

127 FERC ¶ 61,313  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Texas Gas Transmission, LLC

Docket No. RP09-548-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS SUBJECT TO  
CONDITIONS

(Issued June 30, 2009)

1. On April 29, 2009, Texas Gas Transmission, LLC (Texas Gas) filed tariff sheets<sup>1</sup> to revise its *pro forma* service agreements, negotiated rate letter agreements, and discounted rate letter agreements. The Commission accepts and suspends Texas Gas's proposed tariff sheets effective December 1, 2009, or some earlier date specified in a subsequent Commission order, subject to the conditions discussed below.

**I. Details of Filing**

2. Texas Gas proposes to revise and redesign its *pro forma* agreements (i) to address issues raised by the Commission's decision in *Southern Star Central Gas Pipeline, Inc.*,<sup>2</sup> regarding non-conforming agreements and (ii) to create similar contract forms across all three of Boardwalk Pipeline Partners, LP's interstate pipelines.<sup>3</sup>

3. Texas Gas states that the filing contains blank exhibits with an instructional paragraph contained in brackets. Texas Gas explains that the parties may include additional terms permitted by the tariff and applicable to each point covered by the

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<sup>1</sup> See Appendix.

<sup>2</sup> 125 FERC ¶ 61,082 (2008) (*Southern Star*).

<sup>3</sup> Boardwalk is the parent company of Texas Gas. It is also the parent of Gulf South Pipeline Company, LP, (Gulf South) and Gulf Crossing Pipeline Company LLC (Gulf Crossing). Concurrent with this filing, Gulf South submitted revised *pro forma* service and letter agreements in Docket No. RP09-550-000 and Gulf Crossing submitted a similar filing in Docket No. RP09-552-000.

exhibit. Moreover, Texas Gas states that in the *pro forma* service agreements, additional exhibits may be added as necessary. Texas Gas states that, for example, the exhibit may include contact information, such as postal addresses, telephone numbers and email addresses.

4. Texas Gas states that the *pro forma* service agreements also (1) contain specific fill-in-the-blank term language with limited flexibility to accommodate uncertainties due to construction schedules; (2) contain specific term language for optional extension provisions (related to contractual right of first refusal, bilateral evergreen, and unilateral rollover) in its FT/STF/NNS/NNL/SGT/SGL/SNS, ISS/ISS-M/FSS/FSS-M, and PAL *pro forma* service agreements; (3) contain an optional provision that states the subject agreement supersedes in its entirety a previously executed agreement; (4) commence upon a date certain and continue for a term of five years or until terminated by either party upon thirty days written notice in its ISS/ISS-M/FSS/FSS-M *pro forma* service agreement as it applies to ISS; (5) eliminate master agreements in its PAL *pro forma* service agreement and execute a new service agreement for each new transaction that the parties enter into; (6) provide an optional header/footer that provides a place for administrative information, such as contract numbers, contract dates, and page numbers; (7) provide the parties the flexibility to describe the contract demand in the manner that best reflects the subject deal, including descriptions of tariff-permitted capacity ramp-ups.

## **II. Public Notice, Interventions, and Comments**

5. Notice of Texas Gas's filing in Docket No. RP09-548-000 was issued on April 30, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2008). 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 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. Western Tennessee Municipal Group,<sup>4</sup> the Jackson Energy

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<sup>4</sup> 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 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; City of Ripley Natural Gas Department, Ripley, Tennessee.

Authority, City of Jackson, Tennessee, and the Kentucky Cities<sup>5</sup> (jointly, Cities); Louisville Gas and Electric Company (Louisville); and Memphis Light, Gas and Water Division, City of Memphis, Tennessee (MLGW) filed protests to the instant proceeding.

6. On May 15, 2009, Texas Gas filed an answer. On May 18, 2009, Cities and MLGW filed a joint answer to Texas Gas's May 15, 2009 Answer. 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 will accept the answers because they have provided information that assisted us in our decision-making process.

### **III. Discussion**

7. The Commission accepts and suspends Texas Gas's filed revised *pro forma* service agreements and related exhibits subject to the conditions discussed in this order.

#### **A. Specificity of the Information to be Included in the Pro Forma Service Agreements and Exhibits**

8. Cities, Louisville, and MLGW state that the revised *pro forma* service agreements provide Texas Gas too much flexibility and lack the specificity required by the Commission. The protests direct this objection to three different provisions in Texas Gas's filing.

