135 FERC ¶ 61,055
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Natural Gas Supply Association,
American Forest and Paper Association,
American Public Gas Association,
Independent Petroleum Association of America, and
Process Gas Consumers Group

Docket No. RP11-1538-000

ORDER ON PETITION

(Issued April 21, 2011)

1. On November 17, 2010, Petitioners[1] filed a Petition asking that "the Commission exercise its NGA section 5 authority to enforce its policy regarding pipeline crediting during outages and order pipelines to amend their tariffs in accordance with Commission policy."[2] Petitioners are customers of interstate natural gas pipelines, either as producers, local distribution companies (LDC) or consumers of natural gas. Petitioners state that the Commission's policy on crediting during times of interruption of service is clear, but their examination of thirty-three pipeline tariffs establishes that an overwhelming percentage of these tariffs do not include provisions that comply with that policy. Accordingly, Petitioners request that the Commission examine all pipeline tariffs to ensure that they comply with the Commission's crediting policy. Pipelines whose tariffs the Commission deems to be out of compliance with the Commission's crediting policy should be ordered to amend their tariffs in accordance with Commission policy. Petitioners acknowledge that pipelines who believe their tariffs are in compliance with Commission policy should be afforded the opportunity to explain why.

[1] Petitioners consist of the Natural Gas Supply Association (NGSA), the American Forest and Paper Association, Inc. (AF&PA), the American Public Gas Association (APGA), the Independent Petroleum Association of America (IPAA), and the Process Gas Consumers Group (PGC).

[2] Petition p. 1.

2. At this time, the Commission will not institute the Natural Gas Act (NGA) section 5 action that Petitioners request. Rather, in this order the Commission will restate the Commission's reservation charge crediting policy, urge all pipelines to review their tariffs to determine whether their individual tariff is in compliance, and if not make an appropriate filing to come into compliance. In addition, the Commission is taking other corrective action, as set forth below.

<u>The Petition</u>

3. When there is an interruption of service on a pipeline, and the shipper cannot use the capacity it reserved through the reservation charge, pipelines are required to provide shippers credits against their reservation charges. Commission policy distinguishes between *force majeure* and non-*force majeure* outages for determining the level of the credits during such outages. *Force majeure* outages are no-fault occurrences because they are unexpected and uncontrollable events. Since no blame can be ascribed to either party in that situation, the Commission's policy is that both the pipeline and the customer should share the risk. In *North Baja Pipeline, LLC v. FERC*,[3] the Court of Appeals for the District of Columbia Circuit (D.C. Circuit) affirmed the Commission's policy that the risks of any *force majeure*-induced service disruptions should be "equitably" shared by the pipeline and its shippers. With respect to non-*force majeure* outages, where the curtailment occurred due to circumstances within a pipeline's control, the Commission requires pipelines to provide shippers a full reservation charge credit for the amount of primary firm service they scheduled which the pipeline failed to deliver. In *North Baja*, the court also upheld that policy.

4. The Petitioners state that they analyzed a sample of 33 tariffs from major interstate gas pipelines to determine their compliance with the Commission's reservation charge crediting policy. The petition acknowledged that there is some difficulty in interpreting certain tariff provisions and there are a variety of ways by which pipelines incorporate crediting provisions. Given this caveat, Petitioners state that the analysis, attached as Exhibit A, showed that: (a) 20 pipelines do not have appropriate tariff language ensuring that partial credits are issued to shippers during *force majeure* events;[4] and (b) 24

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[3] 483 F.3d 819 (D.C. Cir. 2007) (*North Baja*).

[4] The 20 pipelines are: ANR Pipeline Company, Algonquin Gas Transmission, LLC, CenterPoint Energy Gas Transmission Company, LLC, Columbia Gulf Transmission Company, Dominion Transmission, Inc., East Tennessee Natural Gas, LLC, Equitrans, L.P., Gas Transmission Northwest Corporation, Gulf South Pipeline Company, LP, Kinder Morgan Interstate Gas Transmission LLC, Mojave Pipeline Company, LLC, Northern Border Pipeline Company, Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, LP, Questar Pipeline Company, Sea Robin (continued…)

pipelines do not include appropriate tariff language granting full credits during non-*force majeure* outages.[5] Petitioners also state that the definitions of *force majeure* in many pipeline tariffs are overbroad,[6] allowing the pipelines to include scheduled maintenance as a *force majeure* event when the Commission's policy is clear that it is not such an outage. As a result, they assert, some pipelines refuse to issue appropriate full credits to shippers for scheduled maintenance outages.

