136 FERC ¶ 61,070
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.

Great Lakes Gas Transmission Limited Partnership Docket No. RP11-1723-000

ORDER ACCEPTING TARIFF RECORDS SUBJECT TO CONDITIONS

(Issued July 29, 2011)

1. On March 29, 2011, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed additional information to comply with the Commission's February 28 order.[1] The February 28 Order directed Great Lakes to file the additional information to clarify its proposal for allocating firm shippers' secondary out-of-path capacity and its proposed bumping provisions regarding interruptible shippers. The Commission finds Great Lakes' additional information adequately responds to the Commission's February 28 Order. However, upon review of this additional information, the Commission accepts Great Lakes' tariff records subject to conditions, including Great Lakes' filing revised tariff records within 30 days of the date this order issues, setting forth certain tariff changes discussed below.

Background

2. On January 26, 2011, Great Lakes filed revised tariff records[2] to modify the scheduling priority provisions set forth in section 6 of its General Terms and Conditions (GT&C). Among other changes,[3] Great Lakes proposed to allocate capacity among firm shippers seeking out-of-path secondary service by providing a higher priority to shippers paying a higher rate. Great Lakes states that this methodology allocates the capacity to the shipper that values it the most. Great Lakes also proposed to apply the same

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[1] *Great Lakes Transmission LP*, 134 FERC ¶ 61,148 (2011) (February 28 Order).

[2] *See* Appendix.

[3] A more detailed explanation of Great Lakes' filing is contained within the February 28 Order.

methodology to allocate capacity among interruptible shippers. Great Lakes also proposed a bumping provision providing that an interruptible shipper may bump an already-scheduled service of another interruptible shipper if the confirmed price for the subsequently nominated quantities is higher than that for the already-scheduled service.

3. NJR Energy Services Company (NJR Energy) filed a protest. On February 28, 2011, the Commission issued a letter order accepting and suspending Great Lakes' revised tariff records for five months, subject to conditions, to become effective August 1, 2011. The Commission also directed Great Lakes to file additional information within 30 days of the order's issuance regarding its capacity allocation proposal for firm secondary out-of-path service and the bumping provision relating to interruptible shippers.

Additional Information

4. Regarding the proposal for allocating firm, secondary out-of-path service, Great Lakes clarifies that the confirmed price will be calculated as the 100-percent load factor rate for service from the nominated receipt point to the nominated delivery point. Great Lakes adds that the confirmed price would include the reservation or negotiated rate plus any additional charge for service outside the zone(s) for the service to primary points.

5. The Commission asked Great Lakes to clarify how it would determine the confirmed price for certain specific situations. Great Lakes clarifies that in situations concerning capacity release, the confirmed price will be the price paid by the replacement shipper (i.e., the scheduling shipper), and not the releasing shipper. Great Lakes states that for negotiated rate transactions where a shipper is paying a rate above the maximum rate, it will use the maximum rate as the confirmed price. For expansion projects, Great Lakes states that the rates then currently in effect for, and being paid by, a shipper holding expansion capacity will be utilized in determining the confirmed price. Great Lakes states that if the confirmed price of an expansion shipper's contract exceeds that of a recourse shipper's contract, the expansion shipper will be awarded the capacity. Great Lakes added that, for index-based transactions, it will use the minimum rate associated with the contracted route as the confirmed price. It contends this will avoid incorrectly allocating capacity on a secondary basis to an index-based shipper based on a projected rate which is subsequently reduced at the month's end.

6. The Commission asked that Great Lakes explain how it would distinguish, for the purposes of allocation, between one shipper paying the maximum rate and one shipper with a discount slightly below the maximum rate but with an ACA charge that causes the total rate to exceed the maximum rate. Great Lakes offers an example showing that the maximum rate shipper is paying the higher confirmed price and would be awarded the available capacity before the discounted rate shipper. Great Lakes also provides two

examples showing long-haul shippers obtaining capacity over short haul shippers under Great Lakes' proposal.

7. In the February 28 Order, the Commission explained that under its no-bump rule, firm nominations cannot bump scheduled interruptible nominations during the intraday 2 nomination cycle. The Commission asked Great Lakes to explain why a similar policy rationale should not apply so as to limit the bumping during the intraday 2 nomination cycle of one interruptible service customer's scheduled nominations by another interruptible customer even if the latter customer offered a higher rate. In response, Great Lakes proposes modified tariff language to clarify that the no-bump rule applies to its proposed allocation changes.

8. In its February 28 Order, the Commission also directed Great Lakes to respond to all comments raised by NJR Energy. In response to NJR, Great Lakes asserts that similar economic value allocation methodologies for secondary firm capacity[4] have been accepted by the Commission in the past. Great Lakes contends that the adverse affects proposed by NJR Energy's on state retail unbundling, consumer choice, and capacity releases are speculative and that NJR Energy provides no specific evidentiary support for such adverse affects. Great Lakes questions whether a state unbundling program would allow its service providers to depend on interruptible and secondary out-of-path transactions as a means of guaranteeing service.

