107 FERC ¶ 61,309
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Great Lakes Gas Transmission Limited Partnership — Docket Nos. RP04-188-001, RP04-188-002

ORDER ON REHEARING
AND COMPLIANCE

(Issued June 23, 2004)

1. On April 30, 2004, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed a request for rehearing of certain aspects of the Commission's order, issued March 31, 2004.[1] Additionally, on that same date, Great Lakes filed revised tariff sheets in partial compliance with the March 31 Order. In this order, the Commission grants, in part, and denies, in part, Great Lakes's request for rehearing and accepts its revised tariff sheets. This decision benefits customers by ensuring that Great Lakes's creditworthiness provisions are just and reasonable.

<u>Background</u>

2. On February 27, 2004, Great Lakes filed revised tariff sheets to modify its existing creditworthiness provisions and to establish provisions to govern the termination of a capacity release transaction. Great Lakes asserted that the tariff revisions were necessary to reduce the financial risk caused by non-creditworthy customers, while protecting all shippers from unduly burdensome creditworthiness requirements. Among its revisions, Great Lakes proposed to revise its tariff to: (1) base collateral requirements on three months' worth of service charges; (2) provide for written notice to an existing shipper upon determining that such shipper is no longer creditworthy; (3) provide timelines and procedures applicable to delinquencies and the deterioration of credit; and (4) enhance the criteria that it will employ to determine a shipper's creditworthiness.

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[1] Great Lakes Gas Transmission Limited Partnership, 106 FERC ¶ 61,336 (2004) (March 31 Order).

3. While the March 31 Order found that Great Lakes's proposal was generally consistent with the Commission's recent decisions and our evolving policy pertaining to creditworthiness issues in the industry,[2] certain areas of its proposal did not conform to the Commission's policy. The March 31 Order recognized that Great Lakes's existing tariff allows a shipper to be deemed creditworthy if its request for credit is less than 15% of its total net worth and: (1) Great Lakes determines the shipper's credit history is to be acceptable; or (2) the shipper's debt rating is investment grade or better. Thus, under the existing tariff, Great Lakes deems a shipper creditworthy if its request for credit is less than 15% of its total net worth and the shipper's debt rating is investment grade or better. No further evaluation by the pipeline is necessary. However, Great Lakes proposes to require that even where the shipper satisfies the 15% test and has an investment grade credit rating, the pipeline would review the shipper's creditworthiness. In effect, Great Lakes's proposal replaces the "or" in its existing tariff with an "and."

4. Several intervening parties argued that Great Lakes's proposal would provide it with too much discretion in determining whether a shipper is creditworthy. The Commission agreed, finding that the proposal lacked clear standards for creditworthiness determination. Moreover, we explained that the Commission consistently rejected tariff language that is unnecessarily vague and subject to interpretation.[3] The March 31 Order explained that while pipelines may deem a shipper creditworthy if the shipper has an investment grade credit rating and the level of requested credit is less than 15% of the shippers tangible net worth,[4] Great Lakes failed to justify its proposal to then subject the shipper to its own determination of whether the shipper's credit and financial history is acceptable. The Commission found that the 15% test, together with the investment grade rating is objective, and Great Lakes did not demonstrate a need to include a further subjective element to the analysis. Since Great Lakes did not justify this change to its tariff, the Commission rejected its proposal. The Commission, however, suggested that Great Lakes could consider revising its tariff to provide that a shipper can demonstrate creditworthiness by meeting the 15% net worth test of section 26.1(B)(1) and the investment grade rating requirement of section 26.1(B)(2), or be subject to an objective creditworthiness determination.

[2] See Creditworthiness Standards for Interstate Natural Gas Pipelines, 69 Fed. Reg. 8,587 (Feb. 25, 2004), FERC Stats. & Regs., Proposed Regulations ¶ 32,573 (2004).

[3] March 31 Order at P 12.

[4] See Natural Gas Pipeline Co. of America, 106 FERC ¶ 61,175 at P 69-74 (2004) (Natural).

5. The Commission also found that other aspects of Great Lakes's proposal required modification. Specifically, the Commission directed Great Lakes to: (1) explain how an unrated shipper may demonstrate its creditworthiness; (2) provide an explanation of how Great Lakes will adjust a shipper's tangible net worth to reflect issues of liquidity, asset management, and debt management; (3) provide shippers with a minimum of five business days to respond to a request for additional information; (4) clarify that a shipper is not responsible for reservation charges after its service is suspended; and (5) modify some undefined terms that appear in its tariff.