5. In summary, the Petition claims "the attached chart indicates that 28 of the 33 pipelines in the sample have inadequate or inappropriate tariff language addressing outage crediting."[7]

6. Petitioners request that the Commission examine all pipeline tariffs over a reasonable period of time, using a phased approach, to ensure that they comply with the Commission's crediting policy. Pipelines whose tariffs the Commission deems to be out of compliance with the Commission's crediting policy should be ordered to amend their tariffs in accordance with Commission policy. Petitioners acknowledge that pipelines

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Pipeline Company, LLC, Southern Star Central Gas Pipeline, Inc., Tennessee Gas Pipeline Company, Texas Gas Transmission, LLC, and Trunkline Gas Company, LLC.

[5] The 24 pipelines are: Algonquin Gas Transmission, LLC, CenterPoint Energy – Mississippi River Transmission, LLC, Cheyenne Plains Gas Pipeline Company, LLC, Columbia Gulf Transmission Company, Dominion Transmission, Inc., Equitrans, L.P., Gas Transmission Northwest Corporation, Gulf South Pipeline Company, LP, Kinder Morgan Interstate Gas Transmission LLC, Mojave Pipeline Company, North Baja Pipeline, LLC, Northern Border Pipeline Company, Northern Natural Gas Company, Northwest Pipeline GP, Panhandle Eastern Pipe Line Company LP, Questar Pipeline Company, Sea Robin Pipeline Company, LLC, Southern Natural Gas Company, Tennessee Gas Pipeline Company, Texas Eastern Transmission, LP, Texas Gas Transmission, LLC., Transcontinental Gas Pipe Line Company, LLC, Transwestern Pipeline Company, LLC, and Trunkline Gas Company, LLC.

[6] These pipelines are: ANR Pipeline Company, CenterPoint Energy Gas Transmission Company, LLC, Gulf South Pipeline Company, LP, Kinder Morgan Interstate Gas Transmission LLC, Mojave Pipeline Company, LLC, North Baja Pipeline, LLC, Panhandle Eastern Pipeline Company LP, Sea Robin Pipeline Company, LLC, Southern Natural Gas Company, Texas Eastern Transmission, LP, and Trunkline Gas Company, LLC.

[7] Petition p. 17. Petitioners also note that tariffs of three pipelines provide credits only if the curtailed service is less than a specified percentage, and Commission policy requires crediting when it is less than 100 percent of scheduled service.

who believe their tariffs are in compliance with Commission policy should be afforded the opportunity to explain why.

Comments

7. Comments were filed both in support and in opposition to the Petition. A number of commenters filed in support of the Petition, consisting of pipeline customers who are LDCs, end-users, and producers. Some of these commenters included examples of their failure to receive reservation charge credits during outages.[8] Three parties filed in opposition, consisting of the Interstate Natural Gas Association of America (INGAA), Northwest Pipeline, and Spectra Entities.[9] None of these parties contest the findings in Exhibit A of the Petition that the reviewed tariffs deviate from the Commission's general policy concerning reservation charge credits. However, INGAA argues, as more fully described below, that Petitioners have not identified any generic problem that requires Commission action through an industry-wide NGA section 5 action. INGAA also contends there are specific circumstances that may apply to a pipeline that would permit deviation from the generic rule Petitioners advocate. Thus, Northwest Pipeline, listed in the Petition as not in compliance, claims that its tariff is consistent with the terms of a Commission-approved settlement that specifically dealt with reservation charge credits during outages.[10] Spectra Entities basically set forth the same position as INGAA, and support INGAA's protest.

8. INGAA argues that Petitioners have not identified any generic problem in the industry that needs fixing through an industry-wide NGA section 5 action – a procedure, it contends, that the Commission has used in only a handful of situations to address issues of a truly nationwide scope. INGAA contends that by asking that all pipelines either make a filing changing the reservation charge crediting provisions in their tariffs, or show cause why no change is required Petitioners are unlawfully switching the NGA section 4 and section 5 burdens by transferring to pipelines the burden of proving that their existing tariff provisions and rates are just and reasonable. Moreover, INGAA contends that Petitioners overstate what they assert is Commission policy. INGAA asserts that imposing on a uniform basis the policy Petitioners advocate would undermine

[8] Commenters that included examples of problems receiving reservation charge credits after outage events included City of Charlottesville and City of Richmond, Virginia, Encana Marketing (USA) Inc., Independent Oil & Gas Association of West Virginia, Inc. (IOGA), Integrys Gas Group, and Proliance Energy.

