150 FERC ¶ 61,150
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Leaf River Energy Center LLC — Docket No. RP15-392-000

ORDER ACCEPTING TARIFF RECORDS

(Issued February 27, 2015)

1. On January 29, 2015, Leaf River Energy Center LLC (Leaf River) filed tariff records to modify its Firm Storage Service Ratchet Options and to afford customers a new Low Pressure Tenders Option.[1] Leaf River proposes to modify its tariff to afford customers the opportunity to deliver gas to Leaf River's system at pressures below the minimum pressure level set forth in its Tariff through withdrawal ratchets. For the reasons discussed below, the Commission accepts the proposed tariff records to become effective February 28, 2015.

Background

2. Leaf River's Firm Storage Service (FSS) Rate Schedule provides shippers the option to purchase firm storage service that is subject to injection ratchets as an alternative to service with no ratchets. Injection ratchets reduce the quantity of natural gas a shipper is entitled to nominate for injection to storage as the shipper's storage inventory approaches the shipper's Maximum Storage Quantity. Rate Schedule FSS does not include any option for shippers to purchase firm storage service that is subject to withdrawal ratchets. Withdrawal ratchets reduce the quantity of natural gas which a shipper is entitled to nominate for withdrawal from storage as the customer's storage inventory approaches zero. Injection ratchets are stated as multipliers (less than one) that are applied to a shipper's maximum injection quantity (MDIQ), and withdrawal ratchets are stated as multipliers (less than one) that are applied to a shipper's maximum daily withdrawal quantity (MDWQ).

3. Leaf River's tariff provides that customers shall arrange to deliver natural gas to its point of receipt at a minimum pressure of 700 psig (General Terms and Conditions

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[1] *See* Appendix.

(GT&C) section 6.11). Nevertheless, Leaf River states that periodically gas is tendered for receipt into its pipeline header system at pressures of less than 700 psig.[2] Leaf River states that its facilities were designed on the basis of the assumption that gas would be delivered into the Leaf River header system at all points of interconnection at pressures of 700 psig or greater. Leaf River asserts that when gas is tendered to Leaf River at pressures below this threshold, Leaf River must run its compressors in a manner for which the system was not designed. Leaf River further asserts that, in some instances, it simply cannot inject gas into its caverns when receipt pressures fall below the 700 psig minimum.

4. Leaf River is authorized to charge market-based rates for its storage services.

The Instant Filing

5. Leaf River proposes two modifications to its tariff. First, it proposes to modify its Rate Schedule FSS to add an option for shippers to purchase storage service that would be subject to withdrawal ratchets. Leaf River asserts that the addition of the option of firm storage service subject to withdrawal ratchets will afford its customers greater flexibility, and will give Leaf River an additional means to conform its service to the operational characteristics of its storage facility.

6. Leaf River asserts that it is not proposing any changes to its existing Service Agreements which do not specify withdrawal ratchets. Leaf River proposes to treat Service Agreements executed prior to the effective date of the proposed tariff changes as providing for unratcheted withdrawals to preserve existing customer's rights.

7. Second, Leaf River proposes a change in its tariff provision concerning minimum pressure levels. Leaf River states that, rather than decline to accept deliveries of gas tendered at pressures below 700 psig which could require rejecting a nomination or cutting a scheduled transaction, it proposes to modify its tariff to permit it to accept gas tendered at pressures below 700 psig, when it is operationally feasible for Leaf River to do so, provided that the customer agrees to pay a higher injection rate to compensate Leaf River for the additional costs of accepting the low pressure tenders (e.g., the costs associated with additional use of compression). Leaf River states that injection charges

[2] Leaf River states that its customers are responsible for ensuring adequate delivery pressures on the delivering pipelines. Leaf River asserts that its tariff provides that the customer is responsible for arranging transportation on upstream and downstream pipelines (citing, *e.g.*, Rate Schedule FSS at section 5.1.1(a)(3)).

applicable to low pressure receipts will be negotiated with a customer pursuant to Leaf River's authorization to charge market-based rates.[3]

8. Accordingly, Leaf River proposes to modify GT&C section 6.11 (Pressure and Injection/Withdrawal Rates) and GT&C section 6.5 (Priority, Interruption of Service and OFOs) to provide that Leaf River may accept tenders at pressures of less than 700 psig if it determines that it is operationally feasible to do so and if the customer has agreed to pay a low pressure tender injection charge. Leaf River also proposes to modify its *pro forma* Rate Schedule FSS, FP and FL Service Agreements (sections 7.1, 7.3 and 7.4) to expand the injection charge to include blanks that can be filled in to specify the Low Pressure Tenders injection pricing to which Leaf River and a customer may agree. Leaf River also proposes changes to allow it and its customers to agree to point specific injection and withdrawal pricing to reflect the different values customers ascribe to various Points of Receipts and Points of Delivery. Injection and withdrawal charges under any customer service agreement executed before the date of the tariff changes proposed herein shall be deemed to apply to all applicable Points of Receipt and Points of Delivery.