9. First, Louisville, Cities, and MLGW<sup>6</sup> object to language in Texas Gas's proposed *pro forma* service agreements allowing for the insertion of exhibits. This section states:

Exhibit(s): The following Exhibit(s) are attached and made a part of this Agreement: [Exhibit Descriptions may be inserted here, as necessary. Exhibits will include headings and details needed to describe contractual terms.]<sup>7</sup>

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<sup>5</sup> The Kentucky Cities are the Cities of Carrollton and Henderson, Kentucky. They are municipal distributor-customers of Texas Gas.

<sup>6</sup> MLGW did not raise the objections regarding the specificity of Texas Gas's proposed *pro forma* service agreements and the proposed exhibits in its initial filing. However, MLGW filed a joint answer with Cities that raised these issues.

<sup>7</sup> Proposed Third Revised Sheet No. 3800, Proposed First Revised Sheet No. 4701, and Proposed First Revised Sheet No. 5000.

10. Second, Louisville, Cities and MLGW object to language in Texas Gas's proposed exhibits to the service agreements. The language in the heading of the exhibits states:

[Identify Primary Point(s) covered by the Agreement, which may include but need not be limited to Receipt Point Name, Receipt Point Meter Number, Delivery Point Name, Delivery Point Meter Number, Volume, and Contract Path(s), as well as any additional terms and conditions permitted by the Tariff and related to the Primary Points, if any.]<sup>8</sup>

11. Third, Cities also object to language in the "contract demand" section of the *pro-forma* service agreements indicating that material to be covered is "not limited to" the material specified in brackets. This section reads:

Contract Demand(s): [Insert Contract Demand(s) (including but not limited to daily, monthly, or seasonal Contract Demand(s)) and, as necessary, information related to Contract Demand ramp-ups or other changes. In lieu of inserting here, Contract Demand information may be inserted on an exhibit.]<sup>9</sup>

12. In its protest, Louisville emphasizes that the Commission requires that all agreements containing a "material deviation" from the *pro forma* service agreement be filed with the Commission as non-conforming agreements. Louisville states that a provision in a service agreement amounts to a material deviation if it (1) goes beyond filling in the blank spaces with appropriate information allowed by the tariff and (2) affects the substantive rights of the parties.<sup>10</sup> Louisville states that it is difficult to discern, on the basis of the language in Texas Gas's proposed *pro forma* service agreement and exhibits, which terms of an agreement would be considered conforming or non-conforming. Louisville states that Texas Gas's proposed *pro forma* exhibits are broadly worded and do not provide a highly structured series of blank spaces as required

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<sup>8</sup> Proposed First Revised Sheet No. 3801. Texas Gas's proposed Original Sheet No. 5001 contains a *pro forma* exhibit to the PAL *pro forma* service agreement with similar language. Likewise, proposed *pro forma* exhibits to the negotiated rate *pro forma* service agreement on proposed Original Sheet Nos. 5303 (relating to primary points) and 5304 (relating to secondary points) and *pro forma* exhibits to the discounted rates agreements on proposed Original Sheet Nos. 5403 (relating to primary points) and 5404 (relating to secondary points) contain similar language.

<sup>9</sup> Proposed Third Revised Sheet No. 3800, proposed First Revised Sheet No. 4700, proposed Original Sheet No. 5301, and proposed Original Sheet No. 5401.

<sup>10</sup> *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,010 (2001); *see also ANR Pipeline Co.*, 98 FERC ¶ 61,247, at 62,002 (2002).

by the Commission. Louisville states, for example, that the provision in the proposed *pro forma* service agreement allowing additional exhibits is cryptic and fails to provide any guidance regarding what is and is not conforming. Furthermore, Louisville states that in Exhibit A, the use of such phrases as “which may include” and “any additional terms and conditions” afford great discretion to the pipeline. Louisville further objects that the *pro forma* service agreement and exhibits do not provide a blank to insert operating pressure at primary receipt and delivery points. Finally, Louisville also expresses concern that Texas Gas’s filing may be premature given other tariff changes that Texas Gas has proposed or is planning to make in the near future.

