133 FERC ¶ 61,191
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Tennessee Gas Pipeline Company Docket No. RP11-1484-000

ORDER ACCEPTING TARIFF RECORD

(Issued December 1, 2010)

1. On November 1, 2010, Tennessee Gas Pipeline Company (Tennessee) submitted a revised tariff record,[1] pursuant to section 4 of the Natural Gas Act (NGA) and Part 154 of the Commission's regulations, amending Tennessee's tariff to: (1) replace its existing prohibition on scheduling of routine, non-emergency maintenance except between May 1 and November 1 (Blackout Dates), with a prohibition on such maintenance during "periods of peak demand," and (2) reduce the maintenance outage notification period from 15 days to "as soon as reasonably practicable, but no later than five days prior to the scheduled activity." In this order, the Commission accepts the proposed tariff record to be effective December 2, 2010, as requested.

I. Background and Details of the Filing

2. Tennessee proposes to amend Article XII, *Excuse of Performance*, of the General Terms and Conditions (GT&C) of its tariff to replace the existing prohibition on "Transporter or Shipper" scheduling "routine, non-emergency maintenance except during the period between May 1 and November 1," with a prohibition on scheduling such maintenance "during periods of peak demand." Tennessee states that its market conditions have changed from a winter peak to a dual summer/winter peak and that substantial areas of its pipeline system operate at a high load factor for extended periods on a year-round basis. Tennessee asserts that the flexibility of planning routine, non-emergency maintenance during the full twelve months of the year will enable it to better plan work around periods of peak demand when they arise. Tennessee also states that it now receives significant supplies into the middle of its system as well as from traditional

[1] Sheet No. 363, Warranty of Title Excuse of Performance, 1.0.0 to TGP Tariffs, FERC NGA Gas Tariff.

supply points. Tennessee argues that given this multiplicity of supply options, just as Tennessee often experiences peak demand conditions in various segments of its pipeline system during the May through October period, certain segments of the system may experience throughput conditions below peak levels during the November through April period. Tennessee contends that the ability to schedule maintenance at non-peak times, whenever they occur during the year, will help to avoid possible unplanned outages that could result if maintenance work were postponed because of the current restriction.

3. Tennessee also proposes to amend the *Excuse of Performance* section of its GT&C to reduce the outage notification for maintenance activities from "no later than 15 days prior to the scheduled activity" to "as much notice as reasonably practicable, but no later than five days prior to the scheduled activity." Tennessee notes that numerous pipeline tariffs have a more flexible reasonable notice standard and no minimum notification requirement. Tennessee asserts that there are occasions when a five-day notice period would benefit both the customers and Tennessee—for example, instances of unseasonably warm weather in the winter and windows of opportunity during summer peak periods that would allow Tennessee to accomplish necessary work if it was not inhibited by the 15-day notification period. Tennessee argues that five days' notice would give the market time to adjust business plans in response to any potential capacity impact and Tennessee time to mobilize a crew to perform the work when loads drop off, thus providing more reliable service over the entire year.

II. Public Notice, Interventions and Comments

4. Public notice of Tennessee's filing was issued on November 2, 2010. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2010). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2010), all timely 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. PSEG Energy Resources & Trade LLC (PSEG ER&T), Indicated Shippers,[2]

[2] The Indicated Shippers are: ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation; Hess Corporation; and Shell Offshore Inc.

Joint LDCs,[3] New England LDCs,[4] and NiSource Distribution Companies[5] filed protests. Tennessee Valley Authority (TVA) filed a motion to intervene and comments in support of the filing.[6] On November 23, 2010, Tennessee filed an answer to the protests. Rule 213(a)(2)[7] of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Tennessee's answer because it has provided information that assisted us in our decision-making process.

