128 FERC ¶ 61,084
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Tres Palacios Gas Storage LLC — Docket Nos. RP09-260-000, RP09-260-002

ORDER ON TARIFF SHEETS AND ON COMPLIANCE FILING

(Issued July 24, 2009)

1. On March 26, 2009, in response to the Commission's February 24, 2009 order in this docket (February 24 Order),[1] Tres Palacios Gas Storage LLC (Tres Palacios) filed revised tariff sheets, and also filed the additional information sought by the Commission. The February 24 Order conditionally accepted certain tariff sheets filed by Tres Palacios to comply with Order No. 712,[2] to be effective February 25, 2009, subject to certain conditions. The remaining tariff sheets, in which Tres Palacios proposed changes pursuant to section 4 of the Natural Gas Act (NGA), were suspended subject to further Commission review, to become effective on the earlier of July 25, 2009, or a further Commission order. In this order, the Commission accepts the revised tariff sheets Tres Palacios filed to comply with the February 24 Order's requirements concerning its compliance with Order No. 712.[3] The Commission also generally accepts Tres

[1] *Tres Palacios Gas Storage LLC*, 126 FERC ¶ 61,167 (2009).

[2] *Promotion of a More Efficient Capacity Release Market*, Order No. 712, 73 Fed. Reg. 37,058 (June 30, 2008), FERC Stats. & Regs. ¶ 31,271 (2008), *order on reh'g*, Order No. 712-A, 73 Fed. Reg. 72,692 (December 1, 2008), FERC Stats. & Regs. ¶ 31,284 (2008).

[3] Compliance tariff sheets Substitute First Revised Sheet No. 115 and Substitute Original Sheet No. 115A.

Palacios's section 4 proposals to be effective on July 25, 2009, subject to conditions, for the reasons discussed below.[4]

I. Background

2. Tres Palacios provides open access storage, park and loan, and wheeling services at market based rates.[5] It is not authorized to perform transportation services. On January 26, 2009, Tres Palacios submitted tariff sheets to comply with Order No. 712. Additionally, Tres Palacios included tariff sheets pursuant to section 4 of the NGA containing three other proposed tariff revisions. These tariff provisions included a proposal to: (1) streamline Tres Palacios's tariff procedures by moving individual contract parameters to exhibits attached to *pro forma* agreements; (2) modify its firm storage service to charge higher rates for those shippers that want to access secondary receipt and delivery point rights compared to the rates paid by those shippers that did not desire secondary point rights; and (3) clarify that customers may not simultaneously inject and nominate from storage at different receipt and delivery points under a firm storage agreement.

3. On February 24, 2009, the Commission issued an order that accepted the tariff sheets Tres Palacios filed to comply with Order No. 712, subject to Tres Palacios filing to make certain tariff changes. The Commission required that Tres Palacios clarify vague language in its capacity release provisions and provide additional information to address concerns expressed by Atmos Energy Marketing LLC (Atmos) concerning the flow through of usage and fuel discounts in capacity releases.

4. The February 24 Order also accepted and suspended the tariff sheets Tres Palacios filed pursuant to NGA section 4 to be effective July 25, 2009, subject to Tres Palacios filing additional information and further Commission review. The Commission directed Tres Palacios to file an assortment of additional information to address protests filed by Virginia Power Energy Marketing, Inc., (VPEM) and NJR Energy Services Company (NJRES), and made its acceptance of these tariff sheets subject to further review.

II. Notice

5. Tres Palacios's filing in the instant proceeding was noticed on March 31, 2009. Pursuant to the February 24 Order, parties had 20 days to file reply comments. NJRES, VPEM and Marathon Oil Company filed timely reply comments. On May 4, 2009, Tres Palacios filed to respond to these comments.

---

[4] *See* Appendix.

[5] *Tres Palacios Gas Storage*, LLC, 120 FERC ¶ 61,253 (2007).

6. Pursuant to Rule 213, the Commission grants Tres Palacios's motion to accept its answer to these comments because it has provided information that assisted us in our decision-making process.

