

139 FERC ¶ 61,050  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Tennessee Gas Pipeline Company, L.L.C.

Docket Nos. RP11-1566-003,  
RP11-1566-004,  
RP11-1566-008,  
RP11-1566-009,  
RP11-1566-011,  
and RP11-2066-  
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ORDER CLARIFYING, GRANTING IN PART, AND DENYING IN PART,  
REQUESTS FOR REHEARING AND CONDITIONALLY  
ACCEPTING AND REJECTING TARIFF RECORDS

(Issued April 19, 2012)

1. On November 30, 2010, Tennessee Gas Pipeline Company (Tennessee)<sup>1</sup> filed under section 4 of the Natural Gas Act (NGA)<sup>2</sup> (November 2010 Filing) seeking to increase its transportation and storage rates and to revise certain non-rate provisions of its FERC Gas Tariff (Tariff). On December 29, 2010, the Commission issued an order accepting and suspending the rate changes effective June 1, 2011, subject to refund. The Commission set the rate issues for hearing and established a technical conference to consider the non-rate proposals.<sup>3</sup> On May 31, 2011, the Commission issued an order on the technical conference accepting certain of Tennessee's non-rate tariff proposals,

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<sup>1</sup> Effective October 1, 2011, Tennessee converted its corporate structure to a limited liability company and changed its name from Tennessee Gas Pipeline Company to Tennessee Gas Pipeline Company, L.L.C. *See* Initial Comments of Tennessee in Support of Settlement at n.2 (October 18, 2011).

<sup>2</sup> 15 U.S.C. § 717c (2006).

<sup>3</sup> *Tennessee Gas Pipeline Co.*, 133 FERC ¶ 61,266 (2010) (Suspension Order).

accepting other proposals subject to conditions, and rejecting certain proposals.<sup>4</sup> On June 30, 2011, in Docket No. RP11-1566-004, Tennessee filed revised tariff records (June 2011 Filing) to comply with the Technical Conference Order. Several parties sought rehearing of the Technical Conference Order and protested the June 2011 Filing.

2. On September 30, 2011, Tennessee filed an offer of settlement (Settlement), which the Commission approved on December 5, 2011.<sup>5</sup> The Settlement resolved all the rate issues and most of the non-rate issues in this proceeding<sup>6</sup> but reserved for Commission determination several non-rate issues raised on rehearing and those raised by the protests to the June 2011 Filing.<sup>7</sup> On January 27, 2012, in Docket No. RP11-1566-009, Tennessee filed tariff records to implement the terms of its approved Settlement (January 2012 Filing).<sup>8</sup> In this order we grant in part, and deny in part, the requests for rehearing and conditionally accept and reject various tariff records.

## **I. Background**

3. Article XIX(B)(1) of the Settlement states that the requests for rehearing or clarification of the Technical Conference Order on the following issues are not deemed withdrawn:

- a. Undersigned Parties' request for rehearing of the rejection of Tennessee's proposal to treat firm quantities scheduled from secondary receipt points to primary delivery points as

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<sup>4</sup> *Tennessee Gas Pipeline Co.*, 135 FERC ¶ 61,208 (2011) (Technical Conference Order).

<sup>5</sup> *Tennessee Gas Pipeline Co.*, 137 FERC ¶ 61,182 (2011) (Settlement Order).

<sup>6</sup> The Settlement also resolved issues in Docket No. RP11-2066 relating to Tennessee's proposed revisions to its fuel and loss retention percentages determined in conformance with its new fuel tracker proposed in the November 2010 Filing.

<sup>7</sup> On December 12, 2011, in Docket No. RP11-1566-008, Tennessee filed tariff records to modify its Scheduling Priority Tariff provisions to include scheduling of service categories below secondary out-of-path (December 2011 Filing), which the Commission accepted in the Technical Conference Order but which Tennessee was not able to move into effect at that time due to the need to make computer system changes before such tariff records could be implemented.

<sup>8</sup> Appendix A lists the proposed tariff records accepted for each of the compliance filings and their effective dates and proposed tariff records which are rejected.

primary, for purposes of allocating mainline capacity, when the pipeline constraint occurs within primary capacity path of the applicable service agreement;

b. Tennessee's request for rehearing of the rejection of its proposal to prioritize nominations for secondary capacity outside the contract path on the basis of highest rate first, lowest rate last; and

c. Tennessee's request for rehearing of the Commission's ruling on its proposal to establish a regional net pipeline position for imbalance management.

Article XIX(B)(2) of the Settlement states "The protests to [Tennessee's] June 30, 2011 filing in compliance with the Technical Conference Order are not deemed withdrawn and remain pending Commission action, and, with respect to the issues raised therein, the parties reserve the right to take any position or action they deem appropriate on an order on [Tennessee's] compliance filing."

4. As discussed more fully below, the first two reserved issues relate to Tennessee's proposals to modify its scheduling priorities and the protests to the June 2011 Filing all relate to Tennessee's proposed tariff provisions regarding reservation charge credits. Below we discuss Tennessee's proposals regarding the referenced reserved issues, the requests for rehearing of those issues and the protests to the June 2011 Filing.

## **II. Requests for Rehearing**

### **A. Scheduling Priority Based on Shipper's Path**

#### **1. Proposal, Technical Conference Order, and Request for Rehearing**

5. In the November 2010 Filing, Tennessee proposed to elevate the scheduling priority for firm transactions from a secondary receipt point to a primary delivery point to the same level as primary receipt point to primary delivery point transactions when a restriction is within the shipper's primary capacity path. According to Tennessee, its proposal to increase the scheduling priority for secondary receipt to primary delivery point transactions recognizes that such transactions are using capacity within a shipper's primary capacity path and should thus be afforded the highest priority.<sup>9</sup> Tennessee

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<sup>9</sup> November 2010 Filing at 12.

asserted that the priority increase was warranted because it promotes the flexibility of its pooling services while providing the most reliable service possible to local distribution companies (LDC) at their city gates. Tennessee further asserted that the proposal “reasonably expands” what it calls the Commission’s “‘within-the-path’ scheduling policy,” which Tennessee claims is that “all shipper nominations ... for which the affected mainline is within the shipper’s primary path shall receive equal priority.”<sup>10</sup> Tennessee acknowledged that it was seeking this revision to address the concerns of its northeastern customers about the primacy of city gate delivery points in meeting the needs of gas customers.

6. In rejecting Tennessee’s proposal, the Commission found that it was inconsistent with the policy that primary point to primary point transactions must be afforded the highest scheduling priority. The Commission noted that firm shippers on Tennessee’s system specify the receipt and delivery points to which they will have primary rights, and receive a guaranteed right to ship their gas from their primary receipt point to their primary delivery point in accordance with the requirements of Order No. 636-B.<sup>11</sup> The Commission also rejected Tennessee’s claims that we had modified or abrogated the superiority of primary point to primary point policy, and that Tennessee’s proposal was a reasonable extension of our “in-the-path” scheduling priority policy. The Commission noted that, contrary to Tennessee’s assertions, the “in-the-path” policy established in Order No. 637-A applied to secondary transactions, and affirmed that the Commission’s policy is still that “all secondary service has a lower priority than primary service.”<sup>12</sup> Finally, the Commission held that Tennessee’s proposal discriminates against shippers that seek to schedule through a primary path constraint from a primary receipt to a secondary delivery point by not providing those shippers with the same elevated priority.<sup>13</sup>

7. On June 30, 2011, a group of LDCs, deeming themselves the “Undersigned Parties”, filed a request for rehearing of the Technical Conference Order with respect to the Commission’s determination on scheduling priority based on a shipper’s path.<sup>14</sup> In

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<sup>10</sup> Tennessee’s Initial Technical Conference Comments at 25 (*quoting Ozark Gas Transmission LLC*, 125 FERC ¶ 61,113, at P 27 (2008) (*Ozark*)).

<sup>11</sup> Technical Conference Order, 135 FERC ¶ 61,208 at P 23 and n.27.

<sup>12</sup> *Id.* P 23 and n.30.

<sup>13</sup> *Id.* P 27.

<sup>14</sup> The Undersigned Parties are National Fuel Gas Distribution Corporation; Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities

their rehearing request, the Undersigned Parties contend that contrary to the implication in the Technical Conference Order, Tennessee's proposal was not merely a response to requests from northeastern LDCs. They assert the proposed scheduling modification is linked to the principal rationale underlying Tennessee's rate case, namely a major change in flows and the use of Tennessee's system due to an increase in downstream shale gas supplies. They assert that the proposed modifications to scheduling priority based on a shipper's path are meant to aid Tennessee's downstream customers by allowing them to access various new and shifting supply sources while retaining the ability to deliver those supplies during peak and constrained periods.<sup>15</sup> The Undersigned Parties contend that the proposal will benefit Tennessee and its other shippers because it encourages customers to access the least costly gas supplies using short-haul service while at the same time encouraging shippers to retain long-haul contracts from traditional upstream production zones.

8. The Undersigned Parties also argue that the Commission erred in finding that the proposal was contrary to a policy that establishes supremacy for primary to primary point transactions. They contend that no such uniform policy exists in either Order Nos. 636 or 637 or the other cases cited in the Technical Conference Order in support of such a policy. In support of this position, the Undersigned Parties assert that the Commission approved tariff provisions for other pipelines that permitted those pipelines to "afford a priority to within-the-path transportation from secondary receipt points to primary delivery points."<sup>16</sup> The Undersigned Parties further argue that even if a uniform policy that primary point to primary point transactions are always afforded the highest priority does exist, the Commission has the authority to approve Tennessee's proposal and change that policy.

9. The Undersigned Parties argue that the path based scheduling priority proposal would not result in undue discrimination by failing to give shippers from primary receipt points to secondary delivery points the same priority. They assert that delivery point priorities relate to services for end use consumers, the primary entities the Natural Gas Act (NGA) is meant to protect. They also claim that Tennessee proposed to treat two

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Inc.; the Brooklyn Union Gas Company d/b/a/ National Grid NY; KeySpan Gas East Corporation d/b/a/ National Grid; Boston Gas Company and Colonial Gas Company, collectively d/b/a/ National Grid; EnergyNorth Natural Gas, Inc. d/b/a/ National Grid NH; Niagara Mohawk Power Corporation d/b/a/ National Grid; and The Narragansett Electric Company d/b/a/ National Grid, all subsidiaries of National Grid USA, Inc.

<sup>15</sup> Undersigned Parties' Rehearing Request at 2.

<sup>16</sup> *Id.* at 3.

types of shippers differently, given their differing circumstances, and that based on those differences the disparate treatment is justified. According to the Undersigned Parties, shippers that move gas from secondary receipt points to primary delivery points do so for different reasons than shippers moving gas from primary receipt points to secondary delivery points, and “the impact of losing priority is far more serious for shippers seeking to protect primary delivery points.”<sup>17</sup> They also argue that the proposal would not derogate the rights of shippers transporting from primary receipt to primary delivery points. The Undersigned Parties attached to their rehearing request the Affidavit of John J. Polka, Jr. (Polka Affidavit), which they contend provides factual support for its claims concerning the differing circumstances of these two types of shippers.

10. Finally, the Undersigned Parties claim that at a minimum the Commission should have set the issue of whether to adopt Tennessee’s proposal for hearing.

11. On July 15, 2011, Talisman Energy USA Inc., Encana Marketing (USA) Inc., Tenaska Marketing Ventures, and MGI Supply Ltd. (collectively North American Marketers) filed a motion for leave to answer and answer in opposition to the Undersigned Parties’ rehearing request. North American Marketers contend that good cause exists to accept their answer because it provides them the opportunity to respond to the new evidence introduced by the Undersigned Parties in the form of the Polka Affidavit, and will assist the Commission in its decision making process.

## 2. Commission Decision

12. We reject the Polka Affidavit and deny North American Marketer’s motion to accept its answer to the rehearing request. The submission of additional factual evidence in a request for rehearing is not appropriate.<sup>18</sup> The Undersigned Parties had ample time to submit this information with its post technical conference comments and failed to do so. Accordingly, the Commission has not considered the Polka Affidavit in making our determination on this issue herein. Further, Rule 385.713(d) of the Commission’s Rules of Practice and Procedure<sup>19</sup> prohibits answers to requests for rehearing and our July 28, 2011 order granting rehearing for further consideration made clear that no answers to requests for rehearing would be entertained. Because we are rejecting the Polka Affidavit, there is no need for the North American Marketers to respond to the factual

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<sup>17</sup> Undersigned Parties’ Rehearing Request at 4, 20-24.

<sup>18</sup> *Iroquois Gas Transmission System, L.P.*, 86 FERC ¶ 61,261, at 61,949 (1999).

<sup>19</sup> 18 C.F.R. § 385.713(d) (2011).

assertions made therein, and they provide no further arguments to establish good cause for us to accept their answer.

13. We deny the Undersigned Parties' request for rehearing but grant clarification. We reject their assertion that the Commission has not established a policy that primary point to primary point service must be afforded the highest priority. As noted in the Order on Technical Conference, Tennessee's proposal to elevate secondary receipt point to primary delivery point service to the same scheduling level as primary receipt to primary delivery transactions is inconsistent with this policy. However, we clarify that Commission policy allows pipelines to establish scheduling priorities that give secondary receipt to primary delivery point transactions priority over primary receipt to secondary delivery point transactions. This clarification addresses the concerns raised by the Undersigned Parties' request for a modification of our policy regarding the superiority of primary to primary service.

**a. The Commission's Primary to Primary Superiority Policy**

14. Contrary to the claims of the Undersigned Parties, the Commission does have a policy that requires that service between primary points must be given a higher priority than secondary services. This policy was first established in Order No. 636.<sup>20</sup> In Order No. 636-A, the Commission found that existing shippers retained their primary priorities "at designated *receipt* and delivery points and may not be bumped, preempted, or curtailed under the flexible *receipt* and delivery point policy."<sup>21</sup> Thus, from its inception, the policy of giving superior priority to primary services applied equally to receipt and delivery points. The Commission also noted the conditional nature of secondary service rights when it stated that flexible (i.e., secondary) point rights are akin to interruptible rights because they are "inferior" to primary point rights.<sup>22</sup>

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<sup>20</sup> *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939 *order on reh'g*, FERC Stats. & Regs. ¶ 30,950 (Order No. 636-A), *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992) *order on reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

<sup>21</sup> Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, at 30,583 (emphasis added).

