

140 FERC ¶ 61,083  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

July 31, 2012

In Reply Refer To:  
Texas Gas Transmission, LLC  
Docket No. RP12-820-000

Texas Gas Transmission, LLC  
9 Greenway Plaza  
Suite 2800  
Houston, Texas 77046

Attention: E. Adina Owen  
Senior Counsel

Reference: Proposed Revision to Reservation Charge Credits Tariff Provisions

Dear Ms. Owen:

1. On June 28, 2012, Texas Gas Transmission, LLC (Texas Gas) filed certain tariff records<sup>1</sup> to be effective August 1, 2012, to revise its tariff provisions pertaining to reservation charge credits to be consistent with Commission policy. Texas Gas's Filing was protested, and Texas Gas filed an answer. As discussed below, the Commission accepts and suspends the referenced tariff records, subject to refund and further Commission action, effective January 1, 2013, or an earlier date set forth in a subsequent order.

2. Texas Gas is proposing to modify its tariff provisions related to reservation charge crediting. Specifically, Texas Gas states that its proposal provides for reservation charge

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<sup>1</sup> Texas Gas Transmission, LLC, FERC NGA Gas Tariff, Tariffs; Section 1, Table of Contents, 6.0.0; Section 5.12, Rate Schedules - FSS, 4.0.0; Section 6.9, G T & C - Fuel, and Other Rates and Charges, 9.0.0; Section 6.24.4, GT&C - Misc Provisions - Force Majeure, 2.0.0; Section 6.25, GT&C - Demand Charge Credits, 7.0.0; Section 6.26, GT&C - List of Non-Conforming Service Agreements, 0.0.0.

credits<sup>2</sup> to customers during instances of *force majeure* and all maintenance activities and other non-*force majeure* events, consistent with current Commission policy. The filing includes: (i) a proposed section 6.25<sup>3</sup> dedicated to reservation charge credits; (ii) a proposed modification to the definition of *force majeure* to address new pipeline safety and integrity management obligations; and (iii) minor conforming changes to the Table of Contents and the General Terms and Conditions necessary to accommodate the new reservation charge crediting provision. Texas Gas asserts that its proposed changes are similar to those approved by the Commission in *Midwestern Gas Transmission Co.*<sup>4</sup>

3. Texas Gas states that in *Natural Gas Supply Association, et al.*,<sup>5</sup> the Commission urged all pipelines to review their tariffs to determine whether their individual tariffs are in compliance with Commission policy regarding reservation charge credits. Texas Gas has reviewed its tariff and found that certain aspects of its reservation charge crediting provisions are inconsistent with Commission policy. Texas Gas states its existing tariff provides reservation charge credits for *force majeure* events but does not allow for risk-sharing between the pipeline and its customers. For non-*force majeure* events, Texas Gas's existing tariff only provides reservation charge credits under Rate Schedule FSS.

4. Texas Gas states that it is proposing to modify its tariff to provide reservation charge credits for *force majeure* events utilizing a modified version of the Safe Harbor Method. Under this method, the customer remains liable for all amounts due or that become due under its service agreement(s) for the first twenty days of a *force majeure* event. Following this twenty-day grace period, Texas Gas will provide reservation charge credits for the "Force Majeure Average Usage Quantity" that Texas Gas failed to deliver to the customer's primary delivery point(s) due to the *force majeure* event provided that the customer was not utilizing such quantity for delivery on a non-primary basis. Texas Gas will determine the Force Majeure Average Usage Quantity based upon nominations over the seven gas days prior to the first gas day of the *force majeure* event.

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<sup>2</sup> Texas Gas employs the term "demand charge credits" for reservation charge credits.

<sup>3</sup> This section was formerly dedicated to the "List of Non-Conforming Agreements." Such list has been relocated to section 6.26 of the Tariff.

<sup>4</sup> *Midwestern Gas Transmission Co.*, 137 FERC ¶ 61,257 (2011) (*Midwestern*), order on compliance, Docket No. RP11-2254-002 (April 2, 2012) (unpublished letter order).

