133 FERC ¶ 61,266
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Tennessee Gas Pipeline Company — Docket No. RP11-1566-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS SUBJECT TO REFUND AND ESTABLISHING HEARING PROCEDURES AND A TECHNICAL CONFERENCE

(Issued December 29, 2010)

1. On November 30, 2010, pursuant to section 4 of the Natural Gas Act (NGA), Tennessee Gas Pipeline Company (Tennessee) filed revised tariff records proposing a rate increase for existing services and changes to certain terms and conditions of service, including elimination of certain rate schedules.[1] Tennessee proposes an effective date of January 1, 2011. As discussed below, the Commission accepts and suspends for the maximum suspension period Tennessee's primary tariff records listed in Appendix A, to be effective June 1, 2011, subject to refund and the outcome of the hearing and technical conference established in this order.

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[1] The list of revised tariff records is shown on Appendix A. The Commission notes that Tennessee's list of proposed tariff records in its Transmittal Letter does not match the number of tariff records proposed to be changed as contained in its XML tariff filing (117 v. 137 tariff records respectively). Further, the tariff record section titles in its Transmittal Letter also do not match the tariff records' section titles it provided in the XML tariff filing. Tennessee's use of different tariff record section titles in its document attachments and for the electronic version of its tariff and electronic table of contents is confusing. Consistent with the Commission's January 21, 2010 order on *Electronic Tariff Filings*, 130 FERC ¶ 61,047 (2010), the tariff record data Tennessee provides controls. Therefore, Appendix A reflects Tennessee's proposed tariff records and section titles.

I. Background

2. Tennessee last filed a NGA section 4 general rate change in Docket No. RP95-112-000 on December 30, 1994. The Commission approved a settlement in that docket on October 30, 1996 (1996 Settlement) resolving all cost of service, cost classification, cost allocation, and rate design issues and establishing Tennessee's base tariff rates.[2]

3. The 1996 Settlement established two sets of settlement rates, Period I and Period II rates. The Period II rates, which were to be in effect from November 1, 1996 through the effective date of Tennessee's next general section 4 rate case, are based upon a cost-of-service of $689 million reflecting a general system pre-tax rate of return of 15.3 percent, a rate design in which $79 million of general system transmission fixed costs are assigned for recovery in the usage component of the Part 284 transportation rates, reservation charge billing determinants of 4.180 MMDth per day, and usage charge billing determinants of 1.317 BDth. The 1996 Settlement also provided for fixed fuel and lost and unaccounted for (LAUF) gas retention rates. The 1996 Settlement provided that Tennessee would not file to change the settlement rates prior to November 1, 1998.

II. Description of Tennessee's Filing

4. Tennessee states that its system has experienced numerous changes in the almost sixteen years since its last general section 4 filing, including dramatic changes in market conditions and flow patterns. One of these major changes, Tennessee continues, is the increase in gas supplies sourced from the Marcellus Shale and the Rockies Express pipeline, which are delivered directly into the market area of Tennessee's system, bypassing Tennessee's traditional production area pipeline facilities. In large part due to these new sources of supply, Tennessee claims, its shippers have reduced their traditional reliance on Gulf Coast supplies and related long-haul transportation in favor of market area supplies and associated short-haul transportation at lower usage rates. Due to these new market area supplies and other competitive factors, Tennessee claims that it has experienced a decline in the value of its capacity and the rates at which it is able to contract that capacity. As a result of these changes, Tennessee asserts that its current rates no longer allow Tennessee the opportunity to recover its costs, including a reasonable rate of return on its investment.

5. Tennessee states that the proposed rate changes reflect a rate base of over $2.6 billion, up from less than $1.5 billion under the 1996 Settlement, and a total cost of service of approximately $1.05 billion, up from approximately $700 million under the 1996 Settlement. Tennessee states that the cost of service increase is largely driven by additions to rate base and proposed increases in depreciation and negative salvage rates.

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[2] *Tennessee Gas Pipeline Co.*, 77 FERC ¶ 61,083 (1996).

Further, Tennessee projects that maximum rate billing determinants will decline by approximately 4 percent compared to those under the 1996 Settlement. Moreover, Tennessee is proposing to establish a fuel tracking mechanism that will substantially decrease fuel retention percentages. Tennessee states that the combination of increased cost of service, relatively flat billing determinants, and reduced fuel rates results in an overall revenue increase of approximately 24 percent.

6. Tennessee states that it proposes to change many components of its cost of service, allocation, cost classification and rate design, including the following (referred to herein as rate changes):

- Use of the straight fixed-variable (SFV) rate design, whereas the 1996 Settlement allocated a significant portion of fixed costs to usage charges.
- An overall rate of return of 10.91 percent based on Tennessee's actual capital structure of 54.54 percent equity and 45.46 percent debt, with a return on equity (ROE) of 13.5 percent and a cost of debt of 7.81 percent.
- Increase in depreciation rates for onshore and offshore transmission and storage facilities.
- Increase in the negative salvage allowance for offshore transmission facilities coupled with a new negative salvage allowance for onshore transmission facilities.
- Roll-in of costs and revenues associated with the incrementally priced Rate Schedule NET and Rate Schedule NET 284.
- Recovery in system-wide rates of costs associated with several projects including ConneXion New England, the Triple T extension, and the Blue Water acquisition.
- Updated classification of non-mileaged transmission costs.
- Reservation charge billing determinants for both discounted and non-discounted transactions of approximately 7.2 MMDth per day, and usage charge billing determinants of approximately 4.7 MMDth per day.
- New mechanisms to recover the cost of energy used in Tennessee's pipeline operations—both natural gas and electric power for compressor units—and gas losses. The electric power cost mechanism consists of a dollar surcharge. The fuel and gas loss recovery mechanism provides for Tennessee's retaining gas in-kind from transportation customers. Both mechanisms provide for tracking and truing-up during the course of a year. Tennessee proposes to make the mechanisms effective upon motion following suspension, if any, ordered by the Commission. Moreover, Tennessee will file tariff sheets to place into effect reduced fuel retention rates contemporaneous with the effectiveness of the base rates in this case.
- A new hurricane cost recovery mechanism to recover eligible costs incurred by Tennessee as a result of named hurricanes and windstorms.