13. Cities similarly argue that Texas Gas’s filing takes *Southern Star* to a perverse conclusion by creating *pro forma* agreements so permissive that everything is effectively conforming. Cities state that under Commission regulations, the *pro forma* agreement must clearly define and limit the information that can be inserted into the blank spaces so that the blank spaces may only be filed with specific information.<sup>11</sup> Cities further add that without sufficient detail, there can be no presumption that the ensuing agreements will be just and reasonable and not unduly discriminatory. Cities state that Texas Gas should specify in its *pro forma* service agreements all of the provisions for which it seeks flexibility and which are permissible. To the extent that the pipeline enters into an agreement containing a provision not specifically identified in the relevant *pro forma*, then Cities argue that it should file the actual service agreement with the Commission for individual review as non-conforming.

14. In its answer, Texas Gas states that it committed to the Commission’s Office of Enforcement to file “simplified” *pro forma* service agreements. Texas Gas avers that the simplified *pro forma* service agreements are a key element in Texas Gas’s effort to achieve compliance with *Southern Star*.

15. Texas Gas contends that the protests ignore several factors. First, Texas Gas states that the tariff, not the exhibits, controls in the event of a conflict. Second, Texas Gas states that the language of the exhibit is specifically limited to primary point information and related terms and conditions as they are permitted by the tariff. Third, Texas Gas states that it would be too cumbersome to create a set of exhibits that addresses every issue and that such a structured *pro forma* agreement would cause many non-conforming provisions. Texas Gas asserts that including a laundry list of exhibits to meet the different contractual need of each customer would complicate contracting practices and increase the chance of inadvertent errors. Fourth, Texas Gas asserts that the proposed exhibits create a much more flexible and efficient approach to contracting

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<sup>11</sup> Citing *Northern Natural Gas Company*, 109 FERC ¶ 61,151, at PP 6-7 (2004); 118 C.F.R. § 154.110 (2008).

for capacity. Texas Gas states that although the Commission in the past has rejected a proposal for a blank in a *pro forma* for lacking specificity, the Commission did so in that instance because there was no limit to the type of information that might be inserted.<sup>12</sup> Texas Gas states that, in contrast, the exhibits proposed in this docket are limited both by point (and in some cases rate) information and tariff terms.

16. Regarding the language in Exhibits A and B, Texas Gas states that the exhibits provide that they may only contain “additional terms and conditions permitted by the tariff.” Texas Gas states that this is consistent with Texas Gas’s current *pro forma* Negotiated Rate Agreement, which includes a heading that reads: “Other [as permitted by the tariff.]”<sup>13</sup> Texas Gas further adds that the exhibits will not create non-conforming contracts. Texas Gas states that the Commission has provided the industry guidance that inserting language into a transportation agreement that is consistent with the tariff does not render a contract non-conforming.<sup>14</sup>

17. Finally, Texas Gas asserts that the Commission’s enforcement authority provides sufficient protection against Texas Gas’s perceived discretion to negotiate individual terms and conditions.

18. In their joint answer, Cities and MLGW assert that the language in the proposed *pro forma* service agreement would allow Texas Gas to add as many exhibits to its agreements as it would like. Cities and MLGW aver that any limiting language in Exhibit A is inapplicable to the other exhibits permitted by this provision. Cities and MLGW also assert that language in the *pro forma* service agreement stating that the Texas Gas tariff will control in the event of conflicts between the agreement and the tariff does not prevent Texas Gas from including subject matter that is simply not covered by the tariff. Cities and MLGW assert that the language in the proposed exhibits only prevents inclusion of material that directly conflicts with the tariff. Cities and MLGW emphasize that only through individual filing and review of such provisions can the Commission determine if they are just and reasonable and not unduly discriminatory.

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<sup>12</sup> *Citing Northern Natural Gas Company*, 109 FERC ¶ 61,151, at PP 6-7 (2004).

<sup>13</sup> Texas Gas Transmission, LLC, FERC Gas Tariff, Third Revised Volume No. 1, Original Sheet No. 5300.

<sup>14</sup> *Citing Natural Gas Pipeline Co. of America LLC*, 111 FERC ¶ 61,376, at P 10 (2005).

