125 FERC ¶ 61,133
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.

Tuscarora Gas Transmission Company Docket No. RP09-8-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS AND ESTABLISHING TECHNICAL CONFERENCE

(Issued October 31, 2008)

1. On October 1, 2008, Tuscarora Gas Transmission Company (Tuscarora) filed a revised version of its entire tariff,[1] which it states will bring the tariff into compliance with Commission policy, add, correct, and remove certain tariff provisions, and make minor "housekeeping" changes. Tuscarora's proposal includes changes to the rate statements, rate schedules, general terms and conditions, and forms of service agreements. Tuscarora seeks a November 1, 2008 effective date. For the reasons discussed below, the Commission accepts and suspends the tariff sheets, to be effective April 1, 2009, subject to refund and to the outcome of a technical conference to address the issues raised in this proceeding.

I. **Details of Filing**

A. **Limited Firm Transportation Service**

2. Tuscarora proposes to establish a new Limited Firm transportation service under proposed Rate Schedule LFS, under which Tuscarora and shippers can mutually agree upon a minimum and maximum number of days during which the pipeline can limit firm transportation service. Tuscarora describes the following significant provisions of the proposed Rate Schedule LFS: (1) each contract will identify the minimum and maximum number of Limited Days that may be called over a given time period (the *pro forma* contract will contain blanks on which to enter minimum and maximum days to avoid filing individual agreements with the Commission); (2) Limited Days will be determined separately for each Limited Firm contract based on operational and contractual considerations; (3) Tuscarora and shippers may agree to limit service for a portion of the shipper's maximum transportation quantity on a particular day (i.e., Partial Volume Day),

[1] Tusarora's FERC Gas Tariff, First Revised Volume No. 1.

which will be counted as a Limited Day; (4) Tuscarora will provide at least 2.5 hours notice of service unavailability before daily nomination deadlines; (5) capacity available under Rate Schedule LFS will not be capacity already subscribed under other firm agreements; and (6) Tuscarora will post relevant information on its website.

3. Tuscarora states that the Limited Firm maximum reservation rates will be the same as those for firm service. Tuscarora further states that it will calculate monthly reservation rates for Limited Firm service by taking the applicable daily charges (equal to the monthly reservation charge(s) divided by the number of days in the month) times the maximum transportation quantity times the difference between the number of available days in the month and the number of Limited Days called. Tuscarora states that the delivery rate and surcharges for Limited Firm will be the same as those for firm service. Tuscarora notes that it may discount rates under its limited firm service, and shippers may agree to negotiated rate alternatives.

B. Sales of Available Capacity

4. Next, Tuscarora proposes changes to section 3.2 of its tariff that will enable it to sell capacity more than one year into the future, clarify how capacity that is currently unsubscribed may be sold, and clarify how bids for firm capacity will be evaluated. Tuscarora states that its proposal will allow it to sell unsubscribed firm capacity, or firm capacity without renewal rights, more than one year into the future through an open-season process or on a pre-arranged basis. At the same time, Tuscarora requests that it be able to sell that same capacity on an interim basis up to the commencement of that future sale and reserve the right to limit extension rights, including rights of first refusal (ROFR), on those interim sales. Tuscarora also adds language describing how it will sell unsubscribed firm capacity. Tuscarora states that it will post such capacity on its website and provide minimum bid periods of one business day for capacity available for up to one month, three business days for capacity available between one month and one year, and five business days for capacity available for a year or more.

5. Additionally, Tuscarora includes its methodology for evaluating bids for available capacity. Tuscarora states that when evaluating bids for firm capacity with terms of less than one year, the bid(s) with the greatest economic value will be the bid(s) with the highest net present value. Tuscarora further states that when evaluating bids for firm capacity with terms of one year or more, Tuscarora will look not only at the contract price and term, but also at the likelihood that the shipper (or any replacement shipper) will have the financial ability to honor its contractual commitment. Tuscarora states that it will calculate this creditworthiness factor as one minus the probability of default associated with the potential shipper's maximum bid term. Tuscarora states that it will rely on Standard and Poor's most recent 15-year "Cumulative Average Default Rates By Rating" table to determine probability of default and extrapolate beyond 15 years where bids exceed 15 years. Tuscarora notes that its proposal allows shippers to increase the net present value of their bids by posting additional collateral in one-year increments.