[9] Spectra Entities include 13 natural gas pipelines and storage facilities. Some of these pipelines are among the 33 pipelines' tariff examined by Petitioners.

[10] Northwest cites to *Northwest Pipeline, Corp.*, 85 FERC ¶ 61,195 (1998).

explicit or implicit agreements both between pipelines and their customers, and between pipelines and companies that finance pipeline construction as to whether, or how reservation charge credits should apply during service interruptions.

9. INGAA argues that the reservation charge credit that Petitioners advocate during all outages for all pipelines is not good policy because that proposal raises the specter of pipelines not being able to recover their full revenue requirement by being compelled to provide credits during maintenance and other routine interruptions.

10. Moreover, even if the Commission could in theory proceed with a generic NGA section 5 proceeding to address reservation charge crediting issues, INGAA states it is not clear that it makes sense to do so as a matter of administrative efficiency or convenience. INGAA asserts that the issue is best dealt with on a case-by-case basis.

11. INGAA notes that the Commission has terminated other proceedings that had commenced as a generic matter because the Commission concluded that it was not good policy to continue that proceeding.[11] Here too, INGAA asserts, the Commission should terminate this generic proceeding and evaluate pipeline reservation charge crediting when presented with that issue in a specific situation.

Discussion

12. As described below, the Commission has a well-established and longstanding policy concerning the reservation charge credits which all interstate pipelines must provide their firm shippers during both *force majeure* and non-*force majeure* situations. In *North Baja*, the D.C. Circuit affirmed Commission orders requiring a pipeline to modify its tariff to conform to the Commission's reservation charge crediting policy. The Commission expects all pipelines to maintain tariffs that conform to Commission policy, including the reservation charge crediting policy. The Petition suggests that a number of pipelines do not have tariff provisions properly implementing our reservation charge crediting policy. However, the Commission believes that voluntary action by such pipelines to bring their tariffs into compliance is a more efficient and less burdensome method of obtaining compliance, than initiating an immediate industry-wide NGA section 5 proceeding requiring all pipelines to make filings showing whether their tariffs comply. Therefore, the Commission urges all pipelines to review their tariffs to

[11] INGAA cites to Notice Terminating Proceeding, *Fuel Retention Practices of Natural Gas Companies*, FERC Stats. & Regs., ¶ 35,560 (2008).

determine whether their individual tariff is in compliance, and, if not, make an appropriate filing to come into compliance.[12]

13. In addition, the Commission is directing the Division of Audits in the Office of Enforcement that future audits of interstate pipelines conducted by the Division of Audits should include whether the tariffs comply with the Commission's reservation charge crediting policy. Of course, if any shipper or shippers on a particular pipeline believe that pipeline's tariff does not comply with Commission policy and the pipeline is not taking appropriate action to bring its tariff into compliance, they can file a complaint alleging non-compliance, and seek section 5 relief, or raise the issue in any section 4 filing by that pipeline.[13] Finally, in the event of significant non-compliance with the Commission's reservation charge crediting policy, the Commission will consider other appropriate actions to obtain compliance.

14. In order to assist pipelines and other interested parties in reviewing whether pipeline tariffs comply with Commission policy, the Commission below restates its policy concerning reservation charge credits. In addition, the Commission clarifies certain aspects of its policy concerning the determination of full reservation charge credits in non-*force majeure* situations.

15. Natural gas shippers pay two fees for firm transportation service on an interstate natural gas pipeline. One is the "reservation charge," based on the amount of pipeline capacity reserved by the shipper, regardless of how much of that capacity that shipper actually uses. The second is a "usage charge," based on the actual volume of gas that the shipper transports on the pipeline. When there is an interruption of service on a pipeline, and the firm shipper cannot use the capacity it reserved through the reservation charge, the Commission requires pipelines to provide shippers credits against their reservation charges. Commission policy distinguishes between *force majeure* and non-*force majeure* outages for determining the level of the credits during such outages.

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[12] Where the pipeline and its shippers have entered into currently effective agreements that include provisions that differ from the Commission's reserve charge crediting policy, and which the Commission has accepted, those agreements need not be changed. *Compare Kern River Gas Transmission Co.*, 132 FERC ¶ 61,111, at P 16 (2010) to *Southern Natural Gas Co.,* 135 FERC ¶ 61,056 (2011).