Commission Findings:

1. Pro Forma Service Agreements

19. The provision in Texas Gas's proposed *pro forma* service agreements allowing the insertion of additional exhibits containing undefined "contractual terms" lacks the specificity required by Commission policy. The Commission requires pipelines to include *pro forma* service agreements in their tariffs in order to comply with NGA section 4(c)'s requirement that pipelines file all contracts which affect the pipeline's rates and services "in any manner." The filing of the *pro forma* service agreement gives the Commission and other interested parties an opportunity to review that service agreement in order to ensure that its provisions are just and reasonable and not unduly discriminatory. This enables the Commission to exempt pipelines from filing service agreements with individual customers that conform to the *pro forma* service agreement.<sup>15</sup> For this procedure to satisfy the filing requirements of NGA section 4, the *pro forma* service agreement must define the information that may be included in its blanks with sufficient clarity for the Commission to understand the nature of the contractual provisions it is authorizing the pipeline to enter into. For example, the Commission has held that allowing a blank section labeled "Other" in a *pro forma* service agreement is too broad and vague, and could lead to the inclusion of impermissible terms and conditions of service.<sup>16</sup>

20. Texas Gas's proposed language allowing additional exhibits does not sufficiently define the information which could be included in those exhibits without the need to file them with the Commission. Deprived of the opportunity to adequately review the types of provisions which the *pro forma* service agreement would authorize Texas Gas to include in such exhibits, the Commission lacks the ability to ensure that those contractual terms would be just and reasonable and not unduly discriminatory.

21. Moreover, the vague *pro forma* service agreement provision allowing for the insertion of undefined exhibits inhibits customers from easily tracking and understanding all of the terms that may be inserted into the service agreements. Such lack of clarity poses a substantial inconvenience to pipeline customers, creates confusion, and increases the risk of undue discrimination.

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<sup>15</sup> *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,001-2 (2001).

<sup>16</sup> *See Northern Natural Gas Co.*, 102 FERC ¶ 61,171, at P 19 (2003) (*Northern Natural*).

22. However, the Commission recognizes Texas Gas's desire to develop a flexible approach to its *pro forma* service agreements and to minimize the number of non-conforming agreements. In *Northern Natural*, the Commission required the pipeline to list in a section of its GT&C the provisions which could be included in its proposed broadly defined "blank" for other information, together with references to the specific tariff provisions authorizing it to negotiate those provisions.<sup>17</sup> As a condition of the acceptance of this order, Texas Gas must add to its GT&C a similar list outlining the content of the exhibits that Texas Gas may attach to the proposed *pro forma* service agreement. Consistent with similar tariff sheets accepted by the Commission, the list to be inserted into Texas Gas's tariff should reference the specific section of Texas Gas's tariff (or other authority) authorizing each particular provision and specifying the rate schedules to which each provision applies.<sup>18</sup> If no tariff authority is necessary, such as for the type of customer information (names, addresses, etc.) that Texas Gas used as an example in its transmittal letter, Texas Gas merely needs to state the information that could be included in the exhibit. In the future, to the extent that Texas Gas makes subsequent tariff changes which it wishes to be able to incorporate into the exhibits, Texas Gas must revise the list in its GT&C accordingly.

23. Also, as a condition of acceptance, Texas Gas must revise the open-ended language describing the exhibits that may be inserted to specify that any incorporated exhibits will only include provisions listed in the section of its GT&C that identifies the specific terms which Texas Gas can modify. The list will provide clarity and assure that Texas Gas implements these provisions in a non-discriminatory manner. As Texas Gas negotiates contracts with customers, if the parties desire to include a provision which is not listed in the tariff, Texas Gas may submit the agreement as a non-conforming agreement for Commission consideration.

24. The Commission emphasizes that even if a provision is included in the *pro forma* service agreement and considered conforming, the pipeline must post any special details pertaining to pipeline transportation contracts consistent with section 284.13(b)(1)(viii) of the Commission's regulations.<sup>19</sup> Requiring Texas Gas to post special details further increases transparency and provides customers with knowledge regarding the provisions that Texas Gas has made available.

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<sup>17</sup> *Northern Natural*, 102 FERC ¶ 61,171 at P 19.

<sup>18</sup> See Section 58 of the General Terms and Conditions in Northern Natural Gas Company's Tariff, *Fifth Revised Sheet No. 308 and 309*.

<sup>19</sup> 18 C.F.R. § 284.13(b)(1)(viii) (2008).