7. In addition, Tennessee states that it has made numerous other proposed changes to its tariff (referred to herein as non-rate changes), including the following:

- Elimination of Rate Schedules PAT and IT-X from its tariff.
- Modifications to the general waiver language of Tennessee's tariff which currently requires notice of one business day prior to the effective date of a waiver to require notice as soon as practicable under the circumstances.
- Reduction of the notice period for operational flow order (OFO) – Action Alerts from 48 hours to 24 hours.
- Changes to balancing services provided under Rate Schedules LMS-PA (Load Management Service – Production Area) and LMS-MA (Load Management Service – Market Area).
- Elimination of unutilized balancing options: Third Party Provider (TPP) and Downstream Storage Swing Option (DSSO) (both for TPP Shippers and FS Storage Contract Holders) under Rate Schedule LMS-MA.
- Changes to its cashout and imbalance provisions, including addition of two more market area pricing points to the pooling and market area pricing indices used to determine cashout prices and to carry forward the positive Net Cashout Balances up to $4 million and to apply carrying charges to both positive and negative imbalances.
- Addition to Tennessee's General Terms and Conditions (GT&C) of a provision that addresses how Tennessee may seek a discount-type adjustment for certain negotiated rate agreements. Tennessee states that this tariff provision is consistent with recent Commission orders on similar provisions filed by other pipelines.[3]
- Changes to when Tennessee may hold an open season to sell capacity.
- Changes to scheduling priorities.
- Changes related to Tennessee's pooling services under Rate Schedule SA, including modifications to the location of existing pooling points.
- Addition of a provision to Rate Schedule FS that would impose a charge on firm storage customers who do not cycle 70 percent of their total inventory by withdrawing stored gas by the end of the winter heating season (April 1st of every year).

8. Tennessee states that its cost of service was developed using a twelve month base period ending July 31, 2010 (Base Period), and with adjustments for changes anticipated to occur within a nine-month period ending April 30, 2011 (Adjustment Period) (together, the Test Period).

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[3] Tennessee Transmittal Letter at 2 (citing *Columbia Gulf Transmission Co.*, 133 FERC ¶ 61,078 (2010)).

III. Public Notice, Interventions, and Protests

9. Public notice of Tennessee's filing was issued on December 1, 2010. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2010). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2010), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Protests or comments were filed by numerous parties.[4] The following parties filed protests out-of-time: the City of Huntsville, Alabama d/b/a Huntsville Utilities; City of Moulton, Alabama; City of Morehead, Kentucky; City of Athens, Alabama Utility; City of Florence, Alabama; City of Pulaski, Tennessee; and Town of Scottsville, Kentucky. The Commission grants their late-filed protests, as doing so does not delay or disrupt the proceeding or create additional burdens on the other parties.

10. On December 17, 2010, Tennessee filed an answer to the protests. On December 20, 2010, the New England LDCs and the Tennessee Customer Group each filed an answer to Tennessee's answer. Under Rule 213(a)(2) of the Commission's regulations, 18 C.F.R. § 385.213(a)(2) (2010), answers to protests and answers are prohibited unless otherwise ordered by the decisional authority. We will accept the answers of Tennessee, the New England LDCs and the Tennessee Customer Group because they provide information that will assist us in our decision-making process.

11. In their protests and comments, most parties noted the extensive number of Tennessee's proposed changes to cost of service, classification, allocation, billing determinants, rate design, available services, and the terms and conditions of remaining services. Because of the extensive number of proposed changes and the voluminous amount of documentation, many parties readily admitted that they were not able to fully review Tennessee's filing within the notice period.

12. Specifically, many parties expressed concern with the extent of Tennessee's proposed rate increases.[5] Numerous parties claim that Tennessee failed to support its proposed cost of service, including depreciation, negative salvage, return on equity and many individual cost items. Many parties also protested Tennessee's proposals to change

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[4] *See* Appendix B.

[5] For example, the New England LDCs claim that, under Tennessee's proposed transportation reservation rates, they face rates that are more than double Tennessee's existing rates and in one instance they could face an increase of up to 123 percent. New England LDCs Protest at 5. Similarly, NextEra claims certain transportation reservation rates could increase nearly 250 percent. NextEra Protest at 4.

how certain costs would be recovered, including reclassification of costs as mileage or non-mileage, rolling-in various incrementally priced services as part of system services, the establishment of fuel and electric trackers, and the creation of a hurricane cost recovery mechanism. Many parties also question or protest various aspects of Tennessee's proposed billing determinants, including the gross level of billing determinants, the calculation of the mileage components, shifts in system utilization, and the change in the zone boundary. Many parties also question Tennessee's proposed discount adjustments for both discounted and negotiated rates.

13. Several parties also object to Tennessee's proposal to adopt the SFV method of allocation and rate design. Indicated Shippers and National Fuel also argue that implementation of the proposed SFV rates requires modification of Tennessee's current tariff provision governing force majeure to provide for revenue credits in the event of service interruption due to force majeure events.[6] More specifically, Indicated Shippers argue that, to ensure that Tennessee and its shippers share the risks associated with force majeure interruptions of service, Tennessee should be required to provide its firm shippers partial reservation charge credits equal to Tennessee's return on equity and associated income taxes for the undelivered amount, or one of the other forms of revenue crediting the Commission has approved.[7]

14. In addition to the rate-related issues described above, numerous parties protested several of Tennessee's non-rate proposals, including without limitation: elimination of certain balancing options; changes to the imbalance penalties under Rate Schedules LMS-PA and LMS-MA; changes to the scheduling priorities; and storage cycling requirements.