C. Creditworthiness Provisions

6. Tuscarora next proposes to update its creditworthiness provisions in section 3 of its tariff, consistent with recent Commission precedent and the *Creditworthiness Policy Statement*.[2] Specifically, Tuscarora states that its proposal makes clear that Tuscarora will not be required to provide service on behalf of any shipper that fails to establish or confirm creditworthiness. Tuscarora notes that it has the right to require security if a shipper's credit standing ceases to meet Tuscarora's credit requirements during the period of service. Tuscarora proposes a five-day window from the date of Tuscarora's notification that a shipper no longer meets its creditworthiness standards within which a shipper must pay for one month of service in advance to continue service and must within 30 days provide an acceptable credit alternative. Tuscarora states that it is also establishing objective tariff criteria to determine credit limits, i.e., 10 percent of a shipper's tangible net worth, but notes that it may extend credit on a not unduly discriminatory basis.

7. Tuscarora explains its proposed creditworthiness requirements for lateral facilities. Specifically, Tuscarora states that it has added creditworthiness language to its tariff to clarify that the security requirements for shippers utilizing expansion capacity on lateral facilities will not be greater than a shipper's pro rata share of the total facilities costs, and such security will be reduced over time in proportion to the shipper's contract term. Tuscarora also states that under its proposal, it would only be permitted to recover the cost of expansion capacity on lateral facilities once—either through transportation rates, or in the event of default, by means of the security provided.

8. With respect to interest on cash deposits, Tuscarora states that it currently pays interest on cash security deposits at the Commission's interest rate. Under its proposal, Tuscarora would pay interest on cash security deposits at the actual interest rate such deposits earn. Additionally, Tuscarora proposes the following changes to its creditworthiness provisions: (1) apply the creditworthiness standards for firm service to replacement shippers; (2) provide creditworthiness standards for interruptible services; (3) with respect to its parking and lending services, require that credit support for lending must account for the value of gas being lent; (4) clarify that a shipper's total contractual obligation is the present value of all firm contracts, plus the amount necessary to collateralize all of its interruptible agreements; (5) clarify that a shipper's total security requirement is the amount necessary to collateralize all of its firm and interruptible agreements; (6) clarify that a transporter shall not be required to provide service on behalf

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[2] Citing *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, 111 FERC ¶ 61,412 (2005) (*Creditworthiness Policy Statement*).

of any customer who fails to demonstrate creditworthiness; provided however, that such customer may receive service if it provides alternative credit; and (7) provide that collateral will be returned to shippers along with any applicable interest.

D. **Balancing Penalties and Penalty Crediting**

9. Tuscarora next proposes to modify its penalty provisions to provide for penalties during non-critical periods related to different types of imbalances in section 6.2 of its tariff. With respect to authorized overruns, Tuscarora provides for a penalty of two times the maximum interruptible transportation rate when the actual delivered quantity exceeds the maximum transportation quantity during non-critical periods. With respect to physical imbalances where the actual delivered quantity exceeds the receipt quantity, Tuscarora proposes a penalty of $5/Dth after a three-day period to correct the imbalance. Furthermore, if that imbalance is not corrected within 45 days, Tuscarora proposes an additional $5/Dth penalty. With respect to physical imbalances where the actual quantity received exceeds the delivered quantity by more than five percent of the delivered quantity or 400 Dth (whichever is greater), Tuscarora proposes a penalty of $2/Dth after a three-day period to correct the imbalance. Furthermore, if that imbalance is not corrected within 45 days, Tuscarora proposes to retain the remaining imbalance quantity. Finally, with respect to scheduling imbalances, Tuscarora proposes penalties equal to the maximum interruptible rate.