5. Various protestors assert that Tennessee has not provided any specific information justifying its proposed tariff changes. Joint LDCs specifically request clarification concerning various aspects of Tennessee's proposal, including Tennessee's contention that market conditions and supply options have changed, the need for reduced notice, and the meaning of "peak demand" in the proposed tariff language. Accordingly, protestors urge the Commission to reject the filing or suspend the proposed tariff record for the maximum statutory period and convene a technical conference to explore the basis for Tennessee's assertions about the benefits of the proposal and the cost and reliability implications for shippers. Joint LDCs alternatively request that the Commission establish

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[3] The Joint LDCs are: The Brooklyn Union Gas Company d/b/a National Grid NY; Boston Gas Company, Colonial Gas Company, and Essex Gas Company, collectively d/b/a National Grid; EnergyNorth Natural Gas Inc. d/b/a National Grid NH; Niagara Mohawk Power Corporation d/b/a National Grid; The Narragansett Electric Company d/b/a National Grid; National Fuel Gas Distribution Corporation; and New Jersey Natural Gas Company.

[4] The New England LDCs are: Bay State Gas Company d/b/a Columbia Gas of Massachusetts; The Berkshire Gas Company; Connecticut Natural Gas Corporation; Fitchburg Gas and Electric Light Company; City of Holyoke, Massachusetts Gas and Electric Department; Northern Utilities, Inc.; NSTAR Gas Company; The Southern Connecticut Gas Company; Westfield Gas & Electric Department; and Yankee Gas Services Company.

[5] The NiSource Distribution Companies are: Columbia Gas of Kentucky, Inc; Columbia Gas of Ohio, Inc.; and Columbia Gas of Pennsylvania, Inc.

[6] NextEra Energy Resources, LLC filed a motion to intervene that included a statement that it supports Tennessee's proposed tariff revisions.

[7] 18 C.F.R. § 385.213(a)(2) (2010).

settlement judge procedures to permit parties to air their concerns. Joint LDCs also request that this matter be consolidated with Tennessee's imminent section 4 rate filing.[8]

6. PSEG ER&T argues that conducting maintenance, which could include taking facilities out of service or otherwise limiting the flexibility of system operations, could create a greater possibility that an unanticipated system upset could disturb the flow of gas to firm customers. PSEG ER&T states that this risk is currently managed by the restriction of maintenance to the period of the year when high priority customers are not serving peak or seasonal winter loads, but that this filing upsets the existing balance by allowing maintenance at any time of the year. PSEG ER&T contends that the proposal has the effect of shifting risk from interruptible, non-reservation-charge-paying summer customers to firm, reservation-charge-paying winter customers.

7. NiSource Distribution Companies also argue that the proposal will make it more difficult to secure transportation capacity from alternative sources and that they continue to experience their peak usage during the winter months and need to avoid service disruptions during this period.

8. Joint LDCs express concern with the increased costs of arranging alternate gas supplies in the winter to replace supplies delivered by Tennessee and the administrative burden of arranging for alternative supplies with shortened advanced notice. Joint LDCs assert that they cannot afford to have their ability to serve their firm customers' demands compromised because Tennessee relied on a five-day weather forecast that proves unreliable.

9. Indicated Shippers express concern that the proposed tariff changes would impose new, undue burdens on its shippers by requiring that shippers, in addition to Tennessee, not schedule routine non-emergency maintenance "during periods of peak demand," which is not defined in the proposed tariff provision. Indicated Shippers propose alternative tariff language removing "shipper" from the provision and request that the Commission direct Tennessee to modify its proposed changes accordingly. Indicated Shippers argue that Tennessee's proposal to reduce the notice period to five days is unjust and unreasonable because it does not recognize the potential difficulty the notice period could cause in particular circumstances and time periods, such as during holiday weekends when five calendar days' advance notice could equate to as little as a single business day in which a shipper would need to make alternative sales and transportation arrangements. Indicated Shippers propose alternative tariff language that would change the notice period to five business days.

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[8] PSEG ER&T also states that it would not oppose consolidation of this case into Tennessee's upcoming section 4 rate case.

10. In its comments in support of the filing, TVA states that it recognizes the need to shift scheduled maintenance from predominantly summer-only activity to a year-round basis due to changing customer load profiles and sympathizes with the need to react to unexpected weather changes. TVA states that it agrees with the shortened notice as a reasonable balance to add value through flexibility in scheduling.

