

151 FERC ¶ 61,254
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Florida Gas Transmission Company, LLC

Docket No. RP15-101-000

ORDER ON TECHNICAL CONFERENCE

(Issued June 23, 2015)

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1. On October 31, 2014, as amended on November 7, 2014, Florida Gas Transmission Company, LLC (FGT) filed pursuant to section 4 of the Natural Gas Act (NGA) to implement a general rate increase (October 2014 filing). FGT also proposed a number of revisions to the terms and conditions under which it provides transportation service, including changes both to its General Terms and Conditions (GT&C) and to certain rate schedules. On November 28, 2014, the Commission accepted and suspended the tariff records to be effective on May 1, 2015, subject to refund and conditions, and the outcome of a hearing on the rate issues and a technical conference on the non-rate tariff proposals.¹ This order addresses the issues set for technical conference. As discussed below, the Commission finds certain of FGT's proposals to be just and reasonable and other proposals to be unjust and unreasonable. Further, the Commission is setting certain issues for hearing.

I. Background

2. FGT operates a 5,300-mile pipeline system, which extends from Texas through Louisiana, Mississippi, and Alabama to Florida. FGT's system is divided into two service regions: the Western Division, which consists of all portions west of the Alabama/Florida state line, and the Market Area, which consists of all portions of its system located within Florida. FGT states that historically it has received natural gas from suppliers in its Western Division and has transported such natural gas into its Market Area for delivery to customers in the state of Florida, although some volumes are delivered to customers in the Western Division.²

3. FGT states that it can transport and deliver approximately 3.1 Bcf/day of natural gas to the Florida peninsula and that in Florida it basically serves three types of customers – electric generation, natural gas distribution, and industrial customers. FGT states that electric generation accounts for over 80 percent of the annual throughput on FGT's system, and service to such generators has a seasonal load pattern characterized by higher summer demands due to air-conditioning load requirements. FGT states that the natural gas distribution customers have a seasonal load pattern characterized by higher demands during the winter, due to heating requirements of their residential and small commercial customers. FGT states that it also serves Florida industrial customers that

¹ *Florida Gas Transmission Co., LLC*, 149 FERC ¶ 61,188 (2014) (November 28, 2014 Order).

² FGT's tariff defines the "Reticulated Areas" of its Market Area in which the direction of gas flow changes from time to time. *See* GT&C sections 1 and 31.

take gas at a constant rate during the year, as well as industrials that take gas on a seasonal basis.³

4. FGT provides firm transportation service in the Western Division under Rate Schedule FTS-WD.⁴ FGT provides firm transportation in the Market Area under Rate Schedules FTS-1, FTS-2, FTS-3, and SFTS (a service for small customers). Rate Schedule FTS-1 contains rolled-in rates which recover the costs of facilities constructed before FGT's Phase III Expansion. Rate Schedule FTS-2 contains incremental rates which recover the costs of FGT's Phase III-VII expansion facilities, which were placed into service between 1995 and 2008. Rate Schedule FTS-3 contains an incremental rate to recover the costs of FGT's Phase VIII expansion, which was placed into service in April 2011.⁵

5. The Rate Schedule FT-WD rates applicable in the Western Division and the various Rate Schedule FTS and SFTS rates applicable in the Market Area are postage stamp rates applicable throughout the relevant part of FGT's system, with the exception of the fuel charge for the Western Division. The Western Division fuel retention percentages are charged on a "per-compressor-station" basis.

6. In its October 2014 filing, FGT proposed to increase its rates. Among other things, FGT proposed to roll in the costs of its Phases III-VII expansions, its Phase VIII expansion, and its Mobile Bay expansion. FGT also proposed to eliminate the per-compressor-station fuel charge and establish postage-stamp fuel charge for its Western Division.

7. FGT also proposed extensive non-rate tariff revisions to its operations and business practices. These changes include: (1) a provision for nominations to allow for determination of the path between receipt points and delivery points; (2) the addition of a daily scheduling penalty; (3) additional Alert Day Delivery provisions and an increase of related penalty provisions; (4) modification of the maximum hourly quantities at non-

³ October 2014 filing, Exh. No. FGT-2 at 7-11.

⁴ In September 2011, FGT placed its Mobile Bay Expansion Project into service, adding additional firm transportation capacity in the Western Division. In the order authorizing this project, the Commission made a predetermination that FGT could roll the costs of the expansion into its existing Rate Schedule FTS-WD rates in a future NGA general section 4 rate case, absent any material change in circumstance. *Florida Gas Transmission Co., LLC*, 132 FERC ¶ 61,040 (2010).

⁵ *Florida Gas Transmission Co., LLC*, 129 FERC ¶ 61,150 (2009).

primary and pipeline interconnect points; (5) modification of gas quality provisions; (6) an update of creditworthiness provisions; (7) an additional option for the recovery of construction facility costs; (8) the execution of a new Form of Service Agreement upon any contract extension where the underlying agreement is not consistent with the *pro forma* Form of Service Agreement; (9) the modification of Rate Schedule SFTS; (10) the extension of time between the update of the Data Verification Committee Exempt Usage amounts from three years to seven years; (11) modification of various Forms of Service Agreements; and (12) an extension of the trial basis of its intraday three-nomination cycle. FGT claimed, among other things, that its proposals would enable it to better manage its system in order to maintain reliable service, to provide greater flexibility to shippers, and thereby to compete more effectively with other pipelines.

8. The November 28, 2014 Order accepted without suspension FGT's proposal to extend on a trial basis its Intraday Three nomination cycle, and accepted and suspended to be effective May 1, 2015, all other aspects of FGT's filing. The Commission established a hearing to investigate all rate related issues and directed the Commission Staff to convene a technical conference on the remaining non-rate issues.

9. On January 16, 2015, the Commission issued a notice that the technical conference would be held on February 5, 2015. Along with FGT and Commission Staff, numerous parties attended the technical conference. The parties agreed to submit initial comments on the technical conference by February 19, 2015 and reply comments by March 5, 2015.

10. On February 19, 2015, FGT, Associated Gas Distributors of Florida, Inc. (AGDF), Duke Energy Florida, Inc. (Duke), Florida Power & Light Company (FPL), Florida Municipal Natural Gas Association (FMNGA), Florida Cities,⁶ Indicated Shippers,⁷ Infinite Energy, Inc. (Infinite), Mosaic Fertilizer LLC (Mosaic), Peoples Gas System, a Division of Tampa Electric Company and Tampa Electric Company (collectively, Peoples),⁸ PowerSouth Energy Cooperative, Inc. (PowerSouth), Seminole Electric

⁶ Florida Cities include JEA, the Orlando Utilities Commission, Lakeland Electric, the City of Tallahassee, the City of Gainesville and Florida Gas Utility, a Florida inter-local agency whose membership presently consists of more than 20 municipally-owned electric and/or gas utilities, including the Florida Municipal Power Agency.

⁷ The Indicated Shippers include BP Energy Company, ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation, Noble Energy, Inc., Shell Energy North America (US), L.P., and Shell Offshore Inc.

⁸ Peoples Gas System and Tampa Electric Company jointed filed Initial and Reply Comments.

Cooperative, Inc. (Seminole), and Southern Company Services, Inc. (SCS)⁹ filed Initial Comments. On March 6, 2015,¹⁰ FGT, AGDF, Duke, FPL, FMNGA, Florida Cities, Indicated Shippers, Infinite, Mosaic, Peoples, PowerSouth, and Seminole filed Reply Comments.

11. On April 22, 2015, FGT filed a motion with the Commission stating that FGT, the Commission Staff and the active parties in this proceeding were engaged in settlement discussions and that it would be in the best interest of the participants if the Commission did not issue an order on the technical conference proceeding issues while settlement discussions were underway. FGT stated that these parties requested that the Commission hold in abeyance any order on the technical conference issues until May 28, 2015. FGT stated that at that time it would notify the Commission if additional time for settlement discussions was necessary. If not, FGT stated that the participants agreed that they would request that the Commission issue the order on the “Technical Conference issues on or about May 28, 2015 or as soon as possible after receiving the notification of settlement discussions noted above, to allow [FGT] to be able to motion any tariff records into effect as early as of June 1, 2015 or the first day of the month after the issuance of the order on the Technical Conference issues.” On April 23, 2015, the Commission granted this motion.

12. On May 28, 2015, FGT notified the Commission that the parties determined that no additional period of abeyance of the issuance of the order on the technical conference issues was necessary. Therefore, these parties requested that the Commission issue an order on the technical conference issues on or about May 28, 2015, or as soon as possible after receiving the May 28, 2015 notification. FGT (as agreed to by Commission Trial Staff and the Active Parties) requested that Commission issue the subject order as soon as possible to permit FGT to be in a position to move its suspended tariff records into effect no later than July 1, 2015, subject to modification by such Commission order.

⁹ Southern Company Services, Inc. is an agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company.

¹⁰ The Commission was closed on March 5, 2015 due to weather-related reasons, therefore, Reply Comments were submitted on March 6, 2015.

II. Discussion

A. Pathed Scheduling Nominations and Daily Scheduling Penalty

13. For the reasons discussed in this section, we find that FGT has not satisfied its burden under NGA section 4 to show that its proposals to require pathed scheduling nominations setting forth specific receipt and delivery points and to impose daily scheduling penalties for variances above and below scheduled quantities are just and reasonable. Accordingly, we are rejecting those proposals without prejudice to FGT submitting a new more fully supported NGA section 4 proposal to improve the accuracy of shipper scheduling nominations, without unreasonably restricting existing shipper flexibility. Below, we first describe FGT's existing tariff provisions relevant to these issues. We then describe FGT's October 2014 filing proposing to change these tariff provisions, FGT's support for these proposals in its technical conference presentation and Initial Comments, the shippers' comments opposing these proposals, FGT's Reply Comments, and finally, our reasons for rejecting FGT's proposals.

1. Existing Tariff Provisions

14. FGT's service agreements with its firm shippers set forth the Maximum Daily Transportation Quantity (MDTQ) which FGT is obligated to transport for each shipper. The service agreements also list each shipper's primary receipt and delivery points, together with its Maximum Daily Quantities (MDQs) at those primary points. In addition, section 6 of FGT's Rate Schedules FTS-1, FTS-2, and FTS-3 and section 11 of FGT's GT&C¹¹ provide that a shipper may have a "Multiple Division Contract." Those

¹¹ FGT tariff, GT&C section 11 states:

[a] single Shipper having multiple divisions or plants (Divisions) may contract with Transporter for service under a single Service Agreement. Any such Service Agreement for firm service shall separately state the seasonal MDTQs for each individual Division. The stated MDTQ shall represent Shipper's Primary Delivery Point quantities and shall establish Transporter's firm obligation to make available for delivery volumes at such divisions or plants. The Service Agreement shall also specify a total seasonal MDTQ. The aggregate MDTQ for all Divisions or plants shall not exceed the total MDTQ stated in the Service Agreement, but Shipper may shift entitlements from one Division or plant to another designated by Shipper if operating conditions and pipeline capacity so permit and if such a shift of entitlements does not

(continued...)

contracts permit a firm shipper under a single service agreement to have a separately stated MDTQ for each of its Divisions, together with a total MDTQ for the entire contract equal to or greater than the sum of the Division MDTQs. GT&C section 1 defines Division to mean one or more primary delivery points which are interconnected with the shipper's operationally integrated downstream distribution system capable of serving end-users from deliveries at the primary delivery points forming the Division.¹² FGT's major firm shippers, including its large electric utility shippers, have multiple division service agreements.

15. Section 5 of FGT's firm and interruptible rate schedules, other than its no-notice rate schedule, currently requires that, if a shipper nominates a forwardhaul or backhaul transaction that will take place exclusively in the Western Division or exclusively in the Market Area, it "must nominate the specific Receipt Point and the specific Delivery Point (i.e., path) for each nomination."¹³ FGT's current tariff does not contain any similar requirement that shippers nominate specific receipt and delivery points when shippers nominate a transportation transaction originating in the Western Division and culminating in the Market Area or vice versa. FGT has not explained how shippers nominate such transactions. However, it appears from shipper comments following the technical conference, that FGT currently permits shippers with multiple division contracts to

affect Transporter's ability to render firm service to other customers. Shipper may nominate and Transporter may schedule such deliveries at a particular Division in excess of the divisional MDTQ, provided the total scheduled quantity for the Service Agreement does not exceed the total contractual MDTQ.

¹² FGT tariff, GT&C section 1, provides that:

[d]ivision shall mean one or more Primary Delivery Points under a single service agreement which are (i) included in a divisional or separately stated MDTQ within the total MDTQ of the service agreement, and (ii) interconnected downstream of the Primary Delivery Point(s) on Transporter's system by Shipper's operationally integrated distribution system capable of serving end-users from deliveries at any such Primary Delivery Points forming the Division. The term Division shall include (but not be limited to) all Divisions existing under service agreements in effect on November 2, 1992.

¹³ See, e.g., Rate Schedule FTS-1 section 5.

submit nominations specifying the division in which they request FGT to deliver the natural gas, without specifying the specific delivery points within that division where the shipper will take that natural gas.

16. Section 11 of the GT&C provides that a shipper with a multiple division contract may shift entitlements from one division to another if operating conditions and pipeline capacity permit and if such a shift does not affect the pipeline's ability to render firm service to other customers. The shipper may also nominate and FGT may schedule such deliveries in a particular Division in excess of the divisional MDTQ, provided the total scheduled quantity for the Service Agreement does not exceed the total contractual MDTQ.

17. GT&C sections 12 and 13 require that each receipt and delivery point be covered by an operating account. These accounts are used to keep track of variations between scheduled amounts and the amounts actually received or delivered at the subject points. Under FGT's existing tariff, more than one delivery point may be included in a single operating account. FGT's existing tariff does not contain any daily scheduling penalty for variations between daily amounts scheduled at a point and the amounts actually received or delivered at the point. Currently, these accounts are only used for cashing out shippers' monthly imbalances.¹⁴

2. FGT's October 2014 Filing

18. In its October 2014 filing, FGT proposed to revise its tariff to require shippers to nominate specific receipt and delivery points when nominating service from the Western Division to the Market Area, just as they now do when nominating service exclusively within the Western Division or within the Market Area. FGT also proposed to implement, for the first time, a daily scheduling penalty for variations from scheduled quantities at delivery points and, in some circumstances, at receipt points.

19. Specifically, FGT proposed to add to GT&C section 10.A.1 a requirement that:

[a] Shipper must nominate the specific Receipt Point and the specific Delivery Point (i.e., path) for each nomination, so that the applicable fuel rate, if any, can be determined.

FGT proposed corresponding changes to section 5 of Rate Schedules FTS-1, FTS-2, FTS-3, SFTS and ITS-1.

¹⁴ FGT tariff, GT&C section 14.

20. In addition, FGT proposed to modify GT&C section 13 to require that each market delivery point be covered by a separate Delivery Point Operating Account. Under FGT's proposal, it appears that multiple delivery points could no longer be included in a single operating account.

21. FGT next proposed to add to GT&C section 17 a subsection C.8, providing that each delivery point included in a Delivery Point Operating Account, Operating Balancing Agreement (OBA), or transportation service agreement with a daily scheduling variance exceeding five percent of the scheduled quantity at the delivery point be subject to a daily scheduling penalty.¹⁵ FGT proposed that the daily scheduling penalty would be equal to the Rate Schedule FTS-3 rate stated at an 100 percent load factor basis. FGT proposed to apply the same penalty to daily scheduling variances at a receipt point, if it has provided 24 hours' notice that daily scheduling variances at that point are causing capacity constraints or creating operating conditions that threaten system integrity or safety. FGT also proposed language in GT&C section 13.A.6., providing, "[t]he variance between scheduled and actual quantities in excess of allowed Tolerance Levels at each delivery and receipt point shall be subject to the daily scheduling penalty in accordance with section 17.C.8 of these General Terms and Conditions."

22. FGT's October 2014 filing included direct testimony by its witness Michael T. Langston in support of these proposed changes. Mr. Langston states that FGT has required nominations in its Western Division to nominate a specific receipt point and delivery point, i.e., path, so that applicable fuel rates and transportation rates could be determined. He then states, "FGT is now proposing to extend this pathing system-wide for all receipt and delivery nominations. This will allow tracking for the purposes of fuel calculations as well as proper determination of volume deliveries for future rate design and determination."¹⁶ With regard to its scheduling penalty proposal, Mr. Langston testifies, "[a]t times, FGT has experienced conditions where the existing penalty provisions have not served as an adequate incentive for shippers to modify their actions to assist in alleviating system conditions. As such, FGT has updated penalty provisions covering . . . daily scheduling penalties in Section . . . 17.C.8."¹⁷ FGT's October 2014 filing provides no other support for its proposal to require pathed nominations and

¹⁵ FGT proposes that the tolerance for a receipt point scheduling penalty would be the greater of five percent or 1000 Dth. The 1000 Dth tolerance would not be applicable at delivery points.

¹⁶ FGT Exh. No. FGT-2 at 30.

¹⁷ FGT Exh. No. FGT-2 at 27.

impose daily scheduling penalties when actual quantities received or delivered vary from scheduled quantities.

3. FGT's Technical Conference Presentation and Initial Comments

23. In its technical conference presentation and Initial Comments, FGT provides additional support for its scheduling nomination and scheduling penalty proposals. While its October 2014 filing explained that its proposal to require scheduling nominations to identify specific receipt and delivery points would assist in determining the applicable fuel charge, FGT provides different reasons for this proposal at the technical conference and in its Initial Comments. FGT's Initial Comments state:

[r]equiring detailed point nominations will provide more accurate scheduled and delivered quantities at the point level. Pathed nominations will make accurate tracking possible by more clearly showing how an allocation affects the particular package of gas. The current approach does not provide the accuracy that Florida Gas requires. This proposal to extend pathing system-wide is one of a wide array of tools that will enable shippers to adjust nominations to reflect actual flow at a point and enable delivery point operators to monitor actual deliveries at a point.¹⁸

24. FGT states that it provided a number of examples in its technical conference presentation where no natural gas was nominated or scheduled at a point, yet natural gas was consistently taken at the delivery point even when such a point was in a constrained area of the system.¹⁹ FGT states that its scheduling nomination proposal will ensure that shippers schedule natural gas to points where the natural gas is consumed. It further states that system-wide pathing will protect the rights of firm shippers by ensuring that volumes scheduled to any constrained areas on FGT's system are properly based on scheduling priorities within FGT's tariff. FGT states that this is important because FGT anticipates that it will receive new natural gas from non-traditional shale sources in both the Western Division and in the Market Area.²⁰ Furthermore, it claims that "the pathing

¹⁸ FGT Initial Comments at 3-4.

¹⁹ See FGT Initial Comments, Attachment 1, Slides 38-39. These slides do not provide any information concerning whether the subject nominations were in a constrained or unconstrained area.

²⁰ FGT Initial Comments at 4; Attachment 1, Slide 35.

proposal is not a major change to the [FGT] system,”²¹ and reflects system realities, because for the last five months of 2014, 47 percent of nominations were pathed.

25. FGT provides similar reasons for its scheduling penalty proposal. It states that under its current tariff, shippers are not required to burn gas where natural gas is nominated and scheduled. It asserts that, as the utilization of its system increases, such a practice may jeopardize the firm rights of primary firm shippers. FGT states that its proposed daily scheduling penalty is intended to align shippers’ scheduled quantities with their measured quantities and ensure that the rights of firm shippers are protected. FGT asserts that the revisions will add discipline to the scheduling system on a day-to-day basis. FGT provides examples of points where natural gas was not nominated or scheduled, yet volumes were taken on a regular basis and where gas was scheduled yet actual deliveries were over- or under-nominated.²² FGT also asserts that its proposed five percent tolerance level before invoking the penalty is consistent with tolerances previously approved by the Commission for other pipelines.²³

4. Additional Post-Technical Conference Comments

26. Many of the parties object to FGT’s proposal to implement a pathing requirement. In general, these protests focus on three broad issues: (1) lack of justification and support for the proposal; (2) claims that the proposals reduces operational flexibility (including degrading an existing GT&C section 11 right) without additional benefits; and (3) arguments that the proposal is based in part on premature and speculative claims of new natural gas from non-traditional sources.

27. The parties raise issues concerning the proposed daily penalties, pointing to an alleged lack of support and a failure to meet the NGA section 4 burden to establish that

²¹ *Id.* at 4.

²² FGT Initial Comments at 9 (citing Attachment 1, Slides 32-33). FGT asserts that between May and September 2014: (1) 92 percent of the delivery locations with measured or scheduled volumes on a daily basis were over a five percent tolerance; (2) 9.6 Bcf of gas was scheduled at individual delivery locations in excess of an Alert Day tolerance, however, the overall aggregated Delivery Point Operator Account balance was 26,093 Dth; and (3) during FGT Alert Days, overburns increased by an average of 17 percent compared to non-Alert Days. FGT Initial Comments at 9.