Public Notice and Interventions

6. Public notice of Great Lakes's compliance filing was issued on May 13, 2004. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.[5] Pursuant to rule 214 of the Commission's Rules of Practice and Procedure, all timely motions to intervene and all motions to intervene out of time filed before the issuance of this order are granted.[6] Granting late intervention will not disrupt the proceeding or place additional burdens on existing parties. Consumers Energy Company filed comments recognizing that Great Lakes did not fully comply with the March 31 Order.

Request for Rehearing

7. On April 30, 2004, Great Lakes, in Docket No. RP04-188-001, filed a request for rehearing of the March 31 Order's ruling that it may not incorporate a shipper's credit and financial history into its creditworthiness determination where the shipper is both rated at investment grade and its requested credit is less than 15% of its tangible net worth. Great Lakes primarily argues that it is unreasonable to prevent it from considering a shipper's credit outlook and financial history information merely because the ratings agencies haven't (or won't) reflect that information in a current rating. Great Lakes believes that its consideration of a shipper's credit and financial history and outlook is necessary to protect the pipeline and its existing shippers from foreseeable credit risks.

8. Great Lakes explains that in the Natural decision, the Commission accepted a two-step credit evaluation process.[7] Under this two-step process, the first step assesses

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[5] 18 C.F.R. § 154.210 (2003).

[6] 18 C.F.R. § 385.214 (2003).

[7] Infra at n.4.

whether a shipper is investment grade, and in certain cases, whether its credit request is less than some percentage of the shipper's tangible net worth. If the pipeline declines to deem the shipper creditworthy in this first step, the pipeline may then assess the shipper's credit based on a list of other criteria. However, unlike Natural, Great Lakes states that it proposes to use a one-step credit evaluation process where all credit criteria are applied to the shippers from the outset.

9. Great Lakes considers its one-step proposal superior to the two-step process because it does not create two distinct classes of shippers: (1) shippers that have an investment grade rating; and (2) shippers that either have a non-investment grade rating or shippers that are not rated. Great Lakes submits that since shipper credit risk does not fall into two distinct classes, but is more akin to a "gradual progression" or "spectrum" of credit risk, its one-step proposal would allow Great Lakes to more accurately determine a shipper's risk . Accordingly, Great Lakes believes that its proposed one-step process is a just and reasonable method to ensure non-discriminatory credit evaluation among a range of shipper profiles, and reflects the need to consider information bearing on a shipper's financial health other than its credit rating and tangible net worth.

Discussion

10. The Commission grants rehearing to the extent that parties could read the March 31 Order to require Great Lakes to rely exclusively on credit ratings or the level of requested credit in determining creditworthiness. However, the Commission denies Great Lakes's rehearing request to the extent that we continue to find that its proposed tariff revision is unjust and unreasonable because it does not specifically describe the objective criteria Great Lakes will use to determine whether a shipper is creditworthy. Therefore, the Commission accepts Great Lakes's filing subject to it filing revised tariff sheets to establish the objective criteria it will use in assessing shipper's creditworthiness within 15 days of the date this order issues.

11. In Tennessee,[8] the Commission established that pipelines should use objective criteria when evaluating a shipper's creditworthiness. As the Commission explained, "objective criteria are necessary to ensure that shippers know the basic standards that Tennessee will apply in determining their creditworthiness status, so they can have the ability to predict whether additional collateral or other requirements may be imposed."[9] However, the Commission also found that the requirement for objective criteria does not

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[8] Tennessee Gas Pipeline Co., 103 FERC ¶ 61,275 at P 40-41 (2003) (Tennessee).