15. The protesters request that the Commission accept and suspend the proposed rates for the maximum period, subject to refund and establish a hearing and/or a technical conference. Several protesters request that the Commission establish a hearing to address the proposed rate changes and a technical conference to discuss the proposed non-rate changes. The Northeast Customer Group and NextEra, in contrast, request that the Commission not establish a technical conference and instead set all the non-rate issues for hearing along with the rate issues. These parties argue that many of Tennessee's proposed non-rate changes, such as the termination of certain services, are integral parts of Tennessee's proposal and that having all the issues in the hearing process would

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[6] Indicated Shippers Protest at 24 (*citing Tennessee Gas Pipeline Company*, 76 FERC ¶ 61,022 (1996) (Opinion No. 406), *order on reh'g*, 80 FERC ¶ 61,070, at 61,200 (Opinion No. 406-A), *order on reh'g*, 80 FERC ¶ 61,389 (1997); National Fuel Protest at 10.

[7] Indicated Shippers Protest at 26.

facilitate the settlement process.[8] If the Commission does establish a technical conference, NextEra requests that the Commission permit the hearing process and the technical conference process to proceed in parallel, as opposed to holding the hearing in abeyance pending the outcome of the technical conference, as the Commission did in *Columbia Gulf Transmission Co.*, 133 FERC ¶ 61,182 (2010).[9] Several protesters request that the Commission require Tennessee to implement its proposed fuel tracker mechanism immediately. Some protesters also request that the Commission summarily reject either the entirety of Tennessee's filing or certain portions thereof.

16. Tennessee, in its answer, opposes all requests for summary rejection and requests for immediate implementation of its proposed fuel tracker mechanism. Tennessee also opposes requests to set the entirety of Tennessee's filing for hearing. Tennessee, however, does not oppose setting the non-rate issues for technical conference, though it would prefer to address those issues first, followed by establishment of hearing procedures and the assignment of an administrative law judge (ALJ) after the conclusion of the technical conference. If the hearing procedures are delayed, as it requests, Tennessee states that it is willing to begin discovery on an informal basis immediately, while the technical conference procedures are ongoing and before the case is assigned to an ALJ.

IV. Discussion

17. For the reasons discussed below, the Commission accepts and suspends for the maximum suspension period the tariff records set forth in Appendix A, to be effective June 1, 2011, subject to refund and the outcome of the hearing and technical conference established herein. The Commission sets the rate issues for hearing and the non-rate issues for the technical conference. The Commission also denies all requests for summary disposition.

A. Requests for Summary Disposition

18. A number of the protesting parties request that the Commission summarily reject portions of Tennessee's filing. The Commission may summarily reject portions of a proposed filing if it determines that there are no material issues of fact in dispute and the filing is in clear violation of an applicable statute, regulation, or Commission policy. The Commission will deny the requests for summary rejection, as discussed below.

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[8] Northeast Customer Group Protest at 4-5; NextEra Protest at 7.

[9] NextEra Protest at 8.

1. <u>Abandonment Proceedings</u>

19. Tennessee, in Docket Nos. CP11-44-000 and RP11-1597-000, proposes to abandon through conveyance to Kinetica Partners, LLC (Kinetica) certain offshore and onshore supply facilities located in the Gulf of Mexico and the State of Louisiana.[10] Indicated Shippers argue that Tennessee has failed to meet its burden of providing sufficient evidence to support the proposed rate changes because Tennessee's general section 4 filing does not reflect the sale of the onshore and offshore facilities to Kinetica. Accordingly, Indicated Shippers request that the Commission reject the entire filing as incomplete and deficient, without prejudice to Tennessee refiling a complete application in accordance with the Commission's regulations.

20. In response, Tennessee states that the abandonment by sale remains subject to numerous conditions precedent that are not expected to occur within the Test Period of the general rate proceeding. Tennessee states that, because these conditions precedent are not anticipated to be met until after the end of the Test Period on April 30, 2011, Tennessee's case-in-chief does not eliminate from proposed rates the costs associated with the facilities to be abandoned. Tennessee states, however, that the offer of settlement accompanying the abandonment application provides for appropriate adjustment to Tennessee's rates to reflect the abandonment once it becomes effective.

21. Whether Tennessee's proposed abandonment will be approved within the Test Period, if at all, is speculative. Notwithstanding, if the abandonment application is approved within the Test Period, Tennessee is required to update its statements with actual data for each month of the adjustment period within 45 days of the end of the Test Period.[11] Further, if Tennessee moves the suspended rates into effect where there have been changes to facilities during the adjustment period, the motion must be filed at least one day prior to the effective date and the rates must be adjusted to remove plant not certificated and in service.[12] We believe that these existing requirements address the Indicated Shippers' concerns and therefore, we deny their request for summary disposition.

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[10] Kinetica filed a request for Declaratory Order regarding the jurisdictional status of the facilities to be acquired in Docket No. CP11-47-000.

[11] 18 C.F.R. § 154.311 (2010).

[12] 18 C.F.R. § 154.206(a) (2010). The Commission expects any such filing by Tennessee would contain all the work documents in the appropriate electronic format necessary to fully support the recalculated rates.

