

152 FERC ¶ 61,212
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities Docket No. RM14-2-001

ORDER ON REHEARING

(Issued September 17, 2015)

1. In Order No. 809, the Commission revised its regulations relating to the scheduling of transportation service on interstate natural gas pipelines to better coordinate the scheduling practices of the wholesale natural gas and electric industries, as well as to provide additional scheduling flexibility to all shippers on interstate natural gas pipelines.¹ The Commission also requested that natural gas and electric industries, through the North American Energy Standards Board (NAESB), explore the potential for faster, computerized scheduling when shippers and confirming parties all submit electronic nominations and confirmations, including a streamlined confirmation process if necessary. On May 18, 2015, the Desert Southwest Pipeline Stakeholders (DSPS)² filed a request for rehearing of Order No. 809. On August 4, 2015, NAESB filed a report indicating that due to the press of implementing the revised nomination standards by April 1, 2016, it would not begin the development of computerized scheduling standards until after that date. As discussed below, the Commission denies DSPS' request for

¹ *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, Order No. 809, 80 Fed. Reg. 23197 (Apr. 24, 2015), FERC Stats. & Regs. ¶ 31,368 (cross-referenced at 151 FERC ¶ 61,049 (2015)) (Order No. 809 or Final Rule).

² DSPS consists of Arizona Corporation Commission, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, Salt River Project Agricultural Improvement and Power District, Tucson Electric Power Company and UNS Gas, Inc.

rehearing and directs El Paso Natural Gas Company, L.L.C. (El Paso), Transwestern Pipeline Company, LLC (Transwestern), and TransCanada-North Baja Pipelines (TransCanada-North Baja) to make an informational filing within 90 days of the date of this order. In addition, while we recognize the time commitments in implementing the revised nomination timeline, the Commission requests that the natural gas and electric industries, through NAESB, begin considering the development of standards related to faster, computerized scheduling and file such standards or a report on the development of such standards with the Commission by October 17, 2016.

I. Background

2. Under Commission regulations, pipeline shippers can choose from two types of services: firm services that shippers reserve through payment of a monthly reservation fee and interruptible service for which shippers pay a volumetric usage charge. A firm shipper's primary receipt and delivery points are listed in its service agreement and define the guaranteed firm transportation service the pipeline has contracted to provide that shipper. The Commission also requires pipelines to permit firm shippers to use all other points in the rate zones for which they pay on a secondary firm basis. In scheduling service, nominations of primary firm service enjoy the highest priority, followed by nominations of secondary firm service, and then interruptible service as the lowest priority.
3. The Commission also has incorporated by reference into its regulations standards promulgated by the NAESB Wholesale Gas Quadrant (WGQ) that establish the timing of the nominations.³ These standards provide a number of nomination opportunities for shippers to schedule transportation service for the Gas Day starting at 9:00 a.m. Central Clock Time (CCT): (a) the Timely Nomination Cycle, which occurs the day before the Gas Day on which the gas will flow; (b) the Evening Nomination Cycle, which occurs late in the day prior to gas flow and allows shippers to modify their Timely Nomination Cycle schedules; and (c) two intraday nominations (now three after Order No. 809) that occur during the Gas Day.
4. The Timely Nomination Cycle and all subsequent nomination cycles follow the standard scheduling priority in which primary firm service has the highest scheduling priority, followed by secondary firm, and finally interruptible service. But different rules determine whether a nomination, once scheduled, can be bumped or displaced in the Evening and intraday nomination cycles. In those cycles, any firm service already scheduled (whether primary or secondary) cannot be bumped or displaced by another

³ NAESB is a consensus standards organization.

nomination. Already scheduled interruptible service can be bumped by a firm nomination at the Evening Nomination Cycle and the intraday cycles, but cannot be bumped at the last intraday (or no-bump) cycle. The No-Bump Rule reflects a consensus of the natural gas industry, including both firm and interruptible shippers, reached while developing intraday nomination standards. The Commission adopted this standard in 1998.⁴

