149 FERC ¶ 61,295
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

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

ORDER FOLLOWING TECHNICAL CONFERENCE

(Issued December 31, 2014)

1. On September 30, 2014, Commission Staff convened a technical conference to address issues relating to a proposal by Texas Gas Transmission, LLC (Texas Gas) to limit a shipper's mainline primary receipt point capacity. As discussed below, the Commission accepts Texas Gas' proposal as modified following the technical conference.

## I. Background

2. On July 1, 2014, Texas Gas filed a revised tariff record,[1] to limit a shipper's mainline primary receipt point capacity to 100 percent of the shipper's firm contract demand. On July 31, 2014, the Commission issued an order accepting and suspending the proposed tariff record to become effective January 1, 2015, but subject to conditions and further order of the Commission following a technical conference.[2]

## II. Technical Conference

3. Commission Staff convened a technical conference on September 30, 2014, to address issues raised in this proceeding. Texas Gas, Atmos Energy Corporation (Atmos), and Louisville Gas and Electric Company (Louisville) made presentations at the technical conference. On October 2, 2014, they filed their presentations.

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[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 Transmission, LLC*, 148 FERC ¶ 61,081 (2014).

4. On October 10, 2014, Texas Gas filed initial comments following the technical conference. On October 23, 2014, initial comments were filed by Atmos; Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc. (Duke); Louisville; Tennessee Valley Authority; and Western Tennessee Municipal Group,[3] Jackson Energy Authority, City of Jackson, Tennessee, and the Kentucky Cities[4] (collectively, Cities). On October 31, 2014, Texas Gas filed reply comments.

## III. Comments

### A. Initial Comments

5. In its initial comments, Texas Gas states that shipper hoarding justifies its proposal to cap each shipper's primary receipt point capacity. Texas Gas states that during the winter months, 17 customers hold receipt point capacity exceeding contract demand. Texas Gas states that since 2010, these customers have nominated gas at only 22 of the 281 receipt points at which they hold primary point rights. Regarding the summer months, Texas Gas explains that since 2010 the 17 customers holding receipt point capacity exceeding contract demand nominated gas at only 25 of their 267 primary receipt points. Furthermore, Texas Gas adds that following Order No. 637, the Commission has routinely permitted pipelines to limit shipper primary point rights to contract demand.[5]

6. In order to address certain shipper concerns, Texas Gas agreed to modify and clarify aspects of its proposal. Texas Gas states that it will extend the implementation date of its proposal to April 1, 2015, after the conclusion of the winter heating season. Texas Gas also states that it will require customers to elect the points that they will retain by March 2, 2015. After that date, Texas Gas states that it will hold an open season to

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[3] The Western Tennessee Municipal Group consists of the following municipal distributor-customers of Texas Gas: City of Bells; Brownsville Utility Department; City of Covington Natural Gas Department; Crockett Public Utility District; City of Dyersburg; First Utility District of Tipton County; City of Friendship; Gibson County Utility District; Town of Halls Gas System; Humboldt Gas Utility; Town of Maury City; City of Munford; and City of Ripley Natural Gas Department.

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

[5] Texas Gas Initial Comments at 5 (citing *Midwestern Gas Transmission Co.*, 101 FERC ¶ 61,310, at P 32 n.20 (2002)).

allocate relinquished capacity. In addition, Texas Gas states that it will allocate competing requests for the same capacity on a *pro rata* basis. Further, Texas Gas states that it will honor all replacement shippers' primary receipt point rights up to 100 percent of their contract demand through the end of their releases even if the releasing shipper elects to relinquish its primary rights at the receipt point released.

## B. Shipper Reply Comments

7. Some customers challenge the need for Texas Gas' proposal. Louisville states that Texas Gas has not shown that hoarding is causing any harm or that it has become a serious factor in the operation of Texas Gas' system. Louisville claims that Texas Gas' website shows available capacity at nearly every receipt point on its system. Cities and Louisville contend that Texas Gas' proposal will have no effect on congested receipt point capacity at Lebanon or Perryville. Cities also question the accuracy of Texas Gas' data, claiming that one of its members (Henderson, Kentucky) has nominated gas at a primary point since 2010, in contrast to the data provided by Texas Gas.