[9] Id.

impose restrictions on the pipeline's ability to evaluate all factors relevant to a shipper's creditworthiness:

> The Commission did not impose restrictions on Tennessee's flexibility in evaluating a shipper's creditworthiness, but merely required the minimum standards that Tennessee uses to evaluate a shipper's creditworthiness be set forth in its tariff. While providing minimum objective criteria in its tariff, Tennessee still retains the discretion to determine a shipper's creditworthiness on a case-by-case basis and to consider the uniqueness of each shipper's circumstances…. The Commission's requirement for objective standards does not interfere with Tennessee's right to exercise its business judgment in evaluating a shipper's creditworthiness. Several pipelines provide objective creditworthiness standards in their tariffs, which are similar to the standards that the Commission required Tennessee to provide to its shippers. As the Commission pointed out in the January 29 Order, with the increased importance of the creditworthiness evaluation process, it is important that the process be open and objective.[10]

12. Therefore, contrary to its assertion, we do not require Great Lakes to ignore credit outlook and financial history information that may affect a shipper's credit. However, section 26.1(B)(3) of Great Lakes's tariff provides that the shipper's "credit/financial history and outlook is determined to be acceptable" by Great Lakes, without setting forth a definitive set of objective criteria for making that assessment. The Commission reaffirms its finding that such a provision is unnecessarily vague and does not explicitly describe the objective criteria that Great Lakes will use to evaluate a shipper's credit status. Accordingly, the Commission will accept this tariff provision, subject to Great Lakes's filing revised tariff sheets, proposing additional objective criteria to be used in its creditworthiness evaluation process.

13. Additionally, the Commission previously found that pipelines should inform shippers of the basis for a determination that they are not creditworthy.[11] Great Lakes's tariff does not provide its non-creditworthy shippers with the opportunity to discover the reasons why they were deemed non-creditworthy. Accordingly, consistent with Commission policy, we direct Great Lakes to revise its tariff to provide that upon a determination that a shipper or potential shipper is non-creditworthy, Great Lakes must

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[10] Id.

[11] Tennessee Gas Pipeline Co., 102 FERC ¶ 61,075 at P 46 (2003).

provide, within five days of the request of the shipper, a written explanation of the basis for its determination.

Compliance Filing

14. On April 30, 2004, Great Lakes filed revised tariff sheets in Docket No. RP04-188-002 to partially comply with the March 31 Order.[12] Great Lakes explains that it did not file tariff sheets to comply with the Commission's directive to revise its creditworthiness determination proposal. Instead, Great Lakes sought rehearing of that particular issue, as discussed above.

15. In compliance with the remainder of the directives of the March 31 Order, Great Lakes provides the required explanation that if a shipper is not rated by a credit rating agency, then such shipper is exempt from the requirement to provide verification of a rating under section 26.1(B)(1) of its tariff. Moreover, Great Lakes states that its proposed tariff language clearly specifies that the rating verification requirement only applies to a shipper "if applicable."

16. Great Lakes also proposes to revise section 26.1(B)(2) to provide an explanation of how it will adjust a shipper's tangible net worth to reflect issues of liquidity, asset management, and debt management. Specifically, Great Lakes clarifies that it first calculates the amount that is 15% of a shipper's tangible net worth and that amount is <u>then</u> adjusted as necessary by using key ratios that measure issues of liquidity, asset management and debt management, as well as debt coverage, capital structure, operational efficiency and profitability.

17. In addition, Great Lakes filed the necessary tariff revisions to: (1) provide shippers with a minimum of five business days to respond to a request for additional information; (2) clarify that shippers are not responsible for any reservation charges once its service is suspended; and (3) remove and replace the undefined terms "U.S. Federal Funds" and "working days" wherever they appeared in its tariff.

18. The Commission finds that Great Lakes complied with the directives in the March 31 Order, with the exception of modifying section 26.1 of its tariff, which is

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[12] First Revised Sheet No. 19, Substitute Tenth Revised Sheet No. 40, and Substitute Original Sheet Nos. 50R, 50S, and 50T to FERC Gas Tariff, Second Revised Volume No. 1.

addressed on rehearing. Accordingly, the tariff sheets listed in footnote No. 12 are hereby accepted, effective April 1, 2004, as proposed.

The Commission orders:

(A) Great Lakes's request for rehearing is granted, in part, and denied, in part, as discussed in the body of this order.

(B) Great Lakes is hereby directed to file, within 15 days of the date this order issues, revised tariff sheets setting forth objective criteria for evaluating creditworthiness, as discussed in the body of this order.

(C) Great Lakes's revised tariff sheets, as listed in footnote No. 12, are accepted, effective April 1, 2004, as discussed above.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.