[13] *See Kern River Transmission Co*., 129 FERC ¶ 61,262, at P 22 (2009), and cases cited, where the Commission permitted this issue to be raised in a section 4 proceedings, despite the fact the issue was not directly related to the pipeline's tariff proposal.

Credits in *Force Majeure* Situations

16. *Force majeure* outages are no-fault occurrences because they are unexpected and uncontrollable events. Since no blame can be ascribed to either party, the Commission's policy is that both the pipeline and its customer should share the risk equitably. Before Order No. 636 generally required pipelines to shift to the straight fixed variable (SFV) rate design method, pipelines used different rate design methods where the risk of a *force majeure* interruption was automatically shared between the pipeline and its shippers. A non-SFV rate design places some portion of the pipeline's fixed costs in the usage charge.[14] Therefore, in the event of an interruption in service due to *force majeure*, the pipeline would be at risk for the fixed costs included in the usage charge, since the customer would not have to pay any costs in the usage charge, while the shipper continued to pay the reservation charge. However, under an SFV rate design, the pipeline does not share any risk because all of its fixed costs are included in the reservation charge. Accordingly, after Order No. 636, the Commission held that pipelines using the SFV rate design method must provide partial reservation charge credits in order to share the risk of *force majeure* interruptions of service. To implement that policy, the Commission has permitted pipelines to use two different methods to determine the partial credit and permits the pipeline to choose which one to adopt. Moreover, the Commission has stated that it is open to any other method provided it results in the same type of risk-sharing as the two approved methods do.

17. The first method is the No-Profit method, where the pipeline provides for partial refunds starting on the first day of the interruption in service, covering the portion of the pipeline's reservation charge that represents the pipeline's return on equity and associated income taxes. The Commission first adopted the No-Profit method in Opinion No. 406 issued in 1996 after Order No. 636 required pipelines to shift to the SFV rate design method.[15] The Commission explained that the No-Profit method replicated the risk sharing which had occurred automatically under the prior modified fixed variable (MFV) rate design. Under that design, the pipeline's return on equity and associated income taxes were included in its usage charge and thus the recovery of those costs was dependent on the pipeline's volume.[16] The second method is the Safe Harbor method

[14] For example, under the Modified Fixed Variable (MFV) generally being used before Order No. 636, the pipelines' return on equity and associated income taxes were in the usage charge.

[15] *Tennessee Gas Pipeline Co*., Opinion No. 406, 76 FERC ¶ 61,022 (1996), *reh'g*, Opinion No. 406-A, 80 FERC ¶ 61,070 (1997).

[16] In Opinion No. 406-A, the Commission permitted the pipeline to not have to give partial credits in the *force majeure* event because a settlement had changed its rate

(continued…)

where reservation charges must be credited in full to the shippers after a short grace period when no credit is due the shipper (i.e., 10 days or less).[17]

18. In *North Baja Pipeline, LLC*, 111 FERC ¶ 61,101 (2008), the Commission addressed a pipeline proposal that shippers would receive no refund for the first ten days of a *force majeure* interruption. If the interruption persisted longer than ten days, the shippers would receive a percentage refund for each additional day the pipeline was out of service. The Commission rejected the proposed formula as inconsistent with Commission policy since it was a cherry picking of the two approved methods that combined the pipeline-favorable aspect of the two methods. On appeal, in *North Baja* the D.C. Circuit affirmed the Commission's policy that the risks of any *force majeure*-induced service disruptions should be "equitably" shared by the pipeline and its shippers. The court held that both sharing methods approved by the Commission "incorporate a careful balancing of risk between shippers and pipelines," and therefore the Commission reasonably required the pipeline to choose one of those methods or propose another "formula that achieves an equitable cost-sharing in the same ballpark" as the two approved methods.[18] The court upheld the Commission stating "[t]here is nothing unreasonable about the Commission comparing North Baja's proposal to previously-approved policies to determine if the proposal equitably shares the risk between North Baja and its shippers."[19] Moreover, the court pointed out that the Commission had stated that it "remains open to other approaches that achieve a similar sharing of the risk as the two previously approved policies."[20]

Credits in non-*Force Majeure* Situations

19. With respect to non-*force majeure* outages, where the curtailment occurred due to circumstances within a pipeline's control, the Commission requires pipelines to provide

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design to include certain fixed costs in the usage charge so it no longer had the SFV design. Thus, the shippers would share the risk by paying the reservation charge, with no credit due, and Tennessee would share the risk by not collecting the costs recovered in the usage charge. Opinion No. 406-A, 80 FERC at 61,200.

