

123 FERC ¶ 61,109
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Tuscarora Gas Transmission Company

Docket No. RP07-482-001

ORDER ON COMPLIANCE FILING

(Issued May 1, 2008)

1. On August 3, 2007, Tuscarora Gas Transmission Company (Tuscarora) filed revised tariff sheets¹ to comply with the Commission's July 6, 2007 order (July 6 Order).² The July 6 Order directed Tuscarora to file tariff revisions to provide full reservation charge credits in non-force majeure situations and partial reservation charge credits in force majeure situations. Tuscarora states that it modified section 19.2 and added section 19.3 to the General Terms and Conditions (GT&C) of its tariff to comply with the July 6 Order. As discussed below, the Commission accepts the tariff sheets to be effective August 31, 2007, as requested.

Details of the Filing

2. Tuscarora modified section 19.2 of its GT&C to provide:

If, due to an event of force majeure, Transporter is unable to deliver any portion of Shipper's Firm Daily Volume for a period greater than ten (10) consecutive days, then for each day beyond ten (10) days ... the applicable reservation charges ... shall not apply to the quantity of gas not delivered....

3. Tuscarora also added section 19.3 to its GT&C to provide that in non-force majeure situations, if the pipeline fails to deliver at least 98 percent of a shipper's Firm Daily Volume, then the applicable reservation charges shall not apply to the quantity of gas not delivered. Tuscarora explains that reservation charge credits will be limited to confirmable nominations for firm service within the shipper's Maximum Transportation

¹ See Appendix.

² *Tuscarora Gas Transmission Co.*, 120 FERC ¶ 61,022 (2007).

Quantity. Tuscarora also explains that reservation charges will still apply in both force majeure and non-force majeure situations, if a shipper utilizes secondary point service under its contract. Tuscarora states that the language it proposes is nearly identical to language accepted in previous Commission orders,³ and is consistent with Commission policy.⁴

Public Notice, Intervention and Comments

4. Notice of Tuscarora's filing was issued on August 15, 2007. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2007). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2007), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Sierra Pacific Power Company (Sierra) filed a protest. Tuscarora filed an answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 213(a)(2)(2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Tuscarora's answer because it has provided information that assisted us in our decision-making process.

5. Sierra argues that Tuscarora's proposed sections 19.2 and 19.3 are not consistent with Commission policy and must be revised. Specifically, Sierra opposes the language in section 19.2 stating that Tuscarora will provide a credit in force majeure situations if it "is unable to deliver *any* portion of Shipper's Firm Daily Volume for a period greater than ten (10) *consecutive* days..." (emphasis added). Sierra argues that pursuant to this language, if Tuscarora transports *any* quantities to its customers within the ten consecutive days, the ten day grace period will start over. Sierra contends that accepting section 19.2 as proposed will allow Tuscarora to extend its ten day grace period for an indefinite period of time. Sierra requests that the Commission direct Tuscarora to revise section 19.2 to state that Tuscarora will provide full credits after the earlier of (1) the termination of a ten day grace period, or (2) when the pipeline should have resolved the force majeure situation, consistent with Commission policy.⁵

³ Tuscarora cites *North Baja Pipeline, LLC*, 109 FERC ¶ 61,159 (2004), *order on reh'g*, 111 FERC ¶ 61,101 (2005) (*North Baja*).

⁴ Tuscarora cites *Tennessee Gas Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022, at 61,088-89 (1996), *order on reh'g*, Opinion No. 406-A, 80 FERC ¶ 61,070, at 61,200 (1997) (*Tennessee Gas*).

⁵ Sierra cites *Tennessee Gas and Texas Eastern Transmission Corp.*, Order No. 636, 62 FERC ¶ 61,015, at 61,089-91 (1993), *order on reh'g*, 63 FERC ¶61,100, at 61,433-35 (1993).

6. Sierra also opposes Tuscarora's requirement that nominations for firm service be confirmed in order for non-delivered volumes to be eligible for reservation charge credits. Sierra states that Tuscarora does not define "confirmable" in its tariff, and believes the term would exclude nominations that could not be scheduled because of service curtailment due to a force majeure event. Sierra contends requiring confirmable nominations will insulate Tuscarora from providing any credits during force majeure situations. Sierra requests that the Commission direct Tuscarora to either define the term "confirmable" or eliminate it from sections 19.2 and 19.3.

7. In response to Sierra's contention that the revisions to section 19.2 will allow Tuscarora to extend the ten day grace period indefinitely, Tuscarora argues that Sierra misread its proposal. Tuscarora states that the plain meaning of section 19.2 is that any day on which Tuscarora fails to deliver "any portion of Shipper's Firm Daily Volume" will count as one of the ten days in the grace period. Tuscarora acknowledges that its liability for reservation charge credits will only cease once Tuscarora resumes full service to its shippers.