<sup>5</sup> *Natural Gas Supply Ass'n*, 135 FERC ¶ 61,055, at P 2 (2011).

5. Texas Gas states that it is requesting a longer safe harbor period than the safe harbors of ten days the Commission has approved in other proceedings. This approach, Texas Gas asserts, equitably shares the risk of interruptions between Texas Gas and its customers given the fact that Texas Gas's non-Straight Fixed Variable (SFV) rate design includes almost 7 percent of its transmission fixed costs in its usage rate. Since the usage charge is only billed on volumes actually transported, even with a safe harbor in place Texas Gas may not recover up to approximately 7 percent of its fixed costs during the grace period because it will not be collecting some or all of its usage charge. Texas Gas notes the Commission has approved different *force majeure* reservation charge crediting requirements for pipelines with unique rate designs, for example, not requiring Tennessee Gas Pipeline to provide partial reservation charge credits during *force majeure* events since it allocated approximately 12 percent of its transmission fixed costs to the usage charge.<sup>6</sup>

6. Texas Gas states that it is also proposing to modify its tariff to provide full reservation charge credits for all non-*force majeure* events, including maintenance events not included in the revised definition of *force majeure* described below. Texas Gas will provide reservation charge credits for any "Maintenance Average Usage Quantity" that Texas Gas failed to deliver during a non-*force majeure* event provided the customer was not utilizing such quantity for delivery on a non-primary basis. Texas Gas will determine the Maintenance Average Usage Quantity based upon nominations over the seven gas days prior to the first gas day of the maintenance and non-*force majeure* event.

7. Texas Gas states that it is also proposing to change its definition of *force majeure* in section 6.21.5(2) to address new pipeline safety and integrity management obligations resulting from the recently-enacted Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011 (2011 Act). Specifically, Texas Gas proposes to include in the definition of *force majeure* "any testing, repair, replacement, refurbishment, or maintenance activity, including scheduled maintenance, to comply with the [2011 Act], requirements issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to the 2011 Act, [and] requirements resulting from PHMSA's ongoing gas pipeline rulemaking proceedings." Texas Gas contends that these regulatory and policy initiatives are expected to result in an increase in operations and maintenance costs on pipelines' facilities and greater pressure on the companies to perform upgrades and replacements. Texas Gas further contends that, while the exact nature of the additional pipeline safety requirements is still undetermined, disruptions in service and pipeline infrastructure modernization costs are likely to be substantial.

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<sup>6</sup> *Tennessee Gas Pipeline Co.*, 80 FERC ¶ 61,070 (1997).

8. Texas Gas states that the Commission's current policy regarding reservation charge crediting with respect to *force majeure* events stems from the U.S. Court of Appeals for the District of Columbia Circuit's order in *North Baja Pipeline, LLC v. FERC*,<sup>7</sup> where the court affirmed the Commission's holding that scheduled maintenance does not constitute a *force majeure* event. However, Texas Gas contends that recent pipeline incidents, new legislation, and ongoing rulemakings have resulted in increased scrutiny of pipeline operations, and this scrutiny is evident in several Department of Transportation (DOT) and PHMSA initiatives and actions by the Executive Branch.<sup>8</sup>

9. Texas Gas argues that, while the Commission has not treated service interruptions for testing, repair, and maintenance necessary to comply with government orders as *force majeure* events, such outages to comply with the current restructuring of the pipeline safety regulatory regime should not be considered to be the routine scheduled maintenance contemplated in *North Baja*. Texas Gas further argues that such service disruptions are the result of broad government-initiated actions that are not reasonably in the control of pipelines and which represent a sea change for the natural gas industry.

10. Texas Gas contends that under the Commission's current policy, these pipeline safety compliance activities to comply with the new legislative and regulatory requirements could be considered routine scheduled maintenance rather than *force majeure* events and pipelines would be required to issue full reservation charge credits for the period during which scheduled gas is not delivered. However, Texas Gas asserts that service interruptions necessary to comply with the new pipeline safety regulatory regime should not be considered to be the routine scheduled maintenance that were contemplated in *North Baja*. Texas Gas further asserts that such service disruptions instead are the results of broad, government-initiated actions that are not reasonably in control of pipelines and represent a sea change for the natural gas industry.