10. Tuscarora proposes to perform imbalance determinations on a daily basis, with each daily occurrence constituting a separate incident. Additionally, Tuscarora states that under its proposal, any penalty that would otherwise result from any action or failure to act of Tuscarora, the failure of any facility under Tuscarora's control, or a force majeure event, will not apply. Tuscarora also proposes a new section discussing the treatment of imbalances when a shipper's service agreement is terminated. Tuscarora's proposal provides a terminating shipper 60 days to correct any imbalances, before Tuscarora would be entitled to retain any positive imbalance quantity without compensation to the shipper. For negative imbalances, Tuscarora proposes to use an index-based formula to determine the current market price of gas and then charge the shipper 110 percent of the average of daily midpoint prices reported for Malin, Oregon, in Platt's *Gas Daily* for the month in which the imbalance is cashed out. Tuscarora also proposes to modify its penalty crediting mechanism to provide that all penalty revenues net of costs incurred by Tuscarora will be refunded annually with interest.

E. **Operational Flow Orders (OFOs)**

11. Tuscarora next proposes to add OFO provisions at section 34 of its tariff that articulate when the pipeline may issue an OFO, provide for the posting of information about the status of operational variables that will determine when an OFO will begin and end, and provide for the posting of information after an OFO is issued regarding the factors that caused the OFO to be issued and then lifted. Tuscarora explains that all

shippers on its system are subject to operational balancing agreements, and states that the proposed OFO provisions would apply to shippers and operational balancing agreement operators. Tuscarora notes that this language will effectively replace tariff language dealing with critical periods, which Tuscarora states it has removed. Tuscarora proposes OFO penalties that equal the higher of $25/Dth or a price per Dth equal to two times the midpoint price reported for Malin, Oregon, by Platt's *Gas Daily* for all quantities in excess of that allowed under the OFO for the day(s) on which the penalty is incurred. Tuscarora states that the structure and size of its proposed OFO penalties are similar to other penalties accepted by the Commission.

F. Uniform Pressures and Quantity

12. Tuscarora next proposes to modify section 8.3 of its tariff to provide that scheduled quantities will be received and delivered at a uniform hourly rate divided by 24, unless determined by Tuscarora that variance from the hourly rate will not be detrimental to the operation of the pipeline or adversely affect other shippers. Tuscarora states that the modified section provides all shippers flexibility with respect to hourly flow rates, provided that such flexibility is not detrimental to the pipeline or other shippers.

G. Right of First Refusal (ROFR)

13. Tuscarora proposes a number of changes to its ROFR procedures in section 27.5 of its tariff. Tuscarora states that its proposal will allow Tuscarora and its firm shippers to mutually agree to extend a shipper's service agreement through the renegotiation of the existing agreement prior to the notice of election that initiates the ROFR process. Tuscarora states that if Tuscarora and a shipper agree to such an extension, the contracted capacity will not have to be posted for competitive bidding, and the shipper will not have to separately participate in the posting and bidding procedures under Tuscarora's ROFR provisions. Tuscarora states that this tariff language will enhance a shipper's contracting options and will allow Tuscarora to mitigate its marketing risk associated with potential turned back capacity.

14. Tuscarora also proposes changes related to the rationalization of capacity when a pipeline expansion project occurs, stating that such charges are critical to Tuscarora's ability to properly size expansion projects. First, Tuscarora proposes to amend its notice procedures to provide that when the pipeline proposes an expansion, the sizing of which could be affected by a shipper's decision whether to exercise its ROFR and continue service, Tuscarora may notify the shipper that its election to terminate or not terminate its service agreement must be provided up to 36 months prior to the expiration date of the shipper's term of service. Tuscarora states that a shipper will have 60 days after the notice date to inform Tuscarora of its intent. Second, Tuscarora proposes a new section to provide that when an expansion open-season bidding process results in a fully-subscribed construction project, the sizing of which could be affected by an original