²³ FGT Initial Comments at 9-10 (citing *inter alia*, *Portland Natural Gas Transmission Sys.*, 80 FERC ¶ 61,134 (1997); *Natural Gas Pipeline Co. of America*, 73 FERC ¶ 61,050, at 61,132-33 (1995)).

the changes FGT proposes are just and reasonable. Parties such as Duke assert that FGT does not disclose any change in circumstances on its system that would justify the imposition of daily scheduling penalties and that it did not provide any evidence regarding any operational or system integrity requirements that would justify the burden imposed by the enhanced penalties on shippers. AGDF asserts that FGT fails to demonstrate the need for, or reasonableness of, its proposed daily scheduling penalty or address the negative impacts it would have on its historical firm shippers. In addition, parties such as Duke, Florida Cities, FPL, Mosaic, and Peoples, assert that the daily scheduling penalty is contrary to existing Commission regulations because such regulations permit a pipeline to include penalties in its tariff but, “only to the extent necessary to prevent the impairment of reliable service.”²⁴ These parties argue that FGT’s proposal fails to meet this requirement.

28. AGDF, FMNGA, Florida Cities, Seminole, and Peoples claim that FGT provided only minimal details concerning the manner of implementation and the operational need for its proposed pathing requirement. For example, Peoples asserts that FGT did not provide any existing operational factors that would warrant the need to propose system-wide pathed nominations in its October 2014 filing other than calculating fuel usage and the determination of delivery volumes for future rate design purposes. Peoples and others argue that tracking fuel usage is not a justifiable reason for implementing system-wide pathed nominations because FGT already implements a postage stamp fuel rate to its Market Area from receipt points outside of the Market Area.

29. FGT’s subsequent rationale for pathing - that it will protect its firm shippers from new and non-traditional natural gas flows that may enter the system - is faulted by parties such as Infinite as unsupported, because FGT has not provided any evidence as to what new and non-traditional flow paths it is expecting, or why pathing will become necessary should any of these flow paths materialize. Likewise, other parties, such as AGDF, Duke, and FPL, contend that the proposal to implement a system-wide pathing requirement based on future sources of natural gas is purely speculative.

30. Numerous parties²⁵ argue that the system-wide pathed nominations will reduce operational flexibility and present an unnecessary burden to shippers. Duke, Florida Cities, and Peoples argue that having a pathed system may cause capacity allocation issues and would restrict nomination and scheduling flexibility, which ultimately could

²⁴ Duke Initial Comments at 7, Mosaic Initial Comments at 2 (citing 18 C.F.R. § 284.12(b)(2)(v) (2014)).

²⁵ See Initial Comments of AGDF, Duke, Florida Cities, FMNGA, FPL, Infinite, Peoples, and Seminole.

cause severe degradation of service to customers and may result in additional penalties under FGT's new penalty proposals. FPL asserts that the imposition of a pathed nomination requirement in the Market Area may diminish the reliability of FGT's system and impair electric reliability.

31. Many parties point to what they argue is a lack of support for the proposed daily scheduling penalty. FMNGA adds that FGT's sole justification for its proposal is that in the two most extreme months of 2014, there were delivery points at which the difference between measured and scheduled quantities exceeded five percent.²⁶ SCS states that contrary to FGT's claims that shippers' behavior requires additional disciplining, the use of the existing Alert Day provision in FGT's tariff in the last four years was approximately 0.08 percent of the Market Area deliveries on those days.²⁷ Seminole asserts that because FGT managed its system and provided uninterrupted firm service to its shippers during the past few years, there is no justification for FGT's daily scheduling penalty provisions. In this vein, Duke points out that FGT has not articulated why its other operational tools, which are currently in FGT's tariff, are insufficient for aligning scheduled and measured quantities and protecting firm shippers. FPL asserts that the Commission has rejected a proposal to add a daily scheduling penalty when the pipeline had sufficient tools at its disposal.²⁸ Peoples contends that FGT's proposal to impose a five percent tolerance every day of the year should be rejected. Peoples and AGDF assert that the fact that FGT currently has the authority to impose a five percent daily tolerance in those rare instances when such a narrow tolerance is required, but has had few occasions where imposing such a tolerance was necessary, shows that there is no basis for the rigid requirements – together with associated penalties – that FGT now seeks to apply.

32. Parties such as Duke, Florida Cities, FPL, Mosaic, and Peoples also assert that the proposed daily scheduling penalty is contrary to existing Commission policies. Duke and Mosaic contend that the Commission's regulations permit a pipeline to include penalties in its tariff but caution that the regulations provide that such penalties are permitted, "only to the extent necessary to prevent the impairment of reliable service."²⁹ Mosaic

²⁶ FMNGA Initial Comments at 15.

²⁷ SCS Initial Comments at 6.

²⁸ FPL Initial Comments at 11-12 (citing *El Paso Natural Gas Co.*, 121 FERC ¶ 61,265 (2007)).

²⁹ Duke Initial Comments at 7, Mosaic Initial Comments 2 (citing 18 C.F.R. § 284.12(b)(2)(v) (2014)).

states that FGT must not only demonstrate the need for penalties but also such penalties are the least burdensome penalties necessary to protect system reliability. Moreover, Duke argues that in *Columbia Gulf*, the Commission ruled that because penalties can limit “efficiency in the short-term market by restricting shippers’ abilities to effectively use their transportation capacity,” pipelines must “narrowly design penalties to deter only conduct that is actually harmful to the system,” versus implementing tariff provisions that will impact market behavior on virtually all non-Alert Days.³⁰ Duke argues that FGT has not shown that the new daily scheduling penalties are necessary to prevent the impairment of reliable service, or that it has “narrowly designed” the penalty scheme in a manner that will only deter harmful conduct.

33. In addition to the design and need for the penalties, FMNGA states that the five percent tolerance factor proposed for the imposition of the daily scheduling penalty is unrealistic because it applies to small customers and that the daily scheduling penalty will effectively remove the flexibility that comes from owning firm transportation rights on the FGT pipeline and will force customers to pay additional millions of dollars in penalty charges to ensure reliability.

34. Parties object to FGT’s proposed daily scheduling penalty which is equal to the Rate Schedule FTS-3 transportation rate stated at an 100 percent load factor basis, i.e., \$1.5577 per Dth, multiplied by the quantity of natural gas that exceeds the tolerance level on each Gas Day. Infinite states that FGT failed to support the use of this rate for a penalty.³¹ PowerSouth states that this penalty is contrary to the Commission’s policy that the appropriate level of a penalty is the pipeline’s interruptible rate, because that is the measure of the opportunity loss, if any, resulting from daily scheduling imbalances.³² PowerSouth states that the proposed penalty rate far exceeds FGT’s interruptible rate of \$1.12 for the Market Area. PowerSouth states that in the Western Division, customers subject to this penalty will face a penalty rate some ten times FGT’s proposed firm service rate for the Western Division (e.g., the Rate Schedule FTS-WD rate is \$0.153 per Dth and the Rate Schedule ITS-WD rate is \$0.155 per Dth). PowerSouth

³⁰ Duke Initial Comments at 8 (citing *Columbia Gulf Transmission Co.*, 135 FERC ¶ 61,106 (2011)).

³¹ Infinite Initial Comments at 9.

³² PowerSouth Initial Comments at 4 (citing *Natural Gas Pipeline Co. of America*, 103 FERC ¶ 61,174, at P 63 (2003); *Eastern Shore Natural Gas Co.*, 100 FERC ¶ 61,075, at P 39 (2002)).

states there can be no justification for imposing a penalty based on the Rate Schedule FTS-3 rate on Western Division customers.³³

35. Seminole and AGDF assert that the proposed daily scheduling penalty is also objectionable because it is unduly discriminatory and preferential. They argue that the daily scheduling penalty would apply at all times at delivery points but it would only apply at receipt points after FGT determines there is an operational requirement for imposition of the penalties at receipt points and after it provides 24 hours' notice.

36. The parties also raise concerns with how their GT&C section 11 rights may be affected by FGT's proposal to implement a fully pathed system as well as in the implementation of daily scheduling penalties. For example, Peoples claims that FGT's proposal to require pathing of all nominations to individual delivery points in the Market Area would take away shippers' rights under GT&C section 11. Peoples states that it relies on section 11 rights for balancing in certain divisions. However, Peoples and other parties argue that FGT's pathing proposal would require them to make a far greater number of nominations as well as multiple intraday nominations without providing any benefits. For example, Peoples asserts that GT&C section 11 allows it to shift entitlements between delivery points within a division and to shift entitlements between divisions if operating conditions permit. Peoples argue that FGT's pathing proposal eviscerates shippers' rights and flexibility provided for under GT&C section 11. Peoples maintains that the costs and burdens of FGT's proposal are substantial and the benefits of this departure from long-established practices are few, if any.

37. Parties such as Florida Cities and Peoples argue that FGT has not explained how the proposed daily scheduling tolerance at all delivery points would affect these important GT&C section 11 rights.³⁴ Peoples states that FGT's attempt to illustrate allegedly improper shipper behavior by focusing on a single delivery point provides an incomplete and misleading assertion that may not account for a shipper's rights under GT&C section 11.³⁵

38. In its Reply Comments, FGT argues that its pathing proposal does not restrict the firm rights of shippers because without the pathing of nominations, and daily scheduling obligations and tolerances associated with the delivery points on a contract, shippers may exceed the daily and hourly firm rights at specific points without consequences as long as

³³ PowerSouth Initial Comments at 4.

³⁴ Florida Cities Initial Comments at 9.

³⁵ Peoples Initial Comments at 23-24.

the overall contract is balanced. FGT asserts that the flexibility claimed by shippers in their comments is not a firm right or a right paid for by the shippers. FGT further asserts that its pathing proposal and certain other tariff proposals are designed to provide for more point-based discipline on movement of volumes across its system and are consistent with existing contractual rights.

39. FGT asserts that shippers' protests about increased penalties due to the pathing proposal are also without merit. FGT states that its daily scheduling and Alert Day penalties are both based on final scheduled and measured quantities for the day. FGT argues that if a shipper utilizes the various nominating and scheduling cycles to adjust its nominations, it is less likely to incur daily scheduling penalties. Moreover, FGT asserts that although shippers argue that the daily scheduling penalty proposal is unfair, that it degrades their service, and that it exposes them to large amounts of daily scheduling penalties, the shippers did not dispute the fact that natural gas has been taken at points where no natural gas was nominated or scheduled or that gas has been taken at hourly rates in excess of what is allowed under their contracts or the tariff. In addition, FGT asserts that the shippers did not provide any examples where their takes at the meter were consistently within contractual rights or where FGT's daily scheduling penalties proposal would have any impact if the shippers stayed within the limits of the tariff and their contracts.

40. FGT states that FPL and others cite to the Commission's order in *El Paso* as an example where the Commission did not permit a pipeline to provide for a daily scheduling penalty.³⁶ FGT asserts that in *El Paso*, the pipeline had existing hourly penalties in its tariff and it wanted to add a second layer of daily scheduling penalties. FGT argues that the Commission denied this request because it would result in a situation where if a shipper avoided an hourly penalty, it would be exposed to a daily penalty and vice versa. FGT asserts that it does not have existing hourly penalties and has not proposed them; therefore the *El Paso* order is not applicable in this instance.

41. Lastly, FGT argues that GT&C section 11 does not give shippers a right to "shift entitlements," because a shipper must first request FGT to realign divisional MDTQs in the same manner that shippers currently request to realign receipt or delivery point MDTQs. FGT states that this request to move Primary Firm Division Quantities from one division to another allows FGT to make a determination if such requests are operationally feasible, the capacity requested is currently available, and such a shift of entitlements does not affect transporter's ability to render firm service to other customers. FGT states that arbitrarily nominating in excess from one day to the next at one or more

³⁶ FGT Reply Comments at 18 (citing *El Paso Natural Gas Co.*, 121 FERC ¶ 61,265 (2007)).

divisions is not a right granted to shippers by GT&C section 11, but it does allow nomination corrections within the Gas Day at any of the intraday nomination cycles. FGT states that it has allowed Peoples to nominate in excess of its divisional MDTQ at divisions in the past, but this is considered, under the tariff, to be alternate firm activity under the service agreement as long as the total MDTQ of the agreement is not exceeded.

5. Commission Determination

42. We find that FGT has not satisfied its burden under NGA section 4 to show that its proposals to require pathed scheduling nominations setting forth specific receipt and delivery points and to impose daily scheduling penalties for variances above and below scheduled quantities at those points is just and reasonable. Section 154.204 of the Commission's regulations³⁷ requires a pipeline proposing changes in its rate schedules and GT&C to provide certain information. Among other things, paragraph (b) requires the pipeline to describe "the change in service, including . . . necessity for the change." Paragraph (c) requires the pipeline to "[e]xplain how the proposed tariff provisions differ from those currently in effect, including an example showing how the existing and proposed tariff provisions operate." Paragraph (d) requires the pipeline to "[e]xplain the impact of the proposed revision on firm and interruptible customers, including any changes in . . . receipt or delivery point flexibility [and] nominating and scheduling." Even taking into account FGT's technical conference presentation and comments, FGT has failed to comply with these requirements.

43. A central problem with FGT's effort to support its NGA section 4 proposals concerning scheduling nominations and penalties is its failure to describe how shippers currently nominate transportation transactions from the Western Division to the Market Area (or vice versa), or provide an example showing how the existing nomination process operates as compared to the proposed nomination process. In the absence of a clear understanding of how shippers currently nominate these transportation transactions, we are unable to assess with any confidence how FGT's proposed changes in the nomination process, together with its proposed daily scheduling penalties, will affect the flexibility shippers currently have with respect to where they take natural gas deliveries and whether those changes are necessary. As discussed below, we are particularly concerned with the issue of how FGT's proposals affect multiple division contracts and whether, even if some restriction on the shippers' existing flexibility under those contracts may be justified, FGT's proposal may be unnecessarily restrictive.

44. As described above, FGT's tariff prescribes how shippers must nominate transactions that take place solely within the Western Division and those that take place

³⁷ 18 C.F.R. § 154.204 (2014).

solely within the Market Area. However, the tariff appears to be largely silent concerning how shippers are required to nominate transactions which traverse both parts of FGT's system (hereafter cross-rate zone transactions). The nomination procedures for such transactions appear to be governed by various practices adopted by FGT and its shippers over the years, and those procedures apparently do not require shippers to specify in their scheduling nominations the exact quantities to be received and delivered at each receipt and delivery point. However, FGT has not provided any description of how it currently requires a shipper making a cross-rate zone nomination to identify the location where FGT will receive the natural gas or the location where it will deliver the natural gas to the shipper.

45. We can glean some understanding of how such transactions are currently nominated from the shippers' post-technical conference comments. It appears from the comments of FGT's shippers with multiple-division contracts that FGT permits them to submit scheduling nominations by division. For example, Peoples states that it

submits nominations by division, and therefore submits 17 aggregated delivery point nominations for the gas day.^{38]} With regard to receipt point nominations, Peoples has a portfolio of gas supply agreements of varying prices and durations that it schedules for delivery to FGT. Peoples ranks its supply offers so that in the event that FGT allocates capacity and Peoples must adjust its nominations, it is able to make the needed adjustment to its gas supply sources to keep in balance on a system and division basis.³⁹

46. However, even this description does not fully clarify FGT's existing practice concerning cross-rate zone nominations. For example, it is unclear whether shippers currently include specific receipt points in their scheduling nominations, or whether shippers are allowed to use some other method to identify the location where FGT will receive the natural gas to be transported. Thus, we are not certain whether FGT's proposed change in nomination procedures only has a substantive effect with respect to the nomination of deliveries or whether FGT is also proposing to restrict existing shipper rights with respect to receipt point nominations. It is also unclear whether a shipper's nomination of deliveries to a division currently includes any information concerning

³⁸ Peoples states that it has 84 individual delivery points that are aggregated or organized into 17 non-contiguous divisions.

³⁹ Peoples Initial Comments at 18.

which delivery points within the division the shipper expects to use or whether such a nomination can simply identify the division without containing any other information.⁴⁰

47. In any event, section 154.204 of the Commission's regulations requires the *pipeline* to explain how its proposed tariff provisions differ from those currently in effect, including an example showing how the existing and proposed tariff provisions operate. Without FGT providing an explanation of how its existing tariff, or in this case its existing practice concerning shipper nominations of cross-zone transactions operates, we cannot verify the accuracy of the shippers' explanation of what FGT currently permits. Nor can we evaluate how a proposed change in the subject tariff or practice would affect the existing rights of FGT's shippers and whether the proposed change in those rights is just and reasonable.

48. In this case, it is particularly important that we have a full understanding of how shippers currently nominate cross-rate zone service on FGT. FGT's shippers assert that FGT's proposals to require shippers to nominate specific receipt and delivery points, and incur scheduling penalties whenever their takes at specific delivery points vary from scheduled quantities by more than the proposed five percent tolerance, will remove important flexibility they have relied on at least since FGT restructured its services in compliance with Order No. 636. That flexibility derives in large part from GT&C section 11's authorization of multiple division contracts. Numerous shippers with such contracts, including both electric utilities and local distribution companies (LDCs), assert that they rely on the ability to shift deliveries among the delivery points within a division during the course of a day, without penalty, to respond to unpredictable load changes at those points.⁴¹ For example, Seminole points out that it has two electric generating units on the same property in Hardee County, Florida, which are served by nearby, but separate delivery points. If one unit trips off line mid-day, it may need to shift gas deliveries to the other unit.⁴² Seminole asserts that currently it can do this without penalty, but FGT's nomination and scheduling penalty proposal would cause it to incur a scheduling penalty

⁴⁰ At the technical conference, FGT purported to provide an example of an unpathed nomination from the Western Division to the Market Area and a pathed nomination for the same transaction. Each of those examples showed a receipt location of "HPL Texoma" and a delivery location of "Miami" without any explanation as to how the two nominations differ or why the example of the pathed nomination provides any more information than the example of the unpathed nomination. FGT Initial Comments, Attachment 1, Slide 36.

⁴¹ AGDF Initial Comments at 8.

⁴² Seminole Initial Comments at 10-11.

in this situation, despite the fact the shift in its takes from one nearby delivery point to another is unlikely to cause any operational problem. Similarly, both LDCs and electric utilities state that unexpected weather changes can affect at what delivery point they take natural gas.

49. In its October 2014 filing, FGT's only support for its proposal to require shipper nominations of cross-rate zone transactions to specify receipt and delivery points was that "[t]his will allow tracking for the purposes of fuel calculations as well as proper determination of volume deliveries for future rate design and determination."⁴³ Its sole support for its daily scheduling penalty proposal was a general statement in support of various proposed revisions to its penalty provisions, including increased Alert Day and OFO penalties discussed in the next section, that "[a]t times, FGT has experienced conditions where existing penalty provisions have not served as an adequate incentive for shippers to modify their actions to assist in alleviating system conditions."⁴⁴

50. In its Initial Comments, FGT no longer claims that its scheduling nomination proposal is necessary for its fuel calculations. Instead, it seeks to support both its scheduling nomination and daily scheduling penalty proposals primarily on operational grounds. FGT states that it provided a number of examples in its technical conference presentation where no gas was nominated or scheduled at a point, yet natural gas was consistently taken at the delivery point even when such a point was in a constrained area of the system.⁴⁵ FGT states that its scheduling nomination proposal will ensure that shippers schedule natural gas to points where the natural gas is consumed. FGT attempts to support its scheduling penalty proposal on similar grounds. It states that under its current tariff, shippers are not required to burn gas where gas is nominated and scheduled. It asserts that, as the utilization of its system increases, this practice may jeopardize the firm rights of primary firm shippers. FGT states that its proposed daily scheduling penalty is intended to align shippers' scheduled quantities with their measured quantities and ensure that the rights of firm shippers are protected.

51. FGT's six examples of delivery points with inaccurate scheduling provide too little detail concerning the circumstances surrounding the inaccurate scheduling at the point to show that FGT's proposed solution of requiring point specific scheduling and

⁴³ FGT Exh. No. FGT-2 at 30.

⁴⁴ *Id.* at 27.

⁴⁵ As noted earlier, FGT refers to Slides 38-39. However, those slides do not provide any information concerning whether the subject nominations were in a constrained or unconstrained area.

imposing daily penalties for variances from scheduled quantities at those points is just and reasonable. In the first two examples, FGT states that the point is an LDC located in an unconstrained area. It then states, “[t]his point is often highly ‘overscheduled’ relative to the actual amounts of gas taken.”⁴⁶ However, FGT does not state which shipper submitted the delivery nominations for that point, whether that shipper had a multi-division contract, and whether that shipper actually took quantities elsewhere at a constrained point in the same division or a different division. Similarly, in its other four examples, FGT states that the point is an LDC located in a constrained area. It states those points have “been highly ‘underscheduled’ relative to the actual volumes of gas used for extended periods of time.”⁴⁷ Again, FGT does not state which shipper actually took the unscheduled volumes at the point, whether that shipper had a multi-division contract, and whether that shipper scheduled volumes elsewhere at an unconstrained point in the same division or a different division.