11. Texas Gas also contends that in *North Baja*, the court's rationale for upholding the Commission's general exclusion of routine maintenance and testing outages from the definition of *force majeure* was that a pipeline's rates "incorporate costs associated with a pipeline operating its system so that it meet its contractual obligations."<sup>9</sup> Texas Gas further contends that rationale does not apply with respect to maintenance and testing outages to comply with the extensive new pipeline safety and integrity management

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<sup>7</sup> *North Baja Pipeline, LLC v. FERC*, 483 F.3d 819 (D.C. Cir. 2007) (*North Baja*), *aff'g*, *North Baja Pipeline, LLC*, 109 FERC ¶ 61,159 (2004), *order on reh'g*, 111 FERC ¶ 61,101 (2005).

<sup>8</sup> Transmittal Letter at 7-8.

<sup>9</sup> *Citing North Baja*, 483 F.3d 819, 823.

requirements because pipelines' existing rates do not and cannot incorporate the costs associated with complying with the new requirements.

12. Public notice of the filing was issued on July 2, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2012)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2012)), all timely filed motions to intervene and any unopposed motion 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 the proceeding or place additional burdens on existing parties. Protests were filed by Atmos Energy Corporation (Atmos); Atmos Energy Marketing LLC (AEM); Devon Gas Services, L.P. (Devon); Indicated Shippers;<sup>10</sup> PSEG Energy Resources & Trade, LLC (PSEG ERT); Tennessee Valley Authority (TVA); Duke Energy Ohio, Inc. (DEO); Southwestern Energy Services Company (SESC); and the Western Tennessee Municipal Group,<sup>11</sup> the Jackson Energy Authority, City of Jackson, Tennessee, and the Cities of Carrollton and Henderson, Kentucky. Comments were filed by Louisville Gas and Electric Company (Louisville); Pivotal Utility Holdings d/b/a Elizabethtown Gas (ETG); and ProLiance Energy, LLC (ProLiance). On July 13, 2012, Texas Gas filed a motion to answer and an answer to the protests (Answer).<sup>12</sup> As

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<sup>10</sup> For the purposes of this proceeding, the Indicated Shippers are Anadarko Energy Services Company; Apache Corporation; BP Canada Energy Marketing Corp.; BP Energy Company; Chevron U.S.A. Inc.; ConocoPhillips Company; and Cross Timbers Energy Services, Inc.

<sup>11</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; Town of Maury City, Maury City, Tennessee; City of Munford, Munford, Tennessee; City of Ripley Natural Gas Department, Ripley, Tennessee.

<sup>12</sup> Rule 213(a)(2) of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.213(a)(2) (2012)) prohibits answers to protests otherwise ordered by the decisional authority. In this case, the Commission will accept Texas Gas's Answer because it may assist the Commission in its decision-making process.

discussed below, the protestors shall be afforded an opportunity to respond to Texas Gas' Answer before the Commission makes a final disposition of the filing.

13. The protestors generally argue that Texas Gas's proposal to modify the definition of *force majeure* to include testing, repair, replacement, refurbishment, or maintenance activities to comply with the 2011 Act and other governmental requirements conflicts with Commission and judicial precedents that classify such activities as non-*force majeure* events. The protestors further argue that *force majeure* events must be both uncontrollable and unexpected and these maintenance activities, including scheduled maintenance, are not unexpected or outside Texas Gas's reasonable control. The protests assert that testing and maintenance are part of a pipeline's duties under a certificate of service and are not appropriately considered a *force majeure* event. The protestors contend that the court's determination in *North Baja* that scheduled maintenance is a non-*force majeure* event applies to both the routine and non-routine maintenance in this case. The protestors further contend the maintenance that may be necessary to comply with these governmental requirements is expected, and the extent of any outages is speculative. PSEG ERT, Indicated Shippers, ETG, SESC and ProLiance maintain that at this point it is entirely speculative as to what requirements PHMSA will promulgate related to the 2011 Act or how such potential regulations will affect Texas Gas. Devon, Cities and DEO argue that if a pipeline's rates are insufficient to recover its costs it may file pursuant to section 4 of the Natural Gas Act (NGA) to increase its rates.