Public Notice, Protest, and Answer

9. Public notice of the filing was issued on February 2, 2015. Interventions and protests were due as provided by section 154.210 (18 C.F.R. § 154.210 (2014)). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2014), all timely motions to intervene and any unopposed motions to intervene out-of-time filed before the 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. Southern Company Services, Inc. (SCS)[4] filed a protest. On February 18, 2015, Leaf River filed an answer to the concerns raised by SCS.[5]

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[3] *Leaf River Energy Center LLC,* 125 FERC ¶ 61,131, at PP 34-48 (2008) (*Leaf River*).

[4] SCS consists of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company.

[5] Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits answers to protests or answers unless otherwise permitted by the decisional authority. 18 C.F.R. § 385.213(a)(2) (2014). However, the Commission accepts Leaf River's answer since it will not delay the proceeding, may assist the Commission in understanding the issues raised, and will ensure a complete record.

10. SCS argues that Leaf River's low pressure proposal is not just and reasonable and should be rejected.[6] SCS contends that the new requirements would harm SCS and the customers served by it and its operating affiliates by introducing significant uncertainty in fuel planning and management process and subjecting customers to otherwise avoidable costs.

11. First, SCS states that, under the proposal, Leaf River will have the option to institute the low pressure surcharge with "as much advance notice … *as is practicable under the circumstances*."[7] SCS asserts that Leaf River would have, under its Tariff, the ability to give notice of a low pressure surcharge event after a shipper has nominated a quantity for injection in the timely or evening cycle, before the start of the gas day. SCS asserts that, for example, the decision to nominate in the timely cycle will have been made without a full consideration of the cost implications. SCS further states that it may find itself having foregone a more cost-effective alternative to storage solely due to its not having been apprised quickly enough of the surcharge event. In addition, SCS argues that it is unlikely that it will be able in most cases to cut the transaction without consequence contrary to the filing's promise that shippers will not have to pay a surcharge if they do not so choose. SCS further argues that depending on prevailing circumstances and the timing of the notice, SCS may well be unable to avoid some nominated volumes being subject to the low pressure surcharge as a result of the Tariff's elapsed-prorated-scheduled quantity assumptions.[8]

12. Second, SCS argues that the proposal allows Leaf River to negotiate the actual low pressure surcharge every time it declares a corresponding event. Depending on the timing of Leaf River's notice, SCS states that it is particularly concerned that it will lack the ability to reach a fairly negotiated rate, because it will lack sufficient time to canvas the market and determine the competitiveness (if any) of Leaf River's low pressure surcharge or the availability of other viable options for the nominated quantities. SCS asserts that depending on market conditions, SCS could well find itself negotiating a rate with Leaf River that is not a function of Leaf River's incremental costs to accomplish a low pressure injection, but rather the upstream penalties it faces. SCS argues that this is

[6] SCS does not protest Leaf River's proposal to add an option to purchase storage service that would be subject to withdrawal ratchets. SCS Protest at 3, n.1.

[7] Section 6.5.3(b) (emphasis added).

[8] SCS Protest at 5, n.8 (citing sections 6.2.12 and 6.8.2(c)). SCS asserts that, for example, if 30,000 MMBtu had been scheduled for injection on the timely or evening cycle, 10,000 MMBtu would be trapped and subject to the surcharge if imposed on the Intraday-1 cycle, or 15,000 MMBtu if imposed on the Intraday-2 cycle, due to the elapsed-prorated-scheduled quantity requirements.

especially concerning when injections are scheduled over a weekend or holiday period, when there are no market alternatives available other than leaving gas on the upstream pipeline and suffering the applicable penalties or imbalance costs.

13. SCS asserts that while Leaf River claims that the low pressure tenders are forcing it to operate its compression in a manner different than how its system was designed, Leaf River offers nothing to support the idea that it is under-collecting its fuel costs at this time. SCS contends that Leaf River stands to profit from an activity whose cost may already be recovered.