52. In these circumstances, we are unable to determine whether FGT’s claimed problem with inaccurate scheduling arises from (1) shippers scheduling deliveries to an unconstrained delivery *point* within a division but actually taking gas at a constrained *point* within the same division⁴⁸ or (2) shippers scheduling deliveries to an unconstrained *division* but actually taking gas at a constrained *division*. If any problem with inaccurate scheduling arises primarily in the latter situation involving inaccurate scheduling at the division level, FGT’s proposal to require nominations at the point level and penalize variations from point level scheduling would appear unnecessarily restrictive. Instead, a daily scheduling penalty imposed on variations from scheduled deliveries to a division would appear sufficient.

53. AGDF points out that FGT’s tariff requires that the points included in a division must be limited to points that are within and interconnected downstream by an “operationally interconnected distribution system capable of serving end-users from deliveries at any such Primary Delivery Points forming the Division.”⁴⁹ AGDF suggests

⁴⁶ FGT Initial Comments, Attachment No. 1, Slides 13-14.

⁴⁷ *Id.* at Slides 15-18.

⁴⁸ Shippers with multi-division contracts apparently submit nominations which only identify the division in which they will take deliveries, therefore, it is difficult to see how a situation would arise under FGT’s current scheduling nomination process in which a shipper with a multi-division contract would submit a scheduling nomination for deliveries to one delivery point, but take deliveries from a different delivery point in the same division.

⁴⁹ AGDF Initial Comments at 6 (citing FGT tariff GT&C section 1).

that this limitation on the points included in a single division makes it unlikely that a shipper would have constrained and unconstrained delivery points within the same division. AGDF further suggests that, in the isolated situations where such a situation may exist, any resulting problem with inaccurate scheduling should be addressed with the specific shipper at issue, rather than changing the scheduling rules applicable to all shippers.

54. Given FGT's failure to provide any evidence demonstrating that shippers with multi-division contracts are inaccurately submitting scheduling nominations at one point within a division but taking natural gas at a different delivery point within the same division, we are unable to find that its proposal to move from a divisional scheduling nomination process to a point scheduling nomination process with daily scheduling penalties is just and reasonable. FGT's shippers have persuasively argued that the existing divisional scheduling process provides both LDCs and electric utilities important flexibility in serving their customers. The significance of the change FGT is proposing in how shippers nominate service on its system is illustrated by the fact Peoples estimates that, if FGT's proposed new nomination requirements and daily scheduling penalties had been in effect during 2014, it would have incurred scheduling penalties of over \$125 million, absent a change in its scheduling nomination practices in response to the new requirements.⁵⁰

55. FGT, itself, recognized the importance of the divisional scheduling rights provided by the multi-division contracts authorized by GT&C section 11 rights in its Order No. 636 proceeding.⁵¹ In its explanation of its Order No. 636 Settlement, FGT stated that these rights:

afford[] customers with multiple divisions or plants the ability to respond to fluctuating needs (including the need to ensure service to high priority customers in non-contiguous operating divisions). Both large and small LDCs, and electric generation customers with multiple plants, have historically

⁵⁰ Peoples Initial Comments at 5.

⁵¹ *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939, *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *order on reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

relied on this flexibility. The scheduling provisions of FGT's proposed tariff preserving this flexibility, within defined limits, have not been objected to by any party, and are essential to the Settlement.⁵²

56. In accepting the Order No. 636 Settlement, the Commission also recognized that, “[t]he scheduling provisions of [FGT’s] proposed tariff related to section 11 rights, preserve the delivery point flexibility previously granted to multi-division customers, and provide these customers with some degree of priority over those customers granted flexible delivery points as part of the Order No. 636 restructuring. Inasmuch as these terms have not been objected to by any party, they are accepted as part of the settlement.”⁵³

57. Given the importance to FGT’s customers of the flexibility provided by FGT’s current scheduling nomination process, the Commission cannot find that proposal is just and reasonable absent a showing that a less restrictive change to FGT’s existing nomination process would be insufficient to address whatever reasonable concerns FGT may have with the accuracy of current shipper scheduling nominations. As FGT has stated, the Commission has held in cases such as *Columbia*⁵⁴ that pipelines may impose nominal daily scheduling penalties to encourage accurate scheduling during non-critical periods and higher penalties during critical periods. However, here FGT is not only proposing daily scheduling penalties, it is also proposing to modify the scheduling nomination process itself to move from its divisional scheduling nomination system to a point system. By contrast, the pipeline in *Columbia* did not propose to modify its scheduling nomination process, which provided shippers some flexibility to submit nominations covering more than one point.⁵⁵ When *Columbia* subsequently proposed to require point-specific nominations, its proposal was heavily protested, and *Columbia* withdrew the proposal.⁵⁶

⁵² Florida Gas Transmission Co., June 16, 1993 Settlement and Compliance Filing, Docket No. RS92-16-000 at 43 (Order No. 636 Settlement).

⁵³ *Florida Gas Transmission, Co.*, 64 FERC ¶ 61,302, at 63,204 (1993), *order on reh’g*, 65 FERC ¶ 61,336 (1993), *order on reh’g*, 67 FERC ¶ 61,008 (1994).

⁵⁴ *Columbia Gas Transmission Corp.*, 119 FERC ¶ 61,267 (2007).

⁵⁵ *Columbia Gas Transmission Corp.*, 124 FERC ¶ 61,007 (2008).

⁵⁶ *Columbia* August 15, 2008 Motion to Withdraw, Docket Nos. RR08-401-000 and RP08-403-000.

58. Accordingly, we reject FGT's proposal to require point-specific scheduling nominations and daily scheduling penalties. This rejection is without prejudice to FGT submitting a new NGA section 4 filing proposing revisions to its scheduling process and/or scheduling penalties, including full support for that proposal consistent with the requirements of section 154.204 of the Commission's regulations and the discussion above.

B. Alert Day Proposal

59. Section 13.D of FGT's GT&C allows it to issue an Alert Day notice when it determines that it is experiencing, or may experience in the next gas day, high or low line pack operating conditions which threaten its ability to render firm service. Section 13.D.2 provides that FGT may issue Alert Day notices in addition to other actions it takes with respect to individual shippers, including operational flow orders (OFOs). The Alert Day notice must indicate whether the notice applies "system-wide or to an Affected Area." FGT must also specify whether the alert condition applies to overages or underages from scheduled deliveries. For each Alert Day invoked, FGT must determine a Tolerance Percentage governing the overages or underages a shipper may incur without incurring a penalty. That percentage must be at least 2 percent or 500 MMBtu, whichever is greater. FGT states that its Alert Day Notices generally include a Tolerance Percentage of 20 or 25 percent.

60. Section 13.D.3 requires FGT to keep track of overages or underages in excess of the permitted tolerance level in an Alert Day Account, with overages being deemed to be purchased from other shippers on the system and underages being deemed to have been sold to other shippers on the system. Pursuant to section 13.D.3, overages and underages recorded in the Alert Day Account are not recorded in the Operating Account discussed in the preceding section, which is used for monthly balancing and which FGT proposed in its October 2014 filing to use for purposes of its proposed daily scheduling penalties. Section 13.D.3(d) provides that when an Alert Day notice applies system-wide, the determination of quantities to be recorded in the Alert Day Account will be aggregated for all delivery points covered by the Operating Account Agreement. However, that section provides that, if the Alert Day notice applies to an Affected Area, the Alert Day Account determination for delivery points in the Affected Area shall be made at an individual delivery point level. As described further below, a delivery point operator with an overage recorded in the Alert Day Account must pay a charge equal to 200 percent of a specified index price, plus a transportation charge. A delivery point operator with an underage recorded in the Alert Day Account receives a credit equal to 50 percent of a specified index price.

61. In its October 2014 filing, FGT proposed three changes to the Alert Day provisions in GT&C section 13. First, GT&C section 13.D.1 currently requires FGT to issue an Alert Day "[a]t least two (2) hours prior to the start of the delivery gas day, or upon at least 12 hours' notice within a delivery gas day." FGT proposed to modify this

section to provide that FGT must issue an Alert Day “[p]rior to the start of the delivery gas day, or upon at least 4 hours notice within a gas day.”

62. Second, FGT proposed to replace language in GT&C section 13.D.2 permitting FGT to issue an Alert Day Notice that applies “system-wide or to an Affected Area” with language permitting it to issue an Alert Day Notice that applies “to the Market Area, in a specified Affected Area(s), at a specified Delivery Point(s) and/or to the hourly flow rate at a specified Delivery Point(s).” In connection with this proposal, FGT also proposed to modify the provision in section 13.D.3(d) concerning the aggregation of quantities recorded in the Alert Day Account during a system-wide Alert Day so that provision will apply to Market Area Alert Days.

63. Third, FGT proposed to revise the language in GT&C section 13.D.4 to increase the charges for delivered quantities taken in excess of scheduled deliveries during an Alert Day. Currently, GT&C section 13.D.4 provides that Alert Day overages in excess of a tolerance established by FGT in the Alert Day notice⁵⁷ will be charged “200% of the highest simple average by zone of the daily midpoint prices for the indices listed in the cash-out provisions of Section 14.B, for the week in which the Alert Day occurred.” FGT proposed to increase the charge to “400% of the highest of the Florida Gas, zone 1, Florida Gas, zone 2 and Florida Gas, zone 3 Midpoint price published in Platts Gas Daily publication for the day in which the Alert Day occurred.”⁵⁸

64. FGT also proposed to lower the credits for Alert Day underages (i.e., delivered quantities that are less than scheduled deliveries). Currently, GT&C section 13.D provides that the credit for Alert Day underages will be 50 percent of the index price. FGT proposed to lower the percentage to “25% of the Florida Gas, zone 1, Florida Gas, zone 2 or Florida Gas, zone 3 Midpoint price published in Platts Gas Daily publication for the day in which the Alert Day occurred.”

65. In support of these proposals, FGT’s witness, Mr. Langston, simply described these provisions and stated that FGT has experienced conditions where its existing penalty provisions did not serve as an adequate incentive for shippers to modify their actions to assist in alleviating system conditions.⁵⁹

⁵⁷ GT&C section 13.D.6 provides that the tolerance shall not be less than the greater of two percent or 500 MMBtu.

⁵⁸ For OFOs, FGT proposes a like penalty in its tariff, GT&C section 17 (C) (3).

⁵⁹ FGT Exh. No. FGT-2 at 27.

1. Post-Technical Conference Comments

66. FGT states that it proposes to modify the deadlines for posting an Alert Day because the Commission in its Notice of Proposed Rulemaking (NOPR) in Docket No. RM14-2-000 proposed to move the start of the Gas Day from 9:00 a.m. Central Clock Time (CCT) to 4:00 a.m. FGT states that its proposal to post the Alert Day by the start of the Gas Day or upon four hours' notice within the Gas Day will allow the evaluation of the most current operational information prior to the implementation of Alert Days.

67. FGT supports its other Alert Day proposals on the ground that its existing Alert Day provisions have not served as an adequate incentive for shippers to modify their actions when necessary. FGT contends that its proposals for authority to call Alert Days at individual delivery points and/or the hourly flow at those points and to increase its Alert Day penalties are designed to give it the tools necessary to manage its system. FGT points out that in contrast to its OFO provisions, which are reactive and do not provide tolerance levels, the Alert Day provisions provide for penalties only when the applicable Alert Day Tolerance Percentage is exceeded, thus permitting FGT to manage its system while providing some flexibility to shippers.

68. FGT asserts that the actions of a single customer can impact other FGT customers. FGT states that its proposal would give it the ability to call an Alert Day notice in the Market Area or specific Affected Area with the Alert Day tolerance applicable to individual delivery point(s) or to the hourly flow rate of gas at a specified delivery point(s). It states that this is a change from its current practice of calling an Alert Day only for all delivery points in the Market Area or specific Affected Area, with the Alert Day Tolerance levels applicable to the total volumes for all delivery points on the delivery point operator accounts. FGT states that this change is necessary to account for under-scheduling by shippers in constrained areas and over-scheduling by shippers in unconstrained areas. FGT contends that overage deviations of volumes can cause pressure drops for other firm delivery points in the area of the offending delivery point operator, potentially affecting its ability to provide reliable service.⁶⁰ FGT states that allowing point-based and hourly-based Alert Day Notices will encourage shippers to

⁶⁰ FGT states that it provides examples of delivery points in the Market Area where gas was not nominated or scheduled but where significant volumes were taken on a consistent basis. FGT Initial Comments at 7 (citing Attachment No. 1, slides 15-18). FGT states that it also shows other delivery point examples to demonstrate substantial variances between scheduled and actual deliveries on an hourly and daily basis. FGT Initial Comments at 7 (citing Attachment No. 1 Slides 12-14).

balance their scheduled and measured delivery volumes at these locations on days when compliance is necessary to protect the reliability of the system.

69. FGT also states that its proposal to increase the penalties for overages and underages recorded in the Alert Day Account is also necessary to encourage shippers to take actions to balance scheduled and measured deliveries by point location in response to an Alert Day Notice. FGT states that its technical conference presentation includes examples of various days in December 2010 where the market price of natural gas exceeded the existing charges for taking gas in excess of scheduled quantities during an Alert Day.⁶¹ FGT also contends that under Commission policy it is not necessary for a pipeline to make a showing of harm before it proposes tariff changes to assist in managing its system.⁶²

70. Protesting parties generally argue that FGT has not supported its proposal or presented a compelling need for the Alert Day modifications. For example, AGDF and Duke argue that FGT has not shown its proposal to be just and reasonable. FMNGA adds that FGT should not be entitled to rest entirely upon the comments it made in the technical conference and that it failed to make a *prima facie* case for its proposal. Mosaic joins this attack stating that FGT's support for its proposal in its October 2014 filing is found in a single sentence, "[a]t times, FGT has experienced conditions where existing penalty provisions have not served as an adequate incentive for shippers to modify their actions to assist in alleviating system conditions."⁶³ Mosaic states that this simply does not meet the NGA section 4 requirement to establish that FGT's proposal is reasonable.⁶⁴ Infinite Energy, Seminole and Southern also contend that FGT's tariff already includes operational tools to sufficiently sanction a shipper that is not adhering to an Alert Day and argue that FGT has failed to justify any need for additional tools.

⁶¹ *Id.* at 7 (citing Attachment No. 1, Slide 10).

⁶² *Id.* at 6-7 (citing *Columbia Gas Transmission Corp.*, 119 FERC ¶ 61,267, at PP 26-27 (2007); *Columbia Gas Transmission Corp.*, 115 FERC ¶ 61,134, at P 15 (2006), *Millennium Pipeline Co., L.L.C.*, 130 FERC ¶ 61,074, at P 19 (2010); *Algonquin Gas Transmission*, 115 FERC ¶ 61,067, at P 8 (2006); *Northwest Pipeline LLC*, 149 FERC ¶ 61,070, at P 12 (2014)).

⁶³ Mosaic Initial Comments at 2 (citing, Exh. FGT-2, 27).

⁶⁴ Mosaic Initial Comments at 2; FMNGA Initial Comments at 12.

71. FMNGA states that FGT proposes that its existing little used tariff enforcement tools⁶⁵ become more draconian by shortening notice periods and increasing penalty amounts. AGDF argues that FGT's proposal is contrary to the Commission's policy that "[a] pipeline must take all reasonable actions to minimize the issuance and adverse impacts" of such orders.⁶⁶ Mosaic argues that in the case of penalty provisions, the Commission's rules require FGT to demonstrate that its proposed penalties are no greater than "necessary to prevent the impairment of reliable service."⁶⁷

72. With regard to FGT's proposal to modify its Alert Day timelines, AGDF asserts that FGT states that its intent in shortening the notice timeframes is to address anticipated Commission action in the pending gas/electric coordination NOPR. As such, AGDF joins PowerSouth, FMNGA, FPL, Peoples, Southern, and others in arguing that that the new notice periods are premature and provide inadequate opportunity for shippers to take action to avoid penalty.⁶⁸

⁶⁵ FMNGA asserts that FGT has not issued an OFO in at least three years, and that it has issued few Alert Day notices, i.e., 41 Alert Days in 2014, all of which were Market Area overage Alert Days, and the vast majority of which were 25 percent overage Alert Days, which meant that customers were limited on those days to 25 percent above their scheduled quantities. FMNGA Initial Comments at 6.

⁶⁶ AGDF Initial Comments at 11 (citing 18 C.F.R. § 284.12(b)(2)(v) (2014)).

⁶⁷ Mosaic Initial Comments at 1 (citing *El Paso Natural Gas Co.*, 48 FERC ¶ 61,018, at 61,109 (1989)).

⁶⁸ For example, FPL argues that shippers cannot respond to Alert Day notices issued in such a short period of time. It argues that under its proposal, FGT could potentially notify its shippers of an Alert Day after all Intraday nomination cycles have passed, leaving shippers with no options except to exceed the Alert Day tolerance and incur penalties. FP&L asserts that FGT and its shippers have operated under the current set of rules for quite some time without any apparent problems and that FGT fails to demonstrate why such a change is required or its current tools do not suffice. FPL Initial Comments at 18-19. Peoples add that because FGT will not bump secondary or interruptible shippers in favor of primary firm shippers during the ensuing three nomination cycles, if Alert Day notice is issued after the Evening Nomination Cycle, a shipper may not be able to alter its scheduled quantities in order to avoid the Alert Day penalties. Peoples Initial Comments at 36; Duke Initial Comments at 15.

73. In addressing FGT's proposal to implement point specific Alert Days, FMNGA states that FGT's proposal is superfluous because FGT has the authority, under its existing tariff, to issue Alert Days in Affected Areas, but has not done so, and also argues that FGT should not be given discretion to issue Alert Days configured more narrowly in the absence of any objective criteria.⁶⁹ SCS states that the proposed tariff language is imprecise, and leaves open the question of whether the practice will be subject to abuse or discriminatory application. SCS also states that the proposed modifications appear unworkable in the context of aggregated contract quantities, scheduled quantities and flow at integrated delivery stations in a Division where the shipper does not control the flow at individual meter stations.⁷⁰ In this vein, Peoples argues that FGT has not shown that there is no incompatibility between shippers' section 11 rights and Alert Day penalties applied at the delivery point level or to hourly flows at the delivery point level.

74. FPL and Peoples argue that FGT has not demonstrated that any changes on its system justify its proposal to impose Alert Days at specific points rather than system-wide or in an Affected Area.⁷¹ Florida Cities assert that FGT's proposed change is speculative in nature and not based on any operational need.⁷²

75. With regard to FGT's proposed Alert Day penalties, Duke and Florida Cities state that FGT's proposal is based upon one rare, extreme weather event that occurred in 2010 which cannot support such a proposal. Infinite Energy adds that FGT has failed to demonstrate the need for such penalties, and to show that they are the least burdensome penalties necessary. Mosaic asserts that FGT provides no support for increased penalties, and no demonstration that it is necessary to double existing penalty levels to maintain system reliability. Infinite Energy, Florida Cities, and Southern also argue that FGT's

⁶⁹ Seminole asserts that currently, "FGT has the right to declare OFOs on a point-specific basis but has declined to do so." Seminole Initial Comments at 23.

⁷⁰ SCS Initial Comments at 10.

⁷¹ Peoples add that applying Alert Day penalties to specific delivery points and/or hourly flows at specific delivery points could reduce flexibility in delivering gas. Peoples Initial Comments at 35.

⁷² FPL adds that, FGT has recognized that the majority of Alert Days over the past five years have had tolerance levels of either 20 percent or 25 percent. FPL argues that under such tolerance levels, FGT should be able to manage its system while providing its shippers with the operational flexibility that they currently retain. Therefore, FPL asserts that the Alert Day provisions that apply on a point basis rather than a system-wide basis are entirely unnecessary. FPL Reply Comments at 6.

increase in penalties is unsupported asserting that what little support FGT has provided is based primarily on stale data from 2010.

76. Lastly, Infinite opposes FGT's contention that its existing Alert Day provisions have not served as an adequate incentive for shippers to modify their actions when necessary to assist in alleviating system conditions. Infinite and Peoples state that FGT has failed to call any OFOs since January 2010 and allege that this reflects that FGT has not taken advantage of the operational tools currently available to it. Therefore, they argue that the Commission cannot rely on FGT's claim that the proposed Alert Day revisions constitute the tools necessary to manage its system when FGT concedes that it does not take advantage of the currently available tools.

77. In reply, FGT states that it issues Alert Days on its system only when conditions are expected to place stress on the system. FGT asserts that even under point-based Alert Days, shippers will be able to take more gas than has been scheduled under their contract at a point for a Gas Day, provided they are within the stated tolerance level. FGT states that the new Alert Day provisions allow flexibility that is not limited to the actual volume of gas scheduled for a shipper's account for that period of time and are meant to encourage management of gas volumes at the point level under a shipper's contract. FGT asserts that to the extent that shippers argue that its proposal limits flexibility, such flexibility is achieved by exceeding existing limits in the tariff and the shipper's respective point-based contractual right limits.

