148 FERC ¶ 61,081
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Texas Gas Transmission, LLC — Docket No. RP14-1083-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS AND ESTABLISHING TECHNICAL CONFERENCE

(Issued July 31, 2014)

1. On July 1, 2014, Texas Gas Transmission, LLC (Texas Gas) filed a revised tariff record,[1] with a proposed effective date of August 1, 2014, to limit a shipper's mainline primary receipt point capacity to 100 percent of the shipper's firm contract demand. As discussed below, the Commission accepts and suspends the proposed tariff record to become effective January 1, 2015, subject to the outcome of a technical conference.

I. Background and Filing

2. Texas Gas states that its current tariff does not limit a shipper's mainline primary receipt point capacity. Texas Gas explains that following Order No. 636, the Commission denied a proposal by it to limit primary receipt point capacity to 100 percent of a shipper's contract demand.[2] However, in rejecting Texas Gas' proposal, the Commission stated, "[i]f after actual operating experience, hoarding becomes [a] serious

[1] Texas Gas Transmission, LLC, FERC NGA Gas Tariff, Tariffs, Section 6.6, G T & C - Points of Service, 3.0.0.

[2] Texas Gas Transmittal at 2 (citing *Texas Gas Transmission Corp.*, 64 FERC ¶ 61,083, at 61,784-85, *order on compliance*, 65 FERC ¶ 61,008, at 61,159, *order on compliance*, 65 FERC ¶ 61,341, at 62,657-58 (1993) (Texas Gas)).

factor [the Commission would] reconsider caps in response to a substantive showing by Texas Gas."[3]

3. Texas Gas claims that hoarding has now become a significant problem on its system. Texas Gas states that access to new gas supplies has caused customers to add mainline primary receipt points. Texas Gas explains that because its shippers have unlimited primary receipt point capacity, these shippers have no incentive to reduce existing primary receipt point rights as they acquire new receipt points. Texas Gas further asserts that when new receipt points are added to the mainline system or capacity becomes available due to expiring contracts, existing customers often immediately request to add these newly available points as primary receipt points.

4. Texas Gas states that its proposal is fully consistent with Commission policy and industry standards, which define hoarding as "a pattern of persistent non-use by shippers of designated primary points."[4] Texas Gas includes a table listing 21 customers with combined receipt point and supply lateral capacity ranging from 182 percent of contract demand to 955 percent of contract demand.[5] Texas Gas states that customers are not utilizing this capacity. Texas Gas states that between April 2013 and March 2014, the vast majority of customers did not nominate any supply from their mainline primary receipt points. Texas Gas states that total mainline primary receipt point capacity usage for the 21 listed customers was less than three percent during the summer season. Texas Gas states that during the winter season, only six customers used any of their mainline primary receipt capacity, and five out of these six customers used less than five percent.

5. Texas Gas states the absence of a cap on receipt point capacity has harmed potential customers wishing to use Texas Gas' pipeline. Texas Gas states that it was recently required to reject a potential customer's request for new service under Rate Schedule FT because Texas Gas lacked mainline primary receipt capacity, even though mainline pipe capacity was available on a primary firm basis.

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[3] *Id.* (citing *Texas Gas*, 65 FERC at 61,146).

[4] *Id.* at 3 (citing *El Paso Natural Gas Co.,* 62 FERC ¶ 61,311, at 62,982-83 (1993)).

[5] *Id.* at 4.

6. Texas Gas states that the Commission has allowed pipelines to limit shipper receipt point capacity to 100 percent of contract demand.[6] Texas Gas emphasizes that it is not changing firm customers' access to mainline receipt points on a firm secondary basis. Texas Gas also explains how the restrictions upon mainline receipt point quantities will interact with shipper's supply lateral rights, which can be reserved by new shippers up to 119 percent of mainline contract demand.[7] Under Texas Gas' proposal, mainline receipt point rights and supply lateral rights will be considered together. For example, Texas Gas states that if a non-grandfathered customer has 100 percent of its capacity at mainline receipt points on a primary firm basis, the customer could add another 19 percent of its capacity at supply lateral capacity. Texas Gas states that if a non-grandfathered customer has 119 percent of its contract demand designated as firm supply lateral capacity, that customer could not request additional receipt point capacity on the mainline.

7. Texas Gas states that under its proposal, existing customers with excess receipt point capacity will have until September 1, 2014, to amend their contracts to reflect the desired primary receipt point capacities. If customers do not make an election by September 1, 2014, Texas Gas states it will reduce primary receipt point capacity on a *pro rata* basis effective October 1, 2014.

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[6] *Id.* at 6 (citing *Midwestern Gas Transmission Co.*, 101 FERC ¶ 61,310, P 32 n.20 (2002); *Tennessee Gas Pipeline Co.*, 108 FERC ¶ 61,177, at P 27 (2004); *Horizon Pipeline Co.*, 103 FERC ¶ 61,281, at PP 12-17 (2003); *Natural Gas Pipeline Co. of America*, 103 FERC ¶ 61,174, at PP 14-18 (2003); *Transwestern Pipeline Co.*, 62 FERC ¶ 61,090, at 61,659, *order on reh'g*, 63 FERC ¶ 61,138, at 61,911–12 (1993)).

[7] Following Order No. 636, the Commission permitted Texas Gas to limit firm supply lateral capacity to 135 percent of shipper contract demand. In 2007, after termination of Texas Gas' transportation capacity with certain third parties, the Commission approved Texas Gas proposal to allocate supply lateral capacity to new customers up to 119 percent of their daily contract demand. *Texas Gas Transmission, LLC*, 120 FERC ¶ 61,008 (2007). The supply lateral capacity of 135 percent of contract demand for existing customers was grandfathered for the life of the customers' contract.