2. **Hurricane Tracker**

22. Tennessee proposes a new hurricane cost recovery mechanism to recover eligible costs incurred by Tennessee as a result of named hurricane and windstorms. Several parties request that the Commission summarily reject this hurricane surcharge mechanism, arguing that the surcharge is unnecessary, unsupported, speculative and contrary to prevailing policies disfavoring trackers. New England LDCs and Indicated Shippers argue that the precedents cited by Tennessee[13] are inapposite because those cases involve pipelines that, unlike Tennessee, operate predominantly in the offshore region.[14] NextEra argues that Tennessee has not yet filed to charge customers under the proposed mechanism and "the absence of costs alone is enough for the Commission to reject Tennessee's proposal as unnecessary and speculative."[15] Indicated Shippers also argues that the definition of "eligible costs" in the proposed tracker is overly broad,[16] and Atmos Energy Marketing adds that it would be inappropriate for Tennessee to recover costs associated with gas lost due to hurricanes.[17]

23. Current Commission policy permits a pipeline to establish a hurricane cost recovery mechanism via a limited section 4 filing to recover hurricane-related costs.[18] Moreover, the Commission has found it reasonable for a pipeline to have in place a mechanism to recover *future* hurricane-related costs incurred prior to its next general section 4 rate case.[19] The Commission found that having in place such a mechanism provides the pipeline's shippers notice of how such costs will be recovered.[20] Accordingly, we reject the requests for summary dismissal. Nevertheless, we find that

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[13] *Discovery Gas Transmission*, 122 FERC ¶ 61,099 (2008); *Stingray Pipeline Company, L.L.C.*, 127 FERC ¶ 61,308 (2009); *Sea Robin Pipeline Company, LLC*, 128 FERC ¶ 61,286 (2009).

[14] New England LDCs Protest at 6; Indicated Shippers Protest at 16.

[15] NextEra Protest at 8-9.

[16] Indicated Shippers Protest at 17.

[17] Atmos Energy Marketing Protest at 5.

[18] *See Sea Robin Pipeline Co., LLC*, 128 FERC ¶ 61,286 (2009), *order denying reh'g*, 130 FERC ¶ 61,191 (2010). *See also Chandeleur Pipe Line Co.*, 117 FERC ¶ 61,250 (2006).

[19] *Sea Robin*, 130 FERC ¶ 61,191 at P 13.

[20] *Id.*

Tennessee's proposed hurricane cost recovery mechanism raises issues that warrant further investigation. Accordingly, the issues set forth in the protests and not resolved above may be addressed in the hearing established by this order.

3. **Storage Cycling**

24. Tennessee proposes to add a provision to Rate Schedule FS that would impose a charge on firm storage customers who do not cycle their inventory by withdrawing stored gas by the end of the winter heating season. Tennessee proposes to include in its tariff a requirement that storage customers cycle approximately 70 percent of their total inventory by April 1st of every year. Tennessee states that its shippers have been filling the storage fields earlier and keeping the gas in storage longer and when the withdrawal capabilities of a storage field are not fully utilized, the average annual reservoir pressures increase. Tennessee states that as a consequence of these higher average annual reservoir pressures gas will be forced into lower permeability portions of the reservoirs or impounded. and when the gas becomes impounded it becomes unavailable for withdrawal when immediately needed. To prevent the impoundment, Tennessee proposes to achieve lower average annual reservoir pressures by cycling more.

25. While several parties protest Tennessee's proposal and request that it be set for hearing or addressed in a technical conference, the East Tennessee Group requests that the Commission summarily reject the proposal. The East Tennessee Group argues that the Commission should reject Tennessee's proposed solution as unfair, especially to small local distribution and storage customers, and as unlawful and confiscatory. The East Tennessee Group states that this is not a "system enhancement." The East Tennessee Group states that this proposal would greatly diminish the value of Tennessee's firm storage service at the same time that the cost of that service is proposed to increase.

26. Tennessee states in its answer that the economic argument raised by the protesters and the East Tennessee Group largely ignores the operational issues cited by Tennessee as justification for its proposed cycling requirement. Further, Tennessee states that since it has set the cycling requirement as a percentage of inventory, a smaller customer would not suffer an unfair result. Tennessee states that these arguments do not serve as grounds for summary rejection of the storage cycling proposal and, at most, can justify the convening of a technical conference to assess the asserted need for, and proposed parameters of, an appropriate storage cycling requirement.

27. We agree with Tennessee that the arguments raised by the East Tennessee Group and the other protesters justify the convening of a technical conference to assess the asserted need for, and proposed parameters of, Tennessee's storage cycling requirement. Accordingly, the storage cycling proposal will be included in the technical conference where the parties can address the issues raised by the East Tennessee Group and the other protesters.

B. Request for Minimum Suspension of Fuel Tracker Proposal

28. In this case, Tennessee proposes to recover fuel and LAUF gas through a new fuel tracker and true-up mechanism. Tennessee proposes to file quarterly to revise its fuel retention percentages, with the initial filing to be made thirty days prior to its effective date on June 1, 2011. As stated in its transmittal letter, Tennessee proposes to make the fuel tracking mechanism effective upon motion following the suspension of its proposed base rates. Tennessee also explained its intent to file tariff records to place reduced fuel retention percentages into effect contemporaneously with the effectiveness of the base rates proposed in the filing. While Tennessee submitted indicative fuel retention percentages based on base period data,[21] Tennessee did not propose tariff records with new fuel and LAUF gas retention percentages.

29. Tennessee Customer Group and NextEra state that Tennessee's indicative fuel retention percentages are substantially lower than Tennessee's existing fixed fuel percentages.[22] Both parties request that the Commission accept and suspend Tennessee's fuel tracker proposal for a nominal period, to be effective January 1, 2011 and require Tennessee to make a compliance filing to implement the initial fuel and LAUF retention percentages as of January 1, 2011. Otherwise, they argue, Tennessee will continue to significantly over-recover its fuel and LUAF gas costs.