78. FGT states that OFOs are reactive to a situation, provide no tolerance levels, and may require compliance within one hour. FGT further states that its proposed Alert Day provisions provide for penalties only when the applicable Alert Day tolerance percentages are exceeded. These conditions allow FGT to manage its system while still providing some measure of flexibility to shippers to consume more gas than that to which they are contractually entitled. FGT also reiterates its response to shippers which argue that it has not shown the need for the proposed tariff changes and penalties and there are no operational issues on the system that such a showing is not a prerequisite for approval of FGT's proposal.

2. Commission Determination

79. In the instant proceeding, FGT has proposed several revisions to its Alert Day tariff provisions. First, as set forth above, FGT proposed to shorten the notice it must give when issuing an Alert Day, to permit it to issue an Alert Day as of the start of the Gas Day, rather than two hours before, or to provide only four hours' notice rather than 12 hours' notice when issuing an Alert Day during the Gas Day. FGT did not elaborate upon the need for this change in its October 2014 filing or in the testimony to support its

proposal.⁷³ However, in its Initial Comments, FGT states that it proposed this change because the Commission has issued a NOPR proposing to change the start of the Gas Day and that FGT's proposed timeline allows continued evaluation of the most current operational information prior to the implementation of Alert Days. Parties object to this modification stating that it is premature and that the time period provided by FGT was insufficient for them to react to the possible Alert Day.

80. On April 16, 2015, after the technical conference comments were filed, the Commission issued Order No. 809, its Final Rule in Docket No. RM14-2-000, in which it decided not to modify the Gas Day.⁷⁴ Given the fact that FGT's only stated reason for needing a change in the notification period – the anticipated change in the Gas Day – did not materialize, the Commission rejects FGT's proposal to change its notice period.

81. The Commission also finds that FGT has not satisfied its burden under NGA section 4 to show the justness and reasonableness of its proposal to replace language in GT&C section 13.D.2 permitting it to call an Alert Day that applies “system-wide or to an Affected Area” with language permitting it to call an Alert Day that applies “to the Market Area, in a specified Affected Area(s), at a specified Delivery Point(s) and/or to the hourly flow rate at a specified Delivery Point(s).” We recognize that FGT must have the authority to take reasonable actions to manage its system during periods of stress. However, FGT has not sufficiently explained the operation and need for its proposal to modify the types of Alert Day notices it may issue to enable us to find that the proposal is just and reasonable. First, by removing the provision permitting FGT to call a system-wide Alert Day and inserting in its place a provision permitting it to call a Market Area Alert Day, without any reference to an Alert Day in the Western Division, FGT appears to have removed its ability to call an Alert Day in the Western Division. However, FGT has not explained this aspect of its proposal, and we are not certain that this was its intent.

82. Second, it is not clear how FGT's proposal to issue an Alert Day notice applicable to “specified Delivery Point(s)” differs from its existing ability to issue an Alert Day Notice applicable at Affected Areas. In its technical conference presentation, FGT stated that currently, when it calls an Alert Day, its customers are only motivated to manage their overall takes versus their overall Delivery Point Operator Account scheduled volumes, and therefore FGT needs the ability to call Alert Days at the point level to motivate customers to manage their takes at points in constrained areas.⁷⁵ In making this

⁷³ FGT Exh. No. 2 at 27.

⁷⁴ *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, 151 FERC ¶ 61,049, at PP 3, 62-70 (2015).

⁷⁵ FGT Initial Comments, Attachment No. 1, Slide 20.

argument, FGT appears to assume that, under its existing tariff, when it calls an Alert Day in an Affected Area, each shipper's takes at all delivery points are aggregated for purposes of determining whether the shipper has violated the Alert Day Tolerance level, thus permitting the shipper's underages at some points to offset its overages at other points in the Affected Area. However, existing section 13.D.3(d) provides that "[t]o the extent the Alert Day Notice relates to an Affected Area, the Alert Day Account determination for delivery points in the Affected Area shall be made at an individual delivery point level." Thus, it appears that FGT's existing tariff already permits it to penalize overages and underages at individual delivery points in the context of Alert Days called in Affected Areas, and thereby motivate shippers to manage their takes at each point in the Affected Area consistent with scheduled quantities.

83. Moreover, while section 13.D.3(d), as revised in FGT's October 2014 filing, addresses how overages and underages are to be recorded in the Alert Day Account when an Alert Day is called in the Market Area or in an Affected Area, FGT did not propose any revision to that section to address how overages and underages are to be recorded in an Alert Day Account when an Alert Day is called at "specified Delivery Point(s)" or with respect to hourly flow rates at those points. The Commission is also concerned that this aspect of FGT's Alert Day proposal may have been premised on its proposal to require pathed scheduling nominations, which we have rejected in the preceding section. Accordingly, as with FGT's pathed scheduling nomination proposal, we reject its proposal to call Alert Days at specified points and on an hourly basis, without prejudice to FGT submitting a new NGA section 4 filing proposing to modify its tariff provisions concerning the types of Alert Day notices it may issue, including full support for that proposal consistent with the requirements of section 154.204 of the Commission's regulations and the discussion above.

84. However, the Commission accepts FGT's proposal to increase the penalties for Alert Day violations. Currently, FGT's tariff provides that shippers taking gas in excess of the Alert Day Tolerance must pay 200 percent of an average of index prices for gas sold in its Western Division. FGT has presented evidence that during December 2010 the Florida City Gate price was either equal to or in excess of this charge and that the same situation existed on the day it filed its Initial Comments.⁷⁶ FGT asserts that, in order to motivate shippers to comply with an Alert Day Notice, the penalty for takes in excess of those permitted by the Alert Day Tolerance must be in excess of the Florida City Gate price. As the Commission held, "setting penalties is not a matter for scientific calculation."⁷⁷ Penalty charges are not cost-based, and their essential purpose is to deter

⁷⁶ FGT Initial Comments at 7, Attachment No. 1, Slide 10.

⁷⁷ *Algonquin Gas Transmission*, 115 FERC ¶ 61,067, at P 8 (2006).

undesirable shipper behavior. The penalty level necessary to accomplish that purpose is a matter of judgment. Furthermore, the pipeline lacks an incentive to choose an unreasonably high penalty because it is not permitted to keep penalties it collects.” Therefore, the Commission has consistently accepted pipeline proposals for substantial penalties during critical periods, consistent with FGT’s proposal here.⁷⁸ Accordingly, we find FGT’s proposal to increase its Alert Day penalties and reduce its credits to be just and reasonable. For the same reasons, we accept FGT’s proposal to increase its other existing penalty levels.

C. Maximum Hourly Quantities

1. FGT’s Proposal

85. Section 6.A of FGT’s GT&C provides that a shipper’s “maximum daily quantity for any single receipt or delivery point, if applicable, shall be the volume set forth in the applicable Service Agreement.” Section 6.B provides that, unless otherwise agreed, the maximum hourly quantity “shall not exceed six (6) percent of the maximum daily quantity for each delivery point as set forth in Section A above.”

86. In its October 2014 filing, FGT proposed to modify its provision regarding the maximum hourly quantities at non-primary and pipeline interconnect points. Specifically, FGT proposed the following modifications to section 6.B of the GT&C of its tariff, with the proposed new language indicated by underlining and deletions by strikeout:

Maximum Hourly Quantity shall be the maximum quantity that Transporter is capable of delivering through its metering facilities at the Primary D~~elivery P~~oints set out in the Service Agreements between Shipper and Transporter in any one hour period. Unless otherwise specifically agreed in writing by authorized personnel between Transporter and Shipper, the Maximum Hourly Quantity shall not exceed six (6) percent of the maximum daily quantity for each Primary D~~elivery P~~oint as set forth in Section A above. The Maximum Hourly Quantity at all other points shall not exceed 4.17 percent of the scheduled quantity. The hourly rate of flow at a delivery point that is an interconnect with

⁷⁸ *AES Ocean Express LLC*, 111 FERC ¶ 61,291, at P 30 (2005); *Carolina Gas Transmission Corp.*, 148 FERC ¶ 61,186, at PP 18-19 (2014).

another pipeline shall be 4.17 percent unless otherwise mutually agreed.

87. Mr. Langston, described this proposal as clarifying that volumes at non-primary points or delivered to pipeline interconnect points will be made on a ratable basis at 4.17 percent of the scheduled quantity on an hourly basis, without providing any other support for the proposal.⁷⁹

2. Post-Technical Conference Comments

88. FGT provides further explanation of its proposed changes in its Initial Comments, stating that the additional language in GT&C section 6.B is intended to clarify that volumes at non-primary points or delivered to pipeline interconnect points will be made on a ratable basis at 4.17 percent of the scheduled quantity on that day. According to FGT, this clarification provides that shippers may take six percent of their daily scheduled quantity at their primary delivery points. FGT states that this hourly swing right is not intended to apply to any and all points across the system and this clarification protects the rights of shippers at their primary points. FGT asserts that it does not have any current pipeline delivery interconnects where the delivery rates are not ratable (i.e., 4.17 percent of daily scheduled quantity).

89. FGT proposes additional changes, in its Initial Comments, to the last two sentences of section 6.B of the GT&C of its tariff:

Unless otherwise specifically agreed in writing by authorized personnel between Transporter and Shipper, the Maximum Hourly Quantity shall not exceed six (6) percent of the **daily scheduled** quantity for each Primary Delivery Point as set forth in Section A above. The hourly rate of flow at a delivery point that is an interconnect with another pipeline shall be 4.17 percent of **daily scheduled quantities** unless otherwise mutually agreed.⁸⁰

FGT claims that the proposed additions further clarify the provision by clarifying the hourly flow restriction is a percentage of each day's scheduled quantity, rather than a percentage of the shipper's maximum daily contract quantity.

⁷⁹ FGT Exh. No. FGT-2 at 36.

⁸⁰ FGT Initial Comments at 12 (emphasis in original).

90. In their Initial Comments, parties oppose FGT's proposed restrictions on maximum hourly flows.⁸¹ They claim that despite FGT's assertions, the proposed modifications represent a significant reduction in existing shippers' rights, not a clarification of those rights. They argue that reducing the maximum hourly quantities would degrade existing service by diminishing operational flexibility, especially at secondary points.⁸²

91. Seminole claims that the reduction in hourly flow rights is a significant degradation of FGT's shippers' existing entitlement to transport gas to non-primary delivery points. Peoples claims FGT's proposed reduction in hourly flow rights will degrade service utilizing secondary or alternate points by limiting flows to 4.17 percent in all instances, thereby undermining the value of supplies delivered via non-primary points, which will have less operational flexibility than gas delivered via primary points. Moreover, Peoples asserts that restrictions on hourly flows will severely reduce its ability to respond to changes in customer demand, and will likely require FGT customers to purchase additional firm capacity on FGT in order to replicate the flexibility available under the pipeline's current tariff.

92. Seminole asserts the proposed tariff provision restricts the flow rights at secondary points in a manner that could impair electric system reliability if FGT operationally (or through Alert Day or OFO restrictions) enforces the lower flow rates at secondary points. Seminole is concerned that the proposed limitation on flow rights at secondary points will render the rights available through the capacity release market less valuable and hinder the ability of released capacity to compete with FGT's sale of capacity on a primary basis. Florida Cities likewise claims that many of the generators on its system rely in part on natural gas supply delivered under released capacity agreements, or other commercial arrangements dependent upon delivery at secondary delivery points, and that if the hourly volume capabilities of this acquired or remarketed capacity were decreased through the enforcement of hourly limits as proposed by FGT, then the value of this firm capacity would be materially reduced. Duke states that it will have to make individual nominations under each contract to primary points even when there are no physical constraints to justify this reduced flexibility and increased burden.

93. Opposing parties also claim that not only does FGT's hourly flow proposal significantly reduce shippers' existing rights but that FGT has failed to provide any operational or other reason necessitating the change. AGDF, for example, points out that

⁸¹ AGDF Initial Comments at 13-16; Peoples Initial Comments at 36-39; FMNGA Initial Comments at 13-14; Seminole Initial Comments at 24-27.

⁸² AGDF Initial Comments at 14-15.

the Commission has held that it will only approve restrictions on hourly takes (and correspondingly impose penalties for violating those restrictions) where a pipeline “makes a convincing and fully supported showing of a need for such penalties to protect system integrity.”⁸³ Peoples similarly argues that a pipeline must demonstrate that reductions in flexibility related to limiting hourly flows are necessary. Peoples further argues that the Commission has found that a reduction in the flexibility associated with limiting transmission service to uniform hourly flow rates is unjust and unreasonable absent a clear demonstration why such changes are needed.⁸⁴

94. These parties assert that FGT provided little or no justification for the proposed restriction. AGDF states the Commission has explained that hourly flow restrictions are significantly more burdensome on shippers than daily restrictions because they limit the ability of shippers to react to variations in their need for gas during the course of the day.⁸⁵ AGDF contends FGT’s proposed tariff records do not include a new penalty for shippers that violate the proposed hourly flow limitations; thus, the consequences of violating the proposed new restrictions are unclear. AGDF claims that FGT failed to articulate any change in circumstance or other operational need for such a significant new limitation on firm shipper’s service. Seminole states FGT’s testimony offers no justification for its proposed change nor did FGT provide any substantiation for reduced hourly flow rights at non-pipeline delivery points at the technical conference.

95. Seminole states that FGT offers no explanation for restricting hourly flow rights at on-system (non-pipeline interconnect) delivery points. Seminole comments the Commission has permitted flexibility limitations on open access services only when the pipeline demonstrates that the limitation is operationally necessary,⁸⁶ and has rejected proposals to limit hourly flow rights where there is no showing of specific operational problems resulting from hourly usage under existing hourly flow limitations.⁸⁷ Seminole

⁸³ *Id.*

⁸⁴ Peoples Initial Comments at 38 (citing *Portland Natural Gas Transmission System*, 106 FERC ¶ 61,289, at P 62 (2004)).

⁸⁵ AFDF Initial Comments at 15-16.

⁸⁶ Seminole Initial Comments at 26, n.29, citing *Colorado Interstate Gas Co.*, 96 FERC ¶ 61,330 at 62,259 (2001) (striking down limits on secondary point rights and approving new services, finding it necessary for pipelines to improve their flexibility to serve electric generation load).

⁸⁷ *See, e.g., Northern Natural Gas Co.*, 72 FERC ¶ 61,051 (1995) (rejecting pipeline proposal to reduce hourly flow rights from 6.3% of a shipper’s MDQ to 5.0%);

(continued...)

claims the Commission has interpreted its flexible point policy as requiring shippers to be afforded the same degree of hourly flexibility at secondary points in zones where they pay reservation charges as they are afforded at primary points, so long as there is capacity available and it is operationally feasible.

96. PowerSouth points out that FGT's change in its Initial Comments, to purportedly add "daily scheduled quantities" to section 6.B, was deceiving because FGT omitted the fact that it also deleted the phrase "maximum daily," thereby substituting one for the other, not just adding clarifying language as FGT claims.⁸⁸ PowerSouth claims the substitution of "daily scheduled quantities" in lieu of "maximum daily quantities" represents yet more degradation to existing service by reducing the volumes to which a shipper has hourly flow rights. FMNGA also urges the Commission to reject FGT's proposal, which restricts customers' historic right to take up to six percent of the MDQ in any hour without substantive supporting testimony or data. FMNGA notes that FGT has been able to manage its system without operational problems with the existing tariff tools available to it and provides no explanation or justification in its filing as to the need for the more restrictive measures proposed.⁸⁹

97. In its reply to these comments, FGT reiterates its claim that Commission policy does not prohibit it from limiting shippers to ratable takes at non-primary delivery points.⁹⁰ FGT also reiterates its claim that the proposal is meant to protect the rights of shippers at their primary delivery points where they can take non-ratably up to six percent of their daily scheduled quantity.⁹¹

Algonquin Gas Transmission Co., 98 FERC ¶ 61,211, at 61,782 (2002) (finding a restriction of hourly flow rights at secondary points to be discriminatory and requiring the pipeline to offer extended hourly flow rights at both primary and secondary delivery points); *CNG Transmission Corp.*, 90 FERC ¶ 61,351, at 62,160-61 (2000) (rejecting proposal to impose hourly flow restrictions when not supported by detailed operational information demonstrating a need for such restrictions).

⁸⁸ PowerSouth Reply Comments at 2-3.

⁸⁹ FMNGA Initial Comments at 13.

⁹⁰ See *Southwest Gas Corp.*, 111 FERC ¶ 61,511, at PP 13, 15, 17 (2005); *Tennessee Gas Pipeline Co.*, 108 FERC ¶ 61,177, at P 8 (2004) ("ability of the customer to take in excess of 1/24 of its MDQ is not a firm entitlement [.]").

⁹¹ FGT Initial Comments at 11-12.

3. Commission Determination

98. We reject FGT's maximum hourly quantity proposal. First, the modifications that FGT proposes to add to section 6.B of the GT&C are not merely clarifications, as FGT argues, but substantive changes that materially affect shippers' existing hourly flow rights under FGT's tariff. We find that FGT's existing tariff does not limit flows at secondary and pipeline interconnect points to ratable hourly flows. Indeed, the existing provision states unequivocally that maximum hourly flows may not exceed six percent of the daily maximum flow, without qualification. There is nothing in the existing provision to indicate that the hourly flow at non-primary or pipeline interconnect points is meant to be more restrictive than the six percent of daily maximum flow limit. Thus, additional language restricting maximum hourly quantities at all "non-primary" points is a change that would modify existing shippers' rights, not a clarification of those rights.

99. Similarly, the further changes FGT proposes in its Initial Comments, effectively substituting "daily scheduled quantities" for "maximum daily quantities" represents a material change to FGT's tariff and cannot reasonably be considered a clarification of the existing provision.⁹² Existing section 6.B expressly provides that a shipper's hourly flow shall not exceed 6 percent "of the maximum daily quantity for each delivery point." FGT's proposal to base the hourly flow restriction on a percentage of a shipper's scheduled quantity, rather than its maximum daily quantity, is substantially more restrictive, particularly on days when the shipper's scheduled quantity is significantly below its maximum daily quantity. As we found above, the tariff modifications proposed by FGT are not mere clarifications. Because the hourly take requirements proposed are restrictions on existing service,⁹³ Commission precedent requires that FGT provide a fully supported showing of need based on operational or system integrity concerns.⁹⁴

100. The Commission has held previously that restrictions on hourly flow rights require a showing of operational problems warranting the change. For example, the Commission rejected a pipeline's proposal to change its hourly flow limitation from 6.3 to 5.0 percent because it failed to "cite to any specific operational problems that have been caused by

⁹² As some commenters point out, the redlined provision in FGT's Initial Comments shows only the proposed addition of "daily scheduled quantities" but fails to disclose the strikeout of "maximum daily."

⁹³ *Columbia Gulf Transmission Co.*, 135 FERC ¶ 61,106, at P 86 (2011).

⁹⁴ *Northern Natural Gas Co.*, 72 FERC ¶ 61,051, at 61,292 (1995); *Portland Natural Gas Trans. System*, 106 FERC ¶ 61,289, at P 62 (1993).

the 6.3 percent hourly limitation,”⁹⁵ and because the pipeline did not show how it could enforce the provision or reasonably notify shippers of penalties they may incur from violating the new restriction. Subsequently, we reemphasized that we would only approve hourly flow restrictions and corresponding penalties where the pipeline makes a convincing and fully supported showing of need for such restrictions to protect system integrity.⁹⁶

101. Here, as commenters note, FGT has failed to make such a showing. The October 2014 filing and accompanying testimony are devoid of any substantial support for its maximum hourly quantity restriction changes, and fail to assert any changed circumstances or operational reasons for the proposal. The October 2014 filing merely lists “clarifying the maximum hourly quantities at non-primary points and pipeline interconnects” as one of 12 proposed tariff changes, and the sole justification provided in FGT’s testimony is that the pipeline is proposing language to “clarify that volumes at non-primary points or delivered to pipeline interconnects will be made on a ratable basis at 4.17 percent of the scheduled quantity on an hourly basis.”⁹⁷ As discussed above, we reject the claim that the proposed modifications are merely clarifications of FGT’s existing tariff. Accordingly, a statement of the proposed clarification does not constitute a compelling reason or provided substantial support of the type required to restrict hourly flows.⁹⁸

102. FGT’s attempts to rescue its proposed restrictions in its Initial Comments also fail. There FGT reiterates its claim that its additional language was only meant to clarify its existing hourly take allowance of six percent only applies to primary points and was not intended to apply to any and all points across its system. FGT fails to point to any existing tariff provision or other evidence that shippers would know that the six percent allowance only applied at primary points. Nor does it point to any other provision in its existing tariff that would arguably limit a shipper’s hourly take allowance at secondary points to less than six percent, if the six percent limit in section 6.B were inapplicable.

103. FGT also states that it does not have any current pipeline delivery interconnects where the delivery rates are not limited to 4.17 percent of daily scheduled quantities. As

⁹⁵ *Northern Natural Gas Co.*, 72 FERC ¶ 61,051, at 61,292 (1995).