11. In its answer to the protests, Tennessee reiterates that its market conditions have changed from a winter peak to a dual summer/winter peak, and therefore the Blackout Dates no longer reflect load patterns on Tennessee's system and have no rational connection to the weather patterns or market conditions that should serve as the basis for scheduling routine maintenance. Tennessee also reiterates that its proposal would allow it to perform routine maintenance during periods of relatively low use of its pipeline, which can occur at any time throughout the year. Tennessee contends that the Blackout Dates unnecessarily extend the backlog of scheduled maintenance and notes that the proposed changes do not affect its obligation to schedule maintenance so as to minimize or avoid service interruptions. Tennessee also reiterates that its proposal is consistent with the tariff provisions of many other pipelines.

12. Tennessee responds to the concern that the proposal will result in degradation of existing service levels without offsetting benefits by arguing that allowing Tennessee to approach routine, non-emergency maintenance in a deliberate fashion will enhance existing service levels and avoid the costs and risks of deferring maintenance unnecessarily. For example, Tennessee states that it experienced more than two dozen spark plug failures on multiple units during the last winter season, and contends that if it had been permitted to perform routine checks while the units were offline during off-peak demand, the number of failures may have been reduced by preventative maintenance.

13. Tennessee argues that a reduction of the notice period is necessary to effectuate the purpose of eliminating the Blackout Dates because continued use of the 15-day notice period would negate any added flexibility that might otherwise be gained if the proposed tariff changes are accepted by preventing Tennessee from taking advantage of brief periods of warm weather and weekend demand declines. Tennessee responds to Indicated Shippers' suggestion of a five business day notice period by arguing that a five calendar day notice period is more than sufficient to allow customers to adjust their business plans in response to any potential capacity impact, and that the additional time proposed by Indicated Shippers would reduce Tennessee's ability to rely on more accurate weather forecasts and would defeat the purpose of the proposed changes. Tennessee reiterates that the five-day notice period is consistent with, and in many cases more conservative than, the tariff provisions of many other pipelines.

14. Tennessee asserts that its proposal is not complex and does not require a technical conference or consolidation with Tennessee's forthcoming section 4 rate filing. Tennessee also argues that suspending the proposed changes for the maximum suspension period would eliminate the period from December 1, 2010 to April 30, 2011,

during which Tennessee could otherwise find opportunities to perform maintenance. Finally, Tennessee argues that Indicated Shippers' proposal to strike the reference to "shippers" from the *Excuse of Performance* section of the GT&C is outside the scope of this proceeding, and clarifies that Tennessee's tariff does not define "peak," but states that it is a common industry term that was used in the prior version of this provision of Tennessee's tariff.

III. <u>Discussion</u>

15. As discussed below, the Commission finds Tennessee's proposed changes to Article XII, *Excuse of Performance*, of its GT&C, to be just and reasonable and therefore accepts the proposed tariff record.

16. Tennessee proposes to replace its existing prohibition on scheduling of routine, non-emergency maintenance during the Blackout Dates with a prohibition on such maintenance during "periods of peak demand," and proposes to reduce the outage notification period from 15 days to "as soon as reasonably practicable, but no later than five days prior to the scheduled activity." As Tennessee explains, Tennessee's market conditions have changed from a winter peak to a dual summer/winter peak, so that the currently-existing Blackout Dates for maintenance activities no longer correlate to the peak periods on its system. Tennessee explains that its proposal would allow it to perform routine maintenance during periods of relatively low use of its system, which can occur at any time throughout the year. Tennessee further explains that this will allow it to perform maintenance more efficiently, on an as-needed basis, avoiding a backlog of maintenance activities. Tennessee contends that currently, the Blackout Dates unnecessarily extend the backlog of scheduled maintenance.