## 2. Pro Forma Exhibits

25. The exhibits proposed by Texas Gas which identify primary points and secondary points also contain language that does not adequately specify the terms that Texas Gas intends to incorporate. For example, the proposed exhibit to Texas Gas's contract for FT/STF/NNS/NNL/SGT/SGL/SNS service states that unspecified "additional terms and conditions permitted by the Tariff and related to the Primary Points" may be inserted.<sup>20</sup> Such language does not provide an adequate description of the provisions that may be included in the blank on the exhibit. As a condition of acceptance, Texas Gas must specifically identify all terms and conditions that may be inserted onto the proposed exhibits as conforming provisions and identify the tariff provisions that authorize these additional terms. In the future, to the extent that Texas Gas makes subsequent tariff changes and wishes to incorporate additional terms into its exhibits, then Texas Gas must revise the exhibits accordingly to identify those terms.

26. For example, in both its Answer and in its filings in Docket No. RP09-556-000 which modified its tariff sheets to provide that Texas Gas may negotiate operating pressure at receipt and delivery points,<sup>21</sup> Texas Gas has represented that operating pressure is among the "additional terms and conditions" referenced by the proposed exhibit language. In its filings in RP09-556, Texas Gas has represented that it would be willing to add "maximum and/or minimum pressure for receipt and/or delivery points" to the listed terms on the exhibit.<sup>22</sup> Consistent with our findings here, operating pressure should be specifically identified either on the exhibit or in a tariff provision explicitly referenced by the exhibit.

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<sup>20</sup> See footnote 8 *supra*.

<sup>21</sup> In Docket Nos. RP09-556, *et al.*, Texas Gas filed tariff sheets providing Texas Gas authority to negotiate maximum and minimum operating pressures at delivery and receipt points. At that time, Louisville raised the objection that Texas Gas's proposed *pro forma* service agreement in Docket No. RP09-548-000 did not contain a blank for inserting operating pressure. The Commission accepted Texas Gas's filing subject to conditions, and we stated that we would address the adequacy of Texas Gas's *pro forma* service agreement in the Docket No. RP09-548 proceedings. *Texas Gas Transmission, LLC*, 127 FERC ¶ 61,192, at P 13 (2009).

<sup>22</sup> June 12, 2009 Explanation of Texas Gas, Transmission LLC, filed in Docket Nos. RP09-556-000, *et al.*

27. Texas Gas's proposed exhibits also state that:

“Identify Primary Point(s) covered by the Agreement, which may include but need not be limited to Receipt Point, Name, Receipt Point Meter Number, Delivery Point Name, Delivery Point Meter Number, Volume, and Contract Path(s)....”

The parties object to Texas Gas's usage of the phrase “need not be limited to” in this context. To the extent that the “need not be limited to” language applies only to additional information that is needed or useful to identify primary points, then the “need not be limited to” language is not problematic. However, this phrase should not be used to justify the insertion of terms and conditions of service that are not otherwise enumerated in the *pro forma* service agreement and exhibits. As a condition of acceptance of this filing, the Commission requires Texas Gas to modify its proposed exhibits to clarify that any additional information that is not enumerated will exclusively be used for the purposes of identifying the primary point.<sup>23</sup>

3. *Other Provisions of Texas Gas's Proposed Pro Forma Service Agreement*

28. Similar concerns require revisions to other provisions in Texas Gas's proposed *pro forma* service agreements. Texas Gas's proposed “Contract Demand” section identifies the types of contract demand that may be inserted, but states that this information is “not limited to” the types listed.<sup>24</sup> Texas Gas is ordered to clarify the additional types of contract demand that it proposes to insert and the applicable tariff provisions.

29. The contract demand provision also refers to “information related to” contract demand ramp ups and “other changes.” The Commission is concerned that such language will allow the incorporation of unidentified terms and conditions of service related to contract demand. As a condition of acceptance of this filing, Texas Gas must clarify this provision consistent with this order by listing the applicable provisions related to contract demand in the *pro forma* service agreement and referencing the specific provisions of Texas Gas's tariff which identify such terms and conditions.

30. Likewise the proposed *pro forma* service agreement permits a contractual right of first refusal with terms “that are permitted by the tariff.” The Commission requires Texas

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<sup>23</sup> Similar changes should be made to those exhibits that reference secondary points.

<sup>24</sup> Such contract demand terms appear on proposed Third Revised Sheet No. 3800, proposed First Revised Sheet No. 4700, proposed Original Sheet No. 5301, and proposed Original Sheet No. 5401.