14. SCS contends that, if Leaf River's existing Tariff is not adequate to address the current issues it purports to face, a more equitable approach would be for Leaf River to charge shippers their share of actual fuel incurred to make storage injections. SCS asserts that, for example, Gulf South Pipeline Company's Petal Storage Service (Rate Schedule FSS-P) allows for reimbursement of actual fuel incurred, including incremental fuel incurred in receiving gas from lower-pressure upstream pipelines. SCS states that this service provides the fuel needed as operations dictate without the need to negotiate each incremental transaction. SCS asserts that Shippers get the certainty that their gas will flow as scheduled, and the pipeline recovers its costs through a fuel retention rate that historically has proven stable as well as auditable.

15. In its Answer, Leaf River responds that the Low Pressure Tenders option will not disadvantage customers and will actually benefit those who elect it. Leaf River asserts that the Low Pressure Tenders proposal offers a means by which its customers may elect to compensate Leaf River for the additional costs it must incur in accepting gas at pressures lower than those for which the Leaf River's facility was designed, in return for which Leaf River will accept the customer's Low Pressure Tenders when operationally feasible. Leaf River contends that whether to exercise this option is entirely up to each customer and only customers which see an incremental benefit will want to take advantage of it. Leaf River further contends that service to customers electing not to avail themselves of the option will remain exactly as it is today under Leaf River's Tariff.[9]

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[9] Leaf River's tariff provides that "Customer shall deliver or cause to be delivered to LEAF RIVER all Gas for wheeling, parking or injection at the Point(s) of Receipt at pressures not less than 700 psig and not in excess of the MAOP of LEAF RIVER's facilities at the Point(s) of Receipt." GT&C section 6.11. Leaf River asserts that its customers are responsible for ensuring that the delivering pipelines tender gas into Leaf River's header system at adequate delivery pressures and that its tariff provides that the customer is responsible for arranging transportation on upstream and downstream pipelines (citing, *e.g.*, Rate Schedule FSS at section 5.1.1(a)(3)).

<u>Discussion</u>

16. The Commission finds that Leaf River has fully supported its filing proposing: (1) a firm storage service withdrawal ratchet option and (2) an option whereby Leaf River would accept Low Pressure Tenders if a customer agrees to pay a Low Pressure Tenders injection charge. SCS's Protest is limited to Leaf River's Low Pressure Tenders proposal.[10] The Commission rejects SCS's arguments. Proposed section 6.5.3(a)(iii) provides that:

> LEAF RIVER may decline to accept Low Pressure Tenders (as such term is defined in Section 6.11 of this FERC Gas Tariff) at any time and from time to time *if and to the extent that LEAF RIVER determines that it is not operationally feasible* at such time given then-prevailing operating conditions for LEAF RIVER to accept such Low Pressure Tenders at one or more Points of Receipt. Notwithstanding the foregoing, LEAF RIVER may accept Low Pressure Tenders made by or on behalf of *Customers which have indicated in their Storage Service Agreement and any related Transaction Confirmation their agreement to compensate LEAF RIVER* for implementing such operational measures as it deems necessary to enable it to accept such Low Pressure Tenders. [Emphasis added.]

Contrary to the concerns expressed by SCS, Leaf River presents in its Transmittal Letter (at 3-4), the basic support for finding that its proposal is just and reasonable. Leaf River states that it's proposed tariff revisions:

> will benefit customers by giving them an option to maintain injection service which Leaf River would otherwise have the right to curtail; however, no customer will be obligated to agree to pay a higher injection rate to compensate Leaf River for accepting low pressure tenders if it does not wish to do so (in which case Leaf River would decline to schedule the nomination or, when encountering a pressure of less than 700 psig, cut the transaction).

17. SCS generally argues that Leaf River's Low Pressure Tenders proposal would unjustly burden firm storage service customers. Leaf River is proposing a purely optional program to permit injection of gas which is below the established minimum pressure requirements for delivery into its system. If SCS does not wish to accept this option, it then must accept the consequences of making the non-conforming gas deliveries under Leaf River's Tariff.

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[10] SCS Protest at 3, n.1.