8. Customers also argue that Texas Gas' proposal will result in a degradation of service. For example, Cities contend that the right to flexible primary receipt points is an integral part of the firm service for which they contracted. Louisville states that it used the primary receipt points upstream of a pool as a backstop should a constraint arise.[6] Louisville further asserts that secondary points are not an adequate substitute for primary points. Duke notes that a shipper's infrequent usage of its primary receipt point rights is not indicative of a lack of value for flexible receipt point rights.[7] If Texas Gas' proposal is adopted, Atmos contends that Texas Gas should reduce the rate for any shipper which relinquishes primary receipt points related to a more expensive path (i.e., a path through multiple zones) and opts to retain only those primary points associated with a lower priced path (i.e., a path through fewer rate zones).

9. Some of the shippers argue that Texas Gas should consider other measures to address the perceived hoarding problem. Atmos, for example, suggests capping primary receipt point capacity rights at 150 percent or 200 percent of contract demand. Duke suggests determining a shipper's receipt point capacity by dividing Texas Gas' total available primary receipt point rights by the total available contract demand. Louisville

[6] Louisville Initial Comments at 7.

[7] Duke Initial Comments at 3 n.3.

argues that Texas Gas' proposal be rejected without prejudice to Texas Gas proposing a less drastic alternative.

10. For its part, the Tennessee Valley Authority states that it fully supports Texas Gas' proposal.

### C. **Texas Gas Reply Comments**

11. In its reply comments, Texas Gas reiterates the arguments made in its initial comments. In addition, in response to Cities' concern about the accuracy of its data, Texas Gas explains that its original data only included nominations through physical points, not threading through pools. Texas Gas states that including customers that threaded through pools does not change the conclusion that customers are only utilizing a small fraction of their primary receipt points. In addition, Texas confirms that its proposal will not affect a customer's ability to deliver gas volumes in excess of contract demand for fuel charges.

## IV. **Discussion**

12. For the reasons discussed below, the Commission lifts the suspension of the revised tariff record without condition, thereby accepting Texas Gas' proposal to limit a shipper's mainline primary receipt point capacity to 100 percent of the shipper's firm contract demand, but with the understanding developed at the technical conference that Texas Gas will delay implementing the changes until April 1, 2015, at the conclusion of the current winter season.

13. There is a reasonable basis to accept the proposal so modified, given that several changes have occurred since the Commission last addressed this issue during Texas Gas' Order No. 636 restructuring proceedings many years ago.[8] Subsequently, while implementing Order No. 637's capacity release policies, the Commission repeatedly reassured pipelines that they may restrict each shipper's primary receipt point capacity to that shipper's contract demand, so long as a releasing shipper and its replacement shipper

[8] *Texas Gas Transmission Corp.*, 64 FERC ¶ 61,083, at 61,784-85 (*Texas Gas I*), *order on compliance*, 65 FERC ¶ 61,008, at 61,446 (*Texas Gas II*), *order on compliance*, 65 FERC ¶ 61,341, at 62,657-58 (*Texas Gas III*) (1993).

are treated as separate shippers for this purpose.[9] Specifically, the Commission's capacity release policy requires that, "[t]he releasing shipper may reserve primary points on the unreleased segment up to its capacity entitlement on that segment, while the replacement shipper simultaneously reserves primary points on the released segment up to its capacity on that segment."[10] In the context of this policy, the Commission explained that allowing pipelines to cap primary receipt point capacity "balances the interest of releasing and replacement shippers in having flexibility to use the capacity for which they are paying and the interest of the pipeline in retaining sufficient primary point capacity for sale in conjunction with any unsubscribed capacity it is seeking to market."[11] Today, many pipelines have tariff provisions which allow for the limitation of shippers' mainline primary receipt point capacity.[12] Texas Gas' proposed primary point limitation is consistent with this policy.

14. Furthermore, in Texas Gas' Order No. 636 restructuring proceedings, the Commission stated it would reconsider a cap on Texas Gas' primary receipt point capacity if Texas Gas demonstrated that shippers were hoarding capacity.[13] In this proceeding, Texas Gas has demonstrated that certain shippers have primary receipt point capacity significantly exceeding contract demand and that these shippers are using only a

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[9] *See Midwestern*, 101 FERC ¶ 61,310 at P 32 n.20; *ANR Pipeline Co.*, 104 FERC ¶ 61,320, at P 22-26 (2003); *Tennessee Gas Pipeline Co.*, 108 FERC ¶ 61,177, at P 27 (2004), *order on reh'g*, 110 FERC ¶ 61,385 (2005); *Horizon Pipeline Co.*, 103 FERC ¶ 61,281, at P 16, *order on reh'g*, 105 FERC ¶ 61,304 (2003); *Natural Gas Pipeline Co. of Am.*, 103 FERC ¶ 61,174, at P 18 (2003).