30. Further, Tennessee Customer Group argues that, under judicial and Commission precedent, the Commission has an obligation to impose only a minimal suspension for this proposed rate reduction. Tennessee Customer Group states that, in *Tennessee*,[23] the Commission suspended for one day a proposed reduction in one rate that was filed as part of another Tennessee general rate case, while the Commission imposed a five-month suspension on the balance of the proposed rates that would have implemented rate increases. And in *Northeast Energy*,[24] Tennessee Customer Group states that the D.C. Circuit upheld a challenge to the ruling in a Commission suspension order to impose a five-month suspension on all rates in a general rate case involving Transcontinental Gas Pipe Line Corporation (Transco), including a proposed rate reduction, ruling that the Commission had not justified its deviation from the policy set forth in *Tennessee* to

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[21] Exhibit Nos. TGP-159 and TGP-160.

[22] Tennessee Customer Group Protest at 3; NextEra Protest at 5-6.

[23] Tennessee Customer Group Protest at 4 (citing *Tennessee Gas Pipeline Co.*, 70 FERC ¶ 61,076 (1995), *order on reh'g*, 71 FERC ¶ 61,399, at 62,583-587 (1995)).

[24] Tennessee Customer Group Protest at 5 (citing *Northeast Energy Associates v. FERC*, 158 F.3d 150 (D.C. Cir. 1998) (*Northeast Energy*)).

impose only a minimal suspension on a rate decrease proposed by Transco even when other rates proposed were rate increases.[25]

31. Along these same lines, Tennessee Customer Group contends that the costs that the fuel tracker will collect are costs that are different than the costs underlying the proposed rate increases in Tennessee's base rates. Tennessee Customer Group contends that Tennessee's proposed tracker will not be affected by the Commission's determination of the level of base rates ultimately determined to be just and reasonable in this proceeding, nor will the fuel tracker be affected by the any future changes in those base rates

32. In its answer, Tennessee states that the Tennessee Customer Group's reliance on Tennessee and the Transco cases are inapposite because in both those cases the pipeline itself had filed simultaneously for rate increases under some rates schedules and rate decreases under other rate schedules. Here, in contrast, Tennessee has not proposed in this case to decrease its fuel retention rates. Tennessee states that the indicative fuel rates it included in an exhibit for illustrative purposes are not filed rates that can be accepted. Tennessee states that the Commission would have to act under section 5 in order to require Tennessee to place into effect a rate decrease it did not propose and to change its tariff to require the filing of such a rate decrease.

33. In response, the Tennessee Customer Group maintains that, given the fuel tracker will result in significantly reduced fuel rates, the Commission should, and is required by judicial and Commission precedent to, modify summarily Tennessee's fuel tracker to make it effective as of December 10, 2010.[26]

34. The cases cited by the Tennessee Customer Group are distinguishable from the instant case. Those cases involved incremental rates for a particular service, where the pipeline proposed that the overall rate for that service be reduced because the cost of service of the incremental facilities had gone down.[27] Here, Tennessee has not proposed an overall rate decrease for any service. To the contrary, Tennessee has proposed a substantial increase in the non-fuel rates for all services. It has also proposed to replace its existing fixed fuel retention percentage with a fuel tracker mechanism which is expected to bring about a decrease in the fuel rates for all customer classes. However, that decrease is anticipated to be less than the proposed increase in Tennessee's base

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[25] *Id.*

[26] Tennessee Customer Group Answer at 2.

[27] *See, e.g., Tennessee,* 71 FERC ¶ 61,399, at 62,584-585; *Northeast Energy,* 158 F.3d 150, 151-52.

rates. Therefore, here there has been no concession by Tennessee that the overall rates for a particular service should go down, unlike in *Tennessee* and *Northeast Energy*. This is a situation where, since the settlement of Tennessee's last rate case, some components of the cost of service allocated among all services have gone up, while other components have gone down by a lesser amount. In such circumstances, it is appropriate that all such changes in the cost of service be reflected in Tennessee's rates at the same time.

35. In addition, if the Commission were to accept and suspend Tennessee's fuel tracker mechanism for a minimal period as requested by the protesters, there is no assurance Tennessee's fuel rates would decrease. First, as the court recognized in *Northeast Energy* and the Commission stated in its order on remand,[28] if a pipeline has not included in its filing a motion to move its proposed rates into effect, the Commission can only require a proposed rate change to be implemented immediately by accepting it without suspension.[29] Here, Tennessee has not included such a motion in its filing. Therefore, in order to require Tennessee to implement its fuel tracker mechanism immediately, the Commission would have to accept the relevant tariff records without suspension, despite the fact protesters have contested certain aspects of the proposed tracker.[30] That would require the Commission to proceed under NGA section 5 to require any changes in Tennessee's proposed fuel tracker mechanism in response to the protests. Second, by the terms of the proposed fuel tracker mechanism, revised fuel rates would not become effective any earlier than June 1, 2011.[31] Therefore acceptance with a minimal suspension and implementation of Tennessee's proposed tracker mechanism without modification would not result in any earlier implementation of changed fuel rates.

36. For these reasons, we deny the requests of Tennessee Customer Group and NextEra for a minimal suspension period with respect to Tennessee's fuel tracker.

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[28] *Transcontinental Gas Pipe Line Corp.*, 89 FERC ¶ 61,249 at 61,746-747 (1999).

[29] 18 C.F.R. § 154.206(b) (2010).

[30] For example, some protesters oppose Tennessee's proposal to make quarterly fuel tracking filings, and request that such filings be made annually.