14. Louisville, Indicated Shippers and SESC argue that the Commission should initiate action under NGA section 5 and find Texas Gas's currently effective definition of *force majeure* unjust and unreasonable. Protestors state Texas Gas's existing tariff does not comply with the Commission's *force majeure* policy to the extent it includes in the definition of *force majeure* "the necessity of testing pipeline or other equipment as may be required by a governmental authority or as deemed necessary by the testing party for the safe operation thereof." Protestors state this existing *force majeure* definition is overly broad, in that it may be read to cover routine testing, maintenance and repairs within the pipeline's control and the Commission has declared those actions are not *force majeure* events. Louisville also states the definition "shutdowns for purposes of necessary or required repairs, relocations, or construction of facilities" does not comply with the Commission's *force majeure* policy for similar reasons. Therefore, protestors request that the Commission require Texas Gas be directed to revise these provisions to comply with Commission policy.

15. Indicated Shippers, Cities, DEO and SESC argue that proposed section 6.25.4 conflicts with Commission policy that a pipeline is only absolved from providing reservation charge credits where the outage is solely due to an upstream or downstream disruption or the conduct of shipper and not controlled by the pipeline. Cities assert that Texas Gas's proposal to reduce a customer's Average Usage Quantity "to the extent any curtailments are the result of Customer's negligence or intentional wrongful acts"

conflicts with Commission policy. Cities argue that this proposed use of a crediting reduction due to the shipper's comparative negligence of the shipper is inappropriate.

16. Cities argue that the proposed Average Usage Quantity fails to adequately compensate NNS (No Notice Service) shippers for the loss of firm service during long-term outages. Cities assert that Texas Gas proposes to base its Average Usage Quantities for purposes of calculating both *force majeure* and non-*force majeure* reservation charge credits on the average daily quantity delivered to a NNS shipper's primary delivery points during seven days prior to the event. Cities contend that NNS shippers have seasonal contract quantities that are lower during the summer and higher during the winter and are weather driven. Cities contend that the seven-day usage period from a non-peak period may be significantly lower than the average actual usage during a peak period and does not take into account the higher contract demand that may be rendered unavailable as a result of a longer-term *force majeure* event. Cities argue that Texas Gas should include an alternative calculation of Average Usage Quantities for outages lasting more than twenty eight days based on the level of service experienced in a comparable period in the prior year, presuming that the historical period was not subject to an outage.

17. Louisville states it is inappropriate for Texas Gas to use its failure to deliver the Force Majeure Average Usage Quantity as the triggering event for reservation charge credits because Texas Gas's obligation to deliver gas is determined by the shipper's nomination. Louisville states that while it may be appropriate to use the seven-day average Force Majeure Average Usage Quantity to calculate reservation charge credits, the average should not be used to determine whether Texas Gas has curtailed service on a particular day.

18. PSEG ERT states that section 6.25.3 implies that transactions involving secondary points would for some reason be automatically ineligible for reservation charge credits. PSEG ERT states Texas Gas blurs its use of the concept of primary capacity. On the one hand, when it is unable to provide full services no reservation charge credits will be made to nominations involving anything other than primary points. On the other hand, in determining the Average Usage Quantities in the seven days leading up to service limitations, only primary transactions will be counted. PSEG ERT requests that Texas Gas be required to revise its tariff such that for purposes of calculating the Average Usage Quantities, the average daily usages should include secondary receipt and delivery point transactions that are within the primary path and should not be limited to Primary Firm Service only. SESC also states the Commission should reject Texas Gas' proposal to exclude secondary points used in the base period calculation from the Average Usage Quantity calculations. SESC states there is no reason for distinguishing between primary and secondary firm capacity in the base period when determining the amount of curtailed service for which a shipper will receive reservation charge credits. SESC notes that if a shipper has used its firm transportation capacity during the base period, albeit at secondary points, it has established a legitimate base period requirement for gas which

prevents any gaming. That shipper should then be free to submit nominations at its primary points and if Texas Gas curtails the shipper, the reservation charge credits should be based upon the shipper's nomination of firm transportation service, without regard to whether primary or secondary points were used during the base period.