III. Order No. 712 Compliance

7. In its February 24 Order, the Commission accepted Tres Palacios's proposed tariff revisions to comply with Order No. 712, subject to Tres Palacios amending proposed section 4.1(r) its General Terms and Conditions (GT&C), and certain other conditions.[6]

A. Compliance Tariff Sheets

8. Section 4.1 of Tres Palacios's tariff sets forth the information a shipper must include in an offer to release capacity. Tres Palacios's initial filing included language in section 4.1(r) that required a releasing shipper to include in its offer to release, among other things, "a detailed description of any storage inventory that must be transferred with a released storage capacity." The Commission directed Tres Palacios to file a revised tariff sheet specifying what information a releasing shipper must include in its offer to release with respect to any storage inventory it transfers in connection with a capacity release.

9. In the instant filing, Tres Palacios includes a Substitute Original Sheet No. 115A delineating the information it would require those releasing shippers to include in offers to release capacity. Specifically, revised section 4.1(r) requires a releasing shipper to provide:

> A description of any Storage Inventory that must be transferred with released storage capacity, including
>
> (i) the quantity of Gas in Storage Inventory to be transferred to the Replacement Customer at the beginning of the release term,
>
> (ii) the quantity of Gas which Replacement Customer is to cause to be in the Storage Inventory to be transferred to the Releasing Customer at the end of the release term,

[6] The February 24 Order also directed Tres Palacios to file additional information on the issue of whether it should be required to provide an asset manager/replacement shipper the same market-based usage and fuel rates as it gave the releasing shipper. The Commission will address that issue in a subsequent order.

> (iii) the price(s) (if applicable) to be paid by the Replacement Customer to the Releasing Customer for the transfers of Gas in Storage Inventory described in items (i) and (ii), and
>
> (iv) any other reasonable conditions that the Releasing Shipper chooses to place on the storage inventory transfers.

10. NJRES requests that the Commission require Tres Palacios to clarify that the information on price(s) relates only to the price for actually transferring the storage inventory and does not relate to the price of the actual gas to be transferred. It asserts that requiring information on the actual price of gas to be transferred is not a requirement of Order No. 712, and that, as a storage provider, Tres Palacios does not need this information.

B. Discussion

11. The Commission approves Tres Palacios's revised section 4.1(r). In Order No. 712, the Commission granted an exception to its prohibition on tying to allow a releasing shipper to include conditions in a release concerning the sale and/or repurchase of gas in storage inventory. On rehearing of Order No. 712, the issue arose of how storage releases that include conditions concerning storage inventory should be posted for bidding. In Order No. 712-A, the Commission clarified that the only factor that should be considered for competitive bidding purposes in the context where storage capacity is tied to storage inventory is the capacity.[7] That is because the bidding requirements in the Commission's regulations only apply to capacity releases and must result in a rate the replacement shipper will pay to the pipeline for services using the released capacity. The Commission also pointed out that its policy requires that all conditions in a release, including a condition concerning storage inventory, be objectively stated and applicable.

12. The Commission found that an offer to release which included the purchase price for any gas to be transferred as part of the release and requested bids solely for the capacity would comply with these requirements. The Commission also stated that an offer to release that did not include the purchase price and only provided that the parties will mutually agree on a purchase price after the award of the capacity could be problematic in light of the fact that the commodity price would not be posted or objectively stated.[8] The Commission finds that Tres Palacios's proposal to require that a releasing shipper's offer to release include "the price(s) (if applicable) to be paid" by the

---

[7] Order No. 712-A, at P 135-138.

[8] *Id.* at P 138.

replacement shipper for any required transfer of gas in storage inventory is consistent with Order No. 712-A.

IV. Secondary Point Rights

A. Proposal

13. Currently, Tres Palacios negotiates with each shipper to determine which receipt and delivery points the shipper will specify as primary points under a firm storage service agreement. Shippers also have rights to use other points on a secondary basis. Tres Palacios asserts that the value of these secondary point rights is often not accurately reflected in market-based storage rates.

14. Accordingly, in its original filing Tres Palacios proposed to revise its Rate Schedule FSS *pro forma* service agreement by adding a “check the box” option in order to provide whether firm storage service will come with, or without, secondary point rights. Tres Palacios stated that shippers that opt not to select secondary point rights will be charged less than shippers that elect to use secondary point rights.

15. Tres Palacios further proposed to remove secondary point rights altogether from its *pro forma* service agreements for firm parking service under Rate Schedule FP and from its firm loan service under Rate Schedule FL. Tres Palacios asserts that these services do not require the same degree of flexibility that it offers under Rate Schedule FSS. It stated that the Rate Schedule FP and FL services are structured so that the customer must inject and withdraw its gas in specified equal daily quantities, which allows Tres Palacios to optimize its system operations and thereby offer the service at a lower price. Tres Palacios claimed that customers using service under either rate schedule cannot use secondary points already, because such use would risk curtailment to accommodate the higher-priority rights of other shippers holding primary firm rights, and customers therefore would not be able to park or loan the quantity specified in the agreement. Tres Palacios contended, therefore, that removing secondary point rights from Rate Schedules FP and FL will not adversely affect any customers.