[31] Tennessee's General Terms and Conditions, Article XXXVII, paragraph 3, addressing the fuel and loss retention tracker mechanism, states: "Notwithstanding the above, the initial filing to implement Transporter's F&LR pursuant to this Article XXXVII, shall become effective on June 1, 2011." Sheet No. 400, Fuel and Loss Retention (FL&R) Adjustment, 1.0.0. The language is identical for the electric power cost tracker mechanism. Sheet No. 401, Electric Power Cost Retention Adjustment, 0.0.0.

37. Lastly, if Tennessee moves its suspended rates into effect, the Commission expects Tennessee to follow the procedure it outlines at Exhibit No. T-157 for its fuel tracker tariff records, as well as section 154.403 of the Commission's regulations.[32] If Tennessee makes this fuel tracker filing, the Commission also requires Tennessee to state its intent with regard to suspended Sheet No. 32, Fuel and Loss Retention Percentage, 1.0.0, and Sheet No. 33, Electric Power Cost Recovery Adjustment, 1.0.0.

C. Hearing and Technical Conference Procedures

38. Tennessee's filing raises many typical rate case issues that warrant further investigation. Accordingly, the Commission will establish a hearing to explore the rate issues set forth in the protests regarding cost of service, cost allocation, and rate design for the existing and new services. These rate issues also include the fuel and electric cost tracker mechanisms, the hurricane cost recovery mechanism, the Zone 4 boundary, and Tennessee's proposed discount adjustments. The Commission finds that it is appropriate to examine these issues in the context of a hearing where a factual record can be developed by the parties. If any public record or record subject to a request for privileged treatment[33] is certified to the Commission, these items must be in the Commission's official document repository, eLibrary. Records may include spreadsheets in native file format.[34]

39. The Commission will set all other non-rate issues related to the proposed changes to services and terms and conditions for technical conference. These non-rate issues also include Tennessee's proposed tariff language for the treatment of negotiated rate revenues for discount adjustment purposes and the sharing of risk in the event of *force majeure* under Tennessee's proposed SFV cost allocation and rate design. Tennessee should be prepared to discuss any of its non-rate tariff proposals at the technical conference.

40. The Commission understands the parties' concerns with how the technical conference process may impact the hearing proceedings. However, because the hearing on the rate issues is unlikely to be resolved before the end of the suspension period and because the refund condition provides only limited protections for non-rate changes, the Commission believes a technical conference offers the best process to resolve many non-

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[32] 18 C.F.R. § 154.403 (2010). The appropriate Type of Filing Code is 650, and the tariff filing will receive its own docket number.

[33] 18 C.F.R. § 388.112(a) (2010).

[34] *Filing Via the Internet*, Order No. 703, FERC Stats. & Regs. ¶ 31,259, at P 25 (2007).

rate issues in a more timely fashion. We also see no reason to postpone commencement of the hearing procedures until after resolution of the technical conference proceedings. As the New England LDCs point out in their answer,[35] that action by the Commission in *Columbia Gulf* [36] was atypical and Tennessee has not persuaded us that such action is required here. The parties to the hearing are not foreclosed from examining the integrated nature of Tennessee's proposed rate and non-rate changes, nor are they foreclosed from including these issues in any settlement discussions.

D. Suspension

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

42. The Commission's policy regarding suspensions is that tariff filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards.[37] It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.[38] Such circumstances do not exist here. Therefore, the Commission will exercise its discretion to suspend Tennessee's proposed tariff records set forth in Appendix A, to be effective June 1, 2011 or an earlier date set forth in a subsequent order, subject to refund and the outcome of the hearing procedures and technical conference ordered herein.

The Commission orders:

(A) The proposed tariff records set forth in Appendix A are accepted and suspended effective June 1, 2011, subject to refund and the outcome of the hearing and technical conference established in this order.

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[35] New England LDCs Answer at 4.

[36] *Columbia Gulf*, 133 FERC ¶ 61,182.

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

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

(B) The Commission Staff is directed to convene a technical conference to explore the non-rate issues raised by the filing and to report the results of the conference to the Commission within 120 days of the issuance of this order.

(C) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 7, 8, and 15 thereof, and the Commission's rules and regulations, a public hearing shall be held in Docket No. RP11-1566-000 concerning the lawfulness of Tennessee's proposed rates.

(D) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304, must convene a prehearing conference in this proceeding to be held within 20 days after issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The prehearing conference is for the purpose of clarification of the positions of the participants and establishment by the presiding judge of any procedural dates necessary for the hearing. The Presiding Administrative Law Judge is authorized to conduct further proceedings in accordance with this order and the Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

List of Proposed Tariff Records
Accepted and Suspended to be Effective June 1, 2011