19. DEO notes that Texas Gas offers Firm Transportation Service that includes transportation service on Gulf South Pipeline, which Texas Gas leases from Gulf South. DEO requests that it be made clear in Texas Gas's tariff that this leased capacity will be considered part of Texas Gas's system for determining whether or not reservation charge credits are due its shippers. DEO states that under the language proposed by Texas Gas, if Gulf South issues reservation charge credits for interruptions on the part of the system on which Texas Gas leases capacity, Texas Gas could keep those credits rather than passing them on to its shippers utilizing the leased capacity. Therefore, DEO requests Texas Gas be required to modify its proposal accordingly.

20. Indicated Shippers argue that sections 6.25.1(c) and 6.25.5(d) both define the reservation charge credits owed for segmented capacity, capacity release, or partial assignment. Indicated Shippers contend that section 6.25.1(c) should be eliminated as redundant to section 6.25.5(d).

21. Louisville, PSEG ERT, Indicated Shippers, TVA, Atmos, AEM, Cities, DEO, SESC, and ProLiance protest Texas Gas's proposal to establish a 20-day "grace period" within which Texas Gas would not be required to provide reservation charge credits during a *force majeure* outage and request that the proposal be rejected. Protestors state this is twice as long as the safe-harbor period the Commission has approved for other pipelines and Texas Gas has not provided adequate justification for such a deviation from Commission policy.

22. Protestors state the Commission has rejected a similar attempt to deviate from the standard 10-day grace period, finding that the pipeline's small departure from the straight-fixed variable rate design (inclusion of approximately 3 percent of fixed costs in the usage charge) did not justify non-compliance with the Commission's policy (citing *Northern Natural Gas Co.*, 137 FERC ¶ 61,202 (2011) (*Northern*)). Protestors state Texas Gas asserts that it has included approximately 6.7 percent of its fixed costs in the usage charge is insufficient to warrant a grace period twice as long as previously approved, and that if accepted, the proposal would make it highly unlikely that Texas Gas would ever be required to provide reservation charge credits for *force majeure* outages. Louisville also notes that Texas Gas's 2005 rate case was resolved by a black box settlement and questions Texas Gas's assertion that 6.7 percent of its fixed costs are included in the usage charge. Finally, PSEG ERT and DEO note that the purpose of reservation charge credits is to provide an extra impetus for the pipeline to expeditiously return its system to full operational status and doubling the amount of time in which firm service can be interrupted provides the wrong signal to the pipeline.

23. In its Answer, Texas Gas responds that the Commission must accept Texas Gas's proposal to revise the definition of *force majeure* and reservation charge crediting tariff provisions, if the Commission determines that the proposal is just and reasonable, regardless of whether other tariff or rate mechanisms are also just and reasonable or it has approved different provisions for other pipelines.<sup>13</sup>

24. Texas Gas argues that its proposal to amend its definition of *force majeure* to include service interruptions associated with compliance with the 2011 Act is just and reasonable. Texas Gas asserts that the outages that may occur under the new requirements are not within its control and not contemplated in existing rates. Texas Gas further asserts that it has proposed a mechanism to equitably share the risk of such service interruptions with its shippers utilizing the well-established Safe Harbor method.

25. Texas Gas argues that the protestors fail to accurately characterize the 2011 Act's requirements which will result in significant new obligations for Texas Gas that may require previously unanticipated service disruptions. Texas Gas asserts that these obligations will result in the increased risk of service disruptions which cannot be considered "routine" and over which the pipeline will have little control. Texas Gas further asserts that the 2011 Act represents a fundamental expansion of pipeline safety regulation for all gas transmission pipelines. Texas Gas contends that the resulting service disruptions were not contemplated prior to the 2011 Act and are not accounted for in Texas Gas's existing rates. Texas Gas further contends that the Commission's existing policy regarding the definition of *force majeure* does not address these changed circumstances.