5. On April 16, 2015, the Commission issued Order No. 809. In Order No. 809, the Commission, among other things, revised its regulations to incorporate by reference modified NAESB WGQ Business Practice Standards, which revised the standard nomination timeline for interstate natural gas pipelines.⁵ Among other changes to the nomination timeline, the Timely Nomination Cycle nomination deadline was moved from 11:30 a.m. CCT to 1:00 p.m. CCT. Another intraday nomination cycle was added resulting in three intraday nomination cycles instead of two. Under the revised timeline, Intraday 1 nominations are due at 10:00 a.m. CCT with gas flowing at 2:00 p.m. CCT, Intraday 2 nominations are due at 2:30 p.m. CCT with gas flowing at 6:00 p.m. CCT, and Intraday 3 nominations are due at 7:00 p.m. CCT with gas flowing at 10:00 p.m. CCT. In addition, under the revised nomination timeline, Intraday 3 becomes the no-bump cycle.

6. In Order No. 809, the Commission declined to modify or eliminate the long-standing No-Bump Rule, as requested by several entities, including DSPS.⁶ The Commission found sufficient support for retaining a no-bump cycle and respecting the natural gas industry consensus that had been achieved. In continuing the No-Bump Rule, the Commission stated that interruptible shippers need some stability in the nomination system and making the last intraday nomination opportunity no-bump would provide stability to the nomination system. Moving the last bumpable cycle to later in the day (i.e., the new Intraday 2 Nomination Cycle at 2:30 p.m. CCT instead of the previous

⁴ *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-G, FERC Stats. & Regs., ¶ 31,062, *order on reh'g*, Order No. 587-I, 63 FR 53565, 53569 (Oct. 6, 1998), FERC Stats. & Regs., Regulations Preambles 1996 – 2000 ¶ 31,067 (1998).

⁵ The Commission required interstate natural gas pipelines to comply with the revised NAESB standards beginning on April 1, 2016. *See also Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, 152 FERC ¶ 61,095 (2015) (clarifying that the new day-ahead nomination timelines will apply as of March 31, 2016 for those nominations that will become effective April 1, 2016).

⁶ Order No. 809, 151 FERC ¶ 61,049 at P 102, 106.

Intraday 1 Nomination Cycle at 10:00 a.m. CCT) helps to accommodate the needs of the firm shippers, while maintaining the No-Bump Rule during the Intraday 3 Nomination Cycle provides stability for interruptible shippers. The Commission found that this achieved a reasonable balance of interests.

7. In Order No. 809, the Commission also declined to adopt DSPS' two other proposals: (1) to move the Evening Nomination Cycle from 6:00 p.m. CCT to 7:00 p.m. CCT; and (2) to modify the Commission's policy on natural gas scheduling priority to require all pipelines to permit primary firm nominations to bump secondary firm nominations in the Evening Nomination Cycle.⁷ The Commission stated that, with respect to the proposed change to the timing of the Evening Nomination Cycle, DSPS failed to make clear how moving the start time of the Evening Nomination Cycle one hour later to 7:00 p.m. CCT provided shippers in its region with a more timely opportunity to address operating contingencies that arise fourteen hours later during the Gas Day.⁸ Given the wide support for the revised NAESB Evening Nomination Cycle and the largely unexplained benefits of moving the Evening Nomination Cycle later, the Commission found that making such a change to the Evening Nomination Cycle was unwarranted.

8. The Commission similarly declined to announce a new policy permitting primary firm nominations to bump scheduled secondary firm service in the Evening Nomination Cycle. The Commission found that the benefits of DSPS' proposal did not outweigh the burdens that would be placed on all interstate pipelines and secondary firm shippers as a result of such proposal.⁹ Based on the comments, allowing primary firm to bump secondary firm would move the major confirmation and scheduling period outside of normal business hours, making it more difficult for a pipeline operator to confirm a shipper's nomination with point operators, producers and shippers. It could also disrupt the liquid secondary market for capacity by reducing the value of obtaining released capacity.

9. The Commission also declined to require implementation of DSPS' 1-year regional pilot program, which would have allowed firm shippers to enter a "make-up" nomination in the Evening Nomination Cycle.¹⁰ The Commission stated that the record

⁷ *Id.* P 121.

⁸ *Id.* P 122.

⁹ *Id.* P 123.