<sup>22</sup> *Id.*

15. As the Undersigned Parties point out, the discussion in Order Nos. 636-A and 636-B concerning the flexible point policy focused primarily on the relative rights of shippers at delivery points. For example, in Order No. 636-B, the Commission confirmed that “[s]hippers nominating volumes for delivery to primary firm delivery points have scheduling priority over shippers nominating volumes for flexible (alternate) firm delivery points.”<sup>23</sup> However, the Commission made these statements in response to specific concerns raised by participants in the Order No. 636 rulemaking proceeding concerning how the new flexible point policy would affect their rights at their primary delivery points. The Commission did not intend by these statements to suggest that the flexible point policy operated any differently with respect to receipt points as opposed to delivery points.

16. This interpretation of Order Nos. 636-A and 636-B is confirmed by the Commission’s orders in the Order No. 636 restructuring proceeding of El Paso Natural Gas Company.<sup>24</sup> That proceeding was among the first cases in which the Commission acted on filings by an individual pipeline to comply with Order No. 636, and the Commission used its orders in that case to flesh out the details of many of the policies adopted in Order No. 636. In that case, the Commission rejected a request “that all firm service to primary delivery points have the highest scheduling priority, regardless of whether a primary point receipt point is used.”<sup>25</sup> The Commission explained that “Order No. 636-B requires that pipelines give a scheduling priority for primary to primary point service when there is a capacity constraint.”<sup>26</sup>

17. Since *El Paso*, the Commission has rejected requests in other cases that secondary firm service within the path should have the same mainline capacity priority as primary firm service.<sup>27</sup> In *Ozark*, the Commission held, “All secondary service has a lower priority than primary service.”<sup>28</sup> Similarly, in *Panhandle I*, the Commission denied a

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<sup>23</sup> Order No. 636-B, 61 FERC at 62,013.

<sup>24</sup> *El Paso Natural Gas Co.*, 62 FERC ¶ 61,311, at 62,988, *reh’g denied*, 64 FERC ¶ 61,265, at 62,825 (1993) (*El Paso*).

<sup>25</sup> *El Paso*, 64 FERC at 62,825.

<sup>26</sup> *Id.*

<sup>27</sup> *Panhandle Eastern Pipeline Co.*, 78 FERC ¶ 61,202, at 61,873 (1997) (*Panhandle I*). *Ozark Gas Transmission, LLC*, 125 FERC ¶ 61,113, at P 26 (2008) (*Ozark*).

<sup>28</sup> *Ozark*, 125 FERC ¶ 61,113 at P 26.

request that “secondary receipt/delivery points within the primary path become equal to a shipper’s primary point for scheduling purposes.”<sup>29</sup> The Commission explained that Order No. 636-A found that use of secondary alternative points is inferior to a firm shipper’s use of primary points.<sup>30</sup>

18. The Commission’s policy that service using both a primary receipt and primary delivery point must have a higher scheduling priority than service using a secondary receipt and/or delivery point follows from the fact that a firm shipper has a guaranteed firm contractual right to service only at its primary points, not secondary points. When shippers contract with Tennessee, their contracts specify the receipt and delivery points to which the shipper will have primary rights. The shipper thus has a guaranteed firm right to ship gas up to its mainline contract demand from the designated primary receipt points to the designated primary delivery points.<sup>31</sup> In addition, as the Commission has explained:

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

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<sup>29</sup> *Panhandle I*, 78 FERC ¶ 61,202 at 61,873.

<sup>30</sup> *Id.* Some pipelines may have the operational ability to treat all within-the-path service to primary delivery points as the highest priority primary firm service without regard to the receipt point used, and thus such a pipeline would never have to reduce primary firm nominations absent a *force majeure* or non-*force majeure* outage. In such circumstances, the relative priority of primary to primary point service and secondary receipt to primary delivery point service is generally not an issue, and provisions providing an equal priority for such transactions may be acceptable to all firm shippers. This appears to be the situation in cases such as *Iroquois Gas Transmission System, Inc.*, 97 FERC ¶ 61,164, at 61,738 (2001). Here, however, Tennessee has not asserted that it has the operational ability at all times to provide such an equal scheduling priority without affecting its ability to schedule primary to primary point service, and Tennessee’s proposal to give such an equal priority was contested by a number of its firm shippers.

<sup>31</sup> *Tennessee Gas Pipeline Co.*, 94 FERC ¶ 61,097, at 61,402 (2001), *aff’d*, *Process Gas Consumers Group v. FERC*, 292 F.2d 831 (D.C. Cir. 2002) (“When firm shippers contract with Tennessee for firm transportation service, their contracts specify the receipt and delivery points to which the shipper will have primary rights. The shipper then has a guaranteed firm right to use those designated primary receipt and delivery points.”). *See also Regulation of Short-Term Natural Gas Transportation Services*, 101 FERC ¶ 61,127, at P 48 (2002).

point 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. *Tennessee Gas Pipeline Co.*, 73 FERC ¶ 61,083, at 61,206 (1995) (*Tennessee*).<sup>32</sup>

The scheduling priorities in Tennessee's Tariff should be consistent with the contractual rights of its shippers. Because Tennessee's firm service agreements provide its firm shippers a guaranteed firm right to service from primary receipt points to primary delivery points, the scheduling priorities in its Tariff should give that service priority over service using a combination of primary and secondary rights.

19. As we stated in the Technical Conference Order,<sup>33</sup> Tennessee's claim that its proposal to elevate deliveries from secondary receipt to primary delivery points to the same level as primary to primary service is a mere extension of the Order No. 637 "in-the-path policy" is wrong. Order No. 637 did not modify or otherwise affect the superiority of primary to primary service. The Order No. 637 policy referenced by Tennessee addressed the relative priorities of various secondary transactions and required pipelines to give higher priority to in-the-path transactions over out-of-path transactions. It does not address the Commission's primary to primary superiority policy.

20. The Commission's policies regarding flexible point rights, segmentation and reservation charge credits are based on the foundation that primary point to primary point

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<sup>32</sup> Undersigned Parties argue that the Commission's reliance on this order is misplaced because it addressed the pipeline's obligation with regard to reservation charge credits at non-primary points. To the contrary, the fact that the Commission does not require pipelines to provide credits for failure to provide service to secondary points is directly related to the fact that contractually a shipper only has a right to, and the pipeline only has an obligation to provide, guaranteed service at primary points. It is these contractual rights that govern the pipelines' scheduling priority mechanisms, which should schedule services in a manner so that the pipeline meets its contractual obligations.

<sup>33</sup> Technical Conference Order at P 24.

transactions must have a higher priority than transactions involving a secondary point. The Commission has recently relied on the fact that a firm shipper has a guaranteed contractual right to service at only its primary points, not its secondary points, to reject proposals to require reservation charge credits for a pipeline's failure to provide service at a secondary point.<sup>34</sup> As we stated in *Southern*, reservation charge credits "should be limited to situations where the pipeline has failed to meet its contractual obligation to provide guaranteed firm service to [a] shipper,"<sup>35</sup> that is, at primary points only.

21. Thus, for the reasons described above, we reject the Undersigned Parties' assertions that the Commission lacks a policy that primary point to primary point transactions should have scheduling priority over transactions using a secondary point. Tennessee's proposal to give secondary receipt point to primary delivery point transactions equal priority with primary receipt point to primary delivery point transactions is inconsistent with this policy and therefore must be rejected.

22. However, we clarify that Commission policy does permit giving secondary receipt to primary delivery point transactions a scheduling priority over primary receipt to secondary delivery point transactions.

23. In the Technical Conference Order, the Commission stated that Tennessee's proposal discriminates against shippers that seek to schedule through a primary path constraint from a primary receipt point to a secondary delivery point by not providing those shippers with the same elevated priority.<sup>36</sup> The Undersigned Shippers contend that statement incorrectly suggests that all transactions using one primary point and one secondary point must be given an equal priority, without regard to whether the primary point is a receipt point or a delivery point. The Undersigned Shippers point out that, in *Texas Eastern Transmission, LP*,<sup>37</sup> the Commission approved over protest a scheduling priority procedure that favors secondary service to primary delivery points over secondary service from primary receipt points.

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<sup>34</sup> See, e.g., *Southern Natural Gas Co.*, 135 FERC ¶ 61,056, *order on reh'g*, 137 FERC ¶ 61,050, at PP 11-16 (2011) (*Southern*).

<sup>35</sup> *Southern*, 137 FERC ¶ 61,050 at P 11.

<sup>36</sup> See Technical Conference Order, 135 FERC ¶ 61,208 at P 27.

<sup>37</sup> 98 FERC ¶ 61,215 (2002), *order on reh'g*, 102 FERC ¶ 61,198 (2003). As noted in the Technical Conference Order, this holding is inapplicable to Tennessee's scheduling priority proposal because Texas Eastern's hierarchy applied only to service to secondary points and thus was at a level below primary to primary service.

We grant rehearing to the extent that our statement in the Technical Conference Order could be interpreted as prohibiting giving secondary service to primary delivery points priority over secondary service from primary receipt points. As we stated in *Texas Eastern Transmission, LP*,

The Commission has not required a specific order of priority to allocate capacity between shippers that are either within or outside the path. The Commission did not, for example, specify whether a shipper moving from a secondary receipt point inside its path to a primary delivery point should have priority over a shipper moving from a primary receipt point to a secondary delivery point inside its path. Thus, to the extent there are scheduling conflicts over two secondary within-the-path transactions, the pipeline is free to choose any reasonable method of resolving such a conflict. 102 FERC ¶ 61,198 at P 33.

Thus, under current Commission policy, a pipeline may choose a reasonable method to schedule secondary transactions, provided that all primary to primary point transactions have priority over any transactions involving secondary points.

24. Further, as argued by the Undersigned Parties, it may be just and reasonable under the NGA to give a priority to service to primary delivery points over service from primary receipt points in order to protect end-use consumers who have minimal to no flexibility to vary where they receive their service.<sup>38</sup> The Commission's responsibility under the NGA is to protect the consumers of natural gas from the exercise of monopoly power by pipelines in order to ensure consumers access to an adequate supply of gas at a reasonable price.<sup>39</sup> While the open access requirements of Order No. 636 generally allow shippers to have access to various supply areas, shippers serving end-use consumers have less flexibility in which pipeline delivery points they use. For example, an LDC will typically have primary delivery point rights at its city gates. While the LDC may purchase gas at numerous receipt points including both its primary receipt points and secondary receipt points, it must deliver that gas to its city gate in order to serve the residential and other consumers behind that point. Similarly, an industrial plant or electric generator may purchase gas at numerous receipt points, but must deliver that gas to the delivery point serving the location of its plant or generator.

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<sup>38</sup> Undersigned Parties' Rehearing Request at 20-23.

<sup>39</sup> *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 610 (1944). *Tejas Power Corp. v. FERC*, 908 F.2d 998, 1003 (D.C. Cir. 1990). Order No. 636 at 30,392.

25. Thus, fundamental differences in the purpose and use of receipt and delivery points may justify providing secondary receipt point to primary delivery point transactions a priority over primary receipt point to secondary delivery point transactions. Such a priority can give shippers purchasing natural gas to serve end-use consumers increased flexibility to access diverse gas supply sources consistent with the goals of our open access transportation program, while protecting their ability to transport the gas to the primary delivery point serving those consumers. Thus, a scheduling proposal that distinguishes between receipt and delivery point services on the basis of their disparate impact on consumers may be supportable.

26. The Commission concludes that, to the extent a pipeline can demonstrate disparate factual circumstances between services at delivery points as compared to receipt points, a tariff provision giving a higher scheduling priority to secondary receipt to primary delivery point transactions than to over primary receipt to secondary delivery point transactions may be reasonable. In order to remain consistent with the Commission's superiority of primary to primary transactions rule, however, any flexibility for treating secondary customers differently is necessarily limited to priority tiers below primary to primary.

**b. Other Policy Arguments**

27. The Undersigned Parties' contend that, even if the Commission determines a primary priority policy exists, then the Commission is authorized to change that policy to adopt Tennessee's proposal. As discussed below, aside from the clarification provided above confirming the permissibility of disparate priorities for service to primary delivery points over service from primary receipt points, we will not modify our policy.

28. The Undersigned Parties argue that the Commission should approve Tennessee's path scheduling proposal based on the factual circumstances underlying Tennessee's rate case, namely the recent shifts in the natural gas market on Tennessee's system due to the availability of new gas supplies sourced from the Marcellus shale and the Rockies Express Pipeline. These new supplies are received directly into Tennessee's market area, downstream of its traditional production area along the coast of the Gulf of Mexico. The Undersigned Parties contend their proposal would ensure that Tennessee's LDC customers serving major northeastern markets who have long-haul contracts with primary receipt points in the production area can access the new supply sources using secondary receipt points within their primary path. They also contend that this would assist Tennessee in retaining long haul contracts. The Undersigned Parties also argue that the Commission failed to recognize the alleged benefits of Tennessee's proposal to all Tennessee's shippers and Tennessee itself with regard to increased supply sources, reliability, market liquidity and the disincentive for long-haul shippers to terminate or reduce their contract rights.

29. We find that our clarification above that Tennessee may reasonably give secondary receipt to primary delivery point transactions a scheduling priority over primary receipt point to secondary delivery point transactions reasonably addresses the Undersigned Parties' concern, without the need to modify Commission policy. Tennessee must maintain sufficient mainline capacity between the primary receipt and delivery points of all its firm shippers in order to be able to serve their contract demands. Therefore, when a firm shipper nominates service up to its mainline contract demand from a secondary receipt point within its primary path, the pipeline should ordinarily have sufficient mainline capacity to schedule service to that shipper's primary delivery point. In fact, the Undersigned Shippers recognize that in most circumstances Tennessee should have sufficient mainline capacity in order to be able to schedule both primary to primary and within-the-path secondary receipt to primary delivery point transactions.<sup>40</sup> As a result, if Tennessee implements a priority for service to primary delivery points over service from primary receipt points, long haul shippers on Tennessee should generally be able to obtain service from downstream market area receipt points within their primary paths, unless capacity at the specific receipt point is constrained.