⁹⁶ *Columbia Gulf Transmission Co.*, 135 FERC ¶ 61,106, at P 86 (2011).

⁹⁷ Exh. No. FGT-2 at 34.

⁹⁸ Additionally, FGT provides no explanation of how it would enforce this provision and, which, if any, of its proposed penalties would apply to a violation.

some commenters note, however, while this statement may provide some support for the proposed restriction at pipeline interconnects, it does not provide justification for additional restrictions at secondary points. To the contrary, the Commission's flexible point policy requires that all shippers paying the same rate within the same zone should receive the same level of service absent a demonstration of operational necessity.⁹⁹ As we noted in *Gulfstream*, our secondary point policy is that "whatever maximum service rights for which a firm shipper pays apply on a secondary basis anywhere in the zone for which it pays the reservation charge" and thus a pipeline must provide a basis for declining to provide such service on a secondary basis at all points on its system for those who pay for such flexibility to the extent capacity is available and it is operationally feasible. Thus, in that case and in *CIG*, we rejected operationally unsupported proposals to limit hourly services to primary points.

104. The Commission's flexible point policy, together with its policy requiring pipelines to permit firm shippers to segment their capacity, is intended to provide firm shippers with the flexibility to use their capacity and to enhance competition between shippers and between the shippers and the pipeline.¹⁰⁰ As Florida Cities point out, replacement shippers in capacity releases often use secondary points. Accordingly, imposing more restrictive hourly flow requirements on secondary points than primary points conflicts with Order No. 637's goal of developing a robust secondary market where capacity release is put on a competitive level with the pipeline's marketing of its own capacity.¹⁰¹

105. FGT also argues that there is no Commission precedent or policy that would prohibit its proposed revisions and that it is clear that applicability of uniform hourly flow is controlled by an individual pipeline's tariff.¹⁰² FGT further claims that the Commission has found that shippers' ability to take in excess of 1/24 of its MDQ is not a firm entitlement.

⁹⁹ *Gulfstream Natural Gas System, L.L.C.*, 100 FERC ¶ 61,018 (2002); *order on reh'g*, 103 FERC ¶ 61,068, at PP 11-12 (2003) (*Gulfstream*); *Colorado Interstate Gas Co.*, 96 FERC ¶ 61,330, at 62,259 (2001) (*CIG*).

¹⁰⁰ *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, at 31,589, 31,592-4 (2000).

¹⁰¹ *Algonquin Gas Transmission Co.*, 98 FERC ¶ 61,211, at 61,782 (2002).

¹⁰² FGT Initial Comments at 12 (citing *Southwest Gas Corp.*, 111 FERC ¶ 61,511 (2005); *Tennessee Gas Pipeline Co.*, 108 FERC ¶ 61,177, at P 8 (2004)).

106. These arguments are not compelling. We agree that the applicability of any hourly flow limitations are controlled by the respective pipeline's tariff. The plain language of FGT's tariff provides that shippers may take at an hourly rate of up to six percent of their daily maximum quantity without restriction as to whether the delivery is at a primary or non-primary delivery point. FGT's proposal to apply a new hourly restriction on deliveries at secondary points represents a change in service, limits flexibility, and potentially degrades shippers' existing service and the value of their capacity in the secondary market. FGT has not pointed to any precedent where we have approved a pipeline proposal for more restrictive hourly flow rights at secondary points than at primary points. As discussed above, any such proposal would require a persuasive demonstration of operational need that FGT has not made. The proposed maximum hourly tariff revisions are thus rejected.

D. Gas Quality

1. FGT's Proposal

107. In its October 2014 filing, FGT proposed several changes to the gas quality specifications contained in section 2 of the GT&C of its tariff. Specifically, FGT proposed to:

- 1) establish a new carbon dioxide maximum limit of two percent by volume at all receipt points (both the Western Division and the Market Area), and eliminate the existing one percent carbon dioxide limit for Market Area receipts;
- 2) add a provision meant to ensure that no carbon dioxide, oxygen, or nitrogen is introduced into the FGT system as a dilutant;
- 3) reduce the current lower limit of its existing Wobbe Index from 1340 to 1320;
- 4) eliminate the propane composition limit for Market Area receipt points.

108. FGT provided limited support for these proposed changes in its October 2014 filing. With respect to the proposed two percent carbon dioxide limit at all receipt points, FGT asserted that such a limit is reasonable because carbon dioxide can be corrosive in water.¹⁰³ As to the proposed provision meant to ensure that no carbon dioxide, oxygen or nitrogen is introduced into the system as a dilutant, FGT merely included a statement that it is proposing such a provision.¹⁰⁴ As justification for its proposed Wobbe Index change

¹⁰³ Exh. No. FGT-2 at 30.

¹⁰⁴ *Id.*

to reduce the lower end of the range, FGT stated that the revised range will better reflect the leaner gas being delivered into the system as a result of increased volumes of shale gas production from its supply interconnects.¹⁰⁵ In support of its proposal to eliminate the existing propane specification, FGT stated that the limit was added in its Docket No. RP04-249-000 proceeding¹⁰⁶ but is not included as a standard the Commission has required as part of the review of interchangeability standards within the industry.¹⁰⁷

109. On January 21, 2015, the Commission Staff issued a data request to FGT regarding its proposed changes to its gas quality provisions. The data request sought underlying technical and operational support for FGT's proposed gas quality specification changes, inquired about FGT's current gas quality management methods and instances where FGT had experienced gas quality issues, and whether a downstream pipeline had refused to accept gas from FGT because of gas quality issues. The data request also sought additional information regarding FGT's claim that its supply has become leaner due to greater supplies of shale gas entering its system.

110. FGT filed a response on January 30, 2015, stating that there have been no instances on FGT's system where gas quality issues have been unmanageable and that a downstream pipeline has never refused to accept gas due to gas quality concerns.¹⁰⁸ In addition, FGT provided historical gas chromatograph data (January 1, 2012 through December 31, 2014) for seven points on its system.¹⁰⁹

¹⁰⁵ *Id.* at 30-31.

¹⁰⁶ *AES Ocean Express LLC v. Florida Gas Transmission Company*, Opinion No. 495, 119 FERC ¶ 61,075 (2007), *order on reh'g*, Opinion No. 495-A, 121 FERC ¶ 61,267 (2007), *order on reh'g*, Opinion No. 495-B, 125 FERC ¶ 61,137 (2008).

¹⁰⁷ *Id.* at 30.

¹⁰⁸ *See* FGT's responses to Data Request Nos. 2 and 4.

¹⁰⁹ In response to Data Request No. 1, FGT provided chromatograph data for the SNG Cypress, Gulfstream Hardee, and Gulfstream Osceola receipt points, and the Perry Compressor Station Stream #1 and Perry Compressor Station Stream #2. In response to Data Request No. 3, FGT provided additional chromatograph data for the Brooker Mainline and West Palm systems. FGT did not, however, provide a system map or any additional information detailing where on its system these receipt points and compressor stations are located. A review of FGT's online system map appears to indicate that they are all in the Market Area.

111. FGT states that the gas quality standards established in the Docket No. RP04-249-000 proceeding were meant for gas directly entering the Market Area of its system. FGT contends that those standards were established to govern gas that could, within a short period of time, completely interchange with the traditional domestic gas supply from the Western Division. FGT states the existing standards were required to govern gas supplies from proposed LNG projects entering the FGT system in Southeast Florida, which did not materialize because of shale gas supplies.

112. FGT further states that its existing Wobbe standard was designed to be +/- 2 percent, centered around 1368, which was the average fuel nozzle design for equipment within the State of Florida. According to FGT, with the increase in shale gas supply entering the Western Division, and to a lesser extent at Market Area interconnects, since the establishment of the existing Wobbe Index standard, Wobbe measurements have been lower than 1340 for a large percentage of the time.¹¹⁰ FGT contends that lower Wobbe figures indicate that the fuel nozzle design for equipment, including several of FGT's gas turbines, can interchange with standards broader than represented by its existing limits. FGT states that it now has several years of experience with actual data (the referenced chromatograph data included with its data responses) that support its proposed changes. In response to questions regarding FGT's contentions concerning leaner shale gas entering its system, FGT states that for the past several years the Wobbe Index measurements on its system have been below 1340 over 90 percent of the time, occasionally going as low as 1320.¹¹¹

113. At the technical conference FGT provided graphs of the historical data that it had supplied in response to the January 21, 2015 data request¹¹² but limited additional operational information to support its proposed gas quality changes.

2. Post-Technical Conference Comments

114. Indicated Shippers, Duke, Seminole, and FGT filed Initial Comments regarding FGT's gas quality provisions. Indicated Shippers challenge FGT's proposed gas quality standards on the grounds that FGT did not provide technical, engineering, and operational support for the proposed changes. Indicated Shippers submit that FGT has provided no operational reasons for its proposed carbon dioxide standard revisions to now limit carbon dioxide to not more than "2 percent by volume" in the Western Division, and that

¹¹⁰ FGT response to Data Request No. 1.

¹¹¹ FGT response to Data Request No. 3.

¹¹² FGT Initial Comments, Attachment 1, Slides 47, 49, 51.

record data demonstrates FGT has had no operational issues in the Market Area related to carbon dioxide levels. Indicated Shippers also challenge the proposed “no carbon dioxide or nitrogen injected as dilutant” provision as unsupported. Indicated Shippers do not oppose the proposed Wobbe or propane standards changes.

115. Duke challenges the revisions to the Wobbe Index range. Duke states that while FGT made vague statements at the technical conference regarding the need to accommodate new supplies of shale gas, FGT provided no details as to the source of the gas, the amount of such gas entering its system, or the constituent characteristics of such gas. Duke also asserts that gas quality specifications that are too broad may inhibit the efficient operation of its gas-fired power generating units.¹¹³

116. Seminole states that while it does not oppose the particular gas quality standards proposed by FGT, it objects to the manner in which the standards were developed and proposed. Seminole contends that FGT has not supported its proposed changes because its testimony evidence is terse, is silent on technical details relating to the proposed changes, and lacks analysis of how changes to the propane and Wobbe Index specifications might affect end users. Both Seminole and Duke state that in contrast to the substantial evidence and exhaustive review undertaken to support FGT’s previous gas quality standards in Opinion No. 495,¹¹⁴ its current demonstration of need for its proposed changes is lacking. Seminole also notes that the data provided by FGT in its data responses shows that FGT has in fact been receiving gas that does not conform to its existing standards for Wobbe Index and carbon dioxide, and has been granting an extended waiver of those specifications.¹¹⁵

117. In its Initial Comments, FGT asserts that the proposed gas quality standards are required to better align the tariff gas quality specifications with the realities of the current gas flows and operation of its system. FGT states that much of the gas transported on its system does not meet its existing tariff gas quality specifications for carbon dioxide and Wobbe Index, and thus, absent a waiver of those standards, would have been shut in. FGT claims that changes to gas quality specifications are required as the nation’s gas supply shifts to shale gas, which is leaner in composition.

¹¹³ Duke Initial Comments at 3.

¹¹⁴ *AES Ocean Express LLC v. Florida Gas Transmission Company*, Opinion No. 495, 119 FERC ¶ 61,075 (2007), *order on reh’g*, Opinion No. 495-A, 121 FERC ¶ 61,267 (2007), *order on reh’g*, Opinion No. 495-B, 125 FERC ¶ 61,137 (2008).

¹¹⁵ Seminole Initial Comments at 36.

118. FGT also claims that its data provided at the technical conference supports the proposed changes because it demonstrates that the gas received at Market Area receipt points did not meet the current tariff carbon dioxide or Wobbe Index standards.¹¹⁶ FGT states that the changes in these standards are consistent with the composition of the gas now entering its system. In addition, FGT states it provided data showing that the propane levels in the flowing gas streams are substantially below the tariff levels, and notes that propane is not a component listed in the Gas Quality Policy Statement.¹¹⁷ FGT thus proposes to remove the propane specification from its tariff.

119. FGT states in its Reply Comments that its proposed changes to its gas quality provisions reflect the reality of the gas on the system now and the anticipated new gas supplies. FGT contends that, if approved, the proposed gas quality specifications for the Market Area would match the current Western Division gas quality specifications, and that there is no reason to maintain two different sets of gas quality specifications on its system. In addition, FGT states it is not prohibited from making such a change in the absence of any operational issue.

3. The Gas Quality Policy Statement

120. On June 15, 2006, the Commission issued the *Gas Quality Policy Statement*. Gas quality, as discussed in the *Gas Quality Policy Statement*, is concerned with the impact of non-methane hydrocarbons on the safe and efficient operation of pipelines, distribution facilities, and end-user equipment. As used by the gas industry historically, “interchangeability” means the extent to which a substitute gas can safely and efficiently replace gas normally used by an end-use customer in a combustion application.

121. The Commission’s policy embodies five principles: (1) only natural gas quality and interchangeability specifications contained in a Commission-approved gas tariff can be enforced; (2) pipeline tariff provisions on gas quality and interchangeability need to be flexible to allow pipelines to balance safety and reliability concerns with the importance of maximizing supply, as well as recognizing the evolving nature of the science underlying gas quality and interchangeability specifications; (3) pipelines and their customers should develop gas quality and interchangeability specifications based on technical requirements; (4) in negotiating technically based solutions, pipelines and their customers are strongly encouraged to use the NGC+ interim guidelines on gas quality and

¹¹⁶ FGT Initial Comments at 12-13.

¹¹⁷ *Policy Statement On Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs*, 115 FERC ¶ 61,325 (2006) (*Gas Quality Policy Statement*).

interchangeability filed with the Commission in two reports on February 28, 2005,¹¹⁸ as a common scientific reference point for resolving the issues;¹¹⁹ and (5) to the extent pipelines and their customers cannot resolve disputes over gas quality and interchangeability, those disputes can be brought before the Commission to be resolved on a case-by-case basis, on a record of fact and technical review.

4. Commission Determination

122. As discussed more fully below, we find that the parties have raised concerns about the engineering, operational and market implications of FGT's proposed gas quality changes that raise material issues of fact that are best addressed at the hearing established in this proceeding to address the other factual issues raised by FGT's October 2014 filing. A hearing will allow FGT and all other parties the opportunity to provide further factual support for their respective positions, and will provide the Commission with a written record that will enable it to make determinations on the issues of material fact related to the proposed gas quality standards in dispute in this proceeding.

a. Wobbe Index Range

123. As indicated above, the parties have raised issues of fact regarding the proper minimum Wobbe Index specification that are best addressed in the ongoing hearing in this proceeding. As opponents of the Wobbe Index change point out, FGT's October 2014 filing and accompanying testimony were virtually devoid of any technical or operational data to support the claim that the composition of its supply has changed over the past few years. However, in its response to the Commission Staff data requests, FGT provided copious amounts of chromatograph data from a variety of receipt points on its system that show that over the past three years, the gas flowing on FGT's system has had a Wobbe Index figure below the existing 1340 standard the majority of the time.¹²⁰ FGT also provided flowing gas evidence for the years 2000-2005 (upon which its existing standards were established) demonstrating that the average minimum Wobbe

¹¹⁸ *HDP White Paper and White Paper on Natural Gas Interchangeability and Non-Combustion End Use.*

¹¹⁹ The interim guidelines for interchangeability list the maximum heating value limit as 1110 Btu/scf.

¹²⁰ Attachments FGT-1a, FGT-1b, FGT-1c, FGT-1d, FGT-1e, and FGT-3b to FGT's January 30, 2015 data responses.

Index for that period was 1355 or above.¹²¹ This data supports FGT's claim that the composition of the gas flowing on its system has changed substantially in the time since its existing standards were developed, and that 1340 no longer appears to be the appropriate minimum Wobbe Index figure for FGT's system. FGT itself acknowledges that absent changes to its specifications, much of the gas flowing on its system does not meet the current Wobbe Index standard, and the record indicates that FGT has been waiving that standard since February 2015.¹²² While FGT's data supports its claim that 1340 is not the appropriate standard, it does not appear to justify setting the minimum Wobbe Index at 1320, as there appears to be only one instance in those three years where the Wobbe Index of flowing gas on FGT's system was at or below 1320. Accordingly, this issue is set for hearing.

b. Carbon Dioxide

124. Similar to its Wobbe Index proposal, we find that the parties have raised material issues of fact regarding FGT's proposed carbon dioxide restriction that are best addressed in the ongoing hearing in this proceeding. FGT has not shown that its proposal to impose a two percent limitation on carbon dioxide on all receipt points is operationally necessary. While the chromatograph data FGT supplied shows carbon dioxide levels in the flowing gas on FGT's system above one percent, that data is from the Market Area gas chromatographs, which is not particularly relevant or compelling evidence in support of proposed changes to FGT's Western Division carbon dioxide standards. According to FGT's data, the average carbon dioxide levels for the Market Area during the last three years range from 1.01 percent to 1.24 percent and thus exceed the existing Market Area standard. Those figures, however, are significantly below the two percent proposed by FGT in this proceeding. Thus, again while the data shows the existing standard may not be appropriate, it does not necessarily support a system wide two percent carbon dioxide limit. Accordingly, we set this issue for resolution in the ongoing hearing.

125. We also find that the parties have raised concerns and issues of fact with respect to the appropriateness of FGT's proposal for a provision to ensure that no carbon dioxide, oxygen, or nitrogen is introduced into the FGT system as a dilutant, and set that issue for hearing.

¹²¹ Attachment FGT-3a to FGT's January 30, 2015 data responses.

¹²² Seminole Initial Comments at 36.

c. Propane

126. With respect to FGT's proposal to eliminate its 2.75 percent propane standard, we again find that the parties raise issues of fact best addressed at the hearing. While the data provided by FGT shows that the average propane levels for the Market Area for the last three years are significantly below the existing 2.75 percent standard, FGT's only other argument for eliminating the standard, that a propane standard is not required by the *Gas Quality Policy Statement*, does not justify the complete removal of a provision that was established to be consistent with the specifications of certain electric generation facilities.¹²³ Accordingly, we set the issue of whether FGT should continue to have a propane composition restriction in its tariff, and if so, what is the appropriate limit, for hearing.

E. Monthly Balancing

1. FGT's Proposal

127. Section 14 of the GT&C contains various provisions that resolve FGT's monthly imbalance quantities. FGT's redlined tariff records show that it proposes to modify the rates used in the book-out provisions in section 14.A and the cash-out provisions in section 14.B. FGT provided no explanation for its proposed changes in its October 2014 filing or the accompanying testimony.

2. Post-Technical Conference Comments

128. Duke argues that the Commission should reject FGT's imbalance calculation proposals as unjust and unreasonable due to the lack of support provided by FGT. Duke states that in section 14.B(1)(c), FGT proposes to change how the amount due to transporter for delivery imbalances is calculated for both Market Area and Western Division deliveries. Duke further states that the calculation of the imbalance amount will change from its existing method of multiplying the imbalance quantity by the weighted average of the maximum rates, plus applicable surcharges, of the various Rate Schedules to multiplying the sum of the imbalance quantity by "the weighted average 100 percent load factor for the maximum rate of firm and interruptible transportation services." FGT does not explain its proposed changes in its Initial Comments and does not address Duke's concerns in its Reply Comments.

¹²³ Seminole Initial Comments at 36 and n.52 (citing *AES Ocean Express LLC v. Florida Gas Transmission Co.*, Opinion No. 495, 119 FERC ¶ 61,075, at PP 172, 188-193 (2007)).

3. Commission Determination

129. We reject FGT's proposed changes to section 14 of its GT&C. Because FGT seeks to modify its book-out and cash-out provisions, it bears the burden of proof with respect to any such change and must meet the just and reasonable standard of section 4 of the NGA. As noted earlier, the Commission has held that "[w]here a tariff change proposal is contested . . . it is then reasonable to require the pipeline to come forward with persuasive support for its proposed tariff change in order to meet its burden of proof under section 4 of the NGA." In addition, section 154.7(a)(6) of the Commission's regulations requires a pipeline to include a detailed explanation of the need for a change or addition to its tariff. However, FGT has provided no explanation of the reasons for its proposed change in its charge for delivery imbalances highlighted by Duke in its comments, or for its other proposed changes in section 14. Given the complete absence of any support for these changes, FGT has not satisfied its burden of proof, and these proposed changes must be rejected.