26. Texas Gas argues that the protestors' contentions that it may only amend its *force majeure* provision to implement a risk-sharing mechanism by filing a general section 4 rate case are mistaken because this argument is contrary to recent Commission practice directing pipelines to change their reservation charge crediting provisions, including *force majeure* provisions, in limited section 4 proceedings. Texas Gas argues that any rate changes through a general section 4 rate case or adjustment of its billing determinants and return on equity would only take place on a prospective basis. Texas Gas asserts that the exact level of service interruptions resulting from the new requirements is still unknown, and those costs could potentially be rejected as speculative and non-recurring events. Texas Gas asserts that resolution through a general section 4

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<sup>13</sup> Citing *Columbia Gas Transmission Corp.*, 124 FERC ¶ 61,122, at P 26 (2008), citing *Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1578 (D.C. Cir. 1993); and *Consolidated Edison Co. v. FERC*, 165 F.3d 992 (D.C. Cir. 1999)); *reh'g denied*, 133 FERC ¶ 61,217 (2010).

rate case ignores the realities of the current natural gas market, and it likely would be unable to recover any increased rate because of competitive circumstances.

27. Texas Gas argues that the rationale in *North Baja* for excluding scheduled maintenance from the definition of *force majeure* was that a pipeline's rates include the costs of operating its system to meet its contractual obligations and the outages to comply with the new requirements and associated reservation charge credits are not contemplated by pipelines' existing rate structures. Texas Gas further argues that unlike the situation in *North Baja*, Texas Gas is seeking to include in the definition of *force majeure* only disruptions resulting from specific, new regulatory requirements, and not disruptions resulting from routine scheduled maintenance. Texas Gas asserts that the court in *North Baja* did not address the type of non-routine testing and maintenance that will result from these extensive new pipeline safety requirements and does not preclude a determination that certain non-routine maintenance can be treated as a *force majeure* event.

28. Texas Gas argues that Commission policy is clear that disruptions caused by acts of governmental authorities that are outside of the pipeline's control may be included in the definition of *force majeure*.<sup>14</sup> Texas Gas asserts that the risk of outages under the new pipeline safety requirements is sufficiently detailed to provide certainty as to the range of impacts and is not speculative. Texas Gas further asserts that the risk sharing mechanism will not provide an incentive to prolong outages because it will have an incentive to keep outages to the shortest possible duration to reduce the amount of reservation charge credits after the 20-day safe harbor grace period.

29. Texas Gas argues that protestors' request that the Commission act under section 5 to find that Texas Gas's existing *force majeure* provision is unjust and unreasonable should be rejected. Texas Gas contends that the *force majeure* language, read as a whole with the proposed changes, makes clear that only non-routine maintenance and testing are included in the definition of *force majeure*.

30. Texas Gas contends that the outages due to customer or third party action in proposed section 6.25.4 are appropriate. Texas Gas asserts that nearly identical language providing for the reduction of credits due to the customer's negligence or intentional wrongful acts was approved in *Midwestern* and applies to any outage. Texas Gas argues that it is appropriate that reservation charge credits be reduced to the extent curtailments were caused by a customer's negligent or intentional wrongful acts. Texas Gas states Louisville mischaracterizes Texas Gas's *force majeure* provision as using its failure to deliver the Force Majeure Average Usage Quantity as the triggering event for *force*

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<sup>14</sup> Citing *Tarpon Whitetail Gas Storage LLC*, 125 FERC ¶ 61,050, at P 5 (2008) (quoting *Florida Gas Transmission Co.*, 107 FERC ¶ 61,074, at P 32 (2004)).

*majeure* reservation charge credits. Texas Gas states the triggering event for a *force majeure* outage is controlled by existing section 6.24.4(1) of Texas Gas's tariff, where *force majeure* is defined, rather than new section 6.25, where the crediting mechanism is established, and the Average Usage Quantity is used only to determine whether Texas Gas is required to provide reservation charge credits and the amount of such credits after a *force majeure* event has already been declared.

