ¶ 61,019 (2002).

<sup>32</sup> *Williston*, 107 FERC ¶ 61,229 (2004).

<sup>33</sup> August 9 Order at P 63.

<sup>34</sup> *Williston*, 110 FERC ¶ 61,210 (2005).

<sup>35</sup> *El Paso Natural Gas Co.*, 62 FERC ¶ 61,311 at 62,990-91 (1993).

goals of the selective discount policy with the Commission's goals in adopting segmentation and flexible point rights policies of enhancing competition. As the tariff sheets proposed in the instant filing do not reflect the *CIG/Granite State* policy, no additional compliance filing is required on this point.

### **Segmentation**

36. The August 9 Order addressed seven limitations on segmentation proposed by Tennessee. The August 9 Order required Tennessee to revise the last sentence of Proposal 1 to read: "Point capacity reserved by the Transporter, under applicable provisions of this tariff, to sell generally available mainline capacity to or from the point shall not be available as Segmented Primary Point Capacity."<sup>36</sup> Tennessee has complied by making this revision.

37. In discussing Proposal 3, the August 9 Order stated that, "Tennessee does not offer an explanation of why segmentation should not be permitted at economically and operationally significant points on its system."<sup>37</sup> In compliance with the August 9 Order, Tennessee proposed revised tariff language stating, "Segmented Primary Point Capacity is only available at an existing physical or non-physical point that is available as a primary receipt or primary delivery point on Transporter's system."<sup>38</sup> We accept this revised tariff language as in compliance with the August 9 Order since segmented primary point capacity is available at existing non-physical points available as primary receipt or delivery points.

38. The August 9 Order granted rehearing and permitted Proposal 4, which states that the "Releasing or Replacement Shipper may only create Segmented Primary Point Capacity in the same direction as the Releasing Shipper's contract."<sup>39</sup> In its compliance filing, Tennessee has revised its tariff to include this limitation.

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<sup>36</sup> August 9 Order at P 32.

<sup>37</sup> August 9 Order at P 37.

<sup>38</sup> Tennessee's Fifth Revised Volume No. 1, Second Revised Sheet No. 339B.

<sup>39</sup> August 9 Order at P 39.

39. The August 9 Order granted rehearing and stated that Tennessee will not be required to allow Rate Schedule FT-GS customers to segment capacity for their own use.<sup>40</sup> In its compliance filing, Tennessee has removed this right from Rate Schedule FT-GS.

40. The August 9 Order found that Tennessee's use-or-lose provision in section 11.11(o) of Article III was not in accord with the *Texas Eastern/El Paso* policy. In its compliance filing Tennessee has revised its tariff to remove the use-or-lose provision in section 11.11(o) and is in compliance with the August 9 Order.

### **Operational Flow Orders**

41. The August 9 Order granted rehearing and permitted Tennessee to implement an hourly flow restriction in its OFO provisions applicable to all rate schedules, as initially proposed.<sup>41</sup> In its compliance filing, Tennessee has appropriately revised sections 4.4 and 5.2(d) of Article VIII of its GT&C to reflect the Commission's granting of rehearing.

42. Dominion states that in Tennessee's compliance filing Tennessee, without explanation, deleted the words "during the day" from section 5.2(d) of Article VIII while leaving these words in section 4.4 of Article VIII. Dominion submits that it is reasonable to conclude that the hourly flow limitation of section 5.2(d) applies "during the day." However, Dominion contends that the difference between section 5.2(d) and section 4.4 could lead to confusion and arguments that the different language evidences different intent. Dominion requests that the Commission direct Tennessee to revise section 5.2 (d) to add the words "during the day."

43. We deny Dominion's request. Dominion does not explain, and we fail to see, how the inclusion of the words "during the day" would change the meaning of section 5.2 of the tariff. Section 5.2 provides that Tennessee may require a shipper to deliver and receive gas in uniform hourly quantities. Such a requirement will apply during whatever minimum time period is necessary to deal with the operational constraint, even if that period is less than a full day. Similarly, under section 4.4, all OFOs must be limited to the minimum period necessary to resolve the operational problem.

44. Further, there are differences between section 4.4 and section 5.2. Section 4.4 sets forth required actions when Tennessee has called a Critical Day. Under section 4.3

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<sup>40</sup> August 9 Order at P 48.