30. Therefore, elevating secondary receipt to primary delivery point transactions to the same scheduling priority as primary to primary transactions appears unnecessary to accomplish the goals advocated by the Undersigned Parties. In addition, in the rare cases where Tennessee is unable to schedule both sets of transactions,<sup>41</sup> it is appropriate for the primary receipt point to primary delivery point transactions to be scheduled first, since those transactions are using the firm shippers' contractually guaranteed firm service rights. While the Commission encourages the development of alternative sources of natural gas supplies, and incorporation of those supplies into the market, there has been

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<sup>40</sup> Undersigned Parties' Rehearing Request at 27-28.

<sup>41</sup> Undersigned Parties suggest that, if the Commission had accepted Tennessee's proposal, primary to primary point transactions would still retain the highest priority. They contend that, under Tennessee's proposal, a nomination using primary receipt and primary delivery points would continue to receive the highest priority, "once the priority for allocating point capacity is taken into account." Undersigned Parties' Rehearing Request at 19. This argument misses the point, however, as evidenced by Undersigned Parties' next statement that "[a] nomination using primary receipt and delivery points will always be *more likely* to be scheduled than another nomination scheduled from and to the same points on a secondary basis." [emphasis added] *Id.* As discussed above, because a shipper has a guaranteed right to ship gas between its primary receipt and primary delivery points, such a nomination must *always* be scheduled ahead of a nomination to the same points on a secondary basis. Tennessee's proposal does not produce this result.

no showing that a significant change to Tennessee's scheduling priority provisions is necessary to allow the LDCs to take advantage of these sources on most occasions. Contrary to the assertions of the Undersigned Parties, they will not "lose priority" if they are not provided equal scheduling priority with primary point to primary point transactions for their secondary receipt to primary delivery point transactions.

31. We note the parties provided in the Settlement that Tennessee and its customers would meet once the Settlement was effective to discuss a proposal to elevate the priority of secondary receipt to primary delivery points, and that Tennessee would file and support such a proposal.<sup>42</sup> On March 23, 2012, in accordance with the Settlement,<sup>43</sup> Tennessee filed in Docket No. RP12-514-000 proposed *pro forma* tariff records to revise its secondary in-the-path scheduling priority for purposes of allocating firm transportation capacity on its pipeline system (March 2012 Filing). Tennessee proposes in the March 2012 Filing to create two additional scheduling priorities, below the scheduling priority of nominations from primary receipt points to primary delivery points, such that nominations from secondary receipt points to primary delivery points where a constraint is within the primary path would be scheduled before nominations from primary receipt points to secondary delivery points where a constraint is within the primary path. As clarified herein, the Commission has previously permitted pipelines to afford a higher priority to within-the-path secondary receipt point to primary delivery point transactions than to other secondary point transactions, provided that priority is below primary to primary service. The Commission is reviewing Tennessee's current proposal and will evaluate it in accordance with the clarification of the Commission's scheduling priority policy provided above.

**B. Scheduling Priority Based on Price**

**1. Proposal, Technical Conference Order and Request for Rehearing**

32. In the November 2010 filing, Tennessee proposed to revise Article IV, section 3 of the General Terms and Conditions (GT&C) of its Tariff to schedule firm transactions using a secondary receipt or secondary delivery point outside of a shipper's primary capacity path by price, allocating capacity first to the contract paying the highest transportation rate.<sup>44</sup> Tennessee proposed to use its "transportation rate inclusive of all

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<sup>42</sup> Settlement Article XIV(B).

<sup>43</sup> *Id.*

<sup>44</sup> November 2010 Filing at 12. *See also* Tennessee's FERC NGA Gas Tariff, TGP Tariffs, Sheet No. 318, 1.0.0.

applicable fees and surcharges agreed upon by the Transporter and Shipper (Confirmed Price) to the route being scheduled such that higher rates are allocated before those paying lower rates” for scheduling capacity under primary contracts.<sup>45</sup> Tennessee proposed to calculate the Confirmed Price by taking the sum of the transportation rate (both reservation and usage components) and all applicable fees and surcharges, except for fuel.<sup>46</sup> Tennessee stated that it would calculate the reservation charge as a 100 percent load factor rate and the commodity rate will be determined by nomination zone of receipt to zone of delivery. Thus, Tennessee’s proposal would schedule secondary out-of-the-path transactions according to the rate a customer pays, without consideration of the duration of the contract.

33. For capacity releases, Tennessee proposed to schedule according to the replacement shipper’s Confirmed Price for non-index based capacity releases and the Index-Based Release Rate Floor (NAESB 1.9) in the Confirmed Price calculation for capacity releases based on index prices.<sup>47</sup> For shippers paying the same rate, Tennessee proposed to allocate capacity on a *pro rata* basis. Based on comments made at the technical conference, Tennessee proposed to modify its original proposal to allow a shipper paying a rate less than maximum rate to upgrade its scheduling priority by paying the maximum rate for the entire day.<sup>48</sup> Tennessee also proposed in the Preliminary Comments to use the releasing shipper’s Confirmed Price for capacity releases under asset management arrangements and state retail access programs.

34. Comments protesting this part of Tennessee’s proposal generally focused on the use of absolute price and the use of the replacement shipper’s rate as the Confirmed Price in scheduling released capacity. Protesters contended that the use of an absolute price as the Confirmed Price is discriminatory because long haul shippers would automatically trump short haul shippers. They suggested that this inequity could be rectified by requiring Tennessee to modify its proposal so that any shipper paying the maximum rate for its service will take scheduling priority over a shipper paying less than maximum rate.<sup>49</sup> Others argued that Tennessee’s proposal would not allocate capacity to the one

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<sup>45</sup> Proposed GT&C Article IV, section 3(c).

<sup>46</sup> See BG Energy’s Initial Technical Conference Comments at 4-5.

<sup>47</sup> Proposed GT&C Article IV, section 3(c).

<sup>48</sup> Tennessee’s Preliminary Technical Conference Comments, *pro forma* Sheet No. 318.

<sup>49</sup> See, e.g., Technical Conference Comments of Chesapeake Energy Marketing, Inc. at 4.

that values it the most, because it does not take into consideration the value of the capacity on the day for which the shipper is seeking to schedule an out-of-the-path transaction. According to the commenters, the value of the capacity to a shipper when it originally purchased the capacity from the pipeline has no bearing whatsoever on that shipper's valuation of secondary receipt capacity during a scarcity event. The shipper could not, at the time of original contracting, plan to schedule around an unknown future constraint.

35. In the Technical Conference Order, the Commission rejected Tennessee's proposal to allocate secondary out-of-the-path transactions according to price. The Commission found that Tennessee's proposal was based on a flawed economic premise. Tennessee proposed to schedule secondary out-of-the-path transactions according to the transportation rate that the shipper agreed to at the time it entered into its original contract with the pipeline, based on the claim that such methodology allocates the capacity to the shipper who values it the most. The Commission found, however, that the value to the original capacity holder of the point capacity to which the shipper wants to move on a secondary out-of-the-path basis is irrelevant to that shipper's current valuation of that point capacity. The Commission further found the presumption that a shipper's average daily reservation charges are an accurate measure of how that shipper values secondary out-of-the-path capacity to be erroneous, and noted that a shipper's reservation charge is a sunk cost to reserve primary capacity for an annual period that the shipper will pay regardless of whether Tennessee schedules the shipper's nomination. The Commission thus concluded that reservation charges are not a fair measure of how a shipper values capacity on a particular day, but more accurately represent the value, on an annual basis, that a shipper places on receiving reliable peak day service. Having determined that Tennessee's proposal was based on this economically flawed premise, the Commission determined that Tennessee had not shown its proposal to allocate firm secondary out-of-the-path transactions according to price to be just and reasonable in either the primary contracting or capacity release context.<sup>50</sup>

36. The Commission also rejected Tennessee's attempts to analogize its proposal to other situations where the Commission has approved the allocation of capacity by price – interruptible transportation service and allocations based on Net Present Value (NPV).<sup>51</sup> The Commission noted that in those circumstances, the price the shipper pays does reflect that shipper's current valuation of the capacity. For allocations based on NPV, a shipper bids in an open season an amount that reflects that shipper's value of the capacity being sold in the open season. The same holds true for a shipper seeking interruptible

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<sup>50</sup> Technical Conference Order, 135 FERC ¶ 61,208 at PP 40-42.

<sup>51</sup> *Id.* P 43.

transportation service on a particular day. The Commission noted that allocating capacity according to price in both those instances would maximize the revenue the pipeline would receive for the capacity.

37. Tennessee sought rehearing of the Commission's rejection of Tennessee's proposal to schedule firm secondary out-of-path service by price. Tennessee asserts on rehearing that the Commission departed from an alleged policy of allowing pipelines to schedule secondary services by price without a reasoned explanation for doing so. Tennessee also contends that the Commission erred by failing to find that the reservation rate paid by a shipper for firm service at the time it enters into a service agreement reflects the value of secondary service over the term of the contract.

38. Tennessee argues that the Commission failed to explain its departure from what it considers a well established policy of allowing allocation of secondary capacity on the basis of price paid in order to promote the policy of efficient allocation of capacity to the entity that values it the most.<sup>52</sup> Tennessee cites to several cases purportedly approving the scheduling of secondary service by price, claiming that the Commission erred by failing to explain its departure from this policy.

39. Tennessee also claims that the Technical Conference Order takes its argument supporting the allocation of secondary service by absolute price out of context by applying Tennessee's argument for a proxy in the release situation to that of an original shipper. Tennessee contends that the Commission's statement that the price paid by an original shipper at the time of contracting does not reflect that shipper's future value of secondary points is erroneous, as evidenced by the use of negotiated and discounted rates for secondary points in long term contracts. According to Tennessee, shippers can and do place value on secondary point capacity at the time they execute contracts with pipelines, and the reservation rate paid by shippers at the time of the contract is an accurate and fair measure of the value the shipper places on such capacity during the term of its contract. Finally, Tennessee argues that allocation of secondary capacity by price avoids the inefficiencies and gamesmanship inherent in *pro rata* allocations.<sup>53</sup>

## 2. Commission Decision

40. The Commission denies rehearing in part, and grants rehearing in part, with respect to our earlier rejection of Tennessee's proposal to schedule firm secondary service by price. In the Technical Conference Order, the Commission rejected

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<sup>52</sup> Tennessee's Rehearing Request at 4.

<sup>53</sup> *Id.* at 7.

Tennessee's proposal to schedule firm secondary service by price based on the finding that the economic premise underlying the proposal was flawed and that scheduling by absolute price would not allocate capacity to the shipper that values it the most. The Commission has reviewed and reconsidered this finding in light of Tennessee's rehearing request, and while we continue to find that Tennessee's proposal is not just and reasonable because it discriminates against maximum rate short haul shippers, we clarify that Commission policy does not prohibit the scheduling of firm secondary transactions by price. As Tennessee points out in its rehearing request, the Commission has previously allowed pipelines to schedule such service according to price subject to appropriate conditions to avoid undue discrimination against short-haul shippers.<sup>54</sup> Accordingly, we deny Tennessee's request to approve its instant proposal because that proposal has not been shown to be just and reasonable. We grant rehearing, however, to the extent that our findings in the Technical Conference Order would preclude Tennessee from scheduling firm secondary transactions according to price pursuant to a fully supported tariff proposal. Below we clarify the Commission's policy on scheduling secondary firm services by price and provide general guidelines for just and reasonable tariff proposals.

41. Pursuant to the Commission's policy on economic scheduling of firm secondary capacity, pipelines are permitted to schedule firm secondary capacity by either the highest percentage of the applicable maximum rate or by the highest absolute price. In order to protect against undue discrimination, any proposal to schedule firm secondary capacity according to absolute price must include a provision that all shippers paying the maximum rate applicable to their service will be scheduled ahead of any discount rate paying shipper. Pipelines are allowed to permit discounted rate paying shippers the opportunity to increase their rate to enhance their scheduling priority on a particular day. For capacity releases, pipelines may propose to use either the releasing shipper's or the replacement shipper's rate as the price.

**a. Pipeline Capacity**

42. The Commission has approved proposals by most pipelines to schedule requests for secondary firm service on a *pro rata* basis, which is the method Tennessee currently uses. However, the Commission has also allowed some pipelines to adopt tariff provisions to schedule secondary firm service according to price to further its policy that capacity be awarded to the highest valued use.<sup>55</sup> The Commission's approval or rejection

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<sup>54</sup> Tennessee's Rehearing Request at 2-4 (citing *Trunkline Gas Co.*, 64 FERC ¶ 61,141 (1993) (*Trunkline*); *El Paso Natural Gas Co.*, 114 FERC ¶ 61,305 (2006) (*El Paso II*)).

<sup>55</sup> See *Trunkline, Panhandle I*, 78 FERC ¶ 61,202; *Iroquois Gas Transmission*

of prior proposals to schedule by price turned on (1) which price most closely approximates the value a shipper placed on its secondary capacity; and (2) whether the proposed methodology was unduly discriminatory. In *Panhandle I*, we rejected the pipeline's proposal to schedule secondary service by absolute price because of the potential for undue discrimination against short haul shippers. In that order we also recognized, however, that the concept of scheduling by economic value had merit, and suggested that scheduling according to the percentage of maximum rate would alleviate the discrimination problem associated with scheduling by absolute price.<sup>56</sup> Thus, we later approved proposals in *Panhandle II* and *Iroquois* to schedule secondary firm capacity by percentage of maximum rate. The Commission recognized in those orders that because secondary point capacity rights are being allocated, there is no information identifying what exact value each shipper places on the secondary capacity at a given point. However, the Commission found that the best substitute for information on what that exact value might be is the shipper's firm contract rate, because that rate reflects the value that a shipper places on its total package of firm capacity rights, including secondary rights.<sup>57</sup> The Commission also found that scheduling by price minimizes the practical difficulties arising under the *pro rata* method, which requires reducing each shipper's request for secondary service and may result in scheduling volumes that are so small as to have no meaning.<sup>58</sup>

43. As Tennessee points out, the Commission has also approved scheduling of secondary firm services according to absolute price. In *El Paso II*, the Commission found that scheduling secondary firm capacity by absolute rate paid is consistent with awarding capacity to the customer that values it the most. In approving *El Paso's* proposal, the Commission rejected arguments that secondary firm capacity should only be allocated according to percentage of maximum rate. The Commission specifically recognized that *El Paso* included provisions that scheduled all secondary capacity at maximum rates first, and allowed discount rate shippers to increase to the maximum rate on a daily basis to enhance their scheduling priority.<sup>59</sup> The Commission held that *El*

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*System, LP*, 80 FERC ¶ 61,199 (1997) (*Iroquois*); *Panhandle Eastern Pipeline Co.*, 80 FERC ¶ 61,198 (1997) (*Panhandle II*), *reh'g denied*, 82 FERC ¶ 61,199 (1998).