capacity holder's plans regarding continuation of service, Tuscarora may issue a separate notice to shippers with ROFRs whose service agreements expire within the 36 months of the notice. Tuscarora states that this notice will give an affected shipper until the end of the rationalization period to either elect to terminate the contract at its expiration or to extend its contract by matching the term and rate, up to the maximum historical rate that applies to the ROFR shipper, of the expansion bid generating the lowest net present value. Tuscarora also notes that if the original capacity holder agrees to pay the maximum historical rate, that capacity holder will not be required to extend its service agreement by more than the minimum acceptable term identified in an open-season posting for the subject capacity (not to exceed 15 years).

15. Tuscarora states that immediately upon posting the information relevant to an existing shipper's notice of election, Tuscarora will hold an open season. Tuscarora further states that an open season will be held no later than three months prior to the service agreement expiration. Tuscarora also proposes modifications to its ROFR bidding process, among them, added language to clarify that the offering shipper must satisfy Tuscarora's firm gas transportation and credit evaluation by the close of the bid period. Tuscarora also states that bids for ROFR capacity with terms of one year or longer will take into account a shipper's probability of default. Tuscarora also notes that acceptable bids will be those having the greatest economic value, as determined by the above-described valuation of bids section. Additionally, Tuscarora has modified its bid matching procedure to change the time an existing shipper has to match a competing offer from 30 days to 10 days. Tuscarora states that its proposal clarifies that shippers exercising ROFR rights must match accepted bids in order of economic value (from highest to lowest). Tuscarora also states that new long-term shippers will be subject to the highest incremental fuel rate on Tuscarora's system where such fuel rate otherwise applies to expansion shippers on Tuscarora's system.

16. Tuscarora next proposes to remove a provision stating that shippers holding a ROFR need not match any term greater than five years for capacity subject to the ROFR. Tuscarora states that the effect will be that shippers holding a ROFR will be required to match the highest acceptable bid(s) for capacity, including term, in order to retain that capacity. Tuscarora states that it modified language pertaining to situations where no competing bids are received during a ROFR bidding process to, among other things, allow 20 days from the end of the bid period for Tuscarora and the original capacity holder to negotiate a continuation of service. Tuscarora next proposes language related to shippers with both evergreen rights and a ROFR that would require such shippers to first elect termination under the evergreen provisions in order to initiate the ROFR. Finally, in situations where a ROFR process is competed and there has been no award of capacity, Tuscarora states that the capacity will be offered as generally available unsubscribed capacity.

H. Discounts and Negotiated Rates

17. Tuscarora next proposes to update its list of permissible discounts, such that agreements incorporating these listed discounts would not have to be filed as non-conforming agreements. Tuscarora also proposes to add a new type of discount based on a formula including, but not limited to, published index prices for specific receipt and/or delivery points or other agreed-upon pricing points.

18. Tuscarora states that it is also seeking authority to offer its transportation services (firm, interruptible, parking and lending, and the newly proposed limited firm) at negotiated rates under negotiated rate formulas. Tuscarora proposes new section 32 and states that this section is largely modeled after provisions approved for other interstate pipelines. Tuscarora explains that negotiated rates will only be made available to the extent that such service is alternatively made available at a cost-based recourse rate. Tuscarora describes the individual provisions of section 32, which include, among other things, a provision allowing Tuscarora to seek a discount-type adjustment for (1) negotiated rate agreements that were converted from discount agreements and (2) other negotiated rate transactions in accordance with Commission policy as it may apply in the future. Tuscarora also states that in evaluating bids, if the net present value of any negotiated rate revenues would exceed the net present value of the revenue stream produced by paying the maximum rate over the same period of time, Tuscarora will consider the negotiated rate as the bid with the maximum economic value. Tuscarora also notes that it will separately track revenues and volumes transported under negotiated rates.