Notice and Comments

9. Public notice of the filing was issued on April 4, 2011, allowing for protests to be filed on or before April 11, 2011. NJR Energy filed a protest. Sequent Energy Management, L.P., (Sequent) and BG Energy Merchants, LLC, (BG Energy) filed adverse comments. On May 4, 2011, Great Lakes filed an answer to parties' protests and comments. On May 16, 2011, NJR Energy filed an answer to Great Lakes' answer. We will accept the answers that Great Lakes and NJR Energy filed because they provide additional information which aids in our decision-making process

10. In the protests, NJR and BG Energy assert that the confirmed price scheme discriminates against short-haul shippers by giving long-haul shippers priority access to secondary out-of-path capacity, since the long-haul shippers typically pay a higher rate for their capacity. NJR and Sequent argue that using the confirmed price scheme discriminates against certain shippers based on their vintage of the capacity and favors expansion shippers paying incremental rates over existing shippers paying rolled-in

[4] Great Lakes March 29 Filing at 10 (citing *Iroquois Gas Transmission System, L.P.*, 82 FERC ¶ 61,200, at 61,790 (1998)); *Trunkline Gas Co.,* 64 FERC ¶ 61,141, at 62,124-25 (1993)).

system-wide rates. NJR Energy also protests use of the minimum price as the confirmed price for index-based releases; it asserts the releasing shippers will have more difficulty providing capacity offers with index-based rates since these releases would be less attractive to potential replacement shippers.

11. Regarding capacity release, NJR Energy argues that Great Lakes' proposal gives a competitive advantage to capacity purchased from the pipeline over capacity released by firm shippers. It states that shippers often release capacity during off-peak periods or on a short-term basis and such releases are almost always at prices far below those prices reflected in the shipper's contract with the pipeline. BG Energy asserts that Great Lakes' proposal is inconsistent with the Commission's policies on flexible points and segmentation, since allowing Great Lakes to schedule secondary firm transportation on an economic basis will serve as a deterrent to segmentation.

12. BG Energy contends that shippers will be more reluctant to enter into discount arrangements considering the scheduling risk involved. Similarly, Sequent argues that Great Lakes' proposal is simply a means for Great Lakes to enhance its revenues, by enhancing its leverage to demand greater rates in discount and recontracting negotiations with existing shippers.

13. BG Energy and Sequent express concerns regarding the uncertainty they allege results from Great Lakes' proposal, contending that shippers cannot research the "firmness" of every potential firm agreement or withstand the risk of being bumped by a newer, longer-term contract. Sequent argues that, since Great Lakes' proposal interjects so much more uncertainty into the scheduling process for firm shippers, it not only increases the shippers' administrative and transactions costs, it also reduces their flexibility to source different supplies and to deliver to alternative markets, impairing the basic reliability and value of their firm services.

14. Regarding Great Lakes' claim that the Commission has accepted allocation by price for secondary capacity, BG Energy argues that the Commission may have allowed this proposal in the past on a few pipelines, but the decisions were all issued prior to landmark Commission orders on the subject such as Order Nos. 637 and 712. Sequent also asserts that the Commission has not in fact approved an identical economic mechanism in other proceedings.

15. Sequent contends that if the Commission accepts Great Lakes' proposed economic allocation mechanism, it must require Great Lakes to modify it to ensure the threshold viability of asset management arrangements (AMA). It expresses concerns that Great Lakes failed to include safeguards to ensure the continued development of AMAs and capacity release transactions pursuant to state retail unbundling program.

16. In its answer, Great Lakes argues that secondary capacity, by its very nature, is different than firm capacity in that it will always be limited by various factors such that it

should be rewarded efficiently to those that value it the most. It asserts that a shipper has no right to any secondary point priority and that such rights are inferior to primary point rights.

17. Great Lakes also rejects claims that its proposal would discriminate against short-haul shippers in favor of long-haul shippers. It offers two examples – one where a short-haul shipper would receive its capacity over a long-haul shipper based on their respective confirmed prices, and another where a short-haul and long-haul shipper have the same confirmed price and thus would receive their capacity *pro rata*. Great Lakes also responds to BG Energy's assertions that Great Lakes' proposal is contrary to the Commission's capacity release policies, and that its proposal is designed to make the pipeline's capacity more attractive than the capacity being released, thereby devaluing the shipper's released capacity. Great Lakes contends that the value a replacement shipper is willing to pay for capacity is a value that has often been determined by a competitive bidding process, that is to say what the market is willing to pay for the capacity. With regard to AMAs, Great Lakes states that it will use the releasing shipper's rate in determining the confirmed price for releases of capacity under an AMA or to a marketer participating in a state-regulated retail access program.