Gas to reference the specific tariff provisions referred to in the proposed *pro forma* service agreement as a condition of acceptance of this filing.

**B. The Effect of the Revisions to the Pro Forma Service Agreement on Contractual Rights**

31. Several customers have expressed concern regarding the effect of Texas Gas's filing on the contractual rights of existing customers. Cities state that, consistent with the Commission's May 8, 2009 order in Docket No. RP09-505-000,<sup>25</sup> the Commission should clarify that the *pro forma* agreement revisions proposed in this filing cannot be used to force upon customers with contractual extension rights any substantive contractual changes. Similarly, MLGW states that it is not clear how Texas Gas's filing in this proceeding relates to the requirement established in Docket No. RP09-505-000 that new service agreements be executed as a condition for customers exercising extension rights.<sup>26</sup> MLGW also seeks clarification that nothing in this filing alters the current rates, terms, and conditions of existing service agreements.

32. In its Answer, Texas Gas states that to the extent that certain terms and conditions in a rollover contract differ from the proposed *pro forma* service agreements, the contracts will be filed with the Commission as non-conforming contracts for Commission review. Texas Gas also states that to the extent terms and conditions of the rollover contract differ from the current *pro forma* service agreement or tariff and Texas Gas and the customer agree to include those different terms in the new rollover agreement, such terms will be added to the agreement. Texas Gas asserts that the adoption of the proposed *pro forma* agreements will facilitate the review contemplated by the Commission in Docket No. RP09-505-000.

33. In their joint answer, MLGW and Cities state that Texas Gas's answer contradicts the Commission's May 8, 2009 Order in Docket No. RP09-505-000. MLGW and Cities express concern regarding Texas Gas's statement:

To the extent that certain terms and conditions of a rollover contract differ from the current *pro forma* service agreement or tariff *and Texas Gas and the customer agree to include those differing terms in the new rollover agreement*, such terms will be added to the agreement.<sup>27</sup>

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<sup>25</sup> *Texas Gas Transmission, LLC*, 127 FERC ¶ 61,132 (2009) (May 8, 2009 Order).

<sup>26</sup> *Citing* May 8, 2009 Order, 127 FERC ¶ 61,132.

<sup>27</sup> *Quoting* Texas Gas May 15, 2009 Answer at 5 (emphasis added).

MLGW and Cities state that Texas Gas seems to be asserting that it has a right to unilaterally exclude pre-existing contract provisions from the replacement agreement, thereby terminating provisions in customer agreements. Cities and MLGW state that this is inconsistent with the Commission's holding in the May 8, 2009 Order, which established that Texas Gas's new tariff provision will have no substantive effect as to the rights or obligations under a new service agreement when a customer elects to rollover an expiring agreement.<sup>28</sup> The MLGW and Cities state that the Commission has thus required Texas Gas to ensure that the new agreements contain all of the terms in the expiring agreements, unless the counterparties are amenable to a change. The MLGW and Cities assert that the Commission did not give Texas Gas any discretion to reject "those differing terms," as Texas Gas now suggests.

### Commission Findings

34. There has been no indication that the revised *pro forma* service agreements change the substantive rights of customers pursuant to their current contracts, and the Commission accepts the revised *pro forma* service agreement subject to this understanding. With regard to the contract extension rights, in the May 8, 2009 Order in Docket No. RP09-505-000, the Commission accepted Texas Gas's proposal to modify its GT&C to require that when a customer extends a service agreement, it must sign a new service agreement based upon the then-current tariff. However, the Commission accepted the requirement to execute a new service agreement subject to the understanding that the requirement to execute a new service agreement shall have no substantive effect on the customer's existing rights or obligations when a new service agreement is executed after a customer's election to exercise its rollover rights, absent a customer's agreement to a change. Rehearing and clarification have been sought regarding the May 8, 2009 Order. The Commission accepts Texas Gas's revised tariff sheets subject to the outcome of that proceeding.

### **C. Secondary Points**

35. MLGW also states that the proposed *pro forma* service agreement does not include language regarding secondary points. As a result, MLGW states that the filing does not make clear that Texas Gas will continue to post available secondary points on its website, although MLGW states that Texas Gas will presumably continue this practice.

36. Texas Gas states that the secondary point of receipt is a right granted to customers in the tariff that does not need to be restated in the *pro forma* service agreements. Since access to secondary points is a right granted under certain rate schedules in Texas Gas's tariff, customers will be granted access to such applicable points as they have in the past.