I. Reservation of Capacity for Future Expansions, Purchase and Sale of Operational Gas, Capacity Release, and Other Miscellaneous Changes

19. Tuscarora next proposes a new section that would permit the reservation of existing or potential unsubscribed capacity for future expansion projects. Tuscarora further proposes that the ROFR will not apply to interim service agreements that rely on reserved capacity during the period it is reserved. Tuscarora states that it will only reserve such capacity for a future expansion project during the 12-month period prior to Tuscarora filing for certificate approval of the construction, acquisition, or lease of the proposed expansion facilities, and thereafter until such expansion facilities are placed into service. Tuscarora notes that prior to reserving capacity, it will first make such capacity available for bidding.

20. Tuscarora also proposes to add a new provision to authorize the purchase or sale of gas on an interruptible basis as necessary to manage system pressure and maintain system integrity. Tuscarora states that it will post a notice of its intent to purchase or sell gas on its electronic bulletin board, and that purchases and sales will be made on a nondiscriminatory basis.

21. Tuscarora next states that its proposal reorganizes its capacity release provisions consistent with North American Energy Standards Board requirements, Tuscarora's new electronic bulletin board system requirements, and its current business practices. Tuscarora lists its proposed revisions, describing them as administrative in nature.

22. Tuscarora proposes a number of additional changes to its tariff, including changes to its form of service agreements

II. Public Notice, Intervention and Comments

23. Notice of Tuscarora's filing was issued on October 3, 2008. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2008), 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 and Southwest Gas Corporation (Southwest) filed a joint protest with Paiute Pipeline Company (Paiute) (collectively, Joint Protesters).

24. On October 24, 2008, Tuscarora filed an answer to the protests. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Tuscarora's answer and will, therefore, reject it.

25. In its protest, Sierra states that Tuscarora proposes substantial changes to its tariff but fails to cite any factual basis for the Commission to accept the filing by the proposed November 1, 2008 effective date. Sierra notes that Tuscarora has been operating under its current tariff for years without any significant problems. Additionally, Sierra states that Commission acceptance by November 1, 2008, would provide no time for Sierra to make rational planning decisions on how to adjust at the onset of the peak winter season to fundamental changes to the terms of Tuscarora's service. Sierra argues that the Commission should suspend Tuscarora's filing for the full five-month statutory period so that it has time to fully review the numerous, detailed and complex changes proposed in the filing. In addition to suspending the filing, Sierra argues that the Commission should summarily reject Tuscarora's proposed revisions to section 8.3, which address hourly flow rates, as they would drastically limit the ability of existing firm shippers to deviate from even hourly flows.

26. Joint Protesters also urge the Commission to suspend Tuscarora's filing for the full five-month period, stating that such a suspension is justified given the nature and scope of Tuscarora's proposed complete replacement of its tariff. Joint Protesters state that a number of Tuscarora's proposed provisions raise serious questions, and note the nature and scope of Tuscarora's proposed tariff changes warrant a technical conference.

27. Joint Protesters also state that Tuscarora's filing does not clearly reflect the relationship between its five new proposed daily penalties and its operational balancing agreements. Joint Protesters argue that the proposed new daily penalties, and the more restrictive language governing hourly take flexibility, should not apply to Paiute and shippers such as Southwest who are indirectly served through Paiute's jurisdictional pipeline system. Joint Protesters state the interconnection between Tuscarora and Paiute is subject to a November 26, 2002 Operation and Maintenance Agreement, which contains, among other things, operational balancing procedures. Joint Protesters also state that any imbalance at the interconnection are subject to flow restriction, make-up, and monthly balancing terms set forth by the Interconnection Agreement. Therefore, Joint Protesters request confirmation from Tuscarora that the Interconnection Agreement will still control daily imbalance and flow restrictions at the interconnection.

28. Sierra and Joint Protesters also point to a number of specific proposals in Tuscarora's filing that they contend have not been shown to be just and reasonable and that the Commission should either reject or accept subject to modification.