Tennessee Gas Pipeline Company
FERC NGA Gas Tariff
TGP Tariffs

Sheet No. 1, Table of Contents Volume No. 1, 1.0.0
Sheet No. 2, 1.0.0
Sheet No. 14, FT-A Rates - Firm Transportation, 2.0.0
Sheet No. 15, 1.0.0
Sheet No. 16, 1.0.0
Sheet No. 17, FT-A Rates EDS/ERS, 1.0.0
Sheet No. 18, 2.0.0
Sheet No. 19, FT-A Rates - Recourse Incremental Expansion, 3.0.0
Sheet No. 20, FT-BH Rates - Backhaul, 2.0.0
Sheet No. 21, 1.0.0
Sheet No. 22, 1.0.0
Sheet No. 23, FT-G Rates - Small Customer Transportation, 2.0.0
Sheet No. 24, 1.0.0
Sheet No. 25, 1.0.0
Sheet No. 26, FT-GS Rates, 2.0.0
Sheet No. 27, 1.0.0
Sheet No. 28, FT-IL Rates - Incremental Lateral, 2.0.0
Sheet No. 29, NET Rates, 2.0.0
Sheet No. 30, NET-284 Rates, 2.0.0
Sheet No. 31, Reserved for Future Use, 1.0.0
Sheet No. 32, Fuel and Loss Retention Percentage, 1.0.0
Sheet No. 33, Electric Power Cost Recovery Adjustment, 1.0.0
Sheet No. 34, Hurricane Surcharge Adjustment, 0.0.0
Sheet Nos. 35 - 43, Reserved For Future Use, 0.0.0
Sheet No. 44, IT Rates - Interruptible Transportation, 3.0.0
Sheet No. 45, Reserved for Future Use, 2.0.0
Sheet No. 57, PAT Rates - Preferred Access Transportation, 2.0.0
Sheet No. 58, IT Rates - Incremental Lateral, 2.0.0
Sheet No. 59, PAL Rates - Park and Loan Services, 1.0.0
Sheet No. 60, PTR Rate - Liquefiable Hydrocarbons, 1.0.0
Sheet No. 61, FS Storage Rates - Firm Storage, 2.0.0
Sheet No. 62, IS Storage Rates - Interruptible Storage, 2.0.0
Sheet No. 74, Reserved For Future Use, 1.0.0
Sheet No. 75, Reserved For Future Use, 1.0.0
Sheet No. 78, 1.0.0
Sheet No. 80, 2.0.0
Sheet No. 89, 2.0.0
Sheet No. 90, 1.0.0
Sheet No. 94, 1.0.0
Sheet No. 97, 2.0.0
Sheet No. 99, NET Rate Schedule, 1.0.0
Sheet No. 99A, 0.0.0
Sheet No. 100, 1.0.0
Sheet No. 101, 2.0.0
Sheet No. 102, NET-284 Rate Schedule, 1.0.0
Sheet No. 102A, 0.0.0
Sheet No. 104, 1.0.0
Sheet No. 105, 1.0.0
Sheet No. 106, 1.0.0
Sheet No. 150, 1.0.0
Sheet No. 151, 1.0.0
Sheet Nos. 152 - 154, Reserved For Future Use, 1.0.0
9641.86.74
9853.72.98
Sheet No. 157, 1.0.0
Sheet Nos. 201 - 204, Reserved For Future Use, 1.0.0
9067.57.73
9279.92.98
9492.78.73
Sheet No. 205, Rate Schedule PTR, 1.0.0
Sheet No. 207, 1.0.0
Sheet No. 208, 1.0.0
Sheet No. 213, 1.0.0
Sheet No. 214, 1.0.0
Sheet No. 215, 2.0.0
Sheet No. 216, 1.0.0
Sheet No. 221, 1.0.0
Sheet No. 222, 1.0.0
Sheet No. 223, 1.0.0
Sheet No. 224, 1.0.0
Sheet No. 248, 1.0.0
Sheet No. 249, 1.0.0
Sheet No. 250, 1.0.0
Sheet No. 254, 1.0.0
Sheet No. 256, 1.0.0
Sheet No. 257, 1.0.0
Sheet No. 258, 1.0.0

Sheet Nos. 259 - 262, Reserved for Future Use, 1.0.0
9704.64.97
9917.98.72
9130.84.96
Sheet No. 264, 1.0.0
Sheet No. 266, 1.0.0
Sheet No. 267, 1.0.0
Sheet No. 268, 1.0.0
Sheet No. 270, Rate Schedule SA, 1.0.0
Sheet No. 293, General Terms and Conditions, 1.0.0
Sheet No. 295, 2.0.0
Sheet No. 297, 1.0.0
Sheet No. 298, 1.0.0
Sheet No. 299, 2.0.0
Sheet No. 300, 2.0.0
Sheet No. 313, 3.0.0
Sheet No. 316, 2.0.0
Sheet No. 317, 1.0.0
Sheet No. 318, 1.0.0
Sheet No. 321, Availability of Capacity for Firm Services, 1.0.0
Sheet No. 322, 1.0.0
Sheet No. 357, Action Alerts, 1.0.0
Sheet No. 358, Action Alerts Critical Days, 1.0.0
Sheet No. 365, Regs Schedules Contract Operating Info Estimates RS Changes, 1.0.0
Sheet No. 373, Requests for Service, 1.0.0
Sheet No. 380, Service Requests Credit Evaluation Award Available Capacity, 3.0.0
Sheet No. 386, 2.0.0
Sheet No. 387, Requests for Service Discounting Policy, 1.0.0
Sheet No. 388, Periodic Report Incorp GTC Rate Schedules Contracts Waiver, 1.0.0
Sheet No. 389, PCB Adjustment, 2.0.0
Sheet No. 392, 1.0.0
Sheet No. 397, Penalty Crediting, 1.0.0
Sheet No. 400, Fuel and Loss Retention (FL&R) Adjustment, 1.0.0
Sheet No. 401, Electric Power Cost Retention Adjustment, 0.0.0
Sheet No. 402, 0.0.0
Sheet No. 403, Hurricane Surcharge Adjustment, 0.0.0
Sheet No. 404, 0.0.0
Sheet Nos. 405 - 448, Reserved for Future Use, 0.0.0
Sheet No. 454, Service Request Form, 1.0.0
Sheet No. 457, 1.0.0
Sheet No. 538, 1.0.0
Sheet No. 539, 1.0.0
Sheet No. 571, 2.0.0
Sheet Nos. 663 - 667, Reserved for Future Use, 1.0.0
9343.70.72
9555.56.96
9767.91.71
9980.76.95
Sheet Nos. 668 - 672, Reserved For Future Use, 1.0.0
9193.62.70
9406.97.95
9618.83.70
9831.68.94
Sheet No. 673, FOSA PAL Rate Schedule, 1.0.0
Sheet Nos. 807 - 808, Reserved for Future Use, 1.0.0
9044.54.69
Sheet Nos. 816 - 817, Reserved for Future Use, 1.0.0
9257.89.93