B. Compliance Filing

16. In the information filing required by the February 24 Order, Tres Palacios clarifies that it proposes to implement these secondary point rights revisions on a prospective basis. Tres Palacios states that it will allow its existing firm shippers to retain secondary point rights specified under its existing agreements. It claims this proposal is consistent with the Commission’s open access policy, because it will not deprive any shipper of the right to elect (or retain) firm storage service that includes access to secondary points at no additional cost. Instead, Tres Palacios asserts, shippers that do not need access to secondary points are able to waive this right and pay less. Tres Palacios further asserts its proposal does not represent an impermissible negotiated term and condition of service. It

contends the Commission has accepted binary "check the box" options in form of service agreements that allow a natural gas company and shippers to select or deselect other valuable service rights.[9]

17. Tres Palacios also argues its proposal would not constrain a shipper's ability to release firm storage capacity. It asserts that any replacement shipper that obtained released capacity that does not include secondary point rights would be free to negotiate with Tres Palacios to add secondary point rights to its replacement service agreement, if it so chose and was willing to pay the market-based charge for the option. Tres Palacios states that it would provide a releasing shipper with a rate for secondary point flexibility that it could post as an option in the capacity release process. Tres Palacios asserts that, to date, all of its shippers have utilized secondary points.

18. Tres Palacios argues that the Commission has previously accepted proposals by market-based rate storage providers to offer firm storage service options that allow shippers to elect service that does not include the full spectrum of flexible point rights.[10] Tres Palacios argues that its proposal is similar to other Commission-approved proposals with the only difference being that Tres Palacios is proposing to offer secondary point rights at an embedded price in existing contracts that have secondary point rights.

19. Tres Palacios offers, in order "[t]o remove any concerns over" whether its proposal represents an impermissible negotiated term and condition of service, that it "would be willing to agree to add a separate firm storage rate schedule to its Tariff that would not include secondary point rights" as part of a compliance filing.[11] Tres Palacios adds that shippers electing to retain secondary point rights could contract under Tres Palacio's existing Rate Schedule FSS and shippers electing not to purchase such rights could contract under the new rate schedule.

---

[9] Tres Palacios cites *Pine Prairie Energy Center, LLC*, 120 FERC ¶ 61,198 (2007); *Ozark Gas Transmission, LLC*, 125 FERC ¶ 61,113 (2008); *Monroe Gas Storage Co*., 121 FERC ¶ 61,285 (2007); and *Leaf River Energy, LLC,* 125 FERC ¶ 61,131 (2008).

[10] *See* Tres Palacios March 26, 2009 filing at 6 n.3 (citing SG Resources Mississippi, LLC Original Volume No. 1, Tariff Sheet Nos. 20-30, Rate Schedules FSS (Firm Storage Service) and SFS (Secondary Firm Service)); *id*. at 7 n.4 (citing Egan Hub Storage, LLC First Revised Volume No. 1, Tariff Sheet Nos. 20-36, Rate Schedules FSS and SSS (Secondary Storage Service)); *id*. at 7 n.5 (citing Liberty Gas Storage, LLC Original Volume No. 1, Tariff Sheet Nos. 20-28 Rate Schedules FSS and SFS).

[11] Tres Palacios March 26, 2009 Informational Filing at 12; *see also* Tres Palacios February 20, 2009 Answer at 15-16.

20. With regard to park and loan service, Tres Palacios contends it has demonstrated sufficient operational justification for its proposal not to offer secondary point rights. Tres Palacios states its firm parking service is structured such that the shipper must inject and withdraw its gas in specified equal daily quantities with no flexibility to deviate from the required injection and withdrawal quantities. If a firm parking service shipper were to attempt to use a secondary point, and the point were curtailed to meet the needs of another shipper holding primary rights at the point, the shipper would not be able to honor its contractual obligations to Tres Palacios to park gas. Tres Palacios submits that, for operational purposes, it needs to ensure that quantities to be parked under a firm rate service agreement are actually received, or that quantities Tres Palacios has the right to put to a shipper under a firm loan service agreement are actually delivered.