<sup>56</sup> Prior to its proposal, *Panhandle* had scheduled and allocated secondary services on a *pro rata* basis. Tennessee's current Tariff at Article IV, section 3, also allocates secondary services on a *pro rata* basis.

<sup>57</sup> *Iroquois*, 80 FERC at 61,801.

<sup>58</sup> *Panhandle II*, 80 FERC at 61,793-94.

<sup>59</sup> *El Paso II*, 114 FERC ¶ 61, 305 at P 317.

Paso's agreement that all shippers paying the maximum rate in any rate zone are equal for scheduling purposes resolves the concerns about scheduling inequalities between short-haul and long-haul shippers.<sup>60</sup>

44. Thus, the Commission has approved the scheduling of secondary firm services according to percentage of maximum rate and according to absolute price, with certain conditions in order to avoid undue discrimination against short-haul shippers. As discussed in the referenced orders, allowing the scheduling of secondary capacity on a price basis is reasonable because a shipper has no absolute entitlement to secondary points.<sup>61</sup> In *Iroquois*<sup>62</sup> the Commission explained,

For example, since scheduling occurs on a daily basis, a certain point may not be available as a secondary point on particular day if the capacity at that point is being used by another firm shipper as its primary point capacity. In that sense, secondary firm capacity rights are conditional. Thus, because the nature of firm service at secondary points is conditional and not absolute, a scheduling mechanism for secondary points that recognizes differing degrees of priority among firm shippers may be appropriate.

45. The Commission recognizes that the exact value that a shipper places on its secondary capacity on the day in question is difficult to discern. It seems reasonable that the best substitute for that value may be the shipper's firm contract rate, which reflects the total package for firm services that includes those secondary rights. As Tennessee argues, shippers may place value on their secondary points at the time they enter into their entire firm service packages, as evidenced by the practice of discounting or negotiating the rate applicable at certain points on a primary and secondary basis. Moreover, to the extent that a pipeline proposing to schedule secondary firm services according to absolute price permits discounted rate shippers to increase their rate on a daily basis to enhance their scheduling priority, such a decision clearly demonstrates the shipper's value of its secondary points on that day. In any event, the *pro rata* allocation method is also an imperfect method of allocating secondary firm capacity. Under that method, when secondary firm capacity is constrained, no shipper is able to schedule all the secondary firm capacity it desires, and a shipper's *pro rata* share of the available capacity may be insufficient to be of any value to the shipper. Given that there is no

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<sup>60</sup> *Id.* P 316.

<sup>61</sup> *Iroquois*, 80 FERC at 61,801.

<sup>62</sup> *Id.*

perfect method of allocating secondary firm service, the Commission finds that it is reasonable to permit pipelines also to schedule secondary firm service according to price, subject to the conditions discussed above.

46. Neither scheduling by absolute price nor by percentage of maximum rate, however, stands out as a more accurate method of determining the value of secondary points. As shown by our prior approvals of secondary firm capacity scheduling provisions, either approach may be shown to be just and reasonable. Accordingly, we grant rehearing of our finding in the Technical Conference Order that the value a shipper places on its capacity when it executes its firm service contract bears no relation to the value that shipper places on secondary capacity outside its capacity path. We also clarify that pipelines may propose to schedule secondary firm services according to either percentage of the applicable maximum rate or by absolute price, with the latter subject to the condition discussed below.

47. As noted by commenters opposing Tennessee's proposal, scheduling according to absolute price does have the problem that it discriminates against short haul shippers. On a pipeline such as Tennessee with zone rates, a long haul shipper paying a discounted rate could be scheduled ahead of a short haul shipper paying the applicable maximum zone rate. As we found in *Panhandle I*, such discrimination is not just and reasonable. Unlike El Paso, Tennessee did not propose that all shippers paying the maximum rate applicable to their service would be scheduled before any secondary service is scheduled for non-maximum rate paying shippers. Thus, under Tennessee's proposal, a long-haul shipper paying a discounted rate that is higher than the maximum rate applicable to a short-haul shipper would be scheduled before the short-haul shipper, and the short-haul shipper would have no ability to increase its rate in order for its requested secondary firm service to be scheduled. The Commission finds that this result unduly discriminates against short-haul shippers on Tennessee's system.

48. Accordingly, the Commission continues to find that Tennessee has not satisfied its burden under NGA section 4 to show that its proposal in this proceeding to schedule out-of-path secondary firm service by price is just and reasonable and not unduly discriminatory. However, the Commission's rejection of Tennessee's proposal is without prejudice to Tennessee making a new filing to schedule out of path secondary firm capacity based upon either (1) percentage of maximum rate or (2) absolute price subject to the condition that all maximum rate shippers are scheduled before any secondary service is scheduled for non-maximum rate shippers.

**b. Released Capacity**

49. We also grant subject to conditions, Tennessee's request for rehearing with respect to the use of the replacement shipper's rate as the price for purposes of scheduling secondary firm capacity. In *Panhandle II* and *Iroquois*, the Commission required the use of the releasing shipper's rate as the price for scheduling secondary firm capacity by

price.<sup>63</sup> The Commission did not expressly address this issue in *El Paso II*, permitting the use of absolute price.

50. There are good reasons to use the replacement shipper's rate as the price for scheduling priority purposes. The replacement shipper is the shipper who will actually be using the secondary firm capacity, and its rate represents the closest approximation of the value it places on the capacity at the time it seeks to schedule the secondary firm service. Accordingly, as discussed more fully below, we clarify that pipelines may propose to use either the releasing shipper's rate or, subject to conditions, the replacement shipper's rate, for scheduling secondary firm service by price. Pipelines that schedule secondary firm released capacity using the replacement shipper's rate may permit a replacement shipper paying less than the maximum rate to increase its rates as necessary to obtain secondary firm service on a particular day. Consistent with section 284.8(f) of the Commission's regulations,<sup>64</sup> however, the pipeline must credit any increased amounts collected from the replacement shipper to the releasing shipper's reservation charge.<sup>65</sup>

51. Tennessee proposed to schedule secondary firm released capacity based on the replacement shipper's price. Tennessee argues that use of the replacement shipper's rate in the release context is appropriate because the price paid by the replacement shipper at the time it schedules service is the most current and suitable value for purposes of allocating the capacity to the replacement shipper. Tennessee also proposed to schedule index based releases using the rate floor for index based releases.

52. Opponents of Tennessee's proposal to use the replacement shipper's rate to schedule secondary released capacity contend that such use would provide an unfair advantage to Tennessee's sales of capacity as compared to released capacity, and will thus devalue the released capacity. They argue capacity releases generally occur at discounted rates because shippers are seeking to recoup some of the cost of underutilized capacity. Thus, Tennessee's capacity will be worth more because shippers will be reluctant to purchase an inferior released product if they can obtain a higher priority product from the pipeline. Protesters also contend that Tennessee's proposal to use the

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<sup>63</sup> See *Panhandle II*, 80 FERC at 61,794, and *Iroquois*, 80 FERC ¶ 61,199 at n.27.

<sup>64</sup> 18 C.F.R. § 284.8(f) (2011).

<sup>65</sup> As with negotiated rate shippers, a replacement shipper paying above the maximum rate for a release not subject to the maximum rate (i.e., a short term release of a year or less) would have to be treated as if it were paying the maximum rate for scheduling priority purposes. Otherwise, such replacement shippers would have an unfair advantage over other shippers who are subject to the pipeline's maximum rates.

replacement shipper's rate as the absolute price to schedule released capacity is inconsistent with the Commission's holding in *Panhandle II* requiring use of the releasing shipper's rate.

53. Tennessee replies that contrary to the protesters' assertions, using the replacement shipper's rate will enhance the value of released capacity. Tennessee notes that to the extent a replacement shipper increases its payment to enhance its scheduling position, the releasing shipper, not the pipeline, benefits from that higher rate because the Commission's capacity release regulations require the pipeline to credit that amount back to the releasing shipper. Tennessee also argues that *Panhandle II* does not govern because the proposal there was unopposed, and thus its approval does not stand for the proposition that use of the releasing shipper's rate is the only just and reasonable allocation methodology.

54. While we have approved the use of the releasing shipper's rate as the price for scheduling secondary firm capacity on the basis that it represents the revenue the pipeline will retain for providing the secondary service, Tennessee makes compelling arguments regarding the benefits of using the replacement shipper's rate as the price. Because the objective of scheduling secondary firm service is to allocate the capacity to the shipper who values it most, it is reasonable to use the rate paid by the replacement shipper who will be using the capacity rather than the rate by the releasing shipper. In addition, we are not persuaded that Tennessee's proposal would provide an unfair advantage to Tennessee's sales of capacity as compared to released capacity. Because the replacement shipper would have an opportunity to increase its rate as necessary to schedule desired secondary firm service on any day, there would appear to be little reason for the shipper to agree to pay Tennessee a higher rate for the entire term of its service than it would have to pay for released capacity. Moreover, in the situation postulated by the protesters of a releasing shipper releasing underutilized capacity during an off-peak period, capacity at relevant secondary points is unlikely to be constrained with the result that all requests for service could be scheduled without regard to price. Accordingly, the Commission clarifies that pipelines may propose to schedule secondary firm transactions in the capacity release context on the basis of either the releasing shipper's rate or the replacement shipper's rate.

55. In order to ensure compliance with our capacity release regulations, any proposal to use the replacement shipper's rate is subject to the following conditions. First, consistent with section 284.8(f) of the regulations, all credits from increased payments by the replacement shipper must be paid to the releasing shipper, not retained by the pipeline. This condition will ensure the released capacity is not placed at a competitive disadvantage relative to the pipelines' capacity. Second, pipeline proposals must include provisions governing the use of index rates and other formulas to determine scheduling priorities for secondary firm services. The Commission's regulations and policies allow for a variety of methods and formulas for shippers to use to price capacity releases, including purely volumetric based rates and index based rates. Thus, a pipeline's

proposal to use the replacement shipper's rate for scheduling secondary firm capacity must explain how it would value a replacement shipper's index or formula rate during the scheduling process in order to determine that shipper's scheduling priority. The pipeline's filing must contain sufficient detail as to the procedures to be followed and how exactly the rate will be calculated.

56. Tennessee also proposed to permit a replacement shipper to increase its payment on a daily basis to enhance its scheduling priority on a given day. We have found such a provision to be a reasonable method for discounted rate paying shippers to increase their payments on a daily basis to enhance their scheduling priority.<sup>66</sup> To ensure fairness, however, a replacement shipper paying above the maximum rate for a release not subject to the maximum rate (i.e., a short term release of a year or less) would have to be treated as if it were paying the maximum rate for scheduling priority purposes. Otherwise, such replacement shippers would have an unfair advantage over other shippers who are subject to the pipeline's maximum rates.

### **C. Regional Daily Imbalance Charge**

57. In the November 2010 Filing, Tennessee also proposed to continue to impose a daily imbalance charge under Rate Schedules LMS-PA (Load Management Service-Production Area) and LMS-MA (Load Management Service-Market Area). Those imbalance charges currently apply only on days on which the net pipeline imbalance position is greater than plus or minus five percent of scheduled quantities and apply only to a balancing party with an imbalance greater than 10 percent of scheduled volumes in the same direction as the net pipeline position.<sup>67</sup> The imbalance charge is two times the Rate Schedule PAL rate for imbalances greater than 10 percent and less than or equal to 20 percent, and four times the Rate Schedule PAL rate for imbalances greater than 20 percent. Tennessee credits revenues collected pursuant to this mechanism to balancing parties with an imbalance that is within plus or minus five percent of scheduled volumes. According to Tennessee, the daily imbalance charge thus: (1) rewards parties that stay within 5 percent of scheduled volumes; (2) is only applied to parties who exceed the 10 percent tolerance; and (3) is only charged when the system is stressed by being more than five percent out of balance.

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<sup>66</sup> See *El Paso II*, 114 FERC ¶ 61,305 at 317.

<sup>67</sup> The daily imbalance charge under Rate Schedule LMS-PA applies to the difference between scheduled and actual receipts at the balancing party's receipt point. The daily imbalance charge under Rate Schedule LMS-MA applies to the difference between scheduled quantities and actual quantities accepted at the balancing party's delivery point.

58. In this proceeding, Tennessee proposed that, instead of determining whether to impose a daily imbalance charge based on the net pipeline position across all zones as is the current practice, it would utilize a regional approach by establishing two regional net pipeline positions: one for Zones 0 and 1, and another for Zones 2-6. Under its revised proposal, if the regional net pipeline position for any region is greater than plus or minus five percent, balancing parties in that region and in the same direction as the regional net pipeline position will be assessed the same charge as currently in effect for net pipeline position. Tennessee claimed that these changes are designed and intended to change shipper behavior and to help to better manage imbalances on the Tennessee system in a manner that more fairly focuses on assessing penalties on those parties that are actually causing harm to the system. Tennessee further claimed that the regional net pipeline position approach should help to minimize the need for OFOs.

59. In its preliminary comments filed prior to the technical conference, Tennessee made two clarifications and revisions to its regional net pipeline position proposal. Tennessee proposed (1) to exempt application of the Daily Imbalance Charge for deliveries at or below 1,000 Dth; and (2) to ensure that credits will be provided based on Daily Imbalance Charges collected in each region.

