UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Texas Gas Transmission, LLC Docket No. RP07-339-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS AND ESTABLISHING TECHNICAL CONFERENCE

(Issued March 29, 2007)

1. On March 1, 2007, Texas Gas Transmission, LLC (Texas Gas) filed revised tariff sheets[1] to amend its tariff with respect to the capacity allocation method for its supply laterals. Texas Gas requests an April 1, 2007, effective date for the tendered tariff sheets. For the reasons discussed below, the Commission accepts and suspends the tariff sheets, to become effective the earlier of a date set by subsequent Commission order or September 1, 2007, and establishes a technical conference to address the issues raised.

I. <u>The Instant Filing</u>

2. Texas Gas filed revised tariff sheets to change the supply lateral capacity allocation method contained in section 34 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff. Texas Gas currently allocates its supply lateral capacity on a *pro rata* basis among its firm customers on a preferential basis. The preferential basis provides Texas Gas' customers with the right to change primary receipt point capacity reserved on supply laterals and to release unused preferential capacity rights on each supply lateral pursuant to Texas Gas' capacity release program. Texas Gas proposes to allocate its supply lateral capacity on a market need basis subject to the posting and bidding provisions of its tariff. Texas Gas also proposes to make corresponding changes to its NNS, SGT, SNS, FT and STF Rate Schedules and Forms of Service Agreement to reflect the revised section 34. Texas Gas further proposes to cancel the tariff sheets on which it currently lists supply lateral capacity allocation information. Texas Gas states that allocations in effect on March 31, 2007, will be grandfathered and posted to Texas Gas' Internet website.

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[1] *See* Appendix.

3. Texas Gas states that its supply lateral capacity allocation provisions have remained essentially unchanged since they were implemented when Texas Gas unbundled its services pursuant to Order No. 636. Texas Gas asserts that, since implementing Order No. 636, its customers' usage of these transportation services caused dramatic changes in flow patterns on its system. Texas Gas states that the transportation pattern changes have been especially dramatic in Texas Gas Zones SL and 1, where most of the production on Texas Gas is sourced and where its supply laterals are located. Texas Gas states that it is now receiving requests from existing and potential firm transportation customers to contract for firm capacity utilizing its supply laterals based upon market needs, as opposed to the current *pro rata* allocation of available supply lateral capacity among firm customers. Texas Gas states that it anticipates receiving requests to move LNG imports across these facilities over the next several years.

4. Texas Gas' available supply lateral capacity is not currently subject to Texas Gas' posting and bidding requirements and is not generally available on a *non-pro rata* basis. Texas Gas states that it has posted capacity on its supply laterals where the capacity being used flows in the opposite direction of the traditional supply lateral flows and does not conflict with the supply lateral rights under its tariff. Under existing section 1.2 of Rate Schedules FT and STF, Texas Gas posts its available firm capacity, except for supply lateral capacity, on its Internet website[2] for competitive bidding and allocates the capacity to the party(ies) with the best bid(s). Under Texas Gas' proposal, modified section 34 of the GT&C will permit available firm supply lateral capacity to be posted on its Internet website and allocated through a bidding process, with capacity being awarded to the party(ies) submitting the best bid(s), as determined by the method described in section 25 of the GT&C.[3] The proposed tariff changes would permit Texas Gas to allocate supply lateral capacity on the same basis and subject to the same posting and bidding provisions of its tariff that govern the allocation of other firm capacity. Therefore, under the proposal, customers will select and bid on the available supply lateral capacity based upon their market needs, rather than receive a *pro rata* allocation of Texas Gas' available supply lateral capacity.

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[2] Texas Gas' tariff refers to its Electronic Bulletin Board.

[3] Section 25 of the GT&C pertains to Texas Gas' capacity release program. Section 25.3(f) states that the best bid will be determined in accordance with the bid evaluation method specified by the releasing customer and that if no method is specified by the releasing customer, then the best bid will be determined using the highest net present value (NPV).

5. Texas Gas states that its proposed tariff revisions will respond to the market's demand that supply lateral capacity be allocated on a *non-pro rata* basis, enable it to better accommodate its customers' evolving use of its system and will ensure that such capacity is allocated through a transparent bidding process to those customers who value the capacity most. Texas Gas contends that its proposal ensures that the capacity is made available to the greatest number of potential customers, particularly entities seeking to transport LNG supplies through Texas Gas' facilities. Texas Gas asserts that the proposed tariff revisions are consistent with Commission policy, in the public interest, and just and reasonable.