Appendix B

Entities filing Protests or Comments

American Gas Association
Atmos Energy Corporation
Atmos Energy Marketing LLC (Atmos Energy Marketing)
BG Energy Merchants, LLC
Cabot Oil & Gas Corporation
Chattanooga Gas Company and Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas
City of Athens, Alabama Utility
City of Florence, Alabama
City of Huntsville, Alabama d/b/a Huntsville Utilities
City of Morehead, Kentucky
City of Moulton, Alabama
City of Pulaski, Tennessee
Connecticut Department of Public Utility Control
Consolidated Edison Company of New York, Inc. (Con Edison) and Orange and Rockland Utilities, Inc. (O&R)
Department of Public Utilities of the Commonwealth of Massachusetts
East Tennessee Group[39]
Encana Marketing (USA) Inc.
EQT Energy, LLC
Indicated Shippers[40]

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[39] The East Tennessee Group includes Appalachian Natural Gas Distribution Company, Athens Utilities Board, Bridgeport Utilities, Citizens Gas Utility District, Cookeville Gas Department, Elk River Public Utility District, Etowah Utilities Gas Department, Fayetteville Public Utilities, Gallatin Natural Gas System, Harriman Utility Board, Hawkins County Gas Utility District, Jamestown Gas System, Jefferson-Cocke County Utility District, Knoxville Utilities Board, Lenoir City Utilities Board, Lewisburg Gas Department, Livingston Gas Department, Loudon Utility Gas Department, Madisonville Gas System, Marion Natural Gas System, Middle Tennessee Natural Gas Utility District, Mt. Pleasant Gas System, Oak Ridge Utility District, Powell Clinch Utility District, Rockwood Water & Gas, Sevier County Utility District, Sweetwater Utilities Board, Unicoi County Gas Utility District.

[40] The Indicated Shippers include Anadarko Energy Services Company, Apache Corporation, BP Energy Company and BP America Production Company, Chevron U.S.A. Inc., ConocoPhillips Company, ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation, Hess Corporation, Noble Energy Inc., Shell Energy North America (US), L.P. and Shell Offshore Inc.

Louisville Gas and Electric Company
MGI Supply Ltd.
National Fuel Gas Distribution Corporation (National Fuel)
National Grid Gas Delivery Companies[41]
New England Conference of Public Utilities Commissioners
New England LDCs[42]
New Jersey Board of Public Utilities
New Jersey Division of the Rate Counsel
New Jersey Natural Gas Company and NJR Energy Services Company (NJR)
New York Public Service Commission
New York State Electric & Gas Corporation
NextEra Energy Resources, LLC (NextEra)
NiSource Distribution Companies[43]
North Alabama Gas District
Northeast Customer Group[44]
Pennsylvania Office of Consumer Advocate
Piedmont Natural Gas Company, Inc. (Piedmont)
PSEG Energy Resources & Trade LLC
Rhode Island Division of Public Utilities and Carriers and Patrick C. Lynch, Attorney

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[41] The National Grid Gas Delivery Companies include The Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corporation d/b/a National Grid; Boston Gas Company and Colonial Gas Company, collectively d/b/a National Grid; EnergyNorth Natural Gas, Inc. d/b/a National Grid NH; Niagara Mohawk Power Corporation d/b/a National Grid; and The Narragansett Electric Company d/b/a National Grid.

[42] The New England LDCs include Bay State Gas Company d/b/a Columbia Gas of Massachusetts; The Berkshire Gas Company; Connecticut Natural Gas Corporation; Fitchburg Gas and Electric Light Company; City of Holyoke, Massachusetts Gas and Electric Department; Northern Utilities, Inc.; NSTAR Gas Company; The Southern Connecticut Gas Company; Westfield Gas & Electric Department; and Yankee Gas Services Company.

[43] NiSource Distribution Companies include Columbia Gas of Kentucky, Inc., Columbia Gas of Ohio, Inc., and Columbia Gas of Pennsylvania, Inc.

[44] The Northeast Customer Group includes Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.; National Fuel Gas Distribution Corporation; the National Grid Gas Delivery Companies; the New England LDCs; New Jersey Natural Gas Company and NJR Energy Services Company; PSEG Energy Resources & Trade LLC; and the UGI Distribution Companies.

General of the State of Rhode Island
Sequent Energy Management, L.P. (Sequent)
Southwest Energy, L.P.
State of New Hampshire Public Utilities Commission
Statoil Natural Gas LLC and South Jersey Resources Group, LLC
Talisman Energy USA Inc.
Tennessee Customer Group[45]
Tennessee Valley Authority
Town of Scottsville, Kentucky
UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc. (UGI Distribution Companies)
Virginia Power Energy Marketing, Inc.

[45] The members of the Tennessee Customer Group are CenterPoint Energy; City of Clarksville Gas and Water Department, City of Clarksville; City of Corinth Public Utilities Commission; Delta Natural Gas Company, Inc.; Greater Dickson Gas Authority; Hardeman Fayette Utility District; Henderson Utility Department; Holly Springs Utility Department; Humphreys County Utility District; Town of Linden; Morehead Utility Plant Board; Portland Natural Gas System, City of Portland; Savannah Utilities; Springfield Gas System, City of Springfield; City of Waynesboro; and West Tennessee Public Utility District.