60. The Commission rejected Tennessee's proposal to apply Tennessee's daily imbalance charge on a regional basis. The Commission found that Tennessee had shown that applying its daily imbalance charge on a regional basis was reasonable but that its proposed tariff language did not actually implement its intent to determine daily imbalance charges on a regional basis. The Commission stated that Tennessee's filed testimony and Exhibit TGP-131 implied that Daily Imbalances would be calculated on a regional basis. However, Tennessee did not propose to change the tariff provisions governing the calculation of Daily Imbalance charges:

... Transporter shall calculate ~~the each regional~~ net pipeline position by dividing the sum of the total positive or negative cumulative imbalances at all points covered by this Rate Schedule and the total positive or negative cumulative imbalances at all points under Rate Schedule LMS-PA by the sum of the total scheduled quantities at all points covered by this Rate Schedule and the total scheduled quantities at all points covered by Rate Schedule LMS-PA. The resulting % imbalance is the regional net pipeline position.<sup>68</sup>

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<sup>68</sup> Rate Schedule LMS-MA, section 7(a)(ii) located at Tennessee Gas Pipeline Company's FERC NGA Gas Tariff, TGP Tariffs, Sheet No. 248, , 1.0.0. Redline/strike as provided by Tennessee. Similar language is located in Rate Schedule LMS -PA at

61. The Commission stated that, according to this tariff language, regional net pipeline positions will be calculated on the basis of *total* imbalance data from both Rate Schedules LMS-MA and LMS-PA for the entire system. Because the same system-wide imbalance data will be used to calculate the pipeline's regional net pipeline position for each region, the net pipeline imbalance positions for each region will always be the same as that of the other region. The end result would appear to be that Tennessee would impose exactly the same daily imbalance charges as if it had never made the instant proposal. Thus, the Commission rejected the proposed language without prejudice to Tennessee re-filing its proposal in a separate proceeding.<sup>69</sup>

62. Tennessee, in its request for rehearing, argues that its oversight in drafting the tariff language should not lead to a rejection of the proposal and the need to institute another filing to modify the tariff language. Instead, Tennessee states that the Commission could have simply accepted the proposal, subject to Tennessee's modification of the tariff language in a compliance filing to conform the language to the intent of the proposal.

63. Tennessee also states that, in its June 2011 Filing, it included *pro forma* tariff records with insertions of the phrase "for the applicable region" in several places in the pertinent provision. This compliance filing, Tennessee believes, conforms the tariff language to the intent of the proposal. Tennessee believes that a Commission ruling on these changes would be more efficient than a requirement for Tennessee to make these changes in a separate proceeding.

64. The Commission denies rehearing on this issue. Regardless of whether the Commission had discretion to accept Tennessee's tariff proposal concerning regional imbalance charges subject to Tennessee revising the tariff language to carry out the intent of the proposal, the Commission was under no obligation to do so. NGA section 4(d) requires that a pipeline provide notice of proposed changes to its terms and conditions of service by filing "new schedules stating plainly the change or changes to be made in the schedule or schedules then in force." Section 4(e) imposes on the pipeline the burden of proof to show that its proposed change is just and reasonable. Tennessee failed to file revised tariff language "stating plainly the change" its testimony purported to support, and thus failed to comply with NGA section 4(d). In these circumstances, the Commission acted within its authority in rejecting Tennessee's section 4 proposal concerning regional imbalance charges and requiring the pipeline to make a new section 4 filing with revised tariff language that does plainly state its proposed change as required

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section 5(b), Sheet No. 264, , 1.0.0.

<sup>69</sup> Technical Conference Order, 135 FERC ¶ 61,208 at P 99.

by section 4. This is particularly the case, because the inconsistency between Tennessee's proposed tariff language and the testimony filed in support of that tariff language left the Commission somewhat uncertain as to exactly what change Tennessee did want to make.

65. Tennessee argues that a requirement to modify the Tariff in this proceeding would have been more efficient as opposed to a new proceeding. However, the Commission fails to see any difference in the burden imposed on Tennessee by the two approaches. The effort required by Tennessee to prepare and file a compliance filing or a new proposal are comparable.

66. Tennessee has not identified any error by the Commission, and its request for rehearing is denied. The procedural option suggested by the Commission in the Technical Conference Order is still available to Tennessee should it choose to proceed with its regional balancing proposal.

### **III. Compliance Filings**

67. On June 30, 2011, December 12, 2011, January 27, 2012, and February 24, 2012 (February 2012 Filing), Tennessee filed compliance filings in Docket Nos. RP11-1566-004, RP11-1566-008, RP11-1566-009, and RP11-1566-011, respectively.<sup>70</sup> The June 2011 Filing and the December 2011 Filing were made to comply with the Technical Conference Order on non-rate tariff issues. The January 2012 Filing was made to comply with the Settlement Order. The February 2012 Filing corrects the inadvertent omission of the 300 Line Project Firm Transportation Recourse Rate on Tenth Revised Sheet No. 19, V 10.0.0 in the January 27 Filing.

68. Tennessee in the pending compliance filings (1) moves certain accepted tariff records into effect as of June 1, 2011 and July 1, 2011; (2) files revised tariff language required by the Commission under NGA section 5, to be effective as of the date approved by the Commission; (3) moves certain accepted tariff records to implement the revised scheduling priority provisions into effect as of February 1, 2012; (4) proposes for acceptance revised tariff records implementing regional imbalance charges to be effective March 1, 2012; and (5) with the exception of the proposal in (4) above, eliminate all proposals that were rejected. Tennessee also requests acceptance of the cancellation of tariff records to be effective June 1, 2011, filed under Record Change Type "CANCEL" in the November 30 Filing and accepted and suspended in the Suspension Order. These pending compliance filings are discussed in detail below.

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<sup>70</sup> Tennessee also made a filing in Docket No. RP11-1566-010 on February 23, 2012. However, Tennessee withdrew that filing.

69. Public notice of Tennessee's compliance filings were issued on July 1, 2011, December 14, 2011, January 31, 2012, and March 27, 2012, allowing for comments or protests to be filed on or before July 12, 2011, December 27, 2011, February 8, 2012, and March 30, 2012, as provided in section 154.210 of the Commission's regulations.<sup>71</sup> Protests were filed by Tennessee Customer Group (TCG),<sup>72</sup> and National Fuel Gas Distribution Company (National Fuel), and Indicated Shippers<sup>73</sup> in Docket No. RP11-1566-004.<sup>74</sup> TCG also filed a supplemental protest. TCG<sup>75</sup> and the Indicated Shippers filed comments in Tennessee's Docket No. RP11-1566-009 asserting that issues raised by certain requests for rehearing or clarification of the Technical Conference Order and the protests in Docket No. RP11-1566-004 were reserved under the terms of the Settlement to be determined by the Commission.<sup>76</sup> No adverse comments were filed in Docket Nos. RP11-1566-008 and RP11-1566-011. The protests are discussed below.

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<sup>71</sup> 18 C.F.R. § 154.210 (2011).

<sup>72</sup> TCG includes the following: CenterPoint Energy; City of Clarksville Gas and Water Department, City of Clarksville; City of Corinth Public Utilities Commission; Delta Natural Gas Company, Inc.; Greater Dickson Gas Authority; Hardeman Fayette Utility District; Henderson Utility Department; Holly Springs Utility Department; Humphreys County Utility District; Town of Linden; Morehead Utility Plant Board; Portland Natural Gas System, City of Portland; Savannah Utilities; Springfield Gas System, City of Springfield; City of Waynesboro; and West Tennessee Public Utility District.

<sup>73</sup> The Indicated Shippers are Apache Corporation, BP Energy Company and BP America Production Company, Chevron U.S.A. Inc., ConocoPhillips Company, ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation, Hess Corporation, Noble Energy Inc., Shell Energy North America (US), L.P. and Shell Offshore Inc.

<sup>74</sup> Although Indicated Shippers' protest was filed out of time, no delay will be caused by accepting the protest. The protest is accepted for completeness of the record.

<sup>75</sup> Athens Utilities; City of Florence, Alabama; Hartselle Utilities; City of Huntsville, Alabama; Municipal Gas Authority of Mississippi; North Alabama Gas District; Tuscumbia Utilities; and Sheffield Utilities joined TCG.

<sup>76</sup> This order addresses the issues reserved by the Settlement. Accordingly, there is no need to make this order subject to the outcome of further Commission rulings on those issues.

70. Certain revised tariff records filed in the compliance filings are accepted or accepted subject to the conditions set forth below and to be effective on the dates set forth in the Appendix A to this order, or rejected as shown in Appendix A of this order. Other tariff records from Tennessee's November 2010 Filing are rejected as shown in Appendix B of this order, as discussed below.

**A. Reservation Charge Credits**

71. Tennessee did not propose any changes to its reservation charge crediting provisions in the November 2010 Filing. Tennessee's rate schedules for its FT-A (Firm Transportation Service), FT-BH (Firm Transportation Backhaul Service), FT-G (Small Customer Transportation Service), and FT-IL (Incremental Lateral Service) firm services include provisions requiring it to provide credits against the shippers' reservation charges during periods when service can not be provided because of a non-*force majeure* event.<sup>77</sup> However, Tennessee's rate schedules for its firm services provide that it is not obligated to provide firm shippers reservation charge credits during periods when it cannot provide

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<sup>77</sup> For example, section 7, Failure of Transporter, of Rate Schedule FT-A provides that:

If Transporter fails to tender for delivery during any one or more days the quantity of natural gas which Shipper has scheduled for delivery, taking into consideration an allowable variation of 2%, up to the maximum quantity which Transporter is obligated by the transportation contract to deliver to Shipper, then the demand charge as otherwise computed hereunder shall be reduced by an amount equal to the applicable Daily Demand Rate per Dth times the difference between the quantity of natural gas tendered for delivery during said day or days and the quantity of natural gas scheduled by Shipper for delivery at Primary Delivery Points during said day or days; provided that if Transporter's failure to perform is due to a force majeure event described in Article XII of the General Terms and Conditions of Transporter's FERC Gas Tariff, Transporter will not be obligated to reduce Shipper's demand charges, in the manner described above, for failure to tender delivery at Shipper's primary or secondary delivery point(s).

Tennessee's FERC NGA Gas Tariff, TGP Tariffs, Sheet No. 81, , 0.0.0. Section 7 of Rate Schedules FT-BH, FT-G, and FT-IL contains identical language.

service due to a *force majeure* event. In Opinion No. 406-A,<sup>78</sup> the Commission held that Tennessee need not include in its tariff a provision for reservation credits during *force majeure* events, because a settlement had changed Tennessee's rate design to include certain fixed costs in its usage charges. As a result, Tennessee would not recover the fixed costs in the usage charge during a *force majeure* interruption, thus requiring it to share the risk of such an interruption.

72. In this rate case, Tennessee proposed to return to a Straight Fixed Variable (SFV) rate design. The Technical Conference Order held that Tennessee's implementation of SFV would require it to revise its tariff to provide for partial reservation charge credits during *force majeure* service interruptions consistent with Commission policy. Under that policy, pipelines may provide partial credits pursuant to either: (1) the No-Profit method, under which the pipeline provides credits commencing 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, (2) the Safe Harbor method, under which reservation charges must be credited in full to the shippers after a short grace period without a crediting requirement (i.e., 10 days or less), or (3) another method providing for comparable sharing. The Commission required Tennessee to implement its partial crediting method on the same June 1, 2011 it put its section 4 proposal to use an SFV rate design into effect, because the interaction between its existing tariff provision excusing credits during *force majeure* service interruptions and its section 4 proposal would create results that are unjust and unreasonable under existing Commission policy.<sup>79</sup> Pursuant to the Settlement, Tennessee has withdrawn its request for rehearing of the requirement to implement partial crediting as of June 1, 2011.

73. Tennessee's existing tariff provides that it will give full reservation charge credits for non-*force majeure* outages, if it is unable to make deliveries of at least 98 percent of the shipper's scheduled volumes. The Technical Conference Order found that this 98 percent threshold requirement (98 percent requirement) conflicted with the Commission's policy requiring full reservation charge credits for the entire undelivered amount during non-*force majeure* or planned maintenance events.<sup>80</sup> Accordingly, pursuant to NGA section 5, the Commission required Tennessee either to remove the 98 percent requirement or provide a further explanation why that policy should not apply to it. Tennessee did not seek rehearing of that aspect of the Technical Conference Order.

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<sup>78</sup> *Tennessee Gas Pipeline Co.*, Opinion No. 406-A, 80 FERC ¶ 61,070, at 61,200 (1997).

<sup>79</sup> Technical Conference Order at P 59.

<sup>80</sup> *Id.* PP 64-66.

74. The Technical Conference Order also stated that, in *Southern*,<sup>81</sup> the Commission had found that when the pipeline gives advance notice of an outage before shippers have submitted scheduling nominations for the day (or days) of an outage,<sup>82</sup> it is reasonable for the pipeline to calculate the reservation charge credits based on an appropriate historical average of usage, *i.e.*, the shipper's prior seven days utilization of firm capacity. The Commission recognized that, when such advance notice has been given, the shippers' scheduling nominations may not accurately reflect what they would have scheduled without advance knowledge that the scheduling nominations would not be accepted. Accordingly, the Commission provided that Tennessee could, as part of its compliance filing, propose tariff language using an appropriate historical average consistent with the decision in *Southern*.

75. Finally, the Commission rejected contentions that Tennessee should be required to provide reservation charge credits for interruptions of secondary firm service.

76. Tennessee's revised compliance tariff provisions state that it will provide reservation charge credits for service interruptions due to *force majeure* events under the Safe Harbor method, with a 10-day grace period before any credits are given.<sup>83</sup> Tennessee also proposes tariff language that eliminates the 98 percent requirement from its non-*force majeure* tariff provisions and revised its tariff to provide reservation charge credits when it does not provide 100 percent of scheduled service. In addition, Tennessee, citing *Southern*, proposes a provision by which the amount of service not delivered when the pipeline has given advance notice of an outage will be measured

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<sup>81</sup> *Southern*, 135 FERC ¶ 61,056 at PP 33-34.

<sup>82</sup> 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).

<sup>83</sup> Tennessee's FERC NGA Gas Tariff, TGP Tariffs, Sheet Nos. 81, 86, 90, and 98, all version 1.0.0, provide for a reservation charge credit for each firm service as provided for at Article XII, section 5 of the General Terms and Conditions. Tennessee's revised Article XII, section 5, entitled "Reservation Charge Crediting Mechanism" appears at Sheet No. 364, Excuse of Performance, 1.0.0, and Sheet Nos. 364A and 364B, both version 0.0.0. Tennessee's meta data proposed a 12/31/9998 effective date for these records. However in its June 2011 Filing, Tennessee states that it proposes a June 1, 2011 effective date, coincident with its motion filing to place its suspended SFV base rates into effect and consistent with the requirements of the Technical Conference Order.

against an historical average, which is defined as the shipper's prior seven days utilization of firm capacity. Tennessee also proposes certain other conditions concerning its provision of reservation charge credits, which are discussed below.

77. Tennessee proposes to place into effect the tariff records in GT&C Article XII, section 5, Excuse of Performance, implementing reservation charge credits for *force majeure* and non-*force majeure* events on June 1, 2011. Tennessee states that the elimination of the 98 percent requirement will become effective under NGA section 5 when this compliance filing is accepted by the Commission.