6. Texas Gas asserts that, prior to posting any available supply lateral capacity under the proposed tariff modifications, it will grandfather the existing firm supply lateral capacity allocations and existing primary receipt point designations within such supply lateral capacity allocations under existing firm service agreements in effect on March 31, 2007. Texas Gas states that the grandfathered supply lateral capacity will remain in effect unchanged for the rest of the contract's current term. In addition, Texas Gas states that its proposal provides that its customers may continue to trade grandfathered supply lateral capacity during the remainder of their current contract term.

7. Texas Gas also proposes to cancel Sheet Nos. 539 through 557 on which it currently lists supply lateral capacity allocation information. However, allocations in effect on March 31, 2007, will be grandfathered and posted to Texas Gas' Internet website.

II. <u>Notice, Interventions, Comments and Protests</u>

8. Public notice of the filing was issued on March 6, 2007, with interventions, comments and protests due as provided under section 154.210 of the Commission's regulations (18 C.F.R. 154.210 (2006)). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2006)), all timely motions to intervene and any motions to intervene out of time filed before the issuance date of this order are granted. Protests were filed by Louisville Gas and Electric Company (Louisville), Atmos Energy Corporation (Atmos) and jointly by the Western Tennessee Municipal Group,[4]

[4] The Western Tennessee Municipal Group consists of the following municipal distributor-customers of Texas Gas: City of Bells, Gas & Water, Bells, Tennessee; Brownsville Utility Department, City of Brownsville, Brownsville, Tennessee; City of Covington Natural Gas Department, Covington, Tennessee; Crockett Public Utility District, Alamo, Tennessee; City of Dyersburg, Dyersburg, Tennessee; First Utility District of Tipton County, Covington, Tennessee; City of Friendship, Friendship, Tennessee; Gibson County Utility District, Trenton, Tennessee; Town of Halls Gas

(continued…)

the Jackson Energy Authority and the Kentucky Cities[5] (together Cities). Comments were filed by Memphis Light, Gas and Water Division, City of Memphis, Tennessee (MLGW) and jointly by Duke Energy Ohio, Inc. (DEO) and Duke Energy Kentucky, Inc. (DEK). The protests and comments are discussed below.

9. On March 27, 2007, Texas Gas filed an answer to the protests and comments.[6]

III. Protests and Comments

10. Protestors raise a number of issues and request the Commission to either reject Texas Gas' filing, set the issues for hearing or technical conference, or require Texas Gas to clarify its proposal as to these issues. They assert that Texas Gas' filing suggests that it intends to serve new and/or developing markets through this process, and the implication is that the motivation behind Texas Gas' filing is the prospect of capturing new business by taking back supply lateral capacity currently and historically allocated to Texas Gas' firm shippers.

11. Protestors assert that the problem that Texas Gas' filing apparently seeks to address is that a new firm customer would receive a *pro rata* allocation of supply lateral capacity, which may be different from the supply lateral capacity rights that the customer desires. They state that the existing supply lateral capacity trading and capacity release rights may be used to address this problem. Thus, the increased market demand for supply lateral capacity indicates that the value of supply lateral rights may be increasing and they argue that Texas Gas should not be permitted to appropriate the supply lateral capacity rights for its own benefit.

System, Halls, Tennessee; Humboldt Gas Utility, Humboldt, Tennessee; Martin Gas Department, Martin, Tennessee; Town of Maury City, Maury City, Tennessee; City of Munford, Munford, Tennessee; and the City of Ripley Natural Gas Department, Ripley, Tennessee.

[5] The Kentucky Cities are the Cities of Carrollton, Henderson, and Murray, Kentucky.

[6] Under Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 213(a)(2) (2006), answers to protests are not accepted unless otherwise ordered by the decisional authority. In the circumstances, rather than act in haste upon an answer not permitted by the procedural rules, and to which the protestors will not have an opportunity to reply, it is preferable to explore the issues raised by the filing at a technical conference.

12. Protestors contend Texas Gas' proposal will materially and unjustifiably diminish the quality (and quantity) of service provided to existing system shippers to the economic benefit of Texas Gas and the prospective customers which Texas Gas hopes to serve with its "new found" capacity. They argue that Texas Gas provided no compelling justification or evidentiary basis for its request to confiscate and remarket supply lateral capacity at the expense of existing shippers and that its proposal is unjust and unreasonable.

13. They state that the preferential rights of firm shippers to capacity on the supply laterals feeding Texas Gas' mainline are a longstanding feature of the Texas Gas system which emerged from Texas Gas' post Order No. 636 unbundling proceeding and that allocated supply lateral capacity has been an approved component of Texas Gas' tariffs since that time. They argue that Texas Gas' filing does not even suggest that this capacity is either misutilized or substantially unutilized. Since the existing rate structure on Texas Gas' system is built on the existing allocation methodology, which has been in place in every Texas Gas rate case since Order No. 636, only a compelling rationale could justify the serious abrogation of shipper rights represented by Texas Gas' proposal and Texas Gas has provided no such rationale in this case.