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<sup>28</sup> Citing May 8, 2009 Order, 127 FERC ¶ 61,132 at P 18.

The proposed *pro forma* discounted/negotiated rate letter agreements specifically address this issue from a pricing perspective by providing a space to list secondary points that the customer can access at a discounted/negotiated rate.

### Commission Findings

37. Texas Gas has removed the term from its *pro forma* service agreements specifying that “Customer shall have access to available secondary points of receipt, as listed on Texas Gas’s internet website.”<sup>29</sup> Texas Gas’s tariff provides customers with a right to secondary receipt and delivery points, but this provision does not reference Texas Gas’s website.<sup>30</sup> The Commission requests Texas Gas to clarify whether it proposes to continue to post the same information regarding available secondary points on its website.

#### **D. Supply Lateral Rights**

38. Cities urge the Commission to require that Texas Gas include blanks for supply lateral capacity in its *pro forma* firm transportation service agreement. Cities state that it has grandfathered supply lateral capacity rights. Cities state Texas Gas’s current tariff guarantees that such provisions remain in effect.<sup>31</sup> Cities explain that Texas Gas’s current tariff includes a *pro forma* Exhibit C containing blanks for specifying supply lateral capacity rights, but that Texas Gas’s proposed *pro forma* service agreements do not list supply lateral rights. MLGW also notes that Texas Gas has removed references to supply lateral rights in its contracts and it is not clear how this change will impact Texas Gas customers.

39. Similarly, Louisville states that its currently effective service agreements contain rights to supply lateral capacity. Louisville states that because Texas Gas’s proposal to delete Exhibit C from its tariff opens the possibility that Louisville may have difficulty maintaining its existing supply lateral capacity rights, the Commission should reject it.

40. In its answer, Texas Gas responds that its current exhibit proposals allow the flexibility to insert supply lateral rights where necessary. Texas Gas represents that different customers have different lateral supply capacity, because customer access to supply lateral capacity changed in 2007. Texas Gas explains that some customers have

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<sup>29</sup> Proposed Second Revised Sheet No. 3800, proposed Original Sheet No. 3900, and proposed Second Revised Sheet No. 4200.

<sup>30</sup> First Revised Sheet No. 1801, First Revised Sheet No. 1802, Original Sheet No. 1803, and Original Sheet No. 1804.

<sup>31</sup> *See, e.g.*, Second Revised Sheet No. 3800.

access to supply lateral capacity, and others do not. Texas Gas notes that Zones SL and Zone 1 are the only zones that contain supply laterals so some customers whose path does not include these zones may not possess any supply lateral capacity rights. Texas Gas states that the flexibility in its proposed *pro forma* service agreements and exhibits allows for such varying provisions where appropriate without triggering any non-conforming changes.

41. However, Texas Gas states that it is willing to include a reference to supply lateral capacity rights in the description of Primary Point(s) included in Exhibit A of the firm transportation services *pro forma*. Because this provision does not apply to all customers, Texas Gas states that it will note that the supply lateral capacity rights will only be included if applicable to the particular shipper. Texas Gas states that this provision only needs to be included in the *pro forma* service agreement for firm transportation services because only the firm transportation services may have supply lateral capacity rights.

#### Commission Findings

42. Texas Gas's changes to its *pro forma* service agreement do not alter customers' supply lateral rights, including grandfathered rights. The General Terms and Conditions of Texas Gas's current tariff guarantee grandfathered access,<sup>32</sup> and Texas Gas has not proposed to modify that requirement.

43. However, as discussed previously, for a provision in a contract to be considered conforming, the provision must either be explicitly referenced in the *pro forma* service agreement or the *pro forma* service agreement must reference a tariff sheet listing that particular provision.<sup>33</sup> If a contract is non-conforming with the *pro forma* service agreement, then the contract must be filed with the Commission. Texas Gas has stated that it will add a provision for supply lateral rights to the list of enumerated items on Exhibit A to the *pro forma* service agreement for firm transportation.<sup>34</sup> As a condition of the acceptance of this filing and consistent with the requirement to list the specific terms

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<sup>32</sup> See Section 8.7.3 of the GT&C of Texas Gas's Tariff, Third Revised Vol. No. 1, Substitute Original Sheet No. 2006 (providing that "[s]uch grandfathered supply lateral capacity allocations will remain in full force and effect for the life of Customer's applicable contract, including any automatic rollover or evergreen terms, and will be subject to Customer's right of first refusal, if applicable...").