[17] *Texas Eastern Transmission Co.*, 62 FERC ¶ 61,015 (1993). *Natural Gas Pipeline Company of America*, 106 FERC ¶ 61,310, at P 20-24, *reh'g*, 108 FERC ¶ 61,170, at P 10-11 (2004).

[18] *North Baja*, 483 F.3d at 822.

[19] *Id.*

[20] *Id.*

shippers a full reservation charge credit for the amount of primary firm service they scheduled which the pipeline failed to deliver. In Opinion No. 406,[21] the Commission explained that:

> Because a pipeline is responsible for operating its system so that it can meet its contractual obligations, if the pipeline must curtail firm service due to an event within its control, or management, the Commission finds it inequitable for the pipeline's customers to bear the risk associated with such mismanagement. Thus, the Commission generally requires a pipeline to provide reservation charge credits to compensate its customers for the interruption in service. The reservation charge credits also provide an incentive for the pipeline to manage its system so that it can avoid interruptions that it could have avoided if it had better managed its system.[22]

The Commission has consistently followed this policy in other cases.[23]

20. One issue that has arisen on which the Commission has ruled a number of times is whether scheduled maintenance is a *force majeure* event for which only partial reservation charge credits must be given. The Commission’s consistent ruling has been that scheduled maintenance is not a *force majeure* event, and the pipeline must provide full reservation charge credits for scheduled amounts not delivered during periods of scheduled maintenance. The Commission explained its position in Opinion No. 406,[24] stating:

> [b]ecause a pipeline is responsible for operating its system so that it can meet its contractual obligations, if the pipeline must curtail firm service due to an event

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[21] Opinion No. 406, 76 FERC ¶ 61,022, *order on reh'g*, Opinion No. 406-A, 80 FERC ¶ 61,070(1997). As discussed *infra* P 24, in *Rockies Express Pipeline LLC,* 116 FERC ¶ 61,272 (2006), the Commission clarified that credits are due for the undelivered amount whenever the pipeline fails to deliver 100 percent of the scheduled deliveries.

[22] Opinion No. 406, 76 FERC at 61,086.

[23] *See, e.g., Petal Gas Storage*, L.L.C., 126 FERC ¶ 61,199, at P 25 (2009); *Entrega Gas Pipeline LLC*, 114 FERC ¶ 61,326, at P 13 (2006).

[24] Opinion No. 406, 76 FERC at 61,086.

> within its control, or management, the Commission finds it inequitable for the pipeline's customers to bear the risk associated with such mismanagement.

Furthermore, the Commission found that requiring a pipeline to pay for scheduled maintenance interruptions "provide[s] an incentive for the pipeline to manage its system so that it can avoid interruptions that it could have avoided if it had better managed its system." *Id.*

21. The Commission consistently applied that position in subsequent cases. *See Alliance Pipeline L.P.*, 84 FERC ¶ 61,239 (1995) (*Alliance Pipeline)* and *Florida Gas Transmission Co.*, 105 FERC ¶ 61,171, at P 34 (2003) (*Florida Gas Transmission).* In *El Paso Natural Gas Co.*, 105 FERC ¶ 61,262 (2003) (*El Paso*), the Commission held that the rule applies even to pipelines with little excess capacity. The Commission explained that "[t]he Commission's policy on this issue as set forth in the Florida Gas decision is not dependent upon specific operating conditions on the pipeline."[25]

22. In *North Baja Pipeline, LLC,* 111 FERC ¶ 61,101, the Commission responded to the pipeline's argument that certain planned maintenance should be considered *force majeure* events under certain circumstances. The pipeline argued that Opinion No. 406 emphasized "control" and asserted that a pipeline, when it operates at full capacity, cannot avoid interrupting service at some point to perform necessary maintenance. Thus, it contended, at least for a pipeline that has little or no excess capacity, scheduled maintenance outages were therefore uncontrollable. The Commission rejected the pipeline's contention.