14. They contend that the proposal to eliminate the existing preferential allocated rights of firm system shippers to supply lateral capacity significantly diminishes the quality and nature of service provided to firm shippers on Texas Gas' system. They state that this diminution of service quality results from the inability of firm shippers to utilize supply lateral capacity that is currently available to serve them after the expiration of their current contract term and argue that this is directly contrary to the requirements and intent of section 7 of the Natural Gas Act (NGA). They assert that the degradation in service is not resolved by the fact that shippers can bid on this capacity in order to attempt to recapture it after it is confiscated by Texas Gas, since shippers that formerly had the rights to that capacity will no longer have those rights once the existing allocated supply lateral capacity is confiscated by Texas Gas under its proposal.

15. Protestors also assert that eliminating the existing preferential supply lateral rights upon the expiration of existing contract terms constitutes an effective abandonment of service by Texas Gas without any evergreen, renewal or right-of-first-refusal protections. They argue that this attempted abandonment of service by Texas Gas is directly contrary

to Commission policy, which requires that shippers be provided with the means to retain existing firm transportation rights at the expiration of any contract term as a condition of the Commission's pre-granted abandonment authority.[7]

16. Moreover, they argue that Texas Gas' proposal will disrupt a functioning secondary market for supply lateral capacity, the likely effect of which will be to increase costs for current firm shippers. They assert that the cost increase will result from the lost ability of existing shippers to trade or release supply lateral capacity on the terms they currently are able to do so and the corresponding diminution in secondary market revenues available to these shippers. Protestors contend that the existing rates and cost allocation methodologies on the Texas Gas system are premised upon the current supply lateral allocation methodology. They argue that it would be highly inappropriate to alter that allocation methodology without also reexamining the underlying costs and rate structures for supply lateral service. They further argue that Texas Gas ignored this integral concept since it did not include any proposal to examine rates and/or costs in its filing.

17. Protestors argue that Texas Gas has not proposed any reduction in rates to compensate firm customers for the service degradation and does not establish that there are any benefits that would compensate firm customers for the loss of their rights to supply lateral capacity.

18. Protestors also argue that Texas Gas failed to fully and fairly describe the impact its proposal will have on existing customers as required by section 154.204(d) of the Commission's regulations which provides that the applicant explain the impact of the proposed revisions on firm and interruptible customers, including any changes in a customer's rights to capacity in the manner in which a customer is able to use such capacity and receipt or delivery point flexibility. Protestors argue that Texas Gas has not explained why the currently available supply lateral capacity trading and capacity release mechanisms would not be adequate to permit Texas Gas and its customers to adjust to the changing market for supply lateral capacity. Accordingly, if the Commission does not reject Texas Gas' proposal, they urge the Commission to require Texas Gas to clarify its proposed grandfathering of existing firm customers' rights to supply lateral capacity to ensure that grandfathered customers may exercise their rights-of-first-refusal to retain their supply lateral capacity allocations.

[7] 18 C.F.R. §284.221(d). *See also Texas Eastern Transmission, L.P.*, 101 FERC ¶ 61,215 (2002).

19. Protestors state that their supply lateral capacity is greater than their mainline capacity, which gives them flexibility in sourcing their supplies using their primary point rights. They argue that Texas Gas' proposal, which assumes equal mainline and supply lateral capacities, would deprive them of that flexibility.

20. Protestors state that Texas Gas proposes to grandfather existing firm customers' supply lateral capacity rights for the remainder of the terms of their existing service agreements, but are concerned about the lack of clarity of Texas Gas' proposal with respect to the rights of customers under grandfathered agreements. They note that Texas Gas' transmittal letter asserts that "grandfathered supply lateral capacity will remain in effect unchanged for the rest of the contract's current term." They state that they are concerned about what "in effect" means and what Texas Gas considers the "current term." Thus, it is unclear whether the language in proposed section 34.2, which states that Texas Gas will grandfather "all existing firm supply lateral capacity allocations and existing primary receipt point designations within such supply lateral capacity allocations," will fully preserve existing customers rights.

21. Specifically, Cities state that they are operating under the same transportation agreements established during Texas Gas' restructuring in 1993. Cities assert that these are five-year term agreements with rollover rights which are due to rollover again in 2008. Cities state that it appears these agreements qualify for grandfathered status, but it is not completely clear whether customers with rollover rights in their contracts will retain their grandfathered supply lateral capacity rights during rollover terms. Cities urge the Commission to clarify this in its order. Accordingly, Cities state that the Commission should clarify that grandfathered contracts would retain the right, under proposed section 34.1, to change primary receipt point capacity reserved on supply laterals within their preferential capacity rights and to release their unused preferential capacity on supply laterals pursuant to the capacity release program.