8. Tuscarora also argues that it appropriately based its reservation charge credits in sections 19.2 and 19.3 on confirmable nominations. Tuscarora contends it is not necessary to include a definition of "confirmable" in its tariff because the word is not a term of art and simply means "able to be confirmed." Tuscarora further argues that requiring nominations to be confirmed prevents shippers from gaming their nominations after a curtailment to maximize their credits, thereby ensuring that pipelines only provide reservation charge credits for the level of service shippers would have taken absent the curtailment. Lastly, Tuscarora notes that the Commission has approved tariff provisions with similar confirmation requirements in prior Commission orders.⁶

Discussion

9. The Commission has reviewed Tuscarora's filing as well as the protest and answer filed in this proceeding and finds that Tuscarora's proposed tariff language complies with the July 6 Order and is consistent with Commission policy.

10. In the July 6 Order in this matter, the Commission ordered Tuscarora to provide reservation charge credits to affected shippers when it curtails service. The July 6 Order cited *Tennessee Gas*, where the Commission addressed the issue of reservation charge credits for instances of service curtailment. *Tennessee Gas* requires that when a pipeline fails to deliver at least 98 percent of the shipper's scheduled deliveries and the failure is due to conditions under the control of the pipeline, there must be a full reservation charge credit as to the undelivered amount.

⁶ See *North Baja*.

11. However, the Commission found in *Tennessee Gas* that when there is a shortfall due to a force majeure event, all parties should bear the risk because neither party is responsible. *Tennessee Gas* established that one way of sharing the risk is for the pipeline to provide a partial credit from the onset of the shortfall in deliveries equal to the pipeline's return on equity and associated income taxes for the undelivered amount. In *Texas Eastern* the Commission adopted an alternative approach for risk sharing during a force majeure event by establishing a length of time in which a pipeline may be excused from providing reservation charge credits. In sum, the Commission has two concurrent policies which allow either partial crediting starting at day one of a force majeure event, or full crediting after ten days.⁷ Tuscarora's proposal takes the approach set forth in *Texas Eastern*, in that it provides for full reservation charge credits after a ten day grace period.

12. We find that Tuscarora's proposal for reservation charge credits during force majeure and non-force majeure situations in section 19.2 and section 19.3 is consistent with Commission policy and precedent. In accordance with *Texas Eastern*, section 19.3 provides for full reservation charge credits when a pipeline fails to deliver at least 98 percent of the shipper's scheduled deliveries because of conditions under the control of the pipeline. Section 19.2 is also consistent with Commission precedent because it fairly allocates the risk of a force majeure interruption between the pipeline and its shippers, with the shippers bearing the risk for the first ten days and the pipeline bearing the risk thereafter. In addition, section 19.2 supplies sufficient incentive for the pipeline to quickly resolve the force majeure event by obliging Tuscarora to fully credit reservation charges after the ten day grace period.

13. Sierra argues that pursuant to section 19.2, if Tuscarora transports *any* quantities to its customers within the ten day grace period, the ten day grace period will start over. Tuscarora argues that Sierra misread its proposal and states that the plain meaning of section 19.2 is that any day on which Tuscarora fails to deliver "any portion of Shipper's Firm Daily Volume" will count as one of the ten days in the grace period. We agree that Tuscarora's proposed tariff language is clear and does not permit a restarting of the grace period if Tuscarora delivers any quantity of gas during that day. As Tuscarora acknowledges in its answer, after the ten day grace period following a force majeure event, a pipeline's liability for reservation charge credits will only cease when it resumes full service to its shippers. Accordingly, we find no further clarification of this tariff provision is necessary.

14. Sierra also opposes the requirement in sections 19.2 and 19.3 that nominations for firm service be confirmed in order for non-delivered volumes to be eligible for reservation charge credits. Tuscarora responds that requiring nominations to be confirmed prevents shippers from gaming their nominations after a curtailment to

⁷ *Id.*

maximize credits and ensures that pipelines only provide reservation charge credits for the level of service shippers would have taken absent the curtailment. The Commission agrees that limiting reservation charge credits to those nominations that are confirmed is a reasonable way to determine the amounts of gas shippers would have taken without the curtailment. Further, we find the proposed language is consistent with the policies adopted in *Tennessee Gas* and *Texas Eastern*.⁸ Accordingly, the Commission accepts Tuscarora's proposed tariff sheets to be effective August 31, 2007, as requested.

The Commission orders:

Tuscarora's revised proposed tariff sheets (listed in the Appendix) are accepted effective August 13, 2007.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁸ *Id.*

APPENDIX

**Tuscarora Gas Transmission Co.
FERC Gas Tariff, Original Volume No. 1
Tariff Sheets Accepted
Effective August 31, 2007**

First Revised Sheet No. 64
Original Sheet No. 64A