F. Creditworthiness

1. FGT's Proposal

130. In its October 2014 filing, FGT stated that it proposed to update the creditworthiness provisions in its tariff. In testimony, FGT asserted that the Commission's policy requires pipelines to establish objective criteria for determining creditworthiness and that FGT proposed objective criteria in GT&C section 16.B. In addition, FGT maintained that GT&C section 16.C outlines the information that may be reviewed by FGT in determining creditworthiness, if needed, and that GT&C section 16.D sets out an alternative mechanism to assess creditworthiness when a shipper does not qualify for creditworthiness under the objective criteria of GT&C section 16.B. FGT stated that under its proposal, if a shipper fails to establish or maintain creditworthiness, then that shipper may still obtain or continue service if the shipper provides security pursuant to 16 GT&C section 16.E.¹²⁴

131. A review of the proposed tariff language reveals that FGT will receive information on shippers from bond rating agencies and apply a two-part formula to determine if a shipper is creditworthy. First, FGT will assess the ratings of a shipper's long-term senior unsecured debt by S&P and Moody's to determine if the shipper is rated at least BBB- or better by S&P and Baa3 or better by Moody's and that the rating establishes that the long-term outlook by these credit agencies is stable or positive. Secondly, FGT will consider whether the net present value of the sum of future

¹²⁴ Exh. No. FGT-2 at 31.

reservation charges, usage charges and any other associated fees and charges for the service requested is less than 15 percent of the shipper's tangible net worth. FGT will require that each of these criteria must be satisfied for a shipper to be deemed creditworthy.

132. If the shipper cannot meet the above criteria, under the proposal, the shipper may establish creditworthiness by relying on the credit rating of its parent in conjunction with a showing that the tangible net worth of the service requested is less than 15 percent of the parent's net worth. The shipper may also establish creditworthiness by having its parent issue a guarantee acceptable to FGT.

133. If the shipper or the shipper's parent do not meet these criteria, the shipper may establish creditworthiness based upon FGT's review of information such as audited financial statements, a listing of corporate affiliates, parents and subsidiaries, bank and trade references, statements of legal composition and time in operation, documentation of authorized gas supply cost recovery mechanisms, confirmation that shipper is not in bankruptcy or certain debt related proceedings.

2. Post-Technical Conference Comments

134. FGT states that it proposes to streamline its creditworthiness standards to provide objective criteria for determining creditworthiness and set forth an alternative mechanism to assess creditworthiness consistent with the Commission's policies.¹²⁵ FGT asserts that among its revisions are provisions to address new laterals on the FGT system, notify a shipper of non-creditworthiness, provide timelines for information submittals and responses, and a suspension or termination of service for lack of creditworthiness.

135. Seminole asserts that FGT has selected a narrow category of credit ratings and suggests that that an issuer rating should also be included among the ratings because an issuer rating can be obtained by an entity that does not have rated debt obligations. PowerSouth also maintains that it is inappropriate to limit ratings used for creditworthiness determinations to those of issued debt, and that issuer ratings should be used as well because they provide a measure of creditworthiness fully equivalent to long-term senior unsecured debt ratings.

¹²⁵ FGT Initial Comments at 10 (citing *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines*, FERC Stats. and Regs., Regulations Preambles 2001-2005 ¶ 31,191 (2005) (*Creditworthiness Policy Statement*)).

136. Seminole and PowerSouth assert that the tangible net worth standard is unnecessary and not suited for cooperatively owned and governmental entities that do not have capital stock, and which operate under different accounting and ownership structures. PowerSouth argues that it is impossible for a small generator with fully depreciated assets to meet the net worth requirement but this effect could be mitigated if the costs against which the customer's worth is measured were limited to 30 to 60 days' prospective charges instead of the life-of-the-contract measure proposed by FGT. In sum, PowerSouth argues that the Commission cannot approve a requirement that customers that have paid FGT on a timely basis for years cannot meet.

137. Duke states that under FGT's proposal, if a shipper is rated by S&P and/or Moody's, FGT requires, in certain circumstances, that the shipper have a long-term outlook that is stable or positive.¹²⁶ Duke argues that even if a shipper receives a negative outlook from one of the rating agencies, this does not indicate that a ratings downgrade to below investment grade will or could occur and therefore, such an outlook should not impact the credit of the shipper. PowerSouth adds that an investment grade credit rating should be conclusive evidence of creditworthiness without reference to the rating agency's outlook.

138. Duke recommends that FGT replace the 15 percent tangible net worth test calculation with an alternate calculation that is more in line with the actual exposure FGT may have. Duke argues that even under the proposed method, FGT's exposure should be determined by taking the net present value of the difference between the stated rate and the rate FGT could receive for remarketing the capacity compared to 15 percent of the shipper's tangible net worth.

139. Duke also maintains that FGT proposes that a shipper may provide a "Standby Irrevocable Letter of Credit drawn on a bank which is a U.S. bank or a U.S. branch of a foreign bank with an S&P rating of at least A or Moody's rating of at least A2 on its long-term unsecured debt securities."¹²⁷ Duke argues that the required S&P rating of at least A or Moody's rating of at least A2 should be modified to a required rating of "A- / A3." It reasons that because banks are being downgraded, and could continue to be so in the future, ratings of A and/or A2 are not always feasible.

140. FMNGA asserts that FGT has constructed a creditworthiness provision that seems designed to ensure that municipally-owned entities, such as the members of FMNGA, cannot pass. FMNGA also asserts that the proposed creditworthiness provision is

¹²⁶ FGT tariff, proposed sections 16.B(1)(a) and 16.B(2)(a).

¹²⁷ See FGT tariff, proposed section 16.E(1)(c).

lacking because it does not require FGT to show good cause before initiating a creditworthiness review of an existing customer. FMNGA asserts that under its proposal FGT can require any customer on the system, no matter how consistently it has paid its bills, to provide reams of data and undergo a creditworthiness review. PowerSouth maintains that that FGT's proposal inappropriately provides it with unfettered discretion to probe a wide array of customers' financial information regardless of actual credit performance.

141. FGT replies that the Commission has rejected requests for pipelines to include independent creditworthiness criteria specifically tailored to municipals and small customers.¹²⁸ FGT argues that the Commission addressed arguments that the pipeline should be required to include a specific set of creditworthiness criteria in its tariff for small customers. FGT asserts that the Commission rejected this request, finding that the pipeline's creditworthiness criteria provided sufficient means for small customers to meet the criteria and "will provide [the pipeline] with a basis for evaluating shipper creditworthiness in an objective and non-discriminatory manner, while also enabling it to recognize legitimate difference between shippers."¹²⁹ FGT states that its proposal also provides multiple ways for customers, including municipals and small customers, to achieve creditworthiness.

142. FMNGA argues that it is not seeking a small customer exemption from creditworthiness. It argues that it is seeking a creditworthiness provision that contains objective criteria that pertain to a class of customers, specifically municipally-owned customers, regardless of size.

143. FGT replies that although shippers argue that its new proposal permits it to require any customer on the system, no matter how consistently it has paid its bills, to cough up reams of data and undergo a creditworthiness review, its current tariff provides it with this same ability to review the credit of a customer. FGT states that existing GT&C section 16.A of FGT's tariff states that "Transporter shall not be required to ... continue transportation service for any shipper who is or has become insolvent or who ..., at Transporter's request, fails within a reasonable period to demonstrate creditworthiness pursuant to Transporter's standards."

¹²⁸ FGT Initial Comments at 11 (citing *Tennessee Gas Pipeline Co.*, 103 FERC ¶ 61,275 (2003)).

¹²⁹ *Id.* P 68.

3. Commission Determination

144. We accept FGT's creditworthiness tariff revisions as discussed below. In the *Creditworthiness Policy Statement*, the Commission declined to issue a final rule establishing specific criteria for evaluating and establishing creditworthiness and instead issued general guidance on the Commission's creditworthiness policies. The Commission stated that pipelines must establish and use objective criteria for determining creditworthiness, but allowed individual pipelines to establish those criteria.

145. Here, FGT proposes to utilize credit ratings and a tangible net worth test to evaluate a shipper's creditworthiness. While parties have raised objections to certain elements utilized by FGT to construct its creditworthiness evaluation, the Commission has previously accepted this type of evaluation methodology as an objective test of creditworthiness and found it to be consistent with the Commission's policies.¹³⁰ We find that FGT need not modify its criteria to meet the suggestions of the shippers. For example, FMNGA and others, object to the fact that FGT proposes to use debt rating as a core feature of its evaluation methodology while municipalities and other entities do not have ratable debt and are not evaluated by credit agencies. The Commission has previously accepted creditworthiness provisions over such objections. In *Texas Gas* the Commission responded to protests that the proposed:

criteria for determining creditworthiness is unfair to cities and municipalities because these entities do not have credit ratings. Cities states that Texas Gas' criteria for determining creditworthiness relegates municipalities and others to subjective standards because entities without capital stock, such as a municipality, cannot meet the credit rating requirement since they do not have credit ratings.¹³¹

¹³⁰ The Commission has accepted tangible net worth as an acceptable element of creditworthiness methodologies in numerous cases. For example, *Columbia Gulf Transmission Co.*, 117 FERC ¶ 61,073 (three percent tangible net worth limit); *Texas Gas Transmission, LLC*, 135 FERC ¶ 61,132 (2011) (*Texas Gas*) (five percent tangible net worth limit); *PG&E Gas Transmission, Northwest Corp.*, 103 FERC ¶ 61,137 (2003) (10 percent tangible net worth limit); *Great Lakes Gas Transmission Limited Partnership*, 108 FERC ¶ 61,308 (2004) (15 percent tangible net worth limit); *Natural Gas Pipeline Co. of America*, 106 FERC ¶ 61,175 (2004) (15 percent tangible net worth limit); *Tennessee Gas Pipeline Co.*, 103 FERC ¶ 61,275 (2003) (15 percent tangible net worth limit).

¹³¹ *Texas Gas*, 135 FERC ¶ 61,132 at P 10.

146. The Commission found that such a proposal complied with Commission policy. In particular, the Commission noted that the proposal accepted in *Texas Gas* provided alternative methods for a shipper to meet the creditworthiness standards.¹³² As in *Texas Gas*, the instant proposal provides multiple ways for a shipper to meet the creditworthiness standards in addition to satisfying the credit rating and tangible net worth method of meeting creditworthiness standards. There, as in the instant case, the Commission recognized that, while every shipper may not meet the objective standards of the credit rating and tangible net worth methodology, other methods of establishing creditworthiness are available to the shippers.

147. FGT proposes that if the shipper cannot meet the above criteria, the shipper may establish creditworthiness by relying on the credit rating of its parent in conjunction with a showing that the tangible net worth of the service requested is less than 15 percent of the parent's net worth or the parent can issue a guarantee acceptable to FGT. While parties object to this particular method by arguing that municipalities will not qualify because they do not have corporate parents, it is yet another manner by which an entity may establish creditworthiness under FGT's proposal.

148. In addition, if the shipper or the shipper's parent do not meet any of the above methods to meet a creditworthiness showing, then the shipper may also establish creditworthiness based upon FGT's review of information such as audited financial statements, a listing of corporate affiliates, parents and subsidiaries, bank and trade references, statements of legal composition and time in operation, if applicable, documentation of authorized gas supply cost recovery mechanisms, confirmation that shipper is not in bankruptcy or certain debt related proceedings, other information as may be agreed to by the shipper and transporter and credit agency reports. FMNGA and others argue that it is unacceptable for FGT to have the ability in its sole discretion to determine creditworthiness based on a laundry list of factors that it may or may not consider at its discretion.

149. The requirement for the provision of financial data and the review of such data by the pipeline is a method of showing creditworthiness that is consistent with Commission policies.¹³³ For example, in *Tennessee*, the Commission stated:

¹³² *Id.* P 14.

¹³³ *Id.* P 24 (“While Commission policy requires the pipeline to provide minimum objective criteria in its tariff for determining creditworthiness, the policy also permits consideration of each customer's unique circumstances, and the Commission's requirement for objective standards does not interfere with the pipeline's right to exercise its business judgment in evaluating a shipper's creditworthiness.”)

[f]urthermore, Tennessee's revised standards provide a further basis to evaluate the creditworthiness of customers that do not have ratings by S&P or Moody's or have not been subject to an outlook opinion by S&P or Moody's. As set forth more fully above, Tennessee's revised standards in Section 4.3 provides that, if a shipper is not rated by S&P or Moody's, it may use its parent's rating. Otherwise, the shipper's creditworthiness may be evaluated by Tennessee based on certain relevant financial documents submitted by the shipper. *This will provide Tennessee with a basis for evaluating shipper creditworthiness in an objective and non-discriminatory manner, while also enabling it to recognize legitimate difference between shippers.* Accordingly, the protests on this issue are denied.¹³⁴

150. Similarly, we find that in the instant case the information that FGT may request from shippers attempting to show creditworthiness is consistent with such a goal. The information to make this creditworthiness determination does not appear to be overly burdensome and the information requested is generally consistent with that required to form a creditworthiness opinion. While, as the parties argue, some information which FGT may request may not be relevant to the particular shipper at hand, in such a case the pipeline will not need the information to make its determination. In any event, to the extent the list of information that FGT may require to show creditworthiness may contain information not relevant to the determination at hand, FGT appears to have included that information in the list out of an attempt to provide a list of information that may apply to a variety of situations and, as such, FGT's proposal is not unreasonable.¹³⁵

151. The parties also argue that under the proposal, FGT can require any customer to undergo a creditworthiness evaluation regardless of how consistently the shipper may have paid its bills, and argue that FGT should not have such power. The Commission

¹³⁴ *Tennessee Gas Pipeline Co.*, 103 FERC ¶ 61,275, at P 68 (2003) (emphasis added).

¹³⁵ The Commission also recognizes that the information that may be requested by FGT under its proposal is consistent with the list of information documents set forth in the *Creditworthiness Policy Statement*. The Commission stated that it generally found the "list to be a reasonable compilation of information that, in most cases, will provide pipelines with sufficient data with which to evaluate shipper credit." *Creditworthiness Policy Statement*, FERC Stats. & Regs. ¶ 31,191 at P 7.

will not require that FGT base its determination of a need to initiate a creditworthiness review on whether a shipper has previously paid its bills. The determination of creditworthiness, by its very nature, is an ongoing process that cannot be satisfied by a simple reference to past actions without a consideration of present circumstances.

152. Lastly, we address concerns regarding FGT's use of the stable or positive outlook from the credit agencies. The Commission has permitted the use of an outlook rating as an objective criterion in the past and found:

these ratings to be useful tools for parties trying to assess a company's creditworthiness. The ratings are particularly relevant for a pipeline's assessment of the creditworthiness of a minimum investment-grade shipper because they provide an advance signal that the shipper may drop below investment grade. While [protester] is correct that a Negative Outlook or CreditWatch does not mean a ratings decrease is inevitable, it does mean it is a possibility. A poor credit prognosis from either CreditWatch or Outlook is a reasonable indication that a minimum-grade shipper is at greater risk and, therefore, is relevant information for a pipeline to consider.¹³⁶

Therefore, we find that this is an acceptable element of FGT's proposal. Accordingly, consistent with the discussion above, we accept FGT's proposed creditworthiness provisions as just and reasonable.

G. Rate Schedule SFTS

1. FGT's Proposal

153. Rate Schedule SFTS provides firm transportation service for small customers into the Market Area. Rate Schedule SFTS service is available to shippers that had annual firm sales entitlements of 1,100,000 MMBtu or less under FGT's previously effective Rate Schedule SGS, or under a direct firm sales agreement as set forth on FGT's Index of Entitlements in effect on November 2, 1992.¹³⁷ The rate for this service is a one-part volumetric rate derived on a fifty percent load factor basis from the Rate Schedule FTS-1

¹³⁶ *Kern River Gas Trans. Co.*, 131 FERC ¶ 61,271, at P 17 (2010); *see also Texas Gas*, 135 FERC ¶ 61,132 at P 14 (2011); *Columbia Gas Transmission Corp.*, 119 FERC ¶ 61,041 (2007); *Columbia Gulf Transmission Co.*, 117 FERC ¶ 61,073 (2006).

¹³⁷ Exh. No. FGT-2 at 12-13.

rate, plus fuel, and certain surcharges. Shippers under Rate Schedule SFTS may not release their capacity to replacement shippers.

154. FGT's tariff contains several provisions permitting small customers to transfer between Rate Schedule SFTS and Rate Schedules FTS-1, FTS-2, and FTS-3, all of which have two-part rates and do permit capacity release. First, section 11.A of Rate Schedule SFTS permits any Rate Schedule SFTS shipper to transfer its MDTQ under Rate Schedule SFTS to Rate Schedule FTS-1 upon 60 days' notice to FGT. Second, section 11.A. of Rate Schedule FTS-1 permits multiple "Public Agencies" to aggregate their individual Rate Schedule SFTS service agreements (and Rate Schedule FTS-1 service agreements) into a "Joint Action Agency" under a single Rate Schedule FTS-1 service agreement.¹³⁸ GT&C section 1 defines Public Agency to include shippers which are political subdivisions of Florida such as cities, and a Joint Action Agency as a shipper whose capacity consists of the aggregated capacity of Public Agencies. Section 11.B. of Rate Schedule FTS-1 provides that a Public Agency can disaggregate all or part of its firm capacity from an aggregated service agreement. Section 11.C. of Rate Schedule FTS-1 provides that a Public Agency which disaggregates shall be considered a Rate Schedule FTS-1 shipper, "provided however, a Public Agency which disaggregates by giving notice to FGT within 30 days following FGT's notice of its intention to file a general section 4 rate case may revert to Rate Schedule SFTS service," if it meets the requirements for such service. Section 1.(e)(2) of Rate Schedule SFTS provides that Rate Schedule SFTS service is available to a shipper which exercised its option to aggregate its contract into a Rate Schedule FTS-1 service agreement.

155. Section 2 of article VIII of the 2010 Settlement of FGT's last rate case provides that shippers with Rate Schedule FTS-1 service agreement who satisfy the eligibility requirements for Rate Schedule SFTS service have a one-time right to convert from Rate Schedule FTS-1 service to Rate Schedule SFTS service any time during the term of the 2010 Settlement upon 60 days' notice.¹³⁹

¹³⁸ The FTS-2 and FTS-3 Rate Schedules contain similar provisions.

¹³⁹ Florida Gas Transmission Co., September 3, 2012 Stipulation and Agreement of Settlement, Docket No. RP10-21-000 at 14 (2010 Settlement). *See Florida Gas Transmission Co., LLC*, 134 FERC ¶ 61,136 (2011) (order approving 2010 Settlement). Section 2 of article VIII of the 2010 Settlement provides:

[r]egardless of any provision in FGT's Tariff to the contrary, Settling Parties holding service agreements under Rate Schedule FTS-1 that otherwise meet the requirements of Rate Schedule SFTS shall be granted a one-time right to convert

(continued...)

156. In its October 2014 filing, FGT proposed to modify sections 1.(e)(2) and 11.A of Rate Schedule SFTS to clarify that Rate Schedule SFTS shippers who convert to Rate Schedule FTS-1 service may not subsequently transfer back to Rate Schedule SFTS service. Specifically, FGT proposed to modify section 11.A of Rate Schedule SFTS to provide that if a Rate Schedule SFTS shipper elects to convert all or a portion of its Maximum Daily Transportation Quantity under Rate Schedule SFTS to service under Rate Schedule FTS-1, such conversion shall be made on a permanent basis. FGT also proposed to modify section 1.(e)(2) to limit the availability of Rate Schedule SFTS service to shippers which have not exercised the option to permanently convert service to an FTS-1 service agreement.¹⁴⁰ However, FGT did not propose to modify section 11.C. of Rate Schedule FTS-1, permitting Public Agencies disaggregating capacity from an aggregated service agreement to revert to Rate Schedule SFTS service within 30 days after receiving notice from FGT of its intention to file a general section 4 rate case.

157. Finally, section 11.B. of Rate Schedule SFTS contains a provision permitting a Rate Schedule SFTS shipper to convert temporarily to Rate Schedule FTS-1 for purposes of effectuating a capacity release. FGT did not propose to eliminate that right. However, FGT does propose to modify section 11.B to require that such releases occur for a term, beginning on the first day of a calendar month. Mr. Langston states that this will allow adequate time for the administration of such capacity release.

2. Post-Technical Conference Comments

158. In its Initial Comments, FGT states that Rate Schedule SFTS provides a commodity only-based rate for service and that any election to a Rate Schedule FTS-1 service, which provides service on a demand/commodity basis, is a decision such shipper has the option to make. However, FGT states, once made, such election should be permanent. FGT also states that, consistent with the changes in its NGA section 4 filing, it is also proposing to eliminate paragraph 11.C of Rate Schedule FTS-1, permitting Public Agencies disaggregating capacity from an aggregated service agreement to revert to Rate Schedule SFTS service within 30 days after receiving notice from FGT of its

from Rate Schedule FTS-1 service to Rate Schedule SFTS service. Any such Party may elect this onetime right to convert to be effective as of any date commencing with the first day of the month between the Effective Date and the termination of this Settlement pursuant to Article XIII, Section 5; provided that the Party provides FGT at least sixty (60) days prior notice of such conversion date.

¹⁴⁰ Exh. No. FGT-2 at 33.

intention to file a general NGA section 4 rate case. In its technical conference presentation, FGT stated that the one-time right for Rate Schedule FTS-1 shippers to convert to Rate Schedule SFTS service provided by the 2010 Settlement was only effective during the term of that settlement, and thus has now expired.