78. No party protests Tennessee's proposals to use the Safe Harbor Method to provide reservation charge credits during force majeure outages or its proposed tariff language removing the 98 percent requirement. The Commission finds those aspects of Tennessee's compliance filing comply with the Technical Conference Order and therefore they are accepted to be effective as of the dates proposed by Tennessee. The Commission now turns to the issues raised by the protests to the compliance filing.

### 1. Governmental Action

79. Tennessee proposes to add to its tariff a new section 5(b)(iv) which would exempt Tennessee from providing credits for outages caused by "limitations or restrictions (including, but not limited to reductions in maximum allowable operating pressure) imposed by corrective action orders or other imposition of government agencies." National Fuel, TCG, and Indicated Shippers argue that the Commission should require Tennessee to provide full reservation charge credits if a government agency requires Tennessee to limit or restrict service in order to correct a condition caused by Tennessee's negligence or failure to comply with applicable pipeline safety regulations or similar obligations. TCG and Indicated Shippers also contend that, in situations where Tennessee was not at fault, the service interruption should be treated as a *force majeure* event, for which Commission policy requires partial reservation charge credits. Tennessee contends that it should not be required to provide credits for any outage required by a government agency, and an exemption for negligence or failure to comply would add uncertainty and costly Commission reviews.

80. Tennessee's proposal for a total exemption from reservation charge crediting where a service interruption is required by a government agency conflicts with Commission policy affirmed by the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) in *North Baja*.<sup>84</sup> Under that policy, pipelines are required to provide

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<sup>84</sup> *North Baja Pipeline, LLC v. FERC*, 483 F.3d 819 (D.C. Cir. 2007) (*North Baja*), *aff'g*, 109 FERC ¶ 61,159 (2004), *order on reh'g*, 111 FERC ¶ 61,101 (2005).

firm shippers with either full or partial reservation charge credits when they are unable to provide primary firm service.<sup>85</sup> When the interruption is the result of a *force majeure*<sup>86</sup> event, Commission policy requires that the pipeline provide partial reservation charge credits during the outage in order to share equitably the risk of an event not in the control of the pipeline or the shippers.<sup>87</sup> With respect to non-*force majeure* outages, where the interruption occurred due to circumstances within a pipeline's control, including planned or scheduled maintenance, the Commission requires the pipeline to provide shippers a full reservation charge credit for the amount of primary firm service they nominated for scheduling which the pipeline failed to deliver.<sup>88</sup> In *North Baja*, the DC Circuit affirmed Commission orders requiring a pipeline to modify its tariff to conform to these policies.

81. Therefore, the Commission requires pipelines to provide some level of reservation charge credits whenever the pipeline is unable to schedule primary firm service. The only issue is whether the outage is attributable to a *force majeure* situation outside the pipeline's control, in which case only partial credits are required. The Commission has recognized that, in some circumstances, a governmental action may be treated as a *force majeure* event for which partial reservation charge credits are required. For example, the Commission held that a government order requiring a pipeline to be relocated for highway construction could be treated as a *force majeure* event.<sup>89</sup> The Commission has also permitted pipelines to include in their definition of *force majeure* events government

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<sup>85</sup> See, e.g., *Southern*, 135 FERC ¶ 61,056, *order on reh'g*, 137 FERC ¶ 61,050; *Northern Natural Gas Co.*, 135 FERC ¶ 61,250, *order on reh'g*, 137 FERC ¶ 61,202 (2011); *Midwestern Gas Transmission Co.*, 137 FERC ¶ 61,257 (2011) (*Midwestern*).

<sup>86</sup> *Force majeure* events are “unexpected and uncontrollable events.” *Tennessee Gas Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022, at 61,088 (1996) *order on reh'g*, Opinion No. 406-A, 80 FERC ¶ 61,070.

<sup>87</sup> In that event, the Commission allows two different methods for the credit, either full reservation credits after a short grace period (i.e., ten days) or partial crediting starting on the first day of a *force majeure* event. *Midwestern*, 137 FERC ¶ 61,257 at PP 19-20.

<sup>88</sup> See, e.g., Opinion No. 406, and Opinion No. 406-A, *as clarified by Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 63 (2006).

<sup>89</sup> See *Florida Gas Transmission Co.*, 107 FERC ¶ 61,074, at P 32 (2004) (*Florida Gas*); *Tarpon Whitetail Gas Storage, LLC*, 125 FERC ¶ 61,050, at P 5 (2008) (*Tarpon Whitetail*); *Texas Eastern Transmission, LP*, 138 FERC ¶ 61,126, at P 12 (2012) (*Texas Eastern*).

orders not reasonably within the control of the pipeline.<sup>90</sup> However, the Commission has also recognized that required “testing and maintenance are a part of the service provider’s duties under a certificate of public convenience and necessity that are not appropriately considered a *force majeure* event.”<sup>91</sup> Therefore, the Commission has rejected proposals to treat scheduled testing or repair or routine maintenance required to comply with government regulations as *force majeure* events exempted from the requirement of providing full reservation charge credits.<sup>92</sup> The Commission concludes that Tennessee’s proposal to impose the entire risk of any service interruption resulting from a government order on its shippers is contrary to Commission policy, and therefore the Commission rejects proposed section 5(b)(iv).

82. In addition, existing Article XII, Excuse of Performance, of Tennessee’s GT&C includes as a *force majeure* event “the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means.” To the extent that this provision is intended to treat all service interruptions for testing, repair and maintenance in compliance with government orders as *force majeure* events, this provision is contrary to Commission policy. As discussed in the previous paragraph, the Commission has held that outages for routine maintenance to comply with government orders and regulations do not constitute *force majeure* events. Moreover, in *Florida Gas*, the Commission held that references to events within a pipeline’s control should be removed from a tariff definition of *force majeure*.<sup>93</sup> Testing and maintenance in order to ensure safe and reliable operation of a pipeline are matters within the pipeline’s control, including when performed in compliance with government orders and regulations. Tennessee’s inclusion of circumstances within its control in its *force majeure* provision is unjust and unreasonable. Therefore, pursuant to section 5 of the NGA, Tennessee is required to (1) file revised tariff records, within thirty days of the date of this order, to revise its *force majeure* provisions to exclude circumstances in its control, such as routine testing and maintenance required to comply with governmental action, or (2) explain why it should not be required to do so.

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<sup>90</sup> *Tarpon Whitetail*, 125 FERC ¶ 61,050 at P 4-6.

<sup>91</sup> *Orbit Gas Storage, Inc.*, 126 FERC ¶ 61,095, at P 68 (2009); *See also Tarpon Whitetail*, 125 FERC ¶ 61,050 at P 5; *Texas Eastern*, 138 FERC ¶ 61,126 at P 12; *Florida Gas*, 107 FERC ¶ 61,074 at PP 28-29.

<sup>92</sup> *Natural Gas Pipeline Co. of America*, 106 FERC ¶ 61,310, at P 15 (2004) (*Natural*).

<sup>93</sup> *Florida Gas*, 107 FERC ¶ 61,074 at P 27.

## 2. Use of Seven Days' Historical Average

83. Tennessee proposes in section 5(a)(1)(B)(i) of GT&C Article XII that, when it “has given advance notice of the unavailability of service,” the volumes to which the credit will apply shall be:

the average of the shipper’s immediately preceding seven (7) day’s daily quantities nominated and confirmed to the Shipper’s primary delivery point, less (ii) the quantity measured as delivery at Shipper’s primary delivery point.

Tennessee also proposes similar language in section 6 of Rate Schedule FS. TCG and National Fuel protest the proposed tariff language.

84. TCG argues that this provision could allow days during which service had been interrupted to be included in the seven days’ historical average and thus improperly lower the average. TCG asserts that the tariff language should be revised to clarify that average must be based on the seven days’ average immediately prior to the service interruption. TCG further argues that the proposed tariff language should be revised to clarify that the seven days’ average will only be used when Tennessee has given advance notice of the unavailability of service before the shippers’ first opportunity to submit scheduling nominations for the day in question. TCG contends that the proposed tariff language in GT&C Article XII, section 5(a)(1)(B)(i) and section 6 of Rate Schedule FS be revised as follows:

(B)(i) when Transporter has given advanced notice of the unavailability of service, the average of the previous seven (7) day’s daily quantities *immediately preceding the service interruption* that was nominated and confirmed to the Shipper’s primary Delivery Point, less the quantity measured as delivered at Shipper’s Primary Delivery Point; *provided that if Transporter’s notice of unavailability of service is not provided until after the timely nomination cycle of the service interrupted then the foregoing 7-day average shall not apply*; [emphasis added]

85. Tennessee does not disagree in concept with the TCG’s understanding of the intent of this provision. However, Tennessee believes that no change is needed and, in any case, those requested by TCG are not appropriate. Tennessee asserts that TCG’s proposed placement of “immediately preceding the service interruption” suggests that an interruption is nominated and confirmed and that language should be inserted instead after the phrase “that was nominated and confirmed to the Shipper’s primary Delivery Point.” Tennessee also disagrees with TCG’s proposed prohibition on use of the average when Tennessee does not provide notice of the unavailability of service until after the timely nomination cycle. Tennessee argues that this exception could be read to preclude use of the seven days’ average entirely. Tennessee further argues that, in *Southern*, the

Commission stated that it was “reasonable for Southern to use the shipper’s prior seven day’s utilization of firm capacity to calculate the reservation charge credit when the pipeline has given advance notice,” and its proposed tariff provides for the use of this average “when Transporter has given advance notice.”<sup>94</sup>

86. In the Technical Conference Order, the Commission recognized that 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.<sup>95</sup> We reasoned that, in that circumstance, shippers’ nominations may not accurately reflect what they would have scheduled without advance knowledge that the scheduling nominations would not be accepted. We noted that, in *Southern*,<sup>96</sup> the Commission found 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, *i.e.*, the shipper’s prior seven days utilization of firm capacity when the pipeline has given such advance notice. Accordingly, we allowed Tennessee, in order to address its concern about gaming, to propose tariff language using an appropriate historical average consistent with the decision in *Southern*.

87. As we explained, on rehearing in *Southern*,<sup>97</sup> it improperly distorts the shippers’ average usage of firm service to include nominations during days when service was unavailable during the interruption of service. The revised tariff language accepted in *Southern* added language defining the applicable seven days’ average as that “immediately preceding the service interruption.”<sup>98</sup> Accordingly, consistent with *Southern*, Tennessee must include this clarifying language. However, we agree with Tennessee that for reasons of clarity this language should be added after the phrase “that was nominated and confirmed to the Shipper’s primary Delivery Point.”

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<sup>94</sup> *Southern*, 135 FERC ¶ 61,056 at P 33.

<sup>95</sup> Technical Conference Order, 135 FERC ¶ 61,208 at P 77.

<sup>96</sup> *Southern*, 135 FERC ¶ 61,056 at P 34.

<sup>97</sup> *Southern*, 137 FERC ¶ 61,050 at P 21.

<sup>98</sup> *See, e.g.*, Southern’s FERC NGA Gas Tariff, SNG FERC Tariff Volume 1, Rate Schedule, FT, 5.0.0, section 3(a)(i)(A)(1).

88. Further, in *Southern*,<sup>99</sup> we expressly limited our acceptance of use of the historical average to circumstance where the pipeline gives advance notice of the unavailability of service before shippers nominate gas under the Timely Nomination Cycle for the day (or days) of the outage. We explained that:

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,<sup>100</sup> 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 should be based on the volume the shipper scheduled but the pipeline was unable to deliver.<sup>101</sup>

89. We concluded that when the 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 surcharge credit must be based on the nominated amount.<sup>102</sup> Accordingly, we accepted Southern's revised tariff records which expressly prohibited use of the seven days' average where notice of a non-*force majeure* service is provided after the Timely Nomination cycle.<sup>103</sup> Therefore, consistent with *Southern*, Tennessee must file revised tariff records, within thirty days of the date of this order, to provide that if Tennessee's notice of a non-*force majeure* service is not provided until after the Timely Nomination cycle then the seven days' average will not be applicable.

90. National Fuel complains that there is no specified time for the length of time for the advance notice of the unavailability of service that Tennessee must provide in order to use the historical seven days' average of nominations for calculating credits.<sup>104</sup> National

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<sup>99</sup> *Southern*, 135 FERC ¶ 61,056 at PP 32, 33.

<sup>100</sup> 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).

<sup>101</sup> *Southern*, 135 FERC ¶ 61,056 at P 32.

<sup>102</sup> *Id.* P 34.

<sup>103</sup> *See* n.98.

<sup>104</sup> National Fuel refers to section 5(a)(i)(A)(i). The Commission assumes that

Fuel argues that this provision is overbroad and might be interpreted by the pipeline to reduce the shipper's ability to react. National Fuel states the pipeline might provide as little notice as an hour before timely nominations are due. National Fuel proposes that Tennessee be required to provide seven days' notice.

91. Tennessee responds that National Fuel's position misperceives the purpose of the provision and would not work in a *force majeure* context. Tennessee contends that use of an historic average is intended to prevent a shipper from gaming the system by nominating service to receive credits when it knows that the service will be interrupted. Tennessee asserts that such advance notice for planned maintenance would defeat the purpose of the use of an historical average because it would allow shippers to nominate more primary firm service than they otherwise would to generate credits. Tennessee further asserts that, in a *force majeure* event, it would not be able to provide seven days' notice because it probably would not know of such event seven days in advance.

92. National Fuel's request for seven days' notice of the outage prior to when shippers must nominate gas is denied. As discussed above, the Commission permits pipelines to base reservation charge credits on an appropriate average of the shippers' historic usage if the pipeline gives notice of an outage at any time before the timely nomination cycle. The Commission found that this is reasonable in order to minimize the potential for gaming if shippers have advance knowledge that their nominations will not be accepted. As Tennessee asserts, granting National Fuel's request for a longer advance notice period could conflict with this goal by allowing opportunities for gaming.