C. Reply Comments

21. Marathon Oil asserts that secondary point access is a fundamental open access right that should be available to all shippers. Marathon Oil asserts that Commission precedent prohibits jurisdictional pipelines from offering firm service without secondary point access, or charging different rates based on whether a shipper elects to have secondary point rights. Marathon Oil cites *Colorado Interstate Gas (CIG)*,[12] where the pipeline proposed to implement a new firm service that did not include secondary point rights, with the new service priced at a lower rate than the traditional firm service with secondary point rights. Marathon Oil notes the Commission found CIG's proposal to be an "unwarranted departure" from the Commission's policy regarding the use of secondary points.[13] Marathon Oil notes the Commission also held that allowing a pipeline to charge different rates based on whether a shipper elects to have secondary point rights hinders the capacity release secondary market and is contrary to the Commission's open access goals established in Order Nos. 636 and 636-A. Marathon Oil contends that in *Southeast Supply Header*,[14] the Commission interpreted Order No. 636-A as requiring pipelines to provide maximum point flexibility subject only to reasonable operational limits, including providing secondary points, so as not to restrict the capacity release market.

22. Marathon Oil counters Tres Palacios's claim that because Tres Palacios only has one zone, it should not be required to provide secondary point access to all shippers as a fundamental open access right. It contends open access rights should apply equally to cost-based and market-based jurisdictional facilities. It asserts that access to secondary

[12] *Colorado Interstate Gas Co*., 97 FERC ¶ 61,208 (2001).

[13] *Id*. at 61,911.

[14] *Southeast Supply Header, LLC*, 119 FERC ¶ 61,153 (2007).

point rights is not a legitimate check-the-box additional service option that pipelines can offer at their discretion, differentiating it from such check-the-box options as gas inventory insurance, ROFR rights, or injection/withdrawal ratchet options. Marathon Oil asserts Tres Palacios has not substantiated its claim that there are significant costs associated with providing optional access to secondary points.

23. Finally, Marathon Oil asserts that Tres Palacios's proposal to limit secondary point access is not supported by the services offered by other market-based storage-only providers that Tres Palacios cites. Marathon Oil explains that secondary firm storage services are firm (or quasi-firm) services that generally have a higher priority than interruptible storage service, but a lower priority than firm storage service. It states that there is a significant difference between (1) shippers contracting for a quasi-firm storage service under a separate rate schedule that has a priority in between traditional firm service and traditional interruptible service, and (2) requiring shippers to negotiate to simply acquire rights that the Commission has recognized as fundamental components of open access.

24. NJRES reiterates many of Marathon Oil's points, maintaining that Tres Palacios's proposal contravenes the Commission's open access policy. NJRES argues that the Commission did not intend, by granting Tres Palacios market-based rate authority, to also grant Tres Palacios the ability to negotiate terms and conditions of service with individual shippers. NJRES submits that Tres Palacios has failed to demonstrate support for its proposal, either with cost analysis or Commission precedent.

25. NJRES notes that Tres Palacios stated that all shippers currently operating under Rate Schedule FSS use secondary receipt and delivery point rights. NJRES asserts that this fact refutes Tres Palacios's claim that the vast majority of shippers on its system do not want access to secondary receipt and delivery points and would be willing to pay lower rates in exchange for giving up rights to those points.

26. With regard to Tres Palacios's proposal to eliminate secondary point flexibility under its firm parking and loaning services, NJRES asserts Tres Palacios has not supported its proposal, and that Tres Palacios fails to identify any curtailments that have occurred resulting from the use of secondary point flexibility under its firm park and loan service.

27. VPEM reiterates points raised by other parties. It asserts Tres Palacios's secondary point rights revision would impact capacity release, and wants Tres Palacios to clarify that the capacity under a Rate Schedule FSS contract can be released like any other capacity, and that the proposal would not impact the value of that capacity. VPEM also questions certain aspects of Tres Palacios's explanation of how a capacity release would work for shippers electing to forego secondary point rights. VPEM also argues

that Tres Palacios's proposal substantially differs from what the Commission has approved in the past with regard to secondary point rights.