¹⁰ *Id.* P 127.

was insufficient for it to require the pipelines to institute DSPS' requested pilot program. The comments of the pipelines affected by the proposal indicated that they were uncertain of the operational feasibility of instituting a make-up nomination, but were interested in discussing the issue further with the DSPS shippers. Given the comments, the Commission lacked any evidence that requiring these pipelines to offer make-up nominations during the Evening Nomination Cycle would be operationally feasible for all the pipelines. The Commission pointed out that one or more pipelines appeared willing to discuss potential service offerings that may help DSPS shippers and encouraged those discussions to proceed.

II. Discussion

10. In its request for rehearing, DSPS raises many of the same arguments addressed by the Commission in the Final Rule. In summary, DSPS contends that Order No. 809 failed to specifically address the problems identified by DSPS or to provide utilities in the Desert Southwest with any firm rights to access the natural gas transportation service that they have reserved, paid for, and need to ensure reliable service during their evening peak period of natural gas demand that occurs between 7:00 p.m. CCT and 9:00 p.m. CCT (5:00 p.m. and 7:00 p.m. local time in the Desert Southwest).

11. As discussed below, the Commission denies DSPS' request for rehearing. Given that DSPS' circumstances are unique and regional in nature,¹¹ we continue to find insufficient support in the record to modify the nationwide standards adopted in Order No. 809, as proposed by DSPS.

A. No-Bump Rule

1. Rehearing Requests

12. DSPS argues that the Commission erred in retaining the No-Bump Rule and in arbitrarily ignoring changed circumstances and new evidence demonstrating that there is no longer sufficient justification for providing interruptible shippers preferential access to firm capacity. DSPS argues that the new Intraday 2 Nomination Cycle, with a nomination deadline that occurs at 12:30 p.m. in the west (2:30 p.m. CCT), does not address its problem of obtaining firm access to capacity during the evening periods of peak demand in the Desert Southwest. DSPS argues that firm transportation contracts are

¹¹ DSPS Request for Rehearing at 37 (“...DSPS recognizes that no other region of the country currently experiences all of these unique circumstances and limitations that are faced by the DSPS,...”). *See, e.g.*, Order No. 809, 151 FERC ¶ 61,049 at P 127.

intended to provide superior service and interruptible transportation contracts run the risk of being interrupted. DSPS further argues that continuation of the No-Bump Rule ignores these facts and is now operating contrary to good public policy.

13. DSPS contends that the No-Bump Rule was a concession to the pipeline industry and it was never intended to be an agreement to expand the rights of interruptible shippers. DSPS states that, in the 1980s and early 1990s, shippers submitted nominations to pipelines for natural gas transportation two days in advance of the gas flow day. DSPS states that, in 1997, industry representatives became actively engaged in discussions conducted by the Gas Industry Standards Board (GISB), the predecessor to NAESB, to enhance the natural gas nomination and scheduling process. DSPS states that, as a negotiating concession to obtain the pipeline industry's agreement to allow a total of four nomination opportunities (inclusive of a Timely Nomination Cycle, an Evening Nomination Cycle and two intraday nomination cycles), the gas industry created and agreed to the concept that became known as the No-Bump Rule. DSPS states that this rule was merely an agreement specifically designed to recognize the time commitment associated with manually terminating the interruptible flows and rescheduling the firm flows and to give the pipelines the assurance that the final intraday nomination cycle would not be as time consuming as the other nomination cycles. DSPS states that this settlement accommodation was never intended to be an agreement by the industry to expand or create new "pseudo-firm" rights or entitlements for interruptible shippers or to forevermore allow interruptible shippers a subsequent opportunity to renominate their bumped volumes.

14. DSPS states that, despite the technological advancements in programming and scheduling that have occurred since the adoption of the No-Bump Rule, Order No. 809 effectively precludes a firm contract holder from accessing its capacity for almost two-thirds of the day.¹² DSPS states that, under Order No. 809, the utilities in the Desert Southwest have no firm or bumpable nomination opportunities after the modified Intraday 2 nomination deadline at 12:30 p.m. (2:30 p.m. CCT). DSPS states that, if the No-Bump Rule was eliminated, the cycles contained in Order No. 809 would be agreeable to DSPS, as the Intraday 3 Nomination Cycle would occur at a time that is coincident with the evening peak electric period. If the Commission maintains the No-Bump Rule, DSPS argues that the changed circumstances and policy considerations set forth in their request for rehearing require the addition of a bumpable cycle during the evening peak period of electric demand in the Desert Southwest.