### **3. Service From Secondary Points**

93. National Fuel argues that reservation charge credits should be provided for interruptions of service from secondary in-path receipt points to primary delivery points. National Fuel argues that pooling points are most often secondary-in-path and, therefore, would be a more rational requirement for crediting for failure to deliver at a primary delivery point. National Fuel asserts that the Commission rejected a proposal to include secondary firm volumes in crediting in the Order on Technical Conference, because a firm shipper has such a guaranteed firm contractual right to service only at its primary points.<sup>105</sup> National Fuel further asserts that Tennessee's proposal, however, would preclude credits for deliveries to primary delivery points, solely because the transportation commenced at a secondary receipt point. National Fuel contends that, while the Technical Conference Order references *Southern*, that pipeline's then current

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National Fuel intended to reference section 5(a)(i)(B)(i).

<sup>105</sup> *Citing* Technical Conference Order, 135 FERC ¶ 61,208 at P 69.

and proposed tariff provided for reservation charge credits for any volumes nominated to primary delivery points without limitation on the receipt points.<sup>106</sup>

94. Tennessee asserts that, contrary to National Fuel's assertions, the Commission has held that credits are not required for secondary service and did not limit its holding to only service to secondary delivery points.<sup>107</sup> Tennessee further asserts that a firm shipper has a guaranteed right to service only from its primary receipt point to its primary delivery point and credits are applicable only to interruption of service to and from such primary points.

95. National Fuel's request that reservation charge credits be provided for interruptions of service from secondary in-path receipt points to primary delivery points is denied. The Commission requires pipelines to provide full reservation charge credits during non-*force majeure* outages on the ground that a pipeline should be responsible for operating its system so that it can meet its contractual obligations, regardless of any operational need to restrict service on some parts of its system to carry out required maintenance.<sup>108</sup> The policy also contemplates that pipelines may incorporate the costs of so operating their systems in their rates.<sup>109</sup> In short, the crediting requirement places the pipeline at risk for any failure to meet its contractual obligations to firm customers during non-*force majeure* outages, while permitting the costs of meeting those obligations to be included in rates.

96. The Commission finds it just and reasonable to limit such a blanket at-risk requirement to the pipeline's failure to provide primary firm service. As discussed earlier in this order, a firm shipper has a guaranteed firm contractual right to service only at its primary points, not secondary points. Pipelines design their systems in order to have the capacity to satisfy their primary firm obligations, and the Commission has never required

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<sup>106</sup> *Citing* Southern Natural Gas Company, FERC NGA Gas Tariff, Eighth Revised Vol. No. 1, Rate Schedule FT 2.0.0, section 3(a)(i)(A)(1).

<sup>107</sup> *Citing* *Natural Gas Supply Assn., et al.*, 135 FERC ¶ 61,055 at P 27 (2011) which relied on *Tennessee*, 73 FERC at 61,206.

<sup>108</sup> Opinion No. 406 at 61,086.

<sup>109</sup> *North Baja*, 483 F.3d at 823 (“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 obligations*,’ and that a cost-sharing mechanism should be reserved for uncontrollable and unexpected events that temporarily stall service [emphasis added].”).

pipelines to maintain sufficient capacity to give firm shippers a guaranteed right to service at secondary points. The Commission is also concerned that expanding the requirement of full reservation charge credits to failure to provide secondary firm service could increase the pipeline's costs of operating its system and ultimately lead to higher rates for shippers. Therefore, the Commission continues to find that relief from a shipper's contractual obligation to pay the agreed-upon reservation charge for the capacity reserved for its use should be limited to situations where the pipeline has failed to meet its contractual obligation to provide primary firm service on that capacity.<sup>110</sup>

97. Therefore, National Fuel's request to provide credits for secondary service clearly conflicts with established Commission policy which limits the crediting requirement to the primary firm service paid for by the shipper.<sup>111</sup>

#### **4. Requirement that Nominated Amounts Be Confirmed**

98. National Fuel and Indicated Shippers protest Tennessee's proposed requirement that a nomination be confirmed by a shipper's supplier to be eligible for a credit. National Fuel claims that this requirement would allow Tennessee to avoid a credit by electing not to attempt a confirmation transaction. Similarly, Indicated Shippers contend that Tennessee could frustrate the crediting requirement by declining to process the nomination and requesting the confirmation.

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<sup>110</sup> *Southern*, 137 FERC ¶ 61,050 at PP 11-17.

<sup>111</sup> National Fuel asserts that that Southern's then existing tariff (citing Southern Natural Gas Company, FERC NGA Gas Tariff, Eighth Revised Vol. No. 1, Rate Schedule FT, 2.0.0, section 3(a)(i)(A)(1)) and the proposed tariff would allow reservation charge credits for any amounts nominated to primary delivery points. However, the tariff record actually accepted by the Commission and contained in Southern's current tariff provides, in pertinent part, that:

In the event COMPANY is unable to make deliveries of the volume of gas to which SHIPPER has *firm entitlements* on any day at primary Delivery Point(s) under this firm Rate Schedule, then the applicable Reservation Charge shall be credited to SHIPPER for such day [emphasis added.] Southern's FERC NGA Gas Tariff, SNG FERC Tariff Volume 1, Rate Schedule, FT, 5.0.0, effective October 20, 2011.

Therefore, Southern's reserve charge credit is expressly limited to firm entitlements to primary delivery points and does not include secondary service.

99. Tennessee answers that the protesters' contentions are far-fetched, inconsistent with Tennessee's integrity goals, and contrary to the manner in which the vast majority of supplier confirmations occur on the Tennessee system. Tennessee asserts that, except in the limited circumstance of other interstate pipeline interconnects, suppliers and LDCs directly confirm their supply and city gate deliveries, respectively, online through Tennessee's electronic bulletin board. Tennessee further asserts that it does not and can not attempt a confirmation. Tennessee contends that, even at pipeline interconnects, it would not be in Tennessee's best interest to manipulate the confirmation process because such action would likely interfere with the calculation of imbalances.

100. Tennessee's requirement that the nominated volumes be confirmed must be clarified to conform to Commission policy. In *Southern*, we explained that with respect to non-*force majeure* outages, where the curtailment occurred due to circumstances within a pipeline's control, including scheduled maintenance, the Commission requires the pipeline to provide shippers a full reservation charge credit for the amount of primary firm service they nominated to be scheduled but the pipeline was unable to schedule or deliver.<sup>112</sup> These credits are intended to compensate the shipper for the primary firm service it would have received but for the non-*force majeure* curtailment. Similarly, partial credits for *force majeure* outages are intended to give the shipper partial compensation for service it would have received but for the *force majeure* event. If a shipper's nomination would not have been confirmed by the upstream supplier or the downstream recipient of the gas regardless of the outage on Tennessee's system, it is reasonable for Tennessee not to provide reservation charge credits with respect to that nomination. However, any exemption from crediting for nominated amounts not "confirmed" must be limited to events not within a pipeline's control, *i.e.*, due to conduct of the shipper or downstream facilities operator.<sup>113</sup>

101. Tennessee's revised tariff records already contain an exemption from the crediting requirement for the conduct or operations of the shipper or downstream point operator in GT&C section 5(b). Therefore, Tennessee must file, within thirty days of the date of this order, revised tariff records to expressly limit its exemption of nominated amounts which are not confirmed to firm service that is not confirmed due to events not in its control, *i.e.*, due to the conduct or operations of the shipper or downstream point operator exempted by GT&C section 5(b).

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<sup>112</sup> *Southern*, 137 FERC ¶ 61,050 at PP 3, 19.

<sup>113</sup> *See, e.g., Natural*, 106 FERC ¶ 61,310 at P 15, n.10.

## 5. Re-Nomination Requirement

102. Indicated Shippers argue that Tennessee should clarify that a reservation charge credit must be provided for any curtailment of service during a Nomination Cycle even if Tennessee states that capacity was available during a later Nomination Cycle, except to the extent the firm shipper actually schedules the service during that later cycle. Indicated Shippers assert that a shipper whose nomination has been cut during a nomination cycle should not be required to re-nominate in the remaining nomination cycles in order to receive a curtailment credit.

103. Tennessee answers that Indicated Shippers fail to identify a tariff provision that includes a re-nomination requirement. Tennessee asserts that, if a shipper does not receive nominated firm service, it will be entitled to a credit without having to resubmit a nomination. Tennessee further asserts that, if a shipper does receive the service that it has nominated for the gas day, it will not be eligible for a credit regardless of the nomination cycle in which the service was scheduled.

104. Indicated Shippers' request for clarification concerning a re-nomination requirement is denied. Tennessee states that, if firm service is not provided, the shipper will receive a credit without a re-nomination requirement.<sup>114</sup> Therefore, the requested clarification is not necessary.

## 6. Storage Field Testing

105. TCG argues, in its supplemental protest, that the proposed exemption for storage field testing in section 5(b)(iii) from providing any revenue credits when the interruption is caused by storage field testing is not permissible. In *Southern*, the Commission found that a similar exception for seasonal shut-in storage testing was in direct conflict with the Commission's determination that such interruptions of firm service for testing be considered scheduled maintenance and non-*force majeure* events which must be fully

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<sup>114</sup> 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, when 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. *Wyoming Interstate Co., Ltd*, 130 FERC ¶ 61,091, at P 17 (2010).

credited.<sup>115</sup> Accordingly, the Commission directs Tennessee, within thirty days of the date of this order, to remove this exemption from the revised tariff records.

**B. Revised Scheduling Priority Tariff Provisions**

106. In its December 12 Filing, Tennessee filed actual scheduling priority tariff records to include scheduling of service categories below secondary out-of-path consistent with the Technical Conference Order to replace *pro forma* tariff records in the June 30 Filing. Tennessee proposes a February 1, 2012 effective date. Tennessee's November 2010 Filing proposed (1) to elevate the scheduling priority for firm transactions from a secondary receipt point to a primary delivery point to the same level as primary to primary point in-the-path transactions when a restriction is within the shipper's primary capacity path; (2) to schedule secondary point transactions where a restriction is outside the shipper's capacity path on an economic basis, where capacity will be allocated first to the contract paying the highest transportation rate; and (3) to collapse the current priority tiers for below secondary out-of-the-path level services to four levels. The Technical Conference Order rejected Tennessee scheduling priority proposals (1) and (2) above, and accepted proposal (3). These proposed scheduling tariff records are in compliance with the Technical Conference Order. Therefore, these revised tariff records are accepted to be effective as proposed on February 1, 2012.

**C. Regional Imbalance Charges**

107. In the January 2012 Filing,<sup>116</sup> Tennessee proposes tariff records to replace the *pro forma* records in the June 2011 Filing implementing regional imbalance charges with a proposed effective date of March 1, 2012. In the Technical Conference Order, the Commission rejected Tennessee's proposed regional imbalance charge without prejudice to Tennessee re-filing its proposal in a separate limited section 4 filing.<sup>117</sup> Tennessee has filed the proposed tariff records in the instant compliance filing rather than in a separate limited section 4 filing.

108. The Commission rejects Sheet Nos. 248, 249, 250, and 264, v. 3.0.0, which contain Tennessee's regional imbalance charge proposal. As discussed above, the

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<sup>115</sup> *Southern*, 135 FERC ¶ 61,056 at PP 22-28.

<sup>116</sup> Tennessee states that it has made a correction on Sheet No. 387, Version 3.0.0 to its GT&C to include the designation of PS/GHG as a discountable surcharge inadvertently omitted from the September 30, 2011 Settlement filing.

<sup>117</sup> Technical Conference Order at 99.

Commission denied Tennessee's request for rehearing related to this issue, and Tennessee's proposal is not in compliance with the Commission's Technical Conference Order which required Tennessee to make a separate limited section 4 filing. This rejection is without prejudice to Tennessee proposing regional imbalance charges in a separate proceeding.

**D. February 2012 Filing**

109. In the February 2012 Filing, Tennessee corrected the tariff language as reflected on Substitute First Revised Tenth Revised Sheet No. 19, 10.1.1 and requests an effective date of February 1, 2012. The Commission accepts Substitute First Revised Tenth Revised Sheet No. 19, 10.1.1, and rejects Tenth Revised Sheet No. 19, 10.0.0 as moot, as shown on Appendix A to this order.

**E. Suspended Tariff Records**

110. Certain proposed tariff records filed in the various compliance filings appear to have the same section titles and version numbers as suspended tariff records. Filing multiple tariff records with the same section title and Record Version Number is confusing and in conflict with the Secretary's instructions with regard to the use of Record Version Numbers.<sup>118</sup> These tariff records appear to be intended as replacement tariff records for those suspended by the Suspension Order. Tennessee has identified no differences between the identical section titled and versioned tariff records. Therefore, the suspended tariff records listed in Appendix B to this order are rejected as moot.<sup>119</sup>

The Commission orders:

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

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<sup>118</sup> See Federal Energy Regulatory Commission, Office of the Secretary, *Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings* (Version: January 23, 2012) (*OSEC Implementation Guide*) for an explanation of Record Version Number.

<sup>119</sup> The proper method to place suspended tariff records into effect is to either make a motion filing for the unchanged tariff records through eTariff, or, when filing revised tariff records in response to some Commission order or intervening event, to list the suspended tariff records that do not require that revision and state the proposed effective date the pipeline wishes to place them into effect. Unchanged suspended tariff records should not be refiled when a motion is filed to make them effective.

(B) The tariff records listed in Appendix A to this order are accepted effective on the respective dates, subject to the conditions set forth in the body of this order, or rejected, as indicated in that Appendix.

(C) The tariff records listed in Appendix B are rejected.

(D) Within 30 days of the date of this order, Tennessee must file revised tariff records consistent with the discussion in the body of this order.