23. On appeal, in *North Baja* the D.C. Circuit upheld the Commission's long-standing policy that scheduled maintenance is not a *force majeure* event for which only partial credits need be given. The court stated that the Commission has held that *force majeure* events are "events that are not only uncontrollable, but also unexpected." 483 F.3d at 823. The court referred to Opinion No. 406 where the Commission defined *force majeure* events as events that are not only uncontrollable but also unexpected and to subsequent Commission decisions to the same effect, citing the *Florida Gas Transmission* and *Alliance Pipeline* cases, *see supra* P 21. The court stated that "In its orders here, FERC expressly relied on these precedents and applied its well-established and reasonable definition of a *force majeure* event to the case before it." The court held that, while some scheduled maintenance interruptions may be "uncontrollable" on a system operating at full capacity, they are not "unexpected." The court concluded that "there is nothing unreasonable about FERC's policy that pipelines' rates should incorporate costs associated with a pipeline 'operating its system so that it can meet its contractual

[25] 105 FERC at 62,352 P 15.

obligations,' and that a cost-sharing mechanism should be reserved for uncontrollable and unexpected events that temporarily stall service." *Id*.

24. The Commission has also clearly held that in non-*force majeure* situations, pipelines must provide reservation charge credits with respect to the undelivered amount, whenever the pipeline fails to deliver any portion of the full amount of service the shipper scheduled. Thus, in *Rockies Express Pipeline LLC (Rockies Express)*[26] the Commission rejected a pipeline's proposal to provide reservation charge credits for each day when the customer does not receive at least 98 percent of its scheduled service. Under that proposal the pipeline would not have provided credits for the undelivered amount if that amount was less than two percent of the full amount the shipper has scheduled. The Commission explained:

> The Commission's policy regarding reservation charge adjustments is that where scheduled gas is not delivered due to a *non-force majeure* or planned maintenance event, there must be a full reservation charge adjustment as to the undelivered amount. This is because the failure was due to the pipeline's conduct and was within its control. …We agree …that Rockies Express' proposal not to provide reservation charge credits when it schedules at least 98 percent of a shipper's nominations in non-force majeure situations does not adequately comply with Commission policy.[27]

In *Rockies Express* the Commission acknowledged that in Opinion No. 406 the Commission permitted the pipeline to continue to grant reservation credits only when it failed to deliver at least 98 percent of the scheduled nominations. However, in that proceeding the pipeline had sought to reduce its existing 98 percent provision to 95 percent, which the Commission rejected. Opinion No. 406 did not directly address the question whether 98 percent might not be adequate since the pipeline was required to give "a full reservation charge adjustment as to the undelivered amount." Thus in *Rockies Express* the Commission directly addressed that issue and stated "Upon consideration here, we find that Rockies Express' proposal is unjust and unreasonable because it requires shippers to bear the risk associated with interruption of service within

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[26] 116 FERC ¶ 61,272 (2006).

[27] *Id.* at P 63.

the pipeline's control."[28] The Commission has consistently followed Rockies Express in subsequent proceedings. [29]

25. As described above, the amount of reservation charge credits a pipeline must give in the non-*force majeure* situation is measured by the amount of service which the shipper scheduled but the pipeline was unable to deliver. The reservation charge credit is not measured by a shipper's contractual entitlement for service. Thus, if the shipper scheduled service equal to 50 percent of its total contractual entitlement and the pipeline was unable to deliver any of the scheduled service, the reservation charge credit would be equal to 50 percent of the shipper's reservation charge for that day, not the entire reservation charge. When the pipeline gives notice of the non-*force majeure* service interruption at any time after the shipper's first opportunity to schedule service for the day in question,[30] the amount of service which the shipper scheduled but the pipeline was unable to perform is easily measured. Accordingly, in that situation, the reservation charge credit should be based on the volume the shipper scheduled but the pipeline was unable to deliver. However, pipelines may give advance notice of the unavailability of service, *i.e.*, due to an outage or scheduled maintenance, before shippers have submitted scheduling nominations for the day (or days) of the outage. In that circumstance, shippers' scheduling nominations may not accurately reflect what they would have scheduled without advance knowledge that the scheduling nominations would not be accepted. Therefore, in a contemporaneous order,[31] the Commission finds that in those circumstances, it is reasonable for a pipeline to calculate the reservation charge credits based on an appropriate historical average of usage as a substitute for use of actual scheduled amounts. For example, the pipeline may use the shipper's prior seven days utilization of firm capacity to calculate the reservation charge credit when the pipeline has given such advance notice.

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[28] *Id*.