<sup>41</sup> August 9 Order at P 6 and P 98.

Tennessee must post notice of the Critical Day no later than 10:00 p.m. CCT to be effective by 9:00 a.m. CCT for the following gas day (a gas day is 24 hours starting at 9:00 a.m. CCT). A Critical Day, therefore, must be called in advance of the gas day and will last for the full gas day. Thus, the phrase “during the day” would be appropriate. Section 5.2(d) sets forth required actions when a Balancing Alert, the most stringent level of OFO, is called. Section 5.1 provides that Balancing Alerts will be issued a minimum of eight hours prior to the required action. Thus, Balancing Alerts may become effective at some time other than the start of the gas day and may last beyond the gas day. Therefore, it is appropriate not to apply the language "during the day" to actions required under Balancing Alerts.

45. Dominion contends that in the August 9 Order the Commission expressly limited Tennessee's permission to add an hourly flow limitation provision to its OFO provision to when "such actions are needed to protect system integrity." Dominion claims that in Tennessee's compliance filing, Tennessee failed to include this limitation in the section 4, Critical Days, and section 5, Balancing Alerts OFOs. Dominion requests that the Commission require Tennessee to revise sections 4.4 and 5.2(d) of Article VIII to add this limitation.

46. We deny Dominion's request. It is unnecessary to add the language "when such actions are needed to protect system integrity" to sections 4.4 and 5.2(d) of Article VIII. Tennessee may only call Critical Days or issue Balancing Alerts if the operational integrity of its system is threatened. Section 4.1 specifies that one of three operational problems must exist before Tennessee may call a Critical Day. The conditions are: (1) Tennessee has curtailed its firm storage and transportation customers because of limited capacity; (2) Tennessee's operational storage levels are below 10 percent or above 90 percent of the total operational storage balance; and (3) Tennessee is experiencing loss or an inability to maintain line pack. Section 5 provides that if the Action Alerts and Critical Days are not sufficient to address the situation fully or under circumstances in which the operational integrity of the system is more severely threatened Tennessee may issue Balancing Alerts.

### **Penalty Provisions**

47. In the August 9 Order the Commission rejected Tennessee's proposal to apply twice the Rate Schedule PAL rate to Action Alert penalties applicable to Rate Schedule Load Management Service - Pooling Area (LMS-PA) and directed Tennessee to maintain the Action Alert penalty for Rate Schedule LMS-PA at \$0.2198 per Dth. The finding

was without prejudice to Tennessee making a section 4 filing that may change this Action Alert penalty rate on a prospective basis.<sup>42</sup>

48. In its compliance filing Tennessee has revised Article VIII, Section 3.4 to charge \$0.2198 if a customer fails to comply with an Action Alert. This complies with the August 9 Order.

### **Penalty Revenue Crediting**

49. The August 9 Order required that Tennessee explain the relationship between the cashout revenue crediting mechanism and the non-cashout penalty revenue crediting mechanism and, if necessary, file tariff language, that non-cashout penalty revenues credited would not be included in the cashout revenue crediting mechanism.<sup>43</sup> Tennessee states that the cashout and non-cashout penalty revenues are treated separately, and that the tariff language conditionally accepted by the August 9 Order implements that objective. The Commission accepts Tennessee's clarification. No further compliance filing is required on this issue.

#### The Commission orders:

(A) The requests for rehearing are denied and the requests for clarification are granted and denied as discussed in the body of this order.

(B) Tennessee's proposed compliance tariff sheets are accepted as of the dates shown on the Appendix of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.

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<sup>42</sup> August 9 Order at P 94.

<sup>43</sup> August 9 Order at P 68.

**Appendix**

**List of Tariff Sheets  
Accepted as noted.**

Tennessee Gas Pipeline Company  
FIFTH REVISED VOLUME NO. 1

Sub Second Revised Sheet No. 165A	October 1, 2003
Second Revised Sheet No. 339B	November 1, 2004
Sub Fourth Revised Sheet No. 360	October 1, 2003
Sub Second Revised Sheet No. 360A	October 1, 2003
Sub Third Revised Sheet No. 361	October 1, 2003
1st Revised Sixth Revised Sheet No. 406	October 1, 2003
Eighth Revised Sheet No. 406	August 1, 2004
Sub Sixth Revised Sheet No. 406A	October 1, 2003