¹² DSPS states that an interruptible shipper whose nomination is confirmed during Intraday 2 is guaranteed at least 15 hours of flow (*i.e.*, from the flow time of Intraday 2 at 6:00 p.m. until the 9:00 a.m. beginning of the next Gas Day).

15. DSPS contends that there have been four significant changes to the electric and gas industries since 1997 that render the No-Bump Rule outdated and no longer useful. First, DSPS states that the deregulation of the electric industry and the establishment of organized electric markets have created new industry players and reliability changes. DSPS states that the increased number of players in the electric industry present new reliability challenges that involve pipeline system utilization and infrastructure issues, as well as Regional Transmission Organization issues related to the lack of transparency in dispatching generators that are supported by firm or interruptible transportation. DSPS states that the No-Bump Rule discourages firm contracting, which is needed to ensure reliability, stimulate infrastructure development, and facilitate transparency in generation dispatch. Second, DSPS states that the shale revolution has facilitated the growth in natural gas-fired power plants, shifting the manner in which pipelines are utilized and necessitating infrastructure development. DSPS argues that policies like the No-Bump Rule that devalue firm transportation and enhance the value of interruptible transportation effectively discourage infrastructure development. Third, DSPS states that the accelerated coal to gas shift prompted by new environmental regulations requires the removal of policies that hinder infrastructure development. DSPS states that application of the No-Bump Rule hinders infrastructure development because firm shippers in the Desert Southwest cannot access the firm capacity they have under contract and, as a result, there is no incentive or justification for acquiring more firm contracts. Fourth, DSPS states that implementation of renewable portfolio standards requires timely and reliable access to natural gas to backstop intermittent renewables. DSPS states that the application of the No-Bump Rule, combined with the two hour time zone difference between the Desert Southwest and the NAESB CCT nomination cycle, precludes utilities with firm contracts from having timely access to firm capacity in the evening peak periods in the Desert Southwest (i.e., between 5:00 p.m. and 7:00 p.m. local time).

16. DSPS states that intraday access to firm transportation rights during the evening peak period is critical to maintain system reliability. DSPS states that the Desert Southwest does not have local market area gas storage, which makes it difficult to respond to unexpected changes in demand associated with contingencies that only present themselves during the evening peak period. DSPS also states that the Desert Southwest is the home of a growing percentage of renewable energy resources, which, given their intermittent nature, require quick-starting natural gas to ensure reliable energy. DSPS also states that while the peak hours of electric demand are not likely to change significantly, the peak hours of natural gas demand for natural gas-fired generation are anticipated to move later in the day to correspond with the drop in solar power that coincides with the setting of the sun.

17. As a general matter, DSPS argues that the Commission erred in failing to establish an intraday nomination policy that properly assigns firm contract and interruptible contract rights to pipeline transportation in a manner that is consistent with cost

responsibility and that promotes infrastructure development. DSPS states that, moreover, such an outcome is inconsistent with the Commission's long-held policies that reflect the fact that a fundamental goal of the Commission has been to ensure that pipeline capacity is provided to those who value the capacity the most as evidenced by the shippers willingness to pay the highest price for the longest reasonable term to obtain such capacity. DSPS states that parties willing to commit resources to reserve pipeline capacity on a firm basis should be entitled to as much access to their reserved capacity as technology can provide. Conversely, as the name interruptible suggests, *caveat emptor* should apply to shippers that purchase interruptible capacity and are subsequently interrupted as interruptible shippers should have no expectation of guaranteed flow time or opportunities to renominate bumped volumes.

2. Commission Determination

18. DSPS contends that Order No. 809 erred in retaining the No-Bump Rule because it precludes firm shippers from using their firm capacity rights to meet the evening peak electric demands in the Desert Southwest (i.e., between 7:00 p.m. CCT and 9:00 p.m. CCT, which is 5:00 p.m. and 7:00 p.m. local time in the Desert Southwest). We continue to find insufficient justification for revising the nationwide no-bump cycle and overturning the natural gas industry consensus that was achieved. As several commenters maintained, and as the Commission has previously recognized, interruptible shippers need some stability in the nomination system. In Order No. 587-G, the Commission accepted a consensus of the natural gas industry, including both firm and interruptible shippers, and accepted standards that provided that the last intraday nomination opportunity would not permit bumping of interruptible service. In adopting the standards, the Commission agreed that making the last intraday nomination opportunity no-bump created a fair balance between firm shippers, who had two opportunities to reschedule their gas (i.e., the Evening and Intraday 1 Nomination Cycles), and interruptible shippers, and provided stability in the nomination system.¹³