22. Cities urge the Commission to require Texas Gas to clarify that customers with grandfathered contracts will retain all rights to supply lateral capacity, the associated rights that they currently have and that these rights will be retained during all rollover terms of grandfathered agreements. Cities assert that customers without rollover rights in their agreements should be afforded the ROFR rights contained in sections 32.4 through 34.6 of the GT&C when their contracts expire.

23. Cities state that shippers are currently entitled to trade firm supply lateral capacity rights among themselves but under proposed section 34.3 shippers could only trade grandfathered supply lateral rights. Therefore, Cities assert that trading of new supply lateral capacity would be prohibited. Cities argue that trading capacity rights is consistent with Commission policy. Cities oppose this restriction because it would adversely affect customers trying to operate jointly. Cities state that trading capacity is

necessary to deal with various contingencies on short notice. Cities assert that they have depended on this ability since restructuring and Texas Gas has not provided any justification for the change.

24. Protestors argue that Texas Gas did not describe or document the changes in flow patterns on its system that it states have occurred, and did not explain why those alleged changes in flow patterns require that the existing *pro rata* allocation provisions be changed. They further argue that Texas Gas also did not explain the significance of its references to the transportation of LNG supplies. They presume that shippers of re-gasified LNG would obtain firm capacity on the Texas Gas system and would receive the same *pro rata* allocation and rights to release (or acquire in the secondary market) and trade supply lateral capacity as any other firm shipper. They argue that Texas Gas has not shown that such allocations and the exercise of such rights have not been adequate to satisfy any demand for supply lateral capacity. Thus, they urge the Commission to require Texas Gas to show that the existing tariff mechanisms for allocating supply lateral capacity are no longer effective before the Commission acts on the merits of Texas Gas' filing. They argue that, alternatively, the filing should be rejected without prejudice to refiling with the necessary supporting documentation.

IV. Discussion

25. The Commission has reviewed Texas Gas' filing as well as the protests in the instant proceeding and finds that Texas Gas' proposed modifications to its supply lateral capacity allocation method raise numerous technical, engineering and operational issues which are best addressed at a technical conference. At the conference, the Commission staff and the parties to the proceedings will have the opportunity to further discuss Texas Gas' justification and support for the proposed gas quality specifications.

26. Texas Gas should be prepared to address the concerns raised by the parties in this proceeding and, if necessary, to provide additional technical, engineering and operational support for its proposed modifications to its supply lateral capacity allocation method. Texas Gas should also be prepared to support its assertion that the current *pro rata* method of allocating capacity on its supply laterals is not sufficient to permit existing and potential firm transportation customers to contract for firm capacity on its supply laterals, especially when combined with the existing capacity release and capacity trading provisions of its tariff. In addition, any party proposing alternatives to Texas Gas' proposal should be prepared to support its position with adequate technical, engineering and operational information.

V. **Suspension**

27. Based on a review of the filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept the tariff sheets for filing, and suspend their effectiveness for the period set forth below, subject to the conditions in this order.

28. The Commission's policy regarding tariff filing suspensions is that filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards. *See, Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension). It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. *See, Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (minimum suspension). Such circumstances do not exist here. Therefore, the Commission will accept and suspend the proposed tariff sheets until the earlier of a date set by subsequent Commission order or September 1, 2007**,** subject to the outcome of the technical conference established herein and further orders of the Commission.

The Commission orders:

(A) The tariff sheets listed in the Appendix are accepted and suspended to be effective the earlier of a date set by a subsequent Commission order or September 1, 2007, and subject to the outcome of the technical conference established below.

(B) The Commission's staff is directed to convene a technical conference to address the issues raised by Texas Gas' filing and report the results of the conference to the Commission within 120 days of the date this order issues.

By the Commission.

(S E A L)

Philis J. Posey,
Acting Secretary.

APPENDIX

Texas Gas Transmission, LLC
FERC Gas Tariff, Second Revised Volume No. 1
Tariff Sheets Accepted and Suspended to be Effective the Earlier of a Date Set by Subsequent Commission Order or September 1, 2007

Second Revised Sheet No. 2
First Revised Sheet No. 74
First Revised Sheet No. 86
First Revised Sheet No. 97
First Revised Sheet No. 102
First Revised Sheet No. 103
First Revised Sheet No. 118
First Revised Sheet No. 119
Fifth Revised Sheet No. 201
First Revised Sheet No. 291
Second Revised Sheet No. 292
First Revised Sheet No. 404
First Revised Sheet No. 416
First Revised Sheet No. 420
First Revised Sheet No. 431
First Revised Sheet No. 435
First Revised Sheet No. 445
First Revised Sheet No. 454
First Revised Sheet No. 456
First Revised Sheet No. 465
First Revised Sheet No. 538