D. Discussion

28. We accept, as a general matter, Tres Palacios's proposal to implement a rate schedule that would permit customers to obtain firm service without the right to access secondary points, conditioned on Tres Palacios filing a revised tariff provision that would permit a shipper to negotiate a rate with Tres Palacios that permits the use of secondary point rights. As a general matter, the Commission's regulations require pipelines to provide secondary receipt and delivery points.[15] The Commission, however, permits pipelines to offer discounted rates that limit the shipper's flexibility to use secondary point rights at the same discounted rate.[16] With respect to pipelines with cost-of-service rates, the Commission has required the pipelines to permit access to secondary points as long as the shipper agrees to pay the maximum tariff rate for that service.

29. This case requires the Commission to evaluate how to apply these policies to a pipeline without market power that has been allowed to charge market based rates. In this context, we find just and reasonable Tres Palacios's proposal to permit a shipper to agree to a contract rate that applies only at its primary points and does not include secondary point rights. The shipper is not captive to Tres Palacios and can balance the rate without the use of secondary points against its other alternatives for storage. Tres Palacios has agreed in its answer that it has no objection to negotiating a rate with a shipper that will permit access to secondary points. In the context of market based rates, this provides shippers with the same options as required under Commission policies. The shipper can negotiate a rate for the use of specific points, but will have the ability to negotiate for a different, presumably higher, rate if it desires secondary points.

---

[15] 18 C.F.R. § 284.221(g) and (h)(2008). *See Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636-A**,** FERC Stats. & Regs. ¶ 30,950, at p. 30,585 *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).

[16] *Williston Basin Interstate Pipeline Co*., 85 FERC ¶ 61, 247, at 62,028-30 (1998). *Williston Basin Interstate Pipeline Co.*, 110 FERC ¶ 61,210 (2005)(responding to the decision of the United States Court of Appeals for the District of Columbia Circuit in *Williston Basin Interstate Pipeline Co. v. FERC*, 385 F.3d 45 (D.C. Cir. 2004)).

30. Accordingly, the Commission accepts Tres Palacios proposed tariff sheets to implement a firm storage service without secondary point rights, subject to Tres Palacios filing revised tariff sheets, within 30 days, to clarify that it will negotiate a rate with shippers that includes the right to access secondary points.

V. Nomination Procedures

A. Proposal

31. Tres Palacios proposed to modify the nomination procedures set forth in section 8.3 of its GT&C to clarify that a customer may not nominate simultaneous injections and withdrawals under a single contract to achieve the equivalent of unbundled transportation services. Tres Palacios stated that it occasionally receives service inquiries from customers that involve nominations for simultaneous injections and withdrawals from storage at different receipt and delivery points. Tres Palacios stated that, if it were to accept and confirm such nominations, it would be providing firm transportation service between the storage service receipt and delivery points, which it is not authorized to provide. Tres Palacios claimed, however, that it is authorized to use its existing Rate Schedule IW (Interruptible Wheeling service) to move gas among its receipt and delivery points for shippers.

B. Compliance Filing

32. Tres Palacios clarifies that it only proposes to restrict simultaneous and offsetting nominations for injections and withdrawals in the same nomination cycle. Its proposal is not intended to have any effect on a shipper's ability to nominate same-day, different-cycle injection and withdrawals. Tres Palacios asserts shippers still have the flexibility to change their intra-day nominations under Tres Palacios's four standard nomination cycles. Tres Palacios argues that scenarios offered by protesters where they need quick injection or withdrawal of gas can be handled under different nomination cycles.

33. Tres Palacios states that it did not anticipate that firm storage service customers would attempt to exercise their firm injection and withdrawal rights at the same time or use those rights for purposes other than to store natural gas in Tres Palacios's caverns. Tres Palacios asserts that if this had been apparent, it would have clarified in its original certificate proceeding to explicitly prohibit this practice. Even so, Tres Palacios claims, same-cycle injection and withdrawals would constitute transportation service, which its Commission certificate does not authorize it to provide. Tres Palacios argues that simultaneous receipt and redelivery is not an attribute of storage service, which by definition involves a delay between the injection and withdrawal of a given quantity of gas.

34. Tres Palacios states that it consistently advised prospective shippers during contract negotiations that they would not have the right to utilize simultaneous injections

and withdrawals. Tres Palacios explains that several months after it began rendering storage services, certain shippers sought to transport gas from Transco's Central Texas Gathering System to Florida Gas Transmission's system. Tres Palacios states it directed these shippers – which included both VPEM and NJRES – to request interruptible wheeling service, which Tres Palacios is authorized to provide and which parties subsequently utilized. Tres Palacios also contends when it priced shippers firm storage services, it did not include the opportunity and operational costs associated with providing firm transportation service via simultaneous injections and withdrawals. Tres Palacios also provides testimony describing certain contract negotiations.