19. The Commission found that the record in this rulemaking confirmed the original consensus and did not support elimination of the No-Bump Rule. Retaining the no-bump cycle was strongly supported in the NAESB process and a consensus of the gas industry, as well as many in the electric industry, voted to maintain the No-Bump Rule in the last intraday cycle.¹⁴ Similarly, many commenters argued that the last intraday grid-wide nomination cycle should remain a no-bump cycle, as provided by NAESB's revised

¹³ Order No. 587-G, FERC Stats. & Regs., ¶ 31,062 at 30,671-72.

¹⁴ Order No. 809, 151 FERC ¶ 61,049 at P 103.

standards.¹⁵ As WBI Energy Transmission, Inc. (WBI Energy) contended, maintaining the last cycle as a no-bump cycle provides all shippers, pipelines, interconnects, producers and end users with needed certainty with regard to late-in-the-day usage.¹⁶ Disallowing bumping of interruptible shippers during the modified Intraday 3 Nomination Cycle helps prevent additional operational concerns for pipelines in that they will not need to revise their Gas Day set-up late in the day, when their personnel or counterparties' personnel may not be available. In addition, the No-Bump Rule plays an important role in balancing the flexibility needs of interruptible shippers with available capacity while providing priority to firm shippers (who incurred the firm shipping costs) over interruptible shippers through the modified NAESB Intraday 2 Nomination Cycle.¹⁷ The Natural Gas Supply Association (NGSA) maintained that interruptible service provides significant benefits to the market, such as increasing capacity utilization and lowering costs for all shippers, providing market alternatives to pipeline firm transportation and the secondary capacity release market, and allowing shippers to make alternative transportation arrangements during maintenance periods or unforeseen outages. As NGSA argued, eliminating the No-Bump Rule would diminish the value of interruptible transportation and accordingly, these significant benefits.¹⁸ Maintaining the last intraday cycle as a no-bump cycle also provides stability in the nomination system by allowing market participants, including pipelines, to rearrange transactions during the business day when interruptions to nominations can be more effectively addressed.

20. DSPS further contends that the Commission erred in failing to establish an intraday nomination policy that properly assigns firm contract and interruptible contract rights to pipeline transportation in a manner that is consistent with cost responsibility and that promotes infrastructure development. We do not find our decision here inconsistent with cost responsibility. While firm shippers pay a reservation charge to reserve pipeline capacity, the volumetric usage charge for interruptible transportation service is normally designed based on a 100 percent load factor equivalent of firm transportation rates, such that interruptible service is allocated a share of the pipeline's fixed costs equivalent to the fixed costs allocated to a firm shipper that uses its full contract demand. As described above, the No-Bump Rule seeks to balance the interests of firm shippers with those of

¹⁵ *Id.*

¹⁶ WBI Energy Comments at 5.

¹⁷ Order No. 809, 151 FERC ¶ 61,049 at P 103 (citing Enhanced Reliability Coalition Comments at 31).

¹⁸ NGSA Comments at 19-20.

interruptible shippers by permitting firm service to bump interruptible service at all but the last intraday nomination cycle. DSPS has not shown that the design of the nomination schedule results in an improper allocation of costs.

21. Moreover, although the Commission did not eliminate the No-Bump Rule, it did recognize the need for firm shippers to have additional flexibility. In the Notice of Proposed Rulemaking, the Commission proposed four intraday nomination cycles, which would have added two intraday opportunities for firm nominations to bump interruptible shippers and charged NAESB with developing a consensus proposal. In Order No. 809, the Commission adopted the NAESB consensus standards with three intraday nomination cycles, which added a second bumpable intraday cycle at 2:30 p.m. CCT at which firm nominations can bump interruptible nominations. This cycle will permit DSPS and other firm shippers in the Desert Southwest an additional four and one-half hours to assess potential weather changes and submit revised firm nominations as compared to the current timeline. In addition, the Commission in Order No. 809 indicated that individual pipelines could propose additional nomination opportunities that permit bumping of interruptible shippers up until 5:30 p.m. CCT.¹⁹