[29] *Bison Pipeline LLC*, 131 FERC ¶ 61,013, at P 50 (2010), *SG Resources Mississippi*, *L.L.C.*, 122 FERC ¶ 61,180 P 6 (2008), *Orbitt Gas Storage, Inc.*, 126 FERC ¶ 61,095 P 69 (2008), *Petal Gas Storage*, *L.L.C.*, 126 FERC ¶ 61,199 PP 25-26 (2008).

[30] The North American Energy Standards Board (NAESB) standards currently provide shippers four nomination opportunities: the Timely Nomination Cycle (11:30 a.m. Central Clock Time (CCT) the day prior to gas flow); the Evening Nomination Cycle (6 p.m. CCT the day before gas flow); Intra-Day Cycle 1 (10 a.m. CCT the day of gas flow); and Intra-Day Cycle 2 (5 p.m. CCT the day of gas flow).

[31] *Southern Natural Gas Co.*, Docket No. RP11-60-001, 135 FERC ¶ 61,056 (2011), issuing contemporaneously with this order.

26. However, when a pipeline has not given such advance notice of an outage and curtails a shipper's scheduling nomination during or after the NAESB scheduling process, the reservation charge credit must be based on the curtailed portion of the shipper's scheduling nomination. If the pipeline curtails a shipper's scheduling nomination for the Timely Nomination Cycle, the pipeline may, as a general matter, require the shipper to resubmit its nomination for the Evening Nomination Cycle in order to obtain a reservation charge credit. However, in the limited case where a shipper is curtailed during the Timely Nomination Cycle and then nominates the curtailed quantities on another pipeline, the shipper need not nominate service on the curtailing pipeline during the Evening Nomination Cycle to obtain a reservation charge credit for the curtailed amounts.[32]

27. Finally, Commission policy concerning reservation credits is related to primary firm service, not secondary service or the scheduling priority of such service.[33] The Commission requires pipelines to provide reservation charge credits during non-*force majeure* situations, because such outages result in the pipeline failing to meet its contractual obligation to provide service to that shipper for reasons within its control. A firm shipper has such a guaranteed firm contractual right to service only at its primary points. Therefore, pipelines need not provide reservation charge credits when they fail to provide service at secondary points.

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[32] In *Wyoming Interstate Co., LTD*, 130 FERC ¶ 61,091, at P 17 (2010), the Commission clarified that if the shipper nominating on another pipeline subsequently uses more capacity in the intraday cycles its credits may appropriately be reduced.

[33] *See Tennessee Gas Pipeline Co.*, 73 FERC ¶ 61,083, at 61,206 (1995), where the Commission stated that:

> A shipper pays reservation charges based on primary points not on secondary points. The secondary rights to delivery points are based on Commission regulations and are by definition inferior to primary point [footnote omitted] rights. The reservation charge a customer pays is based on its contract with the pipeline for receipt and delivery of gas at particular primary points, and corresponding reservation charge credits should ordinarily be given when the pipeline fails to provide service to those particular points. The contract does not guarantee the same level of security if other points are used; rather the Commission's regulations require [a pipeline] to provide service to those other points if it can. If a customer wants to be able to receive reservation charge credits for service at a particular point, then that customer should reserve that point as a primary point.

Conclusion

28. The Commission expects pipelines to maintain tariffs that conform in all respects to the Commission's reservation charge crediting policy described above. Therefore, the Commission urges pipelines to review their tariffs to determine whether their individual tariff is in compliance, and if not, make an appropriate filing to come into compliance. In addition, the Commission is directing the Division of Audits in the Office of Enforcement that future audits of interstate pipelines conducted by the Division of Audits should include whether the tariffs comply with the Commission's reservation charge crediting policy. If any shipper or shippers believe that a pipeline's tariff does not comply with Commission policy and the pipeline is not taking appropriate action to bring its tariff into compliance, they can file a complaint alleging non-compliance, and seek section 5 relief, or raise the issue in any section 4 filing by that pipeline. The Commission believes that this procedure provides a more flexible approach to ensure compliance with Commission policy, than instituting the requested section 5 action. However, if additional actions are required to obtain compliance, the Commission will consider them.

The Commission orders**:**

(A) The relief requested in the Petition filed November 17, 2010 is denied.

(B) Future audits of interstate pipelines conducted by the Division of Audits in the Office of Enforcement should include whether the tariffs comply with the Commission's reservation charge crediting policy.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.