A. Limited Firm Transportation Service

29. Sierra notes that the Commission has accepted similar Limited Firm services for pipelines that demonstrate that they have unsubscribed firm capacity available or where the pipeline's proposed conditions ensure that service to firm customers would not be degraded. Sierra also notes that in the same filing, Tuscarora proposes to revise section 8.3 of its tariff to limit critical peak day capacity, which Sierra asserts raises the strong inference that the two proposals are linked. Sierra further asserts that these two revisions could have severe, adverse effects on service provided to firm shippers because they would allow limited firm shippers to use critical peak day capacity already subscribed by existing firm shippers.

30. Sierra requests that the Commission require Tuscarora to modify its proposed LFS Rate Schedule to impose conditions that will assure no degradation of service to existing firm shippers. Sierra argues that Tuscarora should include language in its Limited Firm rate schedule stating that Limited Firm service will be available only if sufficient unsubscribed capacity is available. Sierra contends that Tuscarora's proposal giving Tuscarora the discretion to waive the requirement of sufficient unsubscribed firm capacity is inappropriate and should be eliminated. Additionally, Sierra asserts that the Commission should require Sierra to call a Limited Day or Partial Volume Day before issuing an OFO to firm shippers. Sierra also requests that the Commission require Tuscarora to clarify that Limited Days include Partial Volume Days.

31. Sierra notes that the Commission has previously required a pipeline proposing a Limited Firm service to file a report within a year after implementing that service on its

system.[3] Sierra argues that the Commission should require a similar report here at least annually until Tuscarora's next rate proceeding. Sierra contends that the annual report should provide the Commission and existing firm shippers with information to assess the reasonableness of Tuscarora's exercise of discretion in providing the Limited Firm service.

32. Sierra argues that Tuscarora's Limited Firm rate schedule imposes a less stringent hourly flow obligation on Limited Firm shippers than that imposed on firm shippers under Tuscarora's proposed revision to section 8.3. Sierra contends that under Tuscarora's proposed section 8.3, firm shippers are allowed less flexibility than Limited Firm shippers because firm shippers are required to accept gas in even hourly flows before being allowed any deviations. Sierra argues that firm shippers should be able to deviate from even hourly flows, as required under the existing section 8.3, before any critical capacity is made available to Limited Firm shippers.

B. Creditworthiness

33. Sierra notes the substantial changes to Tuscarora's creditworthiness provisions and states that it has not had enough time to fully evaluate these changes to determine their impact. However, Sierra explains one concern that arises from the criteria Tuscarora proposes to determine whether a shipper is deemed non-creditworthy, and hence, subject to a collateral requirement. Sierra notes that sections 3(a)(1) and 3(b) provide two criteria, both of which must be met for a shipper to be deemed creditworthy. Sierra argues that the first criterion—that a shipper must have a credit rating for its long-term unsecured debt securities from Standard and Poors or Moody's of BBB or Baa2, respectively—is inappropriate and should be changed, even though it is a part of the existing tariff. Sierra contends that there is no reason why these existing standards should be more stringent than investment grade rating levels consistently used by other pipelines. Sierra strongly protests the second criterion—that a shipper's credit, which is 10 percent of the shipper's net worth, be sufficient to cover the shipper's total contractual obligations, or the present value of all firm contracts, plus the amount necessary to collateralize all of the shipper's interruptible agreements. Sierra notes that Tuscarora can, consistent with Commission policy, require collateral equal to no more than three months of reservation charges for its firm service. Sierra argues that Tuscarora's proposed definition of total contractual commitments is out of line with collateral requirements and suggests that a more reasonable definition should be based on a period no longer than one year.

[3] Citing *Natural Gas Pipeline Co.*, 92 FERC ¶ 61,081, at 61,344 (2000).