17. We find Tennessee's proposal to be a reasonable response to the changing market conditions on Tennessee's system and that the proposal is adequately supported by Tennessee's filing and answer. Tennessee addresses the concerns of protestors regarding sufficient justification for the filing by providing additional clarification and support for the proposal in its answer. We also find that Tennessee's proposed provision is consistent with the tariff provisions of other pipelines, which provide even more flexibility for pipelines to schedule maintenance throughout the year.[9] Joint LDCs argue

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[9] *See* Transcontinental Gas Pipe Line Company, Fifth Revised Volume No. 1, Section 11, Force Majeure Provisions and Contract Entitlements, 0.0.0 ("Seller shall exercise reasonable diligence to schedule maintenance so as to minimize disruptions of service to Buyers and shall provide reasonable notice of the same."); Cheyenne Plains Gas Pipeline, L.L.C., CPG Tariffs, Part IV: GT&C, Section 5 – Service Conditions, 0.0.0 ("Transporter shall endeavor to cause a minimum of inconvenience to Shipper and, except in cases of emergency, shall give Shipper advance notice of its intention to so

(continued…)

that performing maintenance activities in the winter could increase costs, but customers of such other pipelines routinely arrange for alternate supplies throughout the year. We also note that Tennessee is still required by its tariff to "exercise reasonable diligence to schedule maintenance so as to minimize or avoid service interruptions." Moreover, section 7 of Tennessee's Rate Schedules FT-A, FT-BH, and FT-G, FT-IL requires it to provide demand charge credits whenever it is unable to schedule service for firm shippers because it is performing maintenance. That provides Tennessee a further incentive to minimize any service interruptions for firm shippers. Therefore, we find Tennessee's proposal to prohibit routine maintenance during periods of peak demand to be just and reasonable.

18. We also find Tennessee's proposed notice period to be reasonable. Tennessee asserts that reduction of the notice period from 15 to five days is necessary to effectuate the purpose of eliminating the Blackout Dates by enabling Tennessee to take advantage of throughput drop-offs associated with brief periods of warm weather and weekend demand declines. As discussed above, Tennessee's proposed tariff provision is consistent with the tariff provisions of other pipelines. In fact, Tennessee's proposed five-day notice period is more generous than the notice provided by many other pipeline tariffs, many of which only promise "reasonable notice" of maintenance outages.[10] While protestors argue that a reduced notification period will adversely affect shippers' ability to economically schedule alternative supplies, we agree with Tennessee that its proposed notice period is reasonable and should permit customers to adjust their business plans in response to a potential capacity impact.

19. The Indicated Shippers request that the Commission direct Tennessee to modify its proposed tariff provision to strike the reference to "Shipper" in Article XII, paragraph 1 of the tariff, so that the provision would no longer apply to shippers. As Tennessee states, Indicated Shippers' request is outside of the scope of this proceeding. Tennessee is not proposing to change this part of the tariff provision and therefore its inclusion in the provision is not at issue in this proceeding.

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interrupt the transportation of gas and of the expected magnitude of such interruptions."); Maritimes & Northeast Pipeline, L.L.C., Maritimes Database 1, 26., Force Majeure, 0.0.0 ("Pipeline shall exercise due diligence to schedule routine repair and maintenance so as to minimize disruptions of service to customers and shall provide reasonable notice of the same to Customers.").

[10] *See* n.9 above. *See also* Northern Natural Gas Company, Substitute Eighth Revised Sheet No. 226 to its FERC NGA Gas Tariff, Fifth Revised Volume No. 1, ("Northern shall provide Shipper reasonable advance notice of routine maintenance, repair, overhaul or replacement.").

20. A number of protestors request that Tennessee's proposal be set for technical conference or consolidated with Tennessee's forthcoming section 4 rate filing. We agree with Tennessee that a technical conference is not necessary nor is consolidation with a future filing. Tennessee's filing, as supplemented with its answer to the protests, provides sufficient information to support acceptance of its proposal. Therefore, we will accept Tennessee's proposed tariff changes effective December 2, 1010, as proposed.

The Commission orders:

Tennessee's revised tariff record is accepted effective December 2, 2010.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.