18. SCS asserts that Leaf River's proposal imposes new requirements that would harm SCS and the customers served by it and its operating affiliates by introducing significant uncertainty in fuel planning.[11] Further, SCS complains that it would be disadvantaged by being compelled to agree to pay the higher Low Pressure Tenders injection charge.[12] However, as Leaf River points out in its Answer,[13] the potential for disruption of SCS's fuel supply planning that may arise when SCS's pipeline transporter cannot deliver gas to Leaf River at the minimum specified pressure exists today under Leaf River's Tariff, under which Leaf River may refuse to accept the gas. Further, whether to elect to negotiate and pay a Low Pressure Tenders injection charge is solely the customer's choice. Leaf River's Low Pressure Tenders proposal offers customers an entirely optional means of obtaining greater certainty that Leaf River will accept a customer's tender of gas that is below the 700 psig minimum pressure required by Leaf River's Tariff. If SCS or any other customer does not believe that it will benefit from the Low Pressure Tenders option that customer need not exercise the option. Therefore, Leaf River's Low Pressure Tenders proposal will not create any new burdens. If SCS makes a choice to not negotiate a Low Pressure Tenders injection charge, SCS would be treated exactly as it is now under Leaf River's existing tariff and would bear the risk that Leaf River will be unable to accept gas tendered on SCS' behalf at pressures below 700 psig.

19. In its Answer, Leaf River provides a description of the problems created by deliveries of gas below the minimum pressure level.[14] Leaf River states that:

> Low Pressure Tender events frequently occur mid-day and may not last into the next gas day.[15] Leaf River generally

[11] SCS Protest at 4.

[12] SCS Protest at 5.

[13] Answer at 3.

[14] Answer at 4-5.

[15] Leaf River asserts that it has been told by certain of its customers that the upstream pipelines have been unresponsive to the customers' requests that they take steps to ensure deliveries to Leaf River at the required minimum 700 psig delivery pressure. SCS responds that it has not experienced unresponsiveness and understands that Leaf River and relevant upstream pipelines communicate and pursue reasonable steps to address the problem. In its Answer, (at n.17) Leaf River asserts that if this were the case, it would not experience a Low Pressure Tenders situation. Leaf River further asserts that it has encountered multiple instances where a pipeline transporting gas on SCS's behalf allowed the pressure at Leaf River's interconnection to fall below the minimum. As Leaf

(continued ...)

> cannot know during the day-ahead nomination process whether an interconnecting pipeline's pressure will drop below 700 psig during the next gas day. When it encounters intra-day declines in interconnecting pipeline pressures below 700 psig, Leaf River generally is not operationally capable of accepting tendered gas without significantly modifying the operation of its header system and bringing on additional compression.[16]

Leaf River further states that:

> These actions have costs, and in the extreme case can adversely affect Leaf River's ability to honor the nominations of customers whose pipeline transporters are capable of maintaining their deliveries into the Leaf River header system at pressures greater than 700 psig. Leaf River's alternatives when an interconnecting pipeline cannot meet Leaf River's 700 psig minimum delivery pressure requirements are to cut the customer's scheduled quantities, or to operate its header system in a way for which it was not designed, in order to avoid being penalized under its operational balancing agreements with the interconnected pipelines.[17]

20. SCS has the responsibility to nominate gas deliveries which meet the minimum tariff requirements including the minimum pressure requirement,[18] and Leaf River may refuse to schedule deliveries of gas which fail to meet those requirements or interrupt the transaction pursuant to the notice and with the consequences provided in its existing tariff. Leaf River proposes an option which would allow the customer to deliver gas which does not meet the minimum pressure requirements but only if the customer agrees to the service option. If SCS chooses to employ this option, it should know the consequences of delivering gas which does not meet the minimum pressure requirements

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River asserts, if SCS is able to persuade that pipeline to maintain the minimum pressure, SCS will have no reason to opt to pay the Low Pressure Tenders charge.

[16] Answer at 4.

[17] Answer at 4-5.

[18] *See*, *e.g.*, section 5.1.1(a)(3) of Rate Schedule FFS which states that "Customer accepts responsibility for arranging any transportation service required for utilization of the storage service provided under this Rate Schedule."

and must agree to the option to receive service for delivery of such gas. Therefore, if SCS chooses this option, it should be well aware of its responsibility to plan for the delivery of gas, consider alternatives to the delivery of gas below the minimum pressure requirements, and be aware of the possibility of interruption and other possible consequences before it schedules any gas. In fact, Leaf River is only proposing a reasonable alternative which allows delivery of the gas.