31. Texas Gas states the Commission has consistently held that reservation charge credits are only provided for primary firm service, not secondary service and that it is reasonable for a pipeline to calculate reservation charge credits based upon the shipper's utilization of primary firm capacity during the seven days prior to the outage and its proposal is consistent with Commission requirements. Texas Gas states that both PSEG ERT and SESC appear to take issue with Commission policy and neither have shown that Texas Gas's proposed tariff provisions regarding primary or secondary service are unjust or unreasonable. Texas Gas also states DEO's arguments reflect a misunderstanding of the way lease arrangements function. Under the terms of the lease, Texas Gas in essence owns the Gulf South capacity it leases and the capacity is subject to Texas Gas's tariff. As the lessor, Gulf South no longer has any rights to use the leased capacity. Texas Gas states Gulf South would not provide reservation charge credits with respect to an interruption on the leased facilities because Gulf South does not have shippers taking service on those facilities under its tariff. In addition, Texas Gas states to the extent it interrupted service to its shippers on the leased capacity, Texas Gas would provide reservation charges pursuant to the terms and conditions of its tariff.

32. Texas Gas responds that protestors' argument that the proposed 20-day safe harbor does not allocate to Texas Gas a fair share of risk fails to recognize how the Commission historically has addressed the implementation of equitable risk-sharing. Texas Gas states that under the Commission risk-sharing policy, the pipeline's rate design is directly tied to whether or not the pipeline is required to provide partial crediting for *force majeure* outages. The Commission's "sharing of the risk" is based upon the fact that under an SFV rate design the pipeline would not be losing the recovery of fixed costs when there was an outage. Thus, an SFV pipeline is required to grant partial credits either under the Safe Harbor or No Profit Method when there is a *force majeure* outage because none of their fixed costs are at risk. By contrast, Texas Gas states, non-SFV pipelines did not have to provide any reservation charge credits since some portion of the pipeline's fixed costs are included in the usage charge.<sup>15</sup> Texas Gas states, that unlike an SFV pipeline, it has allocated approximately 6.74 percent of its transmission fixed costs to its usage

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<sup>15</sup> See, e.g., *Tennessee Gas Pipeline Co.*, 80 FERC ¶ 61,070, at p. 61,198 (1997).

charge.<sup>16</sup> However, rather than request a full exemption from partial reservation charge crediting for *force majeure* events, Texas Gas states it has crafted an approach that modifies the usual provisions of the Safe Harbor method to reflect the significant portion of its fixed costs included in its usage charge.

33. Texas Gas states that its rate design falls somewhere between the 3 percent rejected in *Northern* and the 12 percent in *Tennessee*, where no crediting was required. Texas Gas states that its proposal is clearly consistent with Commission policy that the Commission “[is open to] any other method provided it results in the same type of risk-sharing as the two approved methods do.”<sup>17</sup>

34. With respect to protesters’ contention that a 20-day safe harbor period reduces Texas Gas’s incentive to resolve interruptions caused by *force majeure* events, Texas Gas argues it has a strong incentive to restore service because it is in the business of transporting gas. Moreover, Texas Gas notes that in an outage it is at risk for almost 7 percent of its fixed costs even during the safe harbor period, which represents a significant portion of Texas Gas’s return on equity.

35. In its Answer, Texas Gas offers to modify certain aspects of proposed section 6.25. With respect to proposed sections 6.25(1) and (2), Texas Gas acknowledges that a 7-day historical period may not be sufficient for NNS service during a long-term outage due to its inherently seasonal nature. Texas Gas states that it is willing to modify its tariff to take into consideration the seasonal nature of NNS service. For *force majeure* events, Texas Gas states that it is willing to add subsection (iii) below to proposed Section 6.25.1(b):

(iii) For NNS ands STF Customers with varying seasonal Contract Demands only, if the [*Force Majeure*] Event extends into another season, upon the first day of such season and throughout such season, Customer’s average nominated quantity for Primary Firm Services requiring nominations and Customer’s average actual flow quantity for Primary Firm Service where nominations are not required will both be determined based upon the applicable average nominated quantities in the respective seasons during the previous three calendar years.