C. Balancing Penalties and Penalty Crediting

34. Sierra states that although Tuscarora's tariff already contains penalty provisions implemented after Order No. 637, Tuscarora proposes to make a number of fundamental changes to its tariff's penalty provisions despite the absence of any operational reason to do so. Sierra notes that Tuscarora proposes to add a daily unauthorized overrun penalty and daily scheduling penalties, which may be imposed even during non-critical periods. Sierra states that although the Commission has generally accepted such penalties, the pipeline must demonstrate the reasonableness of the specifics of its proposal, including the proposed tolerance level.[4] Sierra argues that Tuscarora provides no justification why the proposed tolerance level of five percent is appropriate for these penalties. Sierra believes there is no need for these penalties during non-critical periods.

35. Sierra also protests Tuscarora's proposed daily balancing penalties, arguing that Tuscarora's support for such onerous penalties is lacking, and that Sierra fails to discuss relevant authority. Moreover, Sierra states that Tuscarora has not cited any operational reason in support of these balancing penalties. Sierra notes that because it has a massive share of the firm capacity on Tuscarora's system, its exposure to these new penalties is heightened. Sierra also objects to other portions of Tuscarora's proposed balancing penalties, namely changes to the notice provisions for imposing a penalty, the thresholds for applying the penalties, the provision allowing Tuscarora to confiscate a customer's natural gas, and Tuscarora's proposal to base penalties on the lesser of the impact from operational or actual data.

36. Joint Protesters contend that Tuscarora's new penalties are not just and reasonable. Joint Protesters argue that Tuscarora's proposed penalty tolerance levels are too restrictive for non-critical penalties, and that Tuscarora has failed to demonstrate the reasonableness of the proposed daily balancing penalties. Joint Protesters point out that because Tuscarora has operational balancing agreements with all or nearly all of its point operators, it has not shown that imbalance charges relative to scheduled quantities will have any material effect on scheduling compliance. Joint Protesters also states that Tuscarora has failed to show any operational need for its new non-critical balancing penalties, arguing that absent a showing that system reliability is threatened, the Commission should reject its proposed daily balancing penalties.

D. Uniform Pressures and Quantity

37. Sierra states that the Commission should reject proposed revisions to section 8.3 of Tuscarora's tariff, pertaining to hourly flow rates. Sierra notes that this section currently allows Sierra and other firm shippers to deviate from even hourly flows. Sierra

[4] Citing *Williams Gas Pipeline Central, Inc.*, 100 FERC ¶ 61,232, at P 25 (2002).

states that the proposed language would allow deviations from even hourly flow only when Tuscarora makes two determinations: (1) that such deviations will not be detrimental to the operation of the pipeline; [5] and (2) that the deviations from even hourly flows will not adversely affect in any way other Tuscarora shippers, including a shipper that purchases interruptible transportation. Sierra states that the proposal radically changes the existing version of section 8.3 as it would drastically limit the ability of existing firm shippers to deviate from even hourly flows. Specifically, Sierra states that Tuscarora's proposed section 8.3 would eliminate firm customers' present right to deviate by six percent of its hourly take twice each day. Sierra asserts that this right to a six percent deviation is very important for customers serving peak loads, which often occur twice each day. Sierra notes that it, and other firm customers, have made substantial payments for this service throughout the years and argues that it would be inequitable to eliminate this service.

38. Joint Protesters also contend that Tuscarora has not justified the proposed change in its hourly flow restriction. Joint Protesters state that Tuscarora has neither shown any need for this new service restriction, nor has it provided any justification for the reduction in service quality.

E. <u>Right of First Refusal (ROFR)</u>

39. Sierra argues that Tuscarora fails to justify the need to (1) reduce by two-thirds the time period within which an existing shipper must provide notice that it would match an alternative bid for its existing capacity or (2) increase the amount of time an existing shipper must provide notice to implement its ROFR, from twelve months to three years. With respect to the latter change, Sierra argues that the change from twelve months to three years would undercut the purpose of a ROFR by inhibiting a shipper's ability to base its decision to exercise the ROFR on a current assessment of its capacity needs. Sierra further states that under Commission policy, this current assessment is performed during a "reasonable period," roughly six to twelve months, before the contract expiration. Sierra also strongly objects to Tuscarora's proposal to require an existing shipper to match, subject to a 15-year cap, the minimum acceptable term identified in a prior Tuscarora open season for expansion capacity. Sierra argues that this proposal contravenes the Commission's policy that the method for evaluating a ROFR offer must be based on objective criteria because the contract term Tuscarora may set in an open season is not based on any objective factor, nor would it have been subject to Commission review.