35. Tres Palacios includes with its informational filing testimony describing operational problems Tres Palacios would encounter should it be required to accept and confirm simultaneous and offsetting injection and withdrawal nominations. Tres Palacios asserts that this practice would increase Tres Palacios's compression load factor. Tres Palacios states that it chose its compression equipment to operate primarily for injection into caverns using deeper, high pressure injections into caverns, not for small pipe-to-pipe pressure boosts. It asserts that increasing the operating hours of compressors would increase maintenance costs, and place Tres Palacios in jeopardy of violating binding air emission permit limitations. Tres Palacios asserts that this practice could expand Tres Palacios's service obligation to shippers under their respective contracts by requiring Tres Palacios to transport more gas than the contract intended.[17]

C. <u>Comments</u>

36. NJRES argues that confusion still exists whether Tres Palacios's proposal pertains to injection and withdrawal nominations in the same nomination, or the same day. As NJRES noted in its original protest, "one must start from the fact that none of the facilities certificated by the Commission, including the pipeline header system, was certificated to provide transportation service."[18] NJRES maintains, however, that it is allowed to perform simultaneous injections and withdrawals under the terms and conditions of its firm storage service rate schedule, and doing so does not make the service transportation as Tres Palacios asserts. It contends Tres Palacios is taking this right away from shippers in order to sell interruptible wheeling service.

37. NJRES argues that if it has gas in storage, it should be able to withdraw a certain quantity even if it nominates injections of the same quantity in the same nomination cycle. NJRES claims that Tres Palacios's ability to net the injections and withdrawals for

---

[17] *See* Tres Palacios March 26, 2009 Informational Filing at 22 (citing Tres Palacios March 26, 2009 Storey Affidavit at 5-7).

[18] NJRES February 9, 2009 Protest at 12.

its multiple shippers exposes the illegitimacy of its operational concerns. It argues that if Tres Palacios nets nominations for multiple shippers, there is no reason for Tres Palacios not to accept an injection and withdrawal of the same amount in the same nomination cycle when NJRES has gas in its firm storage inventory in an amount equal to or greater than the amount to be withdrawn.

38. VPEM argues that Tres Palacios fails to adequately explain why same-cycle injections and withdrawals should be characterized as transportation service. VPEM asserts that it wants to exercise its rights to inject gas into the storage caverns on any day that its storage capacity is not full, and to withdraw gas from the storage caverns on any day that it has gas in its storage account, subject to maximum injection and withdrawal quantities. VPEM states that, it must be able to respond quickly to price movements in the market, to inject and withdraw gas when it is beneficial to its customers. VPEM asserts nothing in its contract restricts it from injecting and withdrawing gas on the same day, or in the same nomination cycle, as long as VPEM is below its maximum daily injecting and withdrawal quantities and has adequate gas in storage to withdraw.

39. VPEM expresses concern that another storage provider operating under market-based rates – Pine Prairie Energy Center LLC, developed by the same group that developed Tres Palacios – is interpreting and administering this language differently, allowing shippers to perform same-cycle injections and withdrawals. VPEM adds that Tres Palacios used the flexibility provided by its header system to attract shippers on its system.

40. NJRES and VPEM both question Tres Palacios's stated operational concerns, pointing out flaws in its proffered testimony. VPEM argues the operational concerns raised involve extreme situations which are unlikely to happen, and that the same concerns would hold true should Tres Palacios agree to handle the service under its interruptible wheeling service. It asserts Tres Palacios's operational concerns are inconsistent with the reality of day-to-day system operations.

D. Discussion

41. The Commission accepts Tres Palacios's proposal to restrict simultaneous injection and withdrawal nominations from firm storage on its system during the same nomination cycle, subject to the condition discussed below. No one has challenged Tres Palacios's assertion that the Commission has not certificated it to provide transportation service. Rather, the dispute is over whether allowing storage shippers to simultaneously nominate injection and withdrawal quantities would be akin to Tres Palacios performing transportation services. Parties also raise concerns that Tres Palacios's proposed tariff language was not clear regarding what constitutes simultaneous injection and withdrawal nominations (i.e., the same nomination cycle versus the same nomination day).