159. In its Initial Comments, FMNGA opposes FGT's proposals to require that transfers of Rate Schedule SFTS service agreements to Rate Schedule FTS-1 service must be permanent. FMNGA consists of 12 municipally-owned LDCs, which are Public Agencies eligible for the rights provided by section 11 of Rate Schedule FTS-1 to aggregate Rate Schedule SFTS service agreements into a single Rate Schedule FTS-1 service agreement and subsequently disaggregate such agreements, with the limited right to revert to SFTS service in the context of a general NGA section 4 rate case provided by section 11.C. of Rate Schedule FTS-1.

160. FMNGA argues that FGT is impermissibly using a tariff change advertised as a clarification to deprive customers of their rights under existing rate schedules, and such change should be rejected because it is without any basis in the filed testimony and is unjust and unreasonable. FMNGA states that FGT seeks to retroactively take away rights from current and former Rate Schedule SFTS customers. FMNGA states that a Rate Schedule SFTS customer has the right under existing Rate Schedule SFTS, section 11.A, to transfer its MDTQ under Rate Schedule SFTS to Rate Schedule FTS-1 upon providing 60 days' notice to FGT. It argues that this customer has the right under section 11.C of Rate Schedule FTS-1, entitled "Reversion to Service under Rate Schedule SFTS," to revert to service under Rate Schedule SFTS under the terms and conditions set forth therein. FMNGA states that FGT seeks to remove this reversion right. FMNGA states that the net effect of the instant proposal is to take away from Rate Schedule SFTS customers that have switched to Rate Schedule FTS-1 their right to switch back under section 11.C.1 of FTS-1 Rate Schedule, both retroactively and prospectively.¹⁴¹ FMNGA states that not only are existing Rate Schedule SFTS customers precluded from converting to Rate Schedule FTS-1 and thereafter exercising their re-conversion rights under Rate Schedule FTS-1 section 11.C.1, but in addition those Rate Schedule SFTS customers that in the past switched to the FTS-1 Rate Schedule with the explicit understanding that they could convert back to the SFTS Rate Schedule will lose that right retroactively if the Rate Schedule SFTS tariff changes are approved.

¹⁴¹ FMNGA asserts that these conversion rights are very important to these small customers because with the addition or loss of a single industrial customer, their load factor can swing above or below 50 percent, which is the assumed load factor at which the Rate Schedule SFTS one-part rate is set. FMNGA Initial Comments at n.34.

161. In reply to FGT's discussion of Slide 41, which references section 2 of article VIII of the 2010 Settlement granting shippers a one-time right to convert from Rate Schedule FTS-1 service to Rate Schedule SFTS service anytime during the term of the 2010 Settlement, FMNGA states that this provision gave shippers conversion rights in addition to the conversion rights under FTS-1 Rate Schedule section 11.C, which limits the conversion option to those giving notice to FGT within 30 days following FGT notice of intention to file a general section 4 rate case. FMNGA states that the rights in section 11.C are unrelated to the provision in section 2 of article VIII of the 2010 Settlement.

162. In their Initial Comments, Florida Cities also oppose FGT's proposal. They state FGT's proposal would materially abrogate the rights of small customers eligible to receive service under that rate schedule.¹⁴² Florida Cities state that section 11 of Rate Schedule FTS-1, permitting Public Agencies to aggregate Rate Schedule SFTS service agreements into a Joint Action Agency under a single Rate Schedule FTS-1 agreement, has for decades enabled Florida Gas Utility to take service under a single Rate Schedule FTS-1 service agreement on behalf of the individual municipally-owned electric and/or gas utilities that are its members. Florida Cities state that the shippers that are affected by FGT's proposed changes are small distribution systems that have industrial businesses that connect to and also leave their system periodically. Florida Cities state that due to the size of the small shippers, when a relatively "large" industrial load is added to the system, it often has a major impact on the load factor. Florida Cities state that when the average load factor for the small shipper becomes greater than the load factor used to set the Rate Schedule SFTS rate, they have in the past been economically better off as a Rate Schedule FTS-1 customer. Florida Cities state that, however, when the small shipper's load factor drops below the load factor used to set the Rate Schedule FTS-1 rate, the opposite has been true. Florida Cities state that FGT has historically allowed such shippers to exercise their right under section 11.C. of Rate Schedule FTS-1 to switch back to Rate Schedule SFTS service within 30 days after FGT provides notice of its intent to file a general NGA section 4 rate case. Florida Cities contend that nothing should prevent qualifying small shippers from opting to switch to Rate Schedule SFTS service when FGT can take such conversions into effect in planning a rate case filing. Florida Cities state that there are no changed circumstances on the FGT system which would justify its proposal to degrade the rights of these small shippers.

163. In its Reply Comments, FGT states that article VIII, section 12 of the 2010 Settlement granted settling parties holding a service agreement under Rate Schedule FTS-1 a one-time right to convert from Rate Schedule FTS-1 service to Rate Schedule SFTS service provided that such converting shipper otherwise met the requirements of

¹⁴² Florida Cities Initial Comments at 17-19.

Rate Schedule SFTS. FGT states that a settling party was entitled to such one-time conversion right up to the termination of the 2010 Settlement. FGT states that the 2010 Settlement terminated when Florida Gas filed its general NGA section 4 rate filing in this proceeding.

164. FGT states that a shipper does not have a separate right in its contract to re-convert. FGT states that it has the ability to change its tariff and such a right was implicitly recognized in the 2010 Settlement when certain shippers sought the protection of a one-time conversion right during the term of the 2010 Settlement, separate and apart from the tariff provision. FGT states that it has one existing Rate Schedule SFTS shipper and four Rate Schedule SFTS shippers that converted from Rate Schedule FTS-1 under the terms of the 2010 Settlement. FGT states that these five Rates Schedule SFTS shippers are free to convert to Rate Schedule FTS-1 service, but the conversion should be permanent. FGT states that this small class of shippers should not continue to have this special tariff provision, available only to them, to switch back and forth at will.

165. In their Reply Comments, FMNGA submits that if a pipeline intends to remove rights from its tariff, it must do so in a filing that comports with NGA section 4 and the regulations thereunder, which includes a description of the filing, the effect of the filing, and the support for the changes proposed in the filing. FMNGA states that FGT has yet to provide, either in its October 2014 filing or in its Initial Comments, a reason, much less a justification, for taking away the small customer reversion rights.

166. In its Reply Comments, Florida Cities state that the change to Rate Schedule FTS-1 proposed by FGT in its Initial Comments should be rejected on procedural grounds alone because the public has not been provided with notice and opportunity to comment on the proposed change as required by NGA section 4. Florida Cities state that, FGT did not provide any rationale or basis for these proposed changes in its Initial Comments. Florida Cities state that no reason was given for why the continuation of this right would cause any hardship to FGT or any of its shippers, nor did FGT make any attempt to justify the harm that these proposed tariff changes would inflict upon approximately 20 small shippers. Florida Cities state that there are no changed circumstances on the FGT system which would justify its proposal to degrade these long-standing and highly-valued rights of small shippers, and therefore, the Commission should reject FGT's proposed changes.

3. Commission Determination

167. We reject FGT's proposed changes to paragraphs 1.e.2 and 11.A of Rate Schedule SFTS and paragraph 11.C of Rate Schedule FTS-1, requiring all conversions from Rate Schedule SFTS service to Rate Schedule FTS-1 service to be permanent except those for purposes of effectuating a capacity release. Because FGT seeks to modify Rate Schedules FTS-1 and SFTS, it bears the burden of proof with respect to any such change and must meet the just and reasonable standard of section 4 of the NGA. The

Commission has held that “[w]here a tariff change proposal is contested . . . it is then reasonable to require the pipeline to come forward with persuasive support for its proposed tariff change in order to meet its burden of proof under section 4 of the NGA.”¹⁴³ In addition, section 154.7(a)(6) of the Commission’s regulations requires a pipeline to include a detailed explanation of the need for a change or addition to its tariff.

168. FGT has failed to provide any support or explanation of the need for the changes it proposes to paragraphs 1.e.2 and 11.A of Rate Schedule SFTS and paragraph 11.C of Rate Schedule FTS-1. FGT only asserts that it has the right to make these changes to its tariff, as evidenced by the [2010 Settlement], and that once a Rate Schedule SFTS shipper has elected to convert to FTS-1 service, “such election should be permanent.”¹⁴⁴ FGT repeats this assertion in its Reply Comments. It also states it has one existing Rate Schedule SFTS shipper and four Rate Schedule SFTS shippers that converted from FTS-1 under the terms of the 2010 Settlement, and FGT states, “[t]his small class of shippers should not continue to have this special tariff provision, available only to them, to switch back and forth at will.”¹⁴⁵

169. However, existing section 11.C of Rate Schedule FTS-1 does not permit Rate Schedule SFTS shippers who converted to Rate Schedule FTS-1 to shift back to Rate Schedule SFTS service at will. Rather, that section only permits an eligible Public Agency which previously aggregated its capacity into an Rates Schedule FTS-1 service agreement held by a Joint Action Agency to disaggregate that capacity and revert to Rate Schedule SFTS service, provided the Public Agency does this within 30 days of FGT providing notice of its intent to file an general NGA section 4 rate case. Because this right is limited to circumstances where FGT is planning to file a section general NGA section 4 rate case, FGT would have an opportunity to take the conversion into account in designing its proposed rates. FGT has not provided any explanation of the reasonableness of eliminating a Public Agency’s right to revert to Rate Schedule SFTS service in such limited circumstances. For these reasons, FGT’s proposed changes to paragraphs 1.e.2 and 11.A of Rate Schedule SFTS and paragraph 11.C of Rate Schedule FTS-1 are rejected.

170. No party appears to protest FGT’s proposed changes to paragraph 11.B of Rate Schedule SFTS requiring temporary conversions to Rate Schedule FTS-1 service for purposes of effectuating capacity releases to be for a minimum period of one month or

¹⁴³ *Northern Natural Gas Co.*, 118 FERC ¶ 61,072, at P 23 (2007).

¹⁴⁴ FGT Initial Comments at 14.

¹⁴⁵ FGT Reply Comments at 23.

FGT's assertion that this change will allow adequate time for the administration of capacity release. Therefore, we accept FGT's proposed tariff change.

H. Execution of Form of Service Agreements

1. FGT Proposal

171. In its October 2014 filing, FGT proposed to revise its GT&C to require the execution of a current Form of Service Agreement upon any contract extension where the underlying agreement is not consistent with the current Form of Service Agreement in the tariff. Specifically, FGT proposed to add new section 20.D stating: "At any time that a Shipper elects under any provision of any form of service agreement or this Tariff to extend the primary term of an existing service agreement, when the terms and conditions of such agreement are not consistent with the then current applicable Form of Service Agreement in this Tariff, Transporter may, on a not unduly discriminatory basis, require Shipper to enter into a new conforming Form of Service Agreement covering such extended service term." Mr. Langston stated that this provision will allow for the elimination of inconsistent provisions in agreements on the FGT system as such agreements are renewed.¹⁴⁶

2. Post-Technical Conference Comments

172. In its Initial Comments, FGT states that its proposal is necessary to bring shippers' service agreements into conformance with the then-current Form of Service Agreement. FGT states that in 2010, FGT initiated a voluntary review of its currently-effective service agreements to identify whether any service agreements contained potential material deviations from the terms of the applicable Form of Service Agreements. FGT states that, during this review process, it indicated that it "has been proactive in bringing its service agreements into conformity with the *pro forma* service agreements." FGT states that its proposal is a continuation of that effort to bring service agreements into conformance with the applicable Form of Service Agreements and is also consistent with Commission policy that service agreements should match the current Form of Service Agreement in the tariff.¹⁴⁷

¹⁴⁶ Exh. No. FGT-2 at 33.

¹⁴⁷ FGT Initial Comments at 14 (citing *Florida Gas Transmission Co., LLC*, Tariff Filing, Docket No. RP11-1674-000 (filed Dec. 30, 2010); *Florida Gas Transmission Co., LLC*, 138 FERC ¶ 61,008 (2012) (accepting FGT's filing of non-conforming service agreements)).

173. AGDF, FPL and Peoples oppose FGT's proposal. Peoples requests that FGT not be permitted to compel shippers to enter into new service agreement when shippers seek to exercise their rights to extend the term of existing service agreements. FPL states that, in *Texas Gas*,¹⁴⁸ the Commission rejected a proposal to require parties with existing contracts containing rollover rights to execute the current *pro forma* agreement upon the expiration of the current contract. FPL states that, in that proceeding, the pipeline's proposed revisions were very similar to FGT's proposal.¹⁴⁹ FPL states that the Commission initially accepted the Texas Gas provision based on the Commission's understanding that the proposed provision was administrative in nature and would not have any substantive effect on the rights and obligations under a new service agreement if the shipper elected to rollover an expiring agreement.¹⁵⁰ However, on rehearing, Texas Gas explained that the proposed tariff revision was intended to require shippers seeking to extend an existing service agreement to renegotiate the service agreement, which would allow Texas Gas to remove material deviations from the Form of Service Agreement set forth in its tariff. FPL states that given this new information the Commission rejected Texas Gas' proposed tariff provision, finding that, without examining the specific contracts with unilateral rollover rights and the non-conforming provisions that Texas Gas wishes to change or eliminate, and without knowing whether these non-conforming agreements had been filed with the Commission, it could not find just and reasonable Texas Gas' proposed tariff language giving it a blanket authorization to renegotiate all such contracts when they are rolled over.¹⁵¹

174. FPL states that the Commission further explained that modification of a shippers' unilateral rollover rights was not necessary to ensure ongoing compliance with the Commission's regulations stating that if Texas Gas harbored concern over provisions in

¹⁴⁸ FPL Initial Comments at 19 (citing *Texas Gas Transmission, LLC*, 127 FERC ¶ 61,132 (2009), *order accepting and suspending tariff sheets subject to conditions*, 127 FERC ¶ 61,313 (2009), *order on reh'g*, 129 FERC ¶ 61,176 (2009), *order on clarification*, 130 FERC ¶ 61,114 (2010)).

¹⁴⁹ FPL states that Texas Gas proposed including the following provision in its GT&C: "If a service agreement is extended in accordance with any of the provisions in this Section 10, Customer shall execute a new service agreement as provided in the then-current tariff."

¹⁵⁰ FPL Initial Comments at 20 (citing *Texas Gas Transmission, LLC*, 127 FERC ¶ 61,132, at P 18 (2005)).

¹⁵¹ FPL Initial Comments at 20-21 (citing *Texas Gas Transmission, LLC*, 129 FERC ¶ 61,176, at PP 17, 19 (2009)).

non-conforming agreements, those concerns could be addressed through filing the non-conforming agreements to the extent Texas Gas had neglected to previously file them. FPL states that, consistent with Texas Gas, FGT has filed FPL's non-conforming contracts with the Commission and they were accepted. FPL states that if the Commission opts to accept FGT's proposal, the Commission should direct FGT to revise its proposed section 20.D in order to clarify that the terms of existing agreements with rollover rights are able to remain in effect until terminated.

175. Peoples states that customers with unilateral roll-over rights have the option to choose to enter into a new agreement at the end of the contract term, but may not be compelled to do so. Like FPL, Peoples states that previously the Commission rejected a proposed tariff change that would have required the pipeline's customers with unilateral roll-over rights to execute new agreements under the current *pro forma* service agreement when such agreements are rolled over.¹⁵²

176. AGDF states that, under current Commission policy, the only non-conforming terms that may lawfully exist in a shipper service agreement are those that have been specifically approved by the Commission. AGDF states that such terms might have been the result of unique operational or incremental expansion circumstances, or bargained for provisions from an approved rate settlement. AGDF states that, however, with this new tariff clause, FGT could unilaterally terminate such provisions upon rollover of the contract term. AGDF states that this might materially change the terms of service for a shipper without its consent, and if the shipper was captive and subject to the Commission's regulatory right of first refusal (ROFR) protection, such action would violate Commission policy.

177. AGDF states that the Commission has rejected pipeline attempts to force shippers to change the quality or terms of service they are receiving when going through the ROFR process. AGDF states, for example, the Commission has rejected pipeline attempts to force a change in seasonal capacity variations, stating "[t]he purpose of the ROFR has been and remains to protect the existing service of long-term firm customers, particularly captive customers."¹⁵³ AGDF states, similarly, the Commission has made clear that a pipeline "may not impose new contractual minimum pressure or hourly flow

¹⁵² Peoples Initial Comments at 40 (citing *Texas Gas Transmission, LLC*, 129 FERC ¶ 61,176, at P 19 (2009)).

¹⁵³ AGDF Initial Comments at 19, citing *Algonquin Gas Transmission Co.*, 103 FERC ¶ 61,235 (2003), citing, *inter alia*, *NUI Corp. v. Florida Gas Transmission Co.*, 92 FERC ¶ 61,044 (2000) (confirming that FGT may not require an elimination of or change in the seasonal quantity variances for shippers going through the ROFR process).

conditions on an existing long-term firm shipper's service" when the shipper goes through the ROFR contract renewal process.¹⁵⁴ AGDF states that the Commission confirmed that the purpose of the ROFR is "to permit a long-term firm shipper to continue its historic service, subject only to matching conditions on rates and contract term" and emphasized that "the character of service being provided under the expiring contract cannot be changed through use of the ROFR."¹⁵⁵

178. AGDF states that these important captive shipper protections would be undermined if FGT could, through the contract extension/renewal process, unilaterally require changes to the approved, historical service received by the shipper. AGDF states that FGT cannot justify its proposed change on grounds that it would not extend to the ROFR process. AGDF states that such a position would lead to the absurd result that a captive shipper would risk losing its historical service rights in the contract renewal process and could only be assured of preserving those rights by triggering a contract termination and going through the ROFR process.

179. AGDF states that there may be appropriate circumstances for FGT to seek termination of non-conforming service terms upon termination of a shipper's contract when the shipper is not eligible for ROFR protection, and FGT already has the power to do so by exercising its contract termination rights. AGDF states that, however, the added discretion FGT seeks to force execution of a new service agreement in all contract renewal circumstances affords the pipeline too much power to alter the approved service terms of captive shippers, and should be rejected.

180. FGT replies that the ROFR process currently set out in its Tariff allows a shipper to "retain the existing capacity"¹⁵⁶ but requires that the shipper enter into a new service agreement with Florida Gas.¹⁵⁷ FGT states that any ROFR right held by a shipper

¹⁵⁴ AGDF Initial Comments at 20 (citing *Columbia Gas Transmission Corp.*, 110 FERC ¶ 61,063, at P 17 (2005)).

¹⁵⁵ *Id.* P18.

¹⁵⁶ FGT Reply Comments at 24 (citing FGT tariff, GT&C section 20.B).

¹⁵⁷ FGT Reply Comments at 24 (citing FGT tariff at GT&C, section 20.B.; *El Paso Natural Gas Co., L.L.C.*, 144 FERC ¶ 61,004, at PP 45, 47 (2013) (Commission held that provisions of prior service agreements did not carry forward to new service agreements signed when shippers exercised ROFR rights)).

attaches to the capacity sought to be obtained and does not entitle the shipper to extend an existing contract with the same terms and conditions of service.¹⁵⁸

181. FGT states that in *Texas Gas* the Commission held that the pipeline's proposed tariff change would impermissibly impact service agreements containing unilateral rollover rights. FGT argues that unlike *Texas Gas*, FGT is not attempting to terminate the existing extension provisions in the service agreements. FGT states that the proposed tariff change is intended to allow all such contract renewals and extensions to be consistent for all shippers.¹⁵⁹

182. FGT states that absent approval of the proposed tariff revision, non-conforming terms in service agreements, whether material or not, will never be eliminated, notwithstanding that many of these non-conforming provisions were designed to be term-limited (e.g., certain service agreements have non-conforming terms that were added as a specific result of rate case settlements). FGT states that failure to require that a renewal agreement be in conformance with the current form of service agreement, which does not include the expired provision, would effectively allow a shipper to continue to possibly enjoy the benefit of such term-limited provision well past the intended timeframe. FGT also contends that, if a pipeline is not permitted to implement a tariff provision that would allow non-conforming terms to end at the time that such terms were intended to terminate, the pipeline will be forced to incorporate such term-limited provisions in its form of service agreements or within its rate schedules.

183. FGT states that in the capacity release context, unless agreed to by the pipeline, a replacement shipper does not have the right to sign a replacement service agreement containing all of the same terms that the releasing shipper had in its service agreement. FGT states that this effectively provides for service for the replacement shipper under a new service agreement matching the current form of service agreement. FGT argues that the same rationale should apply here.

¹⁵⁸ FGT Reply Comments at 24 (citing *Texas Gas*, 129 FERC ¶ 61,176, at P 18 (2009) (Commission found that the pipeline's proposal to require a shipper to enter into a new service agreement did not have any "real substantive effect" on agreements containing ROFR rights because "in the situation where a service agreement contains a bilateral evergreen provision or ROFR, [the pipeline] can require the shipper to execute a new service agreement regardless of its proposed change [to its tariff]. . . . Under the ROFR, [the pipeline] and the customer would, in any event, execute a new service agreement under the current pro forma service agreement after the ROFR procedures are completed and the relevant capacity has been awarded to the original customer.")).