(E) Within 30 days of the date of this order, pursuant to section 5 of the NGA, Tennessee is required to: (1) file revised tariff records to revise its *force majeure* provisions or (2) explain why it should not be required to do so, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

## Appendix A

Tennessee Gas Pipeline Company, L.L.C., FERC NGA Gas Tariff, TGP Tariffs

Tariff Records accepted effective the date shown

RP11-1566-004		RP11-1566-008		RP11-1566-009		RP11-1566-011	
Section Title	Effective Date	Section Title	Effective Date	Section Title	Effective Date	Section Title	Effective Date
Sheet No. 1, Table of Contents Volume No. 1, 1.0.0	6/1/2011			Sheet No. 14, FT-A Rates - Firm			
Sheet No. 2, , 1.1.0	6/1/2011			Transportation, 5.0.0	2/1/2012		
				Sheet No. 15, , 6.0.0	2/1/2012		
				Sheet No. 16, , 6.0.0	2/1/2012		
				Sheet No. 17, FT-A Rates EDS/ERS, 4.0.0	2/1/2012		
						Sheet No. 19, FT-A Rates - Recourse Incremental Expansion, 10.1.1	2/1/2012
				Sheet No. 19, FT-A Rates - Recourse Incremental Expansion, 10.0.0	Rejected		
				Sheet No. 20, FT-BH Rates - Backhaul, 5.0.0	2/1/2012		
				Sheet No. 21, , 6.0.0	2/1/2012		
				Sheet No. 22, , 6.0.0	2/1/2012		
				Sheet No. 23, FT-G Rates - Small Customer			
				Transportation, 5.0.0	2/1/2012		
				Sheet No. 24, , 6.0.0	2/1/2012		
				Sheet No. 25, , 6.0.0	2/1/2012		
				Sheet No. 26, FT-GS Rates, 7.0.0	2/1/2012		
				Sheet No. 27, , 6.0.0	2/1/2012		

RP11-1566-004		RP11-1566-008		RP11-1566-009		RP11-1566-011	
Section Title	Effective Date	Section Title	Effective Date	Section Title	Effective Date	Section Title	Effective Date
				Sheet No. 28, FT-IL Rates - Incremental Lateral, 6.0.0	2/1/2012		
				Sheet No. 29, NET Rates, 6.0.0	2/1/2012		
				Sheet No. 30, NET-284 Rates, 6.0.0	2/1/2012		
				Sheet No. 32, Fuel and Loss Retention Percentage, 5.0.0	2/1/2012		
				Sheet No. 33, Reserved for Future Use, 3.0.0	2/1/2012		
				Sheet No. 34, Reserved for Future Use, 2.0.0	2/1/2012		
				Sheet No. 44, IT Rates - Interruptible Transportation, 8.0.0	2/1/2012		
				Sheet No. 58, IT Rates - Incremental Lateral, 6.0.0	2/1/2012		
				Sheet No. 59, PAL Rates - Park and Loan Services, 4.0.0	2/1/2012		
				Sheet No. 60, PTR Rate - Liquefiable Hydrocarbons, 5.0.0	2/1/2012		
				Sheet No. 61, FS Storage Rates - Firm Storage, 6.0.0	2/1/2012		
				Sheet No. 62, IS Storage Rates - Interruptible Storage, 6.0.0	2/1/2012		
Sheet No. 78, , 1.0.0	6/1/2011						

RP11-1566-004		RP11-1566-008		RP11-1566-009		RP11-1566-011	
Section Title	Effective Date	Section Title	Effective Date	Section Title	Effective Date	Section Title	Effective Date
Sheet No. 80, , 2.0.0	6/1/2011			Sheet No. 80, , 4.0.0	2/1/2012		
Sheet No. 81, , 1.0.0	6/1/2011						
Sheet No. 86, , 1.0.0	6/1/2011						
Sheet No. 89, , 2.0.0	6/1/2011			Sheet No. 89, , 4.0.0	2/1/2012		
Sheet No. 90, , 1.1.0	6/1/2011						
Sheet No. 90, , 1.0.0	6/1/2011						
Sheet No. 94, , 1.0.0	6/1/2011			Sheet No. 94, , 3.0.0	2/1/2012		
				Sheet No. 94A, , 0.0.0	2/1/2012		
Sheet No. 97, , 2.0.0	6/1/2011			Sheet No. 97, , 4.0.0	2/1/2012		
Sheet No. 98, , 1.0.0	6/1/2011						
Sheet No. 150, , 1.0.0	6/1/2011			Sheet No. 99A, , 2.0.0	2/1/2012		
Sheet No. 151, , 1.0.0	6/1/2011			Sheet No. 102A, , 2.0.0	2/1/2012		
Sheet Nos. 152 - 154, Reserved For Future Use, 1.0.0	7/1/2011			Sheet No. 102B, , 0.0.0	2/1/2012		
Sheet Nos. 201 - 204, Reserved for Future Use, 1.0.0	7/1/2011						
Sheet No. 205, Rate Schedule PTR, 1.0.0	6/1/2011						
Sheet No. 207, , 1.0.0	6/1/2011						
Sheet No. 208, , 1.0.0	6/1/2011						
				Sheet No. 212, Reserved for Future Use, 2.0.0	2/1/2012		
Sheet No. 213, , 1.0.0	7/1/2011			Sheet No. 213, , 3.0.0	2/1/2012		

RP11-1566-004		RP11-1566-008		RP11-1566-009		RP11-1566-011	
Section Title	Effective Date	Section Title	Effective Date	Section Title	Effective Date	Section Title	Effective Date
Sheet No. 214, , 1.0.0	6/1/2011						
Sheet No. 215, , 2.1.0	6/1/2011						
Sheet No. 216, , 1.0.0	6/1/2011						
Sheet No. 221, , 1.0.0	6/1/2011						
Sheet No. 222, , 1.0.0	6/1/2011						
Sheet No. 223, , 1.0.0	6/1/2011						
Sheet No. 224, , 1.0.0	6/1/2011						
				Sheet No. 248, , 3.0.0	Rejected		
				Sheet No. 249, , 3.0.0	Rejected		
				Sheet No. 250, , 3.0.0	Rejected		
Sheet No. 254, , 1.0.0	6/1/2011						
Sheet No. 256, , 1.0.0	7/1/2011						
Sheet No. 257, , 1.0.0	6/1/2011						
Sheet No. 258, , 1.1.0	6/1/2011						
Sheet Nos. 259 - 262, Reserved for Future Use, 1.0.0	7/1/2011						
				Sheet No. 264, , 3.0.0	Rejected		
Sheet No. 266, , 1.0.0	7/1/2011						
Sheet No. 267, , 1.0.0	7/1/2011						
Sheet No. 268, , 1.0.0	7/1/2011						

RP11-1566-004		RP11-1566-008		RP11-1566-009		RP11-1566-011	
Section Title	Effective Date	Section Title	Effective Date	Section Title	Effective Date	Section Title	Effective Date
Sheet No. 270, Rate Schedule SA, 1.0.0	6/1/2011						
Sheet No. 293, General Terms and Conditions, 1.1.0	6/1/2011						
Sheet No. 295, , 2.0.0	6/1/2011						
Sheet No. 297, , 1.0.0	7/1/2011						
Sheet No. 298, , 1.1.0	7/1/2011						
Sheet No. 299, , 2.0.0	7/1/2011						
Sheet No. 300, , 2.0.0	7/1/2011						
Sheet No. 313, , 3.0.0	6/1/2011						
		Sheet No. 316, , 4.0.0	2/1/2012				
		Sheet No. 317, , 3.0.0	2/1/2012				
		Sheet No. 318, , 3.0.0	2/1/2012				
Sheet No. 321, Availability of Capacity for Firm Services, 1.1.0	6/1/2011						
Sheet No. 322, , 1.0.0	6/1/2011						
Sheet No. 357, Action Alerts, 1.1.0	6/1/2011						
Sheet No. 358, Action Alerts Critical Days, 1.0.0	6/1/2011						
Sheet No. 364, Excuse of	6/1/2011						

RP11-1566-004		RP11-1566-008		RP11-1566-009		RP11-1566-011	
Section Title	Effective Date	Section Title	Effective Date	Section Title	Effective Date	Section Title	Effective Date
Performance, 1.0.0							
Sheet No. 364A, , 0.0.0	6/1/2011						
Sheet No. 364B, , 0.0.0	6/1/2011						
Sheet No. 365, Regs Schedules Contract Operating Info Estimates RS Changes, 1.0.0	6/1/2011						
Sheet No. 373, Requests for Service, 1.0.0	6/1/2011						
Sheet No. 380, Service Requests Credit Evaluation Award Available Capacity, 3.1.0	7/1/2011						
Sheet No. 386, , 2.0.0	7/1/2011						
Sheet No. 387, Requests for Service Discounting Policy, 1.1.0	6/1/2011			Sheet No. 387, Requests for Service Discounting Policy, 3.0.0	2/1/2012		
Sheet No. 388, Periodic Report Incorp GTC Rate Schedules Contracts Waiver, 1.1.0	6/1/2011						
Sheet No. 389, PCB Adjustment, 2.0.0	6/1/2011						
Sheet No. 392, , 1.0.0	6/1/2011						
Sheet No. 397, Penalty Crediting,	6/1/2011						

RP11-1566-004		RP11-1566-008		RP11-1566-009		RP11-1566-011	
Section Title	Effective Date	Section Title	Effective Date	Section Title	Effective Date	Section Title	Effective Date
1.0.0				Sheet No. 400, Fuel Adjustment Mechanism, 3.0.0	2/1/2012		
				Sheet No. 401, , 2.0.0	2/1/2012		
				Sheet No. 402, , 2.0.0	2/1/2012		
				Sheet No. 403, Pipeline Safety and Greenhouse Gas Cost Adjustment Mechanism, 2.0.0	2/1/2012		
				Sheet No. 404, , 2.0.0	2/1/2012		
				Sheet No. 405, , 2.0.0	2/1/2012		
				Sheet No. 406, , 0.0.0	2/1/2012		
				Sheet No. 407, Reserved for Future Use, 0.0.0	2/1/2012		
Sheet No. 454, Service Request Form, 1.0.0	6/1/2011						
Sheet No. 457, , 1.0.0	6/1/2011						
Sheet Nos. 663 - 667, Reserved For Future Use, 1.0.0	7/1/2011						
Sheet Nos. 668 - 672, Reserved for Future Use, 1.0.0	7/1/2011						
Sheet Nos. 807 - 808, Reserved for Future Use, 1.0.0	6/1/2011						
Sheet Nos. 816 - 817, Reserved for Future Use, 1.0.0	6/1/2011						
<b>Cancelled Records</b>							

RP11-1566-004		RP11-1566-008		RP11-1566-009		RP11-1566-011	
Section Title	Effective Date	Section Title	Effective Date	Section Title	Effective Date	Section Title	Effective Date
Section Title <sup>120</sup>	Effective Date						
95 9641.86.74	6/1/2011						
96 9853.72.98	6/1/2011						
104 9067.57.73	6/1/2011						
105 9279.92.98	6/1/2011						
106 9492.78.73	6/1/2011						
142 9704.64.97	6/1/2011						
143 9917.98.72	6/1/2011						
144 9130.84.96	6/1/2011						
376 9343.70.72	6/1/2011						
377 9555.56.96	6/1/2011						
378 9767.91.71	6/1/2011						
379 9980.76.95	6/1/2011						
381 9193.62.70	6/1/2011						
382 9406.97.95	6/1/2011						
383 9618.83.70	6/1/2011						
384 9831.68.94	6/1/2011						
440 9044.54.69	6/1/2011						
449 9257.89.93	6/1/2011						

<sup>120</sup> These tariff records are Record Change Type CANCEL and were suspended by the Commission’s Suspension Order. Placing these records into effect results in these tariff records and any of their “children” (as determined by the child record’s Tariff Record Parent Identifier) being cancelled and removed from the effective tariff. *See OSEC Implementation Guide* for an explanation of Record Change Type and Tariff Record Parent Identifier.

## Appendix B

Tariff Records Filed, Accepted and Suspended in Docket No. RP11-1566-000 and Rejected in the Instant Proceeding

### Tennessee Gas Pipeline Company FERC NGA Gas Tariff TGP Tariffs

Sheet No. 1, Table of Contents Volume No. 1, 1.0.0	Sheet No. 358, Action Alerts Critical Days, 1.0.0
Sheet No. 2, 1.0.0	Sheet No. 365, Regs Schedules Contract Operating Info Estimates RS Changes, 1.0.0
Sheet No. 78, 1.0.0	Sheet No. 373, Requests for Service, 1.0.0
Sheet No. 80, 2.0.0	Sheet No. 380, Service Requests Credit Evaluation Award Available Capacity, 3.0.0
Sheet No. 89, 2.0.0	Sheet No. 386, 2.0.0
Sheet No. 90, 1.0.0	Sheet No. 389, PCB Adjustment, 2.0.0
Sheet No. 94, 1.0.0	Sheet No. 392, 1.0.0
Sheet No. 97, 2.0.0	Sheet No. 397, Penalty Crediting, 1.0.0
Sheet No. 150, 1.0.0	Sheet No. 454, Service Request Form, 1.0.0
Sheet No. 151, 1.0.0	Sheet No. 457, 1.0.0
Sheet Nos. 152 - 154, Reserved For Future Use, 1.0.0	Sheet No. 571, 2.0.0
Sheet No. 157, 1.0.0	Sheet Nos. 663 - 667, Reserved for Future Use, 1.0.0
Sheet Nos. 201 - 204, Reserved For Future Use, 1.0.0	Sheet Nos. 668 - 672, Reserved For Future Use, 1.0.0
Sheet No. 205, Rate Schedule PTR, 1.0.0	Sheet No. 673, FOSA PAL Rate Schedule, 1.0.0
Sheet No. 207, 1.0.0	Sheet Nos. 807 - 808, Reserved for Future Use, 1.0.0
Sheet No. 208, 1.0.0	Sheet Nos. 816 - 817, Reserved for Future Use, 1.0.0
Sheet No. 213, 1.0.0	
Sheet No. 214, 1.0.0	
Sheet No. 215, 2.0.0	
Sheet No. 216, 1.0.0	
Sheet No. 221, 1.0.0	
Sheet No. 222, 1.0.0	
Sheet No. 223, 1.0.0	
Sheet No. 224, 1.0.0	
Sheet No. 248, 1.0.0	
Sheet No. 249, 1.0.0	
Sheet No. 250, 1.0.0	
Sheet No. 254, 1.0.0	
Sheet No. 256, 1.0.0	
Sheet No. 257, 1.0.0	
Sheet No. 258, 1.0.0	
Sheet Nos. 259 - 262, Reserved for Future Use, 1.0.0	
Sheet No. 266, 1.0.0	
Sheet No. 267, 1.0.0	
Sheet No. 268, 1.0.0	
Sheet No. 270, Rate Schedule SA, 1.0.0	
Sheet No. 293, General Terms and Conditions, 1.0.0	
Sheet No. 295, 2.0.0	
Sheet No. 297, 1.0.0	
Sheet No. 298, 1.0.0	
Sheet No. 299, 2.0.0	
Sheet No. 300, 2.0.0	
Sheet No. 313, 3.0.0	
Sheet No. 321, Availability of Capacity for Firm Services, 1.0.0	
Sheet No. 322, 1.0.0	
Sheet No. 357, Action Alerts, 1.0.0	