<sup>33</sup> See *Northern Natural*, 102 FERC ¶ 61,171.

<sup>34</sup> Proposed First Revised Sheet No. 3801.

that may be inserted into its *pro forma* exhibits, Texas Gas must modify its tariff accordingly.

#### **E. Technical Conference and Suspension**

44. Cities state that Texas Gas has made and plans to continue making numerous tariff revisions, including the revised *pro forma* service agreements, as a result of the Commission's 2008 order in *Southern Star*. Cities request that the Commission suspend Texas Gas's proposed tariff revisions for the maximum statutory period, pending the outcome of a technical conference to consider the actual requirements of *Southern Star* and Texas Gas's initiative to address these requirements, including all of the related tariff revisions.

45. In its answer, Texas Gas urges the rejection of Cities' request for a technical conference. Texas Gas states that a technical conference would provide little benefit while imposing significant burdens on the parties. Texas Gas states that the only issue before the Commission in this proceeding is whether the proposed *pro forma* service agreements are just and reasonable. Texas Gas avers that there is no legitimate reason to consolidate into a technical conference several tariff filings which are unrelated except for the fact that they were prompted by Texas Gas's recent review of its service agreements following *Southern Star*.

#### **Commission Findings**

46. The Commission denies Cities' request for a technical conference. The issue before the Commission in this proceeding is whether Texas Gas's proposed *pro forma* service agreements are just and reasonable and not unduly discriminatory. A technical conference is not necessary to dispose of this issue and would impose unnecessary delay and expense upon the parties. Although Texas Gas has made numerous filings in other dockets that it claims relate to compliance with Commission requirements following *Southern Star*, many of Texas Gas's proposed tariff changes involve different issues from the matter before the Commission here. To the extent interrelationships between the filings exist, Cities has not demonstrated that a technical conference is necessary to assess whether Texas Gas's proposals conform to Commission policies and regulations. If Texas Gas makes subsequent revisions to its tariff, it will need to adjust its *pro forma* service agreements accordingly. Moreover, to the extent that Cities object to Texas Gas's proposed tariff changes in other proceedings, Cities has had the opportunity to file protests in those dockets.

#### **F. Suspension**

47. Based upon a review of the filing, the Commission finds that the proposed tariff sheet has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept

the tariff sheets for filing and suspend their effectiveness for the period set forth below, subject to the conditions set forth in this order.

48. The Commission's policy regarding suspensions is that tariff 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.<sup>35</sup> 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.<sup>36</sup> Such circumstances do not exist here. Accordingly, the Commission will exercise its discretion to accept and suspend these tariff sheets to become effective December 1, 2009, or some earlier date specified in a subsequent Commission order, subject to the conditions identified in this order and further Commission review.

The Commission orders:

(A) The tariff sheets in the Appendix are accepted and suspended effective December 1, 2009, or some earlier date specified in a subsequent Commission order, subject to the conditions identified in this order and further Commission review.

(B) Texas Gas is directed to file revised tariff sheets and explanations consistent with this order within 30 days of the date this order issues.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>35</sup> See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

<sup>36</sup> See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

Appendix

**Texas Gas Transmission, LLC  
FERC Gas Tariff  
Third Revised Volume No. 1**

**Tariff Sheets Accepted and Suspended, Subject to Conditions  
Effective December 1, 2009**

Second Revised Sheet No. 3  
First Revised Sheet No. 1101  
Third Revised Sheet No. 3800  
First Revised Sheet No. 3801  
First Revised Sheet No. 3900  
Third Revised Sheet No. 4200  
First Revised Sheet No. 4700  
First Revised Sheet No. 4701  
First Revised Sheet No. 4702  
First Revised Sheet No. 5000  
First Revised Sheet No. 5001  
First Revised Sheet No. 5002  
Second Revised Sheet No. 5203  
Third Revised Sheet No. 5225  
Original Sheet No. 5301  
Original Sheet No. 5302  
Original Sheet No. 5303  
Original Sheet No. 5304  
Sheet No. 5305  
Original Sheet No. 5401  
Original Sheet No. 5402  
Original Sheet No. 5403  
Original Sheet No. 5404  
Sheet No. 5405