¹⁵⁹ *Texas Gas*, 129 FERC ¶ 61,176 (2009).

184. In their reply comments, AGDF, FPL and Peoples argue that FGT's proposal conflicts with Commission policy and precedent. FPL argues that FGT does not explain why its proposal is justified in light of Commission precedent holding precisely the opposite. FPL argues that FGT's proposal would appear to require its shippers to do exactly what the Commission refused to let Texas Gas do to its customers, which would be unreasonable, and would serve as a departure from applicable precedent. FPL states that the Commission stated that pipelines can file any contracts that they are concerned might be non-conforming with the Commission and FGT has already filed its non-conforming contracts with the Commission, thereby vitiating the concern it purports to be rectifying. Peoples states that FGT's attempt to revoke customers' rights to preserve the terms of their existing agreement when they seek to exercise their rights to extend or renew such agreements has not been shown to be just and reasonable and should be rejected.¹⁶⁰

3. Commission Determination

185. As discussed below, we reject FGT's proposed section 20.D of the GT&C. FGT's proposal, like the pipeline proposal rejected in *Texas Gas*, would impermissibly require modifications in service agreements containing a unilateral rollover right, exercisable solely by the customer.

186. In *Texas Gas*, like this case, the pipeline proposed to require shippers to execute the pipeline's then current applicable Form of Service Agreement when the shippers' existing contracts were rolled over. The pipeline's proposal applied to all extension rights: a bilateral evergreen provision, a unilateral rollover right held by the customer if certain conditions are met, and a regulatory or contractual ROFR. The Commission found that the only real substantive effect of the proposal would be with respect to service agreements containing unilateral rollover rights¹⁶¹ and with respect to unilateral

¹⁶⁰ Peoples Reply Comments at 19 (citing *Columbia Gas Transmission Corp.*, 110 FERC ¶ 61,063, at PP 17-18 (2005), *order on clarification*, 111 FERC ¶ 61,210 (2005)). Peoples notes that shippers under existing long-term service agreements have the right to renew or extend such agreements in accordance with 18 C.F.R. § 284.221(d)(2).

¹⁶¹ *Texas Gas*, 129 FERC ¶ 61,176 at P 18. The Commission stated that where a service agreement contains a bilateral evergreen provision or ROFR, Texas Gas could require the shipper to execute a new service agreement regardless of its proposed change. Under a bilateral evergreen provision, the Commission stated, Texas Gas has the right to terminate the current service agreement and can therefore require the customer to execute a new service agreement under the current *pro forma* service agreement. Under the ROFR, Texas Gas and the customer would execute a new service agreement under the

(continued...)

rollover rights, the Commission rejected Texas Gas' proposal, stating that the pipeline did not have a contractual right to require modifications in service agreements containing a unilateral rollover right, exercisable solely by the customer. Without examining the specific contracts with unilateral rollover rights and the non-conforming provisions that Texas Gas wished to change or eliminate, and without knowing whether those non-conforming agreements had been filed with the Commission, the Commission could not find just and reasonable Texas Gas's proposed tariff language giving it a blanket authorization to renegotiate all such contracts when they are rolled over.¹⁶²

187. FGT's proposal would apply to all extension rights, but, as in *Texas Gas*, the only real substantive effect of the proposal would be with respect to service agreements containing unilateral rollover rights.¹⁶³ FGT argues that, unlike *Texas Gas*, FGT is not attempting to terminate the existing extension provisions in the service agreements. FGT states that the proposed tariff change is intended to allow all such contract renewals and extensions to be consistent for all shippers. In *Texas Gas*, the pipeline intended its proposal to modify the unilateral rollover provision so as to give it the bargaining power to require customers with certain historical non-conforming agreements to execute a new agreement under Texas Gas' then-current Form of Service agreement, with different substantive terms.¹⁶⁴ FGT's intentions appear to be similar to those of Texas Gas. Mr. Langston states that this proposal will allow for the elimination of inconsistent provisions in agreements on the FGT system as such agreements are renewed.¹⁶⁵ Like the Commission in *Texas Gas*, we find such a proposal unacceptable.

188. FGT states that the tariff revision proposed here is a continuation of its effort to bring service agreements into conformance with the applicable Form of Service

current pro forma service agreement after the ROFR procedures are completed and the relevant capacity has been awarded to the original customer. The same is true here.

¹⁶² *Texas Gas*, 129 FERC ¶ 61,176 at P 19.

¹⁶³ AGDF cites *Columbia Gas Transmission Corp.*, 110 FERC ¶ 61,063 (2005) in support of its contention that the Commission has rejected pipeline attempts to force shippers to change the quality or terms of service they are receiving when going through the ROFR process. We find this case to be unpersuasive because it concerned the extension of existing agreements with conforming provisions, as opposed to the extension of existing agreements with non-conforming provisions present here.

¹⁶⁴ *Texas Gas*, 129 FERC ¶ 61,176 at P 19.

¹⁶⁵ Exh. No. FGT-2 at 33.

Agreements and is also consistent with Commission policy that service agreements should match the current Form of Service Agreement in the tariff. But, as explained in *Texas Gas*, modification of a shipper's unilateral rollover rights is not necessary to ensure ongoing compliance with the Commission's regulations.¹⁶⁶ If FGT has concerns regarding provisions in non-conforming agreements, those concerns can be addressed through filing the non-conforming agreements to the extent FGT has failed to previously file them. For example, in 2010, FGT filed numerous non-conforming service agreements for Commission review.¹⁶⁷

189. FGT also argues that absent approval of the proposed tariff revision, non-conforming terms in service agreements, whether material or not, will never be eliminated, notwithstanding that many of these non-conforming provisions were designed to be term-limited. It is not clear to us why a non-conforming provision that was designed to be term-limited would be in a contract with a unilateral rollover right. We would expect that, if it was the intention of the parties for a non-conforming provision to be term-limited, the contract would have language expressing such intent. In any event, whether a non-conforming provision in a particular contract was intended to be term-limited is a contract interpretation issue with respect to the contract at issue and such issues should be addressed on a case-by-case basis by the parties to the contract, not in a generally applicable provision of FGT's GT&C.

I. Form of Service Agreement Modifications

1. FGT's Proposals

190. In its October 2014 filing, FGT proposed to modify the Rate Schedule FTS-1 and FTS-2 Form of Service Agreements. Mr. Langston stated that FGT proposed to eliminate paragraph 6.4 from the Rate Schedule FTS-1 Form of Service Agreement, which provides for the termination of a shipper's Rates Schedule FTS-1 service agreement in the event Rate Schedule FTS-1 rates are rolled in with the rates for service under Rate Schedule FTS-2.¹⁶⁸ Mr. Langston stated that at the time this provision was added in 2003, the Rate Schedule FTS-2 rates were substantially higher than Rate Schedule FTS-1 rates. Mr. Langston stated that, today, including the Rate Schedule FTS-2 costs into the rate determination for Rate Schedule FTS-1 service is beneficial for Rate Schedule FTS-1 shippers because the stand-alone Rate Schedule FTS-2 rates would not be higher than the

¹⁶⁶ *Texas Gas*, 129 FERC ¶ 61,176 at P 21.

¹⁶⁷ *See Florida Gas Transmission Co., LLC*, 138 FERC ¶ 61,008 (2010).

¹⁶⁸ Exh. No. FGT-2 at 34.

Rate Schedule FTS-1 rates. Mr. Langston stated that paragraph 6.4 also deals with rate design issues, and that this is not appropriate as a term for a service agreement.

191. Mr. Langston stated that FGT is also proposing to eliminate certain rate cap language in paragraph 4.3 of the Rate Schedule FTS-2 Form of Service Agreement. Mr. Langston states that the provision was added as a result of a settlement reached in Docket No. CP92-182, *et al.* under which FGT agreed to provide certain signatory parties with rate caps over a 20-year period. Mr. Langston stated that such period ends in March 2015 and accordingly, this provision should be eliminated from the Rate Schedule FTS-2 Form of Service Agreement going forward.

192. Mr. Langston stated that FGT also proposed to eliminate the last sentence in paragraph 4.4 of the Rate Schedule FTS-2 Form of Service Agreement, which provides that FGT will not propose to modify the Market Area system average fuel rate methodology. Mr. Langston stated that provision is designed to limit FGT's ability to modify the fuel reimbursement methodology on its system. Mr. Langston stated that FGT has not proposed a modification to its fuel reimbursement methodology, but such a provision is more properly a rate design issue and is not appropriate for a service agreement.

2. Post-Technical Conference Comments

193. In its Initial Comments, FGT echoed Mr. Langston's testimony with respect to the three Form of Service Agreement modifications. Regarding the elimination of paragraph 6.4 in the Rates Schedule FTS-1 Form of Service Agreement concerning the termination of Rate Schedule FTS-1 service agreements in the event of a roll-in with Rate Schedule FTS-2, FGT added that having a limitation in a service agreement that precludes a rate design change is not appropriate or needed in a service agreement.

194. FPL and FMNGA request that the Commission reject FGT's proposed revision to Rate Schedule FTS-1 Form of Service Agreement as premature. FPL states that FGT's proposal to roll in Rate Schedules FTS-1 and FTS-2 rates has been set for hearing. Thus, no basis exists for FGT to modify the Rate Schedule FTS-1 Form of Service Agreement because the Rate Schedule FTS-1 and FTS-2 rates have not converged. FMNGA states that it will not be known until the case is concluded whether the Rate Schedule FTS-2 rates will remain higher than the Rate Schedule FTS-1 rates or whether the roll-in of the Rate Schedules FTS-1 and FTS-2 rates is beneficial to the FTS-1 customers. Peoples requests that the Commission clarify that FGT's proposed changes to the Rate Schedule FTS-1 will be prospective for new agreements only and shall not revise the terms of existing agreements.

195. FPL and Peoples request that the Commission direct FGT to clarify that its proposed revisions to the Rate Schedule FTS-2 Form of Service Agreement are prospective in nature and will not apply to currently effective Rate Schedule FTS-2 Form

of Service Agreements. Seminole states that the premise for FGT's elimination of the Rate Schedule FTS-2 rate cap language is incorrect and accordingly its tariff change should be rejected. FPL states that the rate cap provision contained in section 4.3 of the Rate Schedule FTS-2 Form of Service Agreement was a product of a settlement between FGT and its customers. FPL states that shippers have bargained for the rate cap provision in their existing Rate Schedule FTS-2 contracts, and those Rate Schedule FTS-2 contracts have been extended based on the continuation of the rate cap provision. FPL states that to the extent that FGT's proposal is accepted, the Commission should clarify that existing contracts with the rate cap provision remain in effect and may be extended under the same terms.

196. Similarly, Peoples states that the rate caps contained in existing FTS-2 service agreements were negotiated as part of prior settlements, most recently in Docket No. RP04-12-000. Peoples add that pursuant to the parties' agreement, the rate cap and certain other provisions of the Rate Schedule FTS-2 Service Agreements are subject to revision only if the "public interest" standard described in the *Mobile-Sierra* doctrine is met.¹⁶⁹ Peoples states that FGT has not alleged that it has made such a showing and there is no basis in its initial tariff filing revising the Rate Schedule FTS-2 rate cap protections for existing service agreements.

197. Seminole states that the premise for FGT's elimination of the Rate Schedule FTS-2 rate cap language is incorrect and accordingly its tariff change should be rejected. Seminole states that FGT's response to a data request contradicts Mr. Langston's testimony regarding the rate cap language. Seminole states that, as shown in FGT's response, the contracts that include a rate cap for affected Rate Schedule FTS-2 customers include expiration dates ranging from February 2015 to as late as April 2028.¹⁷⁰ Seminole states that it became eligible for the section 4.3 rate cap

¹⁶⁹ Peoples Initial Comments at 39, citing Offer of Settlement, Florida Gas Transmission Co., Docket Nos. RP04-12 and RP00-387 (not consolidated) at article VII (Aug. 13, 2004) and *Florida Gas Transmission Co.*, 109 FERC ¶ 61,320, at P 57 (2004) ("The Settlement also resolves Order No. 637 issues, provides rate caps, and avoids the business uncertainty associated with protracted litigation. For these reasons, and the additional reasons identified by the supporting Settling Parties, we find that the Settlement is in the public interest.") Peoples states that FGT acknowledged the continuing effect of the rate caps in Docket No. RP10-21-000, which did not alter the terms of the prior settlements in this regard.

¹⁷⁰ Seminole Initial Comments at 32 (citing FGT's response to FMNGA-SEC Data Request No. 2.45 (also appended as Attachment 12)).

pursuant to its Order No. 636 Settlement¹⁷¹ and as a result, the currently effective rate cap in Seminole's Rate Schedule FTS-2 agreement extends for the primary term of its contract, which runs through November 2018. Seminole states that to the extent FGT is asserting that rate caps will no longer apply after March 2015, its position is inconsistent with both prior settlements and the terms of current service agreements.

198. Seminole is also concerned that an extension of an existing Rate Schedule FTS-2 contract that includes the rate cap provision could result in the removal of the rate cap from the extended agreement because the shipper could be required under FGT's proposed section 20.D of the GT&C to enter into a new agreement based on the *pro forma* service agreement. Seminole states that the change to the Rate Schedule FTS-2 service agreement could potentially deprive affected shippers of rights established under prior agreements and settlements. Accordingly, Seminole argues that the *pro forma* Rate Schedule FTS-2 service agreement should retain the rate cap language or be clarified so that the continued applicability of the Rate Schedule FTS-2 rate cap will not in any way be impaired by the tariff changes.

199. FPL states that FGT's proposal to remove the fuel reimbursement provision from section 4.4 of the Rate Schedule FTS-2 Form of Service Agreement should also be limited to prospective contracts. FPL states that the provision was also a product of negotiation between FGT and its customers, and the removal of that provision from FGT's *pro forma* agreement should not affect existing agreements between FGT and its customers. FPL understands that FGT's fuel reimbursement rate is not an issue set for technical conference in this proceeding but that it has been set for hearing by the Commission. Nevertheless, FPL wants to ensure that any fuel-related proposal, including FGT's proposal to remove the fuel provision in its Rate Schedule FTS-2 Form of Service Agreement, does not affect the fuel rate that shippers are assessed under currently-effective Rate Schedule FTS-2 agreements.

200. FPL, Peoples, and Seminole request that the Commission direct FGT to clarify that its proposed revisions to the Rate Schedule FTS-2 Form of Service Agreement are prospective in nature and will not apply to currently-effective Rate Schedule FTS-2 Form

¹⁷¹ Seminole Initial Comments at 32 (citing FGT's August 13, 2004 Offer of Settlement, Docket No. RP04-12-000 (Order No. 637 Settlement)). *Florida Gas Transmission Co.*, 109 FERC ¶ 61,320 (2004) (order accepting Order No. 637 Settlement). See also article VII, section 6 of the Order No. 637 Settlement (providing that settling Rate Schedule FTS-2 customers would amend their contracts to include rate cap provisions consistent with the settlement and that the right to a rate cap extended to FTS-2 customers who previously did not have rate caps in their Rate Schedule FTS-2 service agreements).

of Service Agreements. Peoples state that to the extent that FGT's proposal will have no impact on the rate caps reflected in these agreements, including any extension or renewal of such agreements, they do not oppose FGT's proposal. Seminole states that FGT's proposed change to the *pro forma* Rate Schedule FTS-2 Service Agreement, combined with FGT's other proposed change in section 20.D of the GT&C that mandates execution of the *pro forma* service agreement even when it differs from the underlying service agreement, threatens to deprive customers of rate caps that were agreed upon in prior settlements. Seminole urges the Commission to require clarification of FGT's amended Rate Schedule FTS-2 Form of Service Agreement to make clear that the existing rate caps, which in some cases extend for many years, will not be compromised by the tariff changes (whether through an amendment to such an agreement, or by a contention that the agreement does not comply with the *pro forma* service agreement). Seminole states that it may be true that the rate cap will not apply given the filed rates in this case, but for shippers with rate caps that last well into the future, assurances that the rate caps remain valid and effective irrespective of FGT's tariff modifications is necessary to ensure the benefits of those rate caps, if triggered, will remain in place.

201. FGT's Reply Comments state that the proposed revisions to the Form of Service Agreements are prospective in nature and will not apply to currently-effective agreements. Therefore, FGT states, there is no impact on existing service agreements.

3. Commission Determination

202. We find that FGT's proposal to remove the provision in the Rate Schedule FTS-1 Form of Service Agreement providing for the termination the agreement if the Rate Schedule FTS-1 and FTS-2 rates are rolled in is related to FGT's proposal to roll in those rates. Since we have set the roll-in issue for hearing, we find that the proposed change to the FTS-1 Form of Service Agreement should also be included in the hearing established in the November 14, 2014 Order.

203. We accept FGT's proposal to remove the rate cap provision and the prohibition on Market Area fuel design changes in paragraphs 4.3 and 4.4 of the Rate Schedule FTS-2 Form of Service Agreement, subject to FGT clarifying in its proposed tariff language, as it did in its Reply Comments, that such changes will not apply to currently-effective Rate Schedule FTS-2 Service Agreements. We find that the parties' concern that FGT's proposed change to section 20.D of the GT&C requiring the execution of a current Form of Service Agreement upon any contract extension could unreasonably cause them to lose their rights under paragraphs 4.3 and 4.4 is moot given our rejection of proposed section 20.D in the preceding section of this order.

J. Additional Issues

1. Construction Cost of Recovery Option

204. Section 21 of FGT's GT&C addresses requests for service on existing mainline facilities. FGT proposed to add language to section 21.G.1 to provide for an incremental facility charge in addition to transportation rates. FGT stated the purpose of this change is to fund aid-in-construction payment obligations over time instead of all up front. FGT further explained that this change would provide additional options for shippers that request additional facility construction by FGT where such facility costs are to be borne by the requesting shipper.¹⁷² No party objected to FGT's proposal. Accordingly, we accept the tariff records reflecting FGT's proposal of an additional construction cost of recovery option.

2. Data Verification Committee

205. FGT proposed to update various Data Verification Committee (DVC) provisions as specified in GT&C section 17.A.4(g) and (h). Specifically, FGT proposes to extend the time between the update of the DVC Exempt Usage amount from three to seven years in GT&C section 17.A.4(g). Furthermore, in GT&C section 17.A.4(h), FGT proposes to extend the timeframe for updating specific DVC information between required filings. FGT provides additional support for its proposal in its Initial Comments.¹⁷³ No party objected to FGT's proposal. Accordingly, we accept the tariff records reflecting FGT's proposal of updating its DVC provisions.

3. Scheduling Nominations

206. Indicated Shippers request that FGT be required to modify its scheduling provisions, to be consistent with Commission policy. Indicated Shippers contend that this would entail that Rate Schedule IPS nominations (i.e., nominations from a pool that deliver directly to a firm service agreement) be afforded the same firm scheduling priority out of the pool as the firm service agreement to which the nominations are being delivered. Indicated Shippers contend that FGT's current tariff provides for a lower priority for transportation from the pool, notwithstanding the fact that a nomination from a pool might be delivered into a downstream firm transportation agreement. Indicated Shippers contend that its proposed change would bring FGT's tariff into compliance with other pipelines and the Commission's policy, and it will also benefit all firm shippers on

¹⁷² FGT Initial Comments, Attachment 1, Slide 57.

¹⁷³ FGT Initial Comments, Attachment 1, Slide 59.

FGT's system, as well as their suppliers. Both Indicated Shippers and FGT recognize that this change would be subject to the NGA section 5 burden and should be addressed at hearing. Accordingly, we agree that this issue must be further examined at the hearing established in the instant proceeding.

4. Segmented Nominations

207. Infinite requests that the Commission reconsider the justness and reasonableness of FGT's tariff as it relates to nominations for service. Infinite contends that in order to segment capacity, a shipper must designate all segmented nominations, as Transaction Type 84, which enables FGT to designate a lower priority of service to the shipper for all segments. Infinite further contends that section 10(C) of FGT's GT&C provides that segmented within-the-path transactions hold a lower priority of service than secondary firm within-the path transactions. In addition, Infinite contends that segmented outside-the-path transactions hold a lower priority of service than secondary firm outside-the-path. Infinite argues that FGT's current treatment of segmented capacity priorities discourages segmentation, is contrary to Commission policy, is discriminatory, and is unjust and unreasonable. Both Infinite and FGT recognize that this is a NGA section 5 issue. We find that this issue must be further examined at the hearing established in the instant proceeding.

III. Conclusion

208. FGT is directed to comply with the findings above within 15 days of the date of this order. The Presiding Administrative Law Judge may alter the procedural schedule in the hearing as necessary to accommodate the additional issues set for hearing.

The Commission orders:

FGT's tariff proposals are disposed of as more fully described above. Within 15 days of the date of this order, FGT shall make a compliance filing using a filing code of 580 to reflect these determinations.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.