[10] *E.g. Horizon*, 103 FERC ¶ 61,281 at P 7 (citations omitted). Texas Gas states that it will continue to conform to this policy. Texas Gas Initial Comments at 20.

[11] *Midwestern*,101 FERC ¶ 61,310 at P 32 n.20.

[12] *See e.g.*, Natural Gas Pipeline Company of America LLC, FERC NGA Gas Tariff, FERC Gas Tariff, Part 5.2, Rate Schedule FTS, Section 3.2(d)(1), 0.0.0; Texas Eastern Transmission, LP, FERC NGA Gas Tariff, Texas Eastern Database 1, Part 6, Section 14.2, 3.0.0.

[13] *Texas Gas II*, 65 FERC at 61,446. The Commission defined hoarding as including "a pattern of persistent nonuse by shippers of designated primary receipt points…." *Texas Gas III*, 65 FERC at 62,657-58.

small percentage of their primary receipt points.[14] Despite this persistent pattern of non-use, customers have no incentive to relinquish this unused receipt point capacity to make it available for other shippers. Based upon the evolution of Commission policy and the pattern of shipper behavior on Texas Gas' system, we find that Texas Gas' proposal is just and reasonable.

15. The Commission does not find that Texas Gas' proposal improperly changes existing service or that existing shippers should receive some form of rate reduction. Under section 4 of the Natural Gas Act (NGA), Texas Gas may propose to change its tariff. In addition, Texas Gas' service agreements contain a *Memphis Clause* which provides that Texas Gas may change its tariff from time to time and that any changes shall apply to existing customer contracts.[15] Here, Texas Gas is proposing to change one provision under the General Terms and Conditions (GT&C) of its tariff related to its primary receipt point capacity. Under Texas Gas' proposal, customers will choose what primary receipt points to retain, and will have the option to select primary receipt points that use their full contract path. As Texas Gas' existing GT&C specifies, if a shipper chooses primary receipt points resulting in a shorter transportation path than the original contract path, the shipper is not entitled to a reservation rate reduction.[16]

16. The Commission rejects the alternative proposals advocated by shipper parties. The pipeline has the initiative, through an NGA section 4 filing, to propose rates, terms, and conditions for the service it provides. If the pipeline's proposal is just and reasonable, the Commission will accept it, regardless of whether other rates, terms, and

[14] *See* Texas Gas Initial Comments at Tables 1 and 2 (showing that certain customers have primary delivery point capacity significantly exceeding contract demand), Tables 3 and 4 (showing that certain customers are using a small percentage of their primary receipt points); Texas Gas Reply Comments, Attachment A (same).

[15] Texas Gas Transmission, LLC, FERC NGA Gas Tariff, Tariffs, Sections 7.1 Form(s) of Serv Agmts - FT/STF/NNS/NNL/SGT/SGL/SNS/WNS, 2.0.0.

[16] *See* Texas Gas Transmission, LLC, FERC NGA Tariff, Tariffs, Section 6.8, G T & C - Requests for Service, 3.0.0.

conditions may also be reasonable.[17] The Commission has determined that Texas Gas' proposal as modified following the technical conference is just and reasonable, and, thus, there is no need to consider the shipper alternatives.

17. Finally, in order for Texas Gas to delay implementation of its proposal from January 1, 2015 to April 1, 2015, it must move the suspended tariff record into effect pursuant to section 154.206 (a). When Texas Gas makes its motion filing to move the suspended tariff record into effect through the eTariff portal, it should use a Type of Filing Code 610 and an effective date of April 1, 2015.

The Commission orders:

As discussed above, the revised tariff record listed in Footnote 1 is accepted, upon motion, consistent with modified implementation process as clarified at the technical conference.

By the Commission.

( S E A L )

Kimberly D. Bose,
Secretary.

[17] *El Paso Natural Gas Co.*, 145 FERC ¶ 61,040, at P 260 (2013) (citing *United Gas Pipe Line Co. v. Mobile Gas Service Corp*, 350 U.S. 332, at 340-41 (1956); *Public Service Commission of New York v. FERC*, 642 F.2d 1335, 1343-44 (D.C. Cir. 1980); *ANR Pipeline Co. v. FERC*, 771 F.2d 507, 513 (D.C. Cir.1985); *Consolidated Edison Co. v. FERC*, 165 F.3d 992, 1002 (D.C. Cir. 1999)).