18. In its answer, NJR Energy maintains that the Commission should resolve allocation at out-of-path secondary points by looking at the rate paid by shippers for the underlying primary receipt to primary delivery firm service – the service from which they are given the right to access secondary points. NJR Energy argues that all firm shippers paying the maximum rate for the underlying service – whether the service is for short-haul or long-haul, existing or expansion, or firm service purchased on the release market or from Great Lakes – should be treated the same in accessing secondary out-of-path points, regardless of the total revenues that Great Lakes receives from the transaction.

Discussion

19. The Commission accepts Great Lakes' tariff records subject to the conditions discussed herein. Following the Commission's February 28 Order, the Commission issued its decision in *Tennessee Gas Pipeline Co.*,[5] which rejected a similar proposal to allocate priority for capacity among firm secondary out-of-the-path shippers according to each shippers' contracted price for firm service. The Commission rejected the argument, similar to the one advanced by Great Lakes in this proceeding, that such a proposal allocates capacity to the shipper that values it the most. The Commission explained that the shipper's contracted price for firm service bears no relation to the value to the shipper at a later time for service to a secondary point outside the originally contracted capacity

[5] 135 FERC ¶ 61,208 (2011) (Tennessee).

path.[6] Thus, the Commission concluded that such an allocation proposal is not consistent with allocating capacity to the highest valued use. Because Great Lakes' proposal is based on a similarly flawed economic premise, it has not shown its proposal to be just and reasonable.

20. As Great Lakes notes, the Commission has permitted allocation of secondary capacity according to price in the past. In these prior decisions, the Commission acknowledged that it was difficult to determine how much a firm shipper valued service to secondary points, but reasoned that the "best substitute for information on what that exact value might be is the shipper's firm contract rate because it reflects what value that shipper has placed on the total package of firm services that includes those secondary rights."[7] In *Tennessee*, the Commission reconsidered this conclusion and determined that the link between the firm contract rate originally accepted by the shipper and the shipper's subsequent valuation for an out-of-path secondary point was too tenuous to serve as a basis for allocating capacity. Thus, as the Commission rejected Tennessee's proposal because it lacked an economic justification, the Commission also rejects the similar proposal advanced by Great Lakes.

21. Accordingly, the Commission directs Great Lakes to file revised tariff records removing any provision allowing Great Lakes to schedule firm secondary out-of-path capacity based on price and incorporating an allocation methodology that is consistent with Commission policy, such as *pro rata* allocation.

22. Further, in its March 29 filing, Great Lakes proposes clarifying language that more clearly prohibits bumping during the intraday 2 and last intraday nomination cycles, to ensure Great Lakes is consistent with the Commission's no-bump rule. The Commission direct Great Lakes to file revised tariff records within 30 days of the date this order issues including this clarifying language.

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[6] *Id.* at 42.

[7] *Iroquois Gas Transmission System, L.P.*, 80 FERC 61,199 at 61,801 (1997), *order on reh'g*, 82 FERC ¶ 61,200 (1998).

<u>The Commission orders:</u>

(A) The Commission accepts Great Lakes' revised tariff records listed in the Appendix to become effective August 1, 2011, subject to the conditions set forth in this order.

(B) The Commission directs Great Lakes to file revised tariff records, within 30 days of the date this order issues, implementing the changes required by this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Great Lakes Gas Transmission Limited Partnership
GLGT Tariffs
FERC NGA Gas Tariff
<u>Tariff Records Accepted to Become Effective August 1, 2011, Subject to Conditions</u>

4.1 - Statement of Rates, Rate Schedules FT, LFT & EFT, 2.0.0
4.9 - Statement of Rates, Rate Schedules FT, LFT & EFT - Contesting Parties, 2.0.0
5.1.2 - Rate Schedule FT, Applicability and Character of Service, 2.0.0
5.5.2.1- Rate Schedule MC, Park and Loan Service, 2.0.0
6.1 - GT&C, Definitions, 2.0.0
6.3.1 - GT&C, General Nomination Guidelines, 2.0.0
6.3.3 - GT&C, Imbalances and Penalties, 2.0.0
6.3.4 - GT&C, Scheduling of Transportation and Allocation of Capacity, 2.0.0
6.11.1 - GT&C, Priorities, 2.0.0
6.11.2 - GT&C, Bumping Provisions, 2.0.0
6.11.3 - GT&C, Reserved for Future Use, 2.0.0
6.11.4 - GT&C, Curtailment, 2.0.0
6.15.1 - GT&C, Definitions, 2.0.0
6.24.1 - GT&C, Internet Customer Activities Web Site (Web Site), 2.0.0
6.24.2 - GT&C, GLConnect Agreement, 2.0.0