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<sup>16</sup> Texas Gas submitted an affidavit to support its claim that it recovered almost 7 percent of fixed costs in the usage charge

<sup>17</sup> *Northern* at P 22.

36. Texas Gas also offers to make similar changes to proposed section 6.25.2, which addresses credits for non-*force majeure* events. Texas Gas states its proposal is economically incentivized to eliminate such interruptions as soon as possible and, in instances where a long-term interruption may occur, this proposal appropriately acknowledges the seasonality of NNS service while establishing a calculation that reasonably accounts for the impact of weather conditions.

37. Texas Gas also agrees that proposed section 6.25.1(c) should be deleted because it is redundant to proposed section 6.25.5(d). Texas Gas states that, while this language is consistent with the language approved in *Midwestern*, it agrees to delete both proposed section 6.25.1(c) and section 6.25.2(c) because they are redundant.

38. A contested portion of proposed section 6.25.4 provides that a customer will not be entitled to reservation charge credits as a result of loss of any of the following: (a) gas supply, (b) markets, or (c) transportation upstream or downstream of Texas Gas's system or to the conduct of others not controlled by the pipeline. Texas Gas states that it is willing to modify its proposed tariff language with the following emphasized language:

*Unless Texas Gas has declared a force majeure, maintenance, or non-force majeure event, Customer shall not be entitled to demand charge credits as a result of loss of any of the following: (a) gas supply, (b) markets, or (c) transportation upstream or downstream of Texas Gas's system.*

39. Texas Gas asserts that this addition makes clear that it will not be exempt from providing credits if it cannot provide service due to an interruption on its facilities. Texas Gas further asserts that this clarification is more appropriate than limiting the exemption to circumstances solely due to others' operating conditions or the conduct of others not controlled by the pipeline since use of the term "solely" could be interpreted to require reservation charge credits when none are appropriate.

40. Texas Gas states that its affiliated pipelines, Gulf South Pipeline and Gulf Crossing Pipeline have offered to make one additional modification to their proposed reservation charge crediting provisions and in the interest of consistency across the affiliated pipeline companies Texas Gas offers to add the following language to section 6.25.2(b), which it states is similar to language accepted in *Midwestern*:

*The previous seven (7) days' average daily quantity usage will only be used in the determination of the Maintenance Average Usage Quantity when Texas Gas has posted notice prior to the Timely Cycle nomination deadline that the capacity will be unavailable for the day in question.*

41. Texas Gas states that it also will amend section 6.25.2(b)(ii), changing the 7:00 a.m. CCT deadline to conform to the deadline established above, which is tied to the Timely Cycle nomination deadline. Texas Gas asserts that such deadline for the posting notice is appropriate because it better synchronizes with the actual nominations process.

42. The Commission accepts Texas Gas's proposed tariff records for filing and suspends their effectiveness for the period set forth below. The protestors have raised a number of issues that warrant further consideration. In addition, Texas Gas filed a detailed answer to the protests in which it proposed various modifications to its original proposal. Therefore, the Commission will provide the protestors an opportunity to respond to that answer before making a final determination in this proceeding.

43. Based upon a review of this filing, the Commission finds that the proposed tariff language has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. The Commission's policy regarding suspensions is that 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 inconsistent with other statutory standards.<sup>18</sup> It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.<sup>19</sup> Such circumstances do not exist here. Accordingly, the Commission shall suspend the effectiveness of the referenced tariff records for the full five months, until January 1, 2013, or an earlier date if set by a subsequent Commission order.

44. Consistent with the discussion above, the tariff records set forth in n.1 are accepted and suspended, subject to refund and further Commission action, to be effective January 1, 2013, or an earlier date established in a subsequent Commission order in this proceeding. Within twenty days of the date of this order, parties may file a response to the Answer filed by Texas Gas in response to the protests.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

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<sup>18</sup> See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

<sup>19</sup> See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).