42. The tariff language that Tres Palacios proposes, set forth in section 8.3 of its GT&C, is:

> A Customer shall not be permitted to nominate simultaneous injections to and withdrawals from storage under the same Service Agreement or otherwise to engage in any nomination pattern that would result in Customer receiving the equivalent of unbundled transportation service, other than interruptible wheeling service provided by TRES PALACIOS in accordance with an executed Hub Services Agreement.

43. In its additional information, Tres Palacios clarifies that the above language is meant to pertain to nominations within the same nomination cycle, and does not restrict different-cycle nominations made within the same day.[19] Firm storage shippers on Tres Palacios's system would still be able to nominate injections and withdrawals on the same day as long as those nominations were not made within the same nomination cycle.

44. The Commission finds Tres Palacios's proposed tariff clarification of the limitations of its system and its certificate to be just and reasonable. Indeed, the Commission has accepted similar clarifications from other storage providers.[20] Tres Palacios's proposal provides shippers with reasonable methods of maintaining flexibility. Shippers who want to nominate simultaneous injection and withdrawal quantities during the same nomination cycle may still accomplish such action by utilizing Tres Palacios's interruptible wheeling service under Rate Schedule IW. Similarly, customers under the proposed tariff may nominate firm injection and withdrawal quantities during the same day, so long as they use different nomination cycles.[21]

45. Tres Palacios states that its proposed language is meant to prevent same-cycle simultaneous injection and withdrawal, but not same-day, different-cycle injection and withdrawal. Accordingly, as a condition of acceptance, Tres Palacios is directed to file

---

[19] Tres Palacios March 26, 2009 Informational Filing at 1.

[20] For example, section 8.3 of SG Resources Mississippi LLC's FERC Gas Tariff, Original Volume No. 1, provides that "[a] customer shall not be permitted to nominate simultaneous injections to and withdrawals from storage."

[21] Section 8 of Tres Palacios's GT&C sets forth its daily nomination schedule. They include: The Timely Nomination Cycle (shipper makes nominations by 11:30 am), the Evening Nomination Cycle (shipper makes nominations by 6:00 pm), the Intraday 1 Nomination Cycle (shipper makes nominations by 10:00 am), and the Intraday 2 Nomination Cycle (shipper makes nominations by 5:00 pm).

revised tariff sheets within 30 days of the issuance of this order, revising section 8.3 of its GT&C to specify this "same-cycle" interpretation.

VI. Technical Conference

46. VPEM requests in its reply comments the Commission convene a technical conference since it asserts material issues of fact are in dispute. Tres Palacios argues that the information it filed should clarify VPEM's concerns, and that adequate information exists on the record for the Commission to render a decision without the need for a technical conference.

47. The Commission finds that adequate information exists on the record, and accordingly will not convene a technical conference at this time.

The Commission orders:

(A) The tariff sheets listed in footnote 3 of this order are accepted effective February 25, 2009.

(B) The remaining tariff sheets Tres Palacios proposed under NGA section 4, as enumerated in the Appendix, are accepted effective July 25, 2009, subject to Tres Palacios filing revised tariff sheets within 30 days of the date of this order consistent with the discussion in this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Tres Palacios Gas Storage LLC
Original Volume No. 1

Tariff Sheets Accepted Effective February 25, 2009:

Substitute First Revised Sheet No. 115
Substitute Original Sheet No. 115A

Tariff Sheets Conditionally Accepted Effective July 25, 2009:

First Revised Sheet No. 2
First Revised Sheet No. 52
First Revised Sheet No. 138
First Revised Sheet No. 139
First Revised Sheet No. 148
First Revised Sheet No. 149
Original Sheet No. 165
Original Sheet Nos. 166-199
First Revised Sheet No. 201
First Revised Sheet No. 202
First Revised Sheet No. 206
First Revised Sheet No. 207
First Revised Sheet No. 208
First Revised Sheet No. 209
First Revised Sheet No. 212
First Revised Sheet No. 213
First Revised Sheet No. 214
First Revised Sheet No. 219
First Revised Sheet No. 220
First Revised Sheet No. 221
First Revised Sheet No. 225
First Revised Sheet No. 226
First Revised Sheet No. 227
Original Sheet No. 231A
First Revised Sheet No. 232
First Revised Sheet No. 233
First Revised Sheet No. 234
Original Sheet No. 237A
First Revised Sheet No. 238
First Revised Sheet No. 239
First Revised Sheet No. 244
First Revised Sheet No. 245
Original Sheet No. 245A