21. SCS complains that Leaf River's existing tariff only requires Leaf River to give the advance notice which is practicable under the circumstances. The tariff provision cited by SCS, section 6.5.3(b), provides that "LEAF RIVER shall provide Customer as much advance notice of any interruption as is practicable under the circumstances." SCS argues that its fuel supply planning will be impeded because notice of a Low Pressure Tender event could come after a nomination deadline.[19] However, section 6.5.3(b) is part of Leaf River's existing tariff which is applicable to all interruptions of service. Further, as Leaf River points out, Leaf River cannot give notice of an impending Low Pressure Tender event before it is aware of such an event and rarely receives advance notice from interconnecting pipelines, or from storage customers. Leaf River states that often the first indication it receives that an interconnecting pipeline cannot deliver gas at the required minimum 700 psig pressure comes from its receipt of real-time pressure data in its control center.

22. SCS claims that Leaf River's proposal could require it to agree to a price for Low Pressure Tenders injections one day at a time and under timing pressures that might not allow it to consider alternatives available in the market.[20] However as Leaf River points out in its Answer,[21] if chosen by the customer, its proposal offers significant flexibility in the modified *pro forma* agreements which include blanks that can be completed with the dates on which a Low Pressure Tenders injection charge would become effective and terminate and blanks may be filled with any dates to which a customer and Leaf River agree.[22] Therefore, it is not necessary for SCS to wait until the day of a low pressure event to negotiate a Low Pressure Tenders charge.

23. SCS also suggests that Leaf River has not justified its proposed Low Pressure Tenders injection charge on the basis of incremental costs and may not be a function of

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[19] SCS Protest at 4.

[20] SCS Protest at 5.

[21] Answer at 6.

[22] *See* proposed section 7.1, Exhibit A-2.

Leaf River's incremental costs.[23] However, Leaf River is proposing the Low Pressure Tenders option using its market-based rate authority.

24. Finally, SCS suggests that a more equitable approach is reimbursement for the actual fuel costs incurred. However, the courts have long recognized that there is no single just and reasonable rate, but instead that various rates may be just and reasonable.[24] The NGA gives the pipeline the primary initiative, through a section 4 filing, to propose its rates, terms, and conditions of service.[25] If the pipeline's proposal is just and reasonable, the Commission must accept it, regardless of whether other just and reasonable rates, terms, and conditions of service may exist.[26] Here, the Commission has found that Leaf River lacks market power with respect to its storage services,[27] and therefore Leaf River's proposal to charge a market-based rate for its Low Pressure Tenders option is reasonable.

25. In conclusion, the Commission finds that the proposed Low Pressure Tenders option is reasonable. If customers do not choose the Low Pressure Tenders option, they will not incur the injection charge and their service will not change. Leaf River is offering customers additional flexibility without compelling customers to incur the costs of the Low Pressure Tenders option.

26. Accordingly, the Commission finds that Leaf River's proposed tariff records are just and reasonable, and therefore, these tariff records listed in the Appendix to this order are accepted to be effective February 28, 2015.

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[23] SCS Protest at 5.

[24] *Permian Basin Area Rate Cases*, 390 U.S. 747, 767 (1968). *Consolidated Edison Co. v. FERC*, 165 F.3d 992, 998, 1002-1004 (D.C. Cir. 1999) (*Consolidated Edison*), *aff'g, Tennessee Gas Pipeline Co.*, Opinion No. 406-A, 80 FERC ¶ 61,070, at 61,223-61,224 (1997). *See also Cities of Bethany v. FERC*, 727 F.2d 1131, 1138 (D.C. Cir. 1984)*; Alabama Electric Cooperative, Inc. v. FERC*, 684 F.2d 20, 27 (D.C. Cir. 1982).

[25] *Consolidated Edison*, 165 F.3d at 1002 (stating NGA grants the "primary initiative for rate-setting to the pipeline").

[26] *Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1578 (D.C. Cir. 1993).

[27] *Leaf River*, 125 FERC ¶ 61,131 at P 47.

<u>The Commission orders</u>:

The tariff records listed in the Appendix to this order are accepted to be effective February 28, 2015.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Leaf River Energy Center LLC
FERC NGA Gas Tariff
Leaf River Energy Center LLC, FERC Gas Tariff

Tariff Records Accepted to be effective February 28, 2015

Rate Schedules, 5.1 FSS Rate Schedule, 3.0.0
GT&C, 6.5 Priority, Interruption of Service and OFOs, 2.0.0
GT&C, 6.11 Pressure and Injection/Withdrawal Rates, 1.0.0
Service Agreement Forms, 7.1 FSS Service Agreement, 3.0.0
Service Agreement Forms, 7.3 FP Service Agreement, 1.0.0
Service Agreement Forms, 7.4 FL Service Agreement, 1.0.0