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[5] Sierra notes that the broad phrase "not be detrimental to the operation of the pipeline" is not defined in Tuscarora's tariff.

40. Joint Protesters argue that the ROFR provision does not strictly conform to Commission policy because it does not reflect the exception for contracts below the maximum rate that were executed prior to March 27, 2000. Joint Protesters also argue that a number of provisions under proposed section 27 are unnecessarily restrictive, among them, a reference only to contract "terminations" as opposed to "terminations" and "expirations" in the ROFR section and a lack of explanation of how the method for evaluating creditworthiness will fit into the ROFR process.

F. Negotiated Rates

41. With respect to Tuscarora's proposed section pertaining to negotiated rates, Sierra notes that section 32.3 would give Sierra the right to seek a discount-type adjustment in a future rate case for negotiated rate agreements that are converted from pre-existing discount recourse rate agreements. Sierra argues that Tuscarora should be required to clarify that it will apply the standards used for affiliate discounts in determining the extent of a discount-type adjustment discussed in that section.

G. Sale of Excess Gas

42. Sierra notes that Tuscarora proposes new section 35, which would allow Tuscarora to purchase or sell gas on an interruptible basis as necessary to manage system pressure and maintain system integrity. Sierra argues that Tuscarora's proposal lacks the necessary detail. Sierra also notes that Tuscarora's proposed tariff provision is deficient in that it fails to explicitly state how Tuscarora will account for any purchases or sales of gas. Sierra argues that the Commission should require Tuscarora to revise its proposal to specifically state the source of gas to be sold or purchased and the conditions under which such gas might be sold and purchased. Sierra also argues that this section should include a reporting mechanism.

III. Discussion

43. The Commission has reviewed Tuscarora's filing as well as the protests filed by Sierra and the Joint Protesters in this proceeding and finds that Tuscarora's proposed tariff revisions raise significant issues, which are best addressed at a technical conference.

44. It is not possible to determine, at this juncture, whether Tuscarora's proposed tariff revisions are just and reasonable. A technical conference will afford the Commission Staff and the parties to the proceeding an opportunity to discuss all of the issues raised by Tuscarora's filing, including but not limited to Tuscarora's proposal to offer a new Limited Firm service, proposed penalty provisions for non-critical periods, proposed revisions to its current hourly take provisions, proposed revisions to the ROFR process, and proposed revisions to the creditworthiness provisions. At the technical conference, Tuscarora should be prepared to fully support its proposals in light of the protests lodged in this proceeding. Any party proposing alternatives to Tuscarora's proposals should also

be prepared to similarly support its position. Finally, based upon its analysis of the information provided in this proceeding, the Commission Staff may issue data requests prior to the technical conference, or a notice of the technical conference may contain questions that need to be addressed by Tuscarora or other parties at the conference.

45. Based upon 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 such tariff sheets for filing and suspend their effectiveness for the full statutory period, subject to the conditions set forth in this order.

46. The Commission's policy regarding rate suspensions is that rate 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 suspensions for the maximum period may lead to harsh and inequitable results. *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension). No such circumstances exist here. Therefore, the Commission shall exercise its discretion to suspend the rates to take effect on April 1, 2009, subject to the conditions set forth in the body of this order and in the Ordering Paragraphs below.

The Commission orders:

(A) The proposed tariff sheets referenced in footnote no. 1 are accepted and suspended, effective April 1, 2009, (or some earlier date if directed in a subsequent order), subject to refund and conditions, and to the outcome of the technical conference established by this order.

(B) The Commission's staff is directed to convene a technical conference to address the issues raised by Tuscarora's filings 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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.