22. While DSPS contends the revised 2:30 p.m. CCT Intraday 2 nomination cycle should be later to coincide with the evening peak electric demands in the Desert Southwest (i.e., 7:00 p.m. CCT), we find a reasonable basis for honoring the consensus of the natural gas industry, as well as many in the electric industry. Many of the comments opposed moving the last bumpable cycle later in the day because it would force shippers and pipelines to manage interruptible transportation well after the close of the business day.²⁰

23. DSPS states that “satisfying the evening peak demands [in the Desert Southwest] is as important as ensuring the reliability of the morning peak period in the Northeast, which was the focus of the Commission’s attention in the Final Rule.”²¹ In Order No. 809, however, the Commission declined to change the Gas Day start time because the concerns underlying the proposal primarily were regional and could be addressed by regional initiatives.²² We similarly decline to move the last bumpable cycle later to

¹⁹ Order No. 809, 151 FERC ¶ 61,049 at P 106 & n.174.

²⁰ *See, e.g.*, NGSAs Comments at 18.

²¹ DSPS Request for Rehearing at 26.

²² Order No. 809, 151 FERC ¶ 61,049 at P 25.

accommodate the needs of a particular region. A number of pipelines already have adopted enhanced firm services that permit bumping of interruptible service after the standard nomination timelines,²³ and we urge DSPS and the pipelines in the Desert Southwest to consider such regional solutions. In comments, at least one or more pipelines appeared willing to discuss potential service offerings that may further help Desert Southwest shippers.²⁴

24. In addition to enhanced nominations, the Commission also recognized in Order No. 809 that additional standardized intraday nomination opportunities could promote more efficient use of existing pipeline infrastructure and provide additional operational flexibility to all pipeline shippers.²⁵ Accordingly, the Commission urged the natural gas and electric industries, through NAESB, to explore the potential for faster, computerized scheduling when shippers and confirming parties submit electronic nominations and confirmations, including a streamlined confirmation process if necessary. NAESB reports that the Gas-Electric Harmonization Forum will begin planning for the development of electronic scheduling standards in 2016 due to the time commitments of members in transitioning to the revised nomination schedules.²⁶

25. While the Commission recognizes the natural gas industry needs to devote computer and technical resources to implement the revised nomination timeline adopted by Order No. 809 by April 1, 2016, we find it reasonable for the industry to begin considering such standards and to submit standards or a report on the development of such standards by October 17, 2016.

26. Given these initiatives and the strong industry support for retaining the no-bump cycle, we find that DSPS has not provided sufficient justification for eliminating the No-Bump Rule and we deny rehearing.

²³ See, e.g., *Texas Gas Transmission LLC*, 137 FERC ¶ 61,093 (2011), *order on compliance*, 138 FERC ¶ 61,176 (2012)); *Gulf South Pipeline Co., LP*, 141 FERC ¶ 61,262 (2012).

²⁴ Order No. 809, 151 FERC ¶ 61,049 at P 125-26.

²⁵ *Id.* P 107.

²⁶ See NAESB August 4, 2015 Report at 3.

B. Bumping of Secondary Firm in Evening Nomination Cycle**1. Rehearing Requests**

27. DSPS also contends that the Commission's policy prohibiting scheduled secondary firm nominations from being bumped by primary firm nominations is further diluting the rights of primary firm shippers to access their capacity during bumpable intraday nomination cycles.²⁷ DSPS contends that a change in Commission policy is warranted because it is aware of incidents where shippers have deliberately contracted for firm transportation (or released capacity) rights on unused or inexpensive pipeline paths and instead of utilizing their primary firm pipeline path, the shippers routinely schedule secondary firm service outside of such path. DSPS contends that the unintended consequences surrounding the Commission's policy on secondary firm nominations need to be examined by the Commission in order to promote long-term firm contracting²⁸ and, at a minimum, secondary firm nominations should not be deemed firm until the first intraday nomination cycle.