II. Public Notice, Interventions, and Comments

8. Public notice of Texas Gas' filing was issued on July 2, 2014. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2013)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2013)), all timely filed motions to intervene and any unopposed 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 the proceeding or place additional burdens on existing parties. The Tennessee Valley Authority filed comments in support of the proposal. The Western Tennessee Municipal Group;[8] Jackson Energy Authority; City of Jackson, Tennessee; and the Kentucky Cities[9] (collectively, Cities) filed joint protest. Louisville Gas and Electric Company (Louisville); Atmos Energy Marketing, LLC (Atmos Marketing); Atmos Energy Corporation (Atmos Corporation); CIMA Energy, Ltd. (CIMA); and Midwest Fertilizer Corporation (Midwest Fertilizer) filed protests or adverse comments. On July 18, 2014, Louisiana Municipal Gas Authority (LMGA) filed late comments. The Commission accepts the late comments as they will not disrupt this proceeding.

9. Louisville urges the Commission to reject Texas Gas' proposal. Louisville objects to Texas Gas' hoarding claims. Louisville states that Texas Gas' website indicates that significant mainline receipt point capacity remains available. Louisville observes that Texas Gas only discusses one instance in which it has been unable to contract to sell firm pipeline capacity because it lacked capacity at a primary receipt point. Louisville states that Texas Gas' proposal will hurt shippers' ability to "thread" nominations through a pool, i.e. obtaining primary firm priority through the pool by use of an upstream primary receipt point. Louisville notes that Texas Gas, in order to garner support for approval of

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[8] 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.

[9] The Kentucky Cities consists of Carrollton and Henderson, Kentucky.

its revisions to pooling on its system, recently represented that it would continue to preserve firm customers' ability to "thread" nominations through a pool, but now Texas Gas is rescinding that ability which it had so recently agreed to preserve. Louisville states Texas Gas' proposal to eliminate threading through pools is thus contrary to Commission regulations that encourage the development of market centers.[10] Louisville further states that Texas Gas did not consider less drastic alternatives, such as grandfathering existing contracts, limiting receipt point rights to some multiple of contract demand, providing incentives for customers to turn back their primary receipt point rights, or transitioning the change over a period of years. Louisville states that if the Commission does not reject Texas Gas' proposal, it should suspend it for the maximum period and hold a technical conference, and if the proposal were to be allowed, it should be conditioned such that it is the customer's sole choice as to which primary receipt points shall be kept to reflect 100 percent of its contract demand.

10. Cities, Atmos Marketing, Atmos Corporation, LMGA, CMA, and Midwest Fertilizer also urge the Commission to hold a technical conference. These parties state that a technical conference could be used to examine the allegation of hoarding on Texas Gas' system. Several parties raised concerns regarding the effect and operation of Texas Gas' proposal. For example, Midwest Fertilizer expresses concerns about the effect upon supply sourcing, pathing, curtailments, force majeure provisions, and demand credits. CIMA states that the proposal will force LDCs to pay higher costs by requiring additional services while reducing Texas Gas' exposure to refund demand credits. CIMA also claims that the proposal greatly affects marketers' ability to serve base load.

11. Atmos Marketing, Atmos Corporation, LMGA, and Cities also emphasize that it is important for the Commission to suspend or otherwise delay implementation of Texas Gas' proposal. Atmos Marketing and Atmos Corporation note that contracts and other arrangements for the 2014-2015 winter season have already been made based upon existing receipt point capacity. They claim that Texas Gas' proposed reduction of shipper primary receipt point capacity by September 1, 2014 will disrupt these plans and does not provide current shippers with adequate time to adjust to the changed policy. Likewise, Cities and LMGA states that shippers need additional time to evaluate and respond to the changes proposed by Texas Gas.

12. These parties state that a technical conference should address whether Texas Gas' proposal is appropriately targeted toward addressing any hoarding problems. For example, Cities state that the technical conference could address whether an alternative

[10] Louisville Protest at 8 (citing 18 C.F.R. § 284.7(b)(3) (2013)).

option, such as a “use or lose” provision, would result in a more rational allocation of mainline receipt point capacity. CIMA adds that to the extent the Commission accepts Texas Gas’ proposal, shippers should be permitted to turn back firm capacity which has been made significantly less valuable as a result of Texas Gas’ proposal.

III. Discussion

13. Texas Gas’ proposal to limit a shipper’s mainline receipt point capacity to 100 percent of contract demand raises issues that are best addressed at a technical conference. It is not possible at this juncture to determine whether Texas Gas’ proposal is just and reasonable. A technical conference will afford the Commission staff and the parties to the proceeding an opportunity to discuss issues raised by Texas Gas’ filing, including but not limited to the concerns raised in the protests and comments.

14. Based upon review of the filing, the Commission finds that the proposed tariff records have not been shown to be just and reasonable, and may be unjust, unreasonable and unduly discriminatory or otherwise unlawful. Accordingly, the Commission shall accept and suspend the effectiveness of the proposed tariff records for the period set forth below, subject to the conditions set forth in this order.

15. The Commission’s policy regarding tariff filings is that they 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.[11] 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.[12] Such circumstances do not exist here. Therefore, the Commission shall exercise its discretion to suspend the proposed tariff records listed in the Appendix as suspended, to be effective January 1, 2015, subject to the outcome of a technical conference, which is intended to provide a forum to examine all the issues raised by the filing.

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[11] *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

[12] *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

<u>The Commission orders</u>:

(A) The tariff record is accepted and suspended to become effective January 1, 2015, subject to conditions, and further order of the Commission following a technical conference.

(B) The Commission's staff is directed to convene a technical conference to address all issues raised by Texas Gas' filing including, but not limited to, those raised in protests and comments made in response to that filing, and to report the results of the conference to the Commission within 120 days of the date this order issues.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.