2. Commission Determination

28. DSPS argues that the Commission erred by failing to modify its policy that, once scheduled, secondary firm service cannot be bumped in any subsequent nomination cycle, as proposed by DSPS. Again, DSPS' proposal addresses what appears to be primarily a regional issue, which does not warrant a nationwide change in policy. Moreover, DSPS fails to explain in any detail how allowing primary firm service to bump secondary firm service at the Evening Nomination Cycle or first intraday nomination cycle would provide tangible benefits in the Desert Southwest region. The Evening Nomination Cycle occurs at 6:00 p.m. CCT the day prior to gas flow. DSPS, however, seems concerned with demand fluctuations occurring, for example, from changes in weather forecasts that occur the next day. Similarly, under the modified NAESB nomination schedule, the first intraday nomination cycle occurs at 10:00 a.m. CCT the day of gas flow, which DSPS states is too early in the day to address its evening peak demand. DSPS fails to support how allowing primary firm nominations to bump scheduled secondary firm service in the Evening Nomination Cycle or first intraday

²⁷ DSPS Request for Rehearing at 4-5.

²⁸ DSPS states that by analogy, the actions of the secondary firm capacity holder under this scenario would be similar to a situation on the electric side where an entity purchased point to point service but was being allowed to be treated as a network service customer.

nomination cycle would appreciably affect demand fluctuations occurring in the evening the next Gas Day or in the evening the same Gas Day, respectively.

29. DSPS also ignores the harms identified by the comments to this proposal. As the commenters previously pointed out, allowing primary firm nominations to bump secondary firm nominations at the 6:00 p.m. CCT Evening Nomination Cycle would result in moving the major confirmation and scheduling period for the next Gas Day outside of normal business hours for both the pipelines as well as shippers, making it more difficult for a pipeline operator to confirm a shipper's nomination with point operators, producers and shippers. It could also disrupt the liquid secondary market for capacity by reducing the value of obtaining released capacity. Accordingly, the Commission denies rehearing.

C. Pilot Program

1. Rehearing Requests

30. DSPS contends that the Commission's rejection of its one-year pilot program to require the pipelines serving the Desert Southwest (i.e., El Paso, Transwestern, and TransCanada-North Baja) to permit make-up nominations during the Evening Nomination Cycle reflects a lack of understanding of the proposal. That proposal would allow firm shippers experiencing an unexpected increase in demand during the evening of the current Gas Day to submit a separate "retro/make-up" nomination during the Evening Nomination Cycle that would not take effect until the start of the next Gas Day but would make up for the unscheduled service they take during the current Gas Day. DSPS proposes that the Commission establish technical conference procedures to examine the viability of the proposal.

2. Commission Determination

31. At this time, the Commission finds insufficient basis to initiate a Natural Gas Act section 5 proceeding to further examine the viability of DSPS' proposed pilot program as applied to the Desert Southwest. In their previous comments, pipelines serving the Desert Southwest, while interested in pursuing discussions with DSPS on scheduling issues, also pointed out the substantial operational difficulties with the make-up nomination proposal. Kinder Morgan argued that, without expanding pipeline infrastructure, DSPS' proposal poses substantial problems for a pipeline.²⁹ It maintained

²⁹ Order No. 809, 151 FERC ¶ 61,049 at P 125. For purposes of Order No. 809, Kinder Morgan includes El Paso.

that such a service is akin to no-notice transportation service that may require construction of additional facilities, such as storage. Transwestern, another pipeline serving the Desert Southwest, stated that it is willing to work with DSPS and other regional entities to structure retroactive/make-up nominations and help customers manage their loads in view of the unique operating circumstances of the Desert Southwest.³⁰ DSPS, however, does not indicate in its rehearing request whether it has yet engaged Kinder Morgan or Transwestern in discussions regarding its proposal, as encouraged by the Commission. The Commission therefore finds insufficient support at this juncture for instituting proceedings to compel these pipelines to offer make-up nominations. We continue to encourage El Paso, Transwestern, and TransCanada-North Baja pipelines to continue discussions with DSPS regarding the pilot program. We direct El Paso, Transwestern, and TransCanada-North Baja to make an informational filing in this docket within 90 days of the date of this order regarding the status of those discussions. DSPS may also file comments at that time.

The Commission orders:

(A) DSPS' request for rehearing is denied, as discussed in the body of this order.

(B) As directed in the body of this order, El Paso, Transwestern, and TransCanada-North Baja are directed to make an informational filing in this docket within 90 days of the date of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³⁰ *Id.* P 126.