142 FERC ¶ 61,160
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Great Lakes Gas Transmission Limited Partnership Docket Nos. RP11-1723-002
RP11-1723-001

ORDER ON REHEARING AND COMPLIANCE

(Issued February 28, 2013)

1. On August 24, 2011, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed a request for rehearing of the Commission's July 2011 order rejecting Great Lakes' proposal to allocate firm secondary out-of-path transportation on an economic-based basis.[1] In addition, Great Lakes also filed revised tariff records to comply with the Commission's July 2011 Order. The revised tariff records filed in compliance with the July 2011 Order are accepted to be effective August 1, 2011.[2] The Commission denies rehearing in part, and grants rehearing in part. As discussed below, we clarify that Commission policy does not prohibit the scheduling of firm secondary transactions by price. However, we deny rehearing regarding Great Lakes' request that we accept its proposed allocation methodology for secondary out-of-path transportation.

I. <u>Background</u>

2. On January 26, 2011, Great Lakes filed revised tariff records to modify the scheduling priority provisions set forth in section 6 of its tariff's general terms and conditions of service (GT&C). Among other changes, Great Lakes proposed to change its capacity allocation mechanism for scheduling firm and interruptible transportation. Under Great Lakes' proposal, the highest priority is given to Category A shippers, which are defined as firm shippers nominating for service within their transportation paths.[3]

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[1] *Great Lakes Gas Transmission Limited Partnership*, 136 FERC ¶ 61,070 (2011) (July 2011 Order).

[2] *See* Appendix.

[3] In its transmittal, Great Lakes defines "transportation path" as that area of the transportation service provided under a shipper's agreement that is bounded by the farthest upstream primary receipt point within a shipper's agreement and farthest downstream delivery point.

The second highest priority is given to Category B shippers, which are firm shippers nominating for service outside of their transportation paths. The third highest priority is given to Category C shippers, which are interruptible shippers. As between different Category B shippers, Great Lakes proposed to allocate capacity based upon the "confirmed price"[4] each shipper paid for capacity, with the shipper paying a higher confirmed price receiving a higher priority over shippers paying a lower confirmed price. Great Lakes stated that in the event multiple Category B shippers nominate at an equivalent price, capacity will be allocated *pro rata* based upon nominations.

3. On February 28, 2011, the Commission issued a letter order accepting and suspending Great Lakes' revised tariff records for five months, subject to conditions, to become effective August 1, 2011.[5] The Commission also directed Great Lakes to file additional information to clarify certain elements of its proposal. Great Lakes filed this additional information on March 29, 2011. In response to this filing, NJR Energy Services Company (NJR Energy),[6] Sequent Energy Management, L.P., (Sequent) and BG Energy Merchants, LLC, (BG Energy) filed adverse comments. Among other concerns, these parties alleged that Great Lakes' proposal discriminates against short-haul shippers in favor of long-haul shippers.

4. In the July 2011 Order, the Commission rejected Great Lakes' proposal to allocate firm secondary out-of-path transportation on an economic basis.[7] The Commission held that the shipper's contracted price for firm service bears no relation to the value to the shipper at a later time for service to a secondary point outside the originally contracted capacity path. Accordingly, the Commission rejected Great Lakes' proposal. The Commission also directed Great Lakes to prohibit bumping during and after the intraday 2 and last intraday nomination cycles.

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[4] Great Lakes' proposed GT&C section 6.1 defines "confirmed price" as "the Transportation rate inclusive of all applicable fees and surcharges agreed upon by Transporter and Shipper computed at one hundred percent (100%) load factor, if applicable."

[5] *Great Lakes Gas Transmission Limited Partnership*, 134 FERC ¶ 61,148 (2011) (February 2011 Order).

[6] NJR Energy also filed a protest against Great Lakes' original January 26, 2011 filing. February 2011 Order, 134 FERC ¶ 61,148 at PP 6-8.

[7] July 2011 Order, 136 FERC ¶ 61,070.

II. Rehearing

A. Great Lakes' Rehearing Request

5. On August 24, 2011, Great Lakes filed a request for rehearing of the July 2011 Order. Great Lakes asserts that the Commission erred when it rejected Great Lakes' proposal to schedule secondary out-of-path service by price. Great Lakes asserts that its proposal to schedule secondary out-of-path service by price is consistent with Commission policy permitting economic value allocation methodologies for secondary capacity. Great Lakes cites *Iroquois*[8] and *Trunkline*,[9] in which the Commission determined that it was appropriate for capacity at secondary receipt and delivery points to be allocated on the basis of price so that capacity may be awarded to the highest valued use.

6. In its rehearing request, Great Lakes states that the July 2011 Order wrongly relied on a *Tennessee Order*[10] which rejected Tennessee's proposal to allocate secondary point capacity on an economic basis. Great Lakes contends that the *Tennessee Order* is inconsistent with *Iroquois* and *Trunkline* and that the *Tennessee Order* did not provide a reasoned explanation for departing from this precedent.

7. In support of its proposal, Great Lakes argues that the reservation rate paid by the shippers at the time of the contract is a fair measure of the value each shipper places on secondary capacity during the term of the agreement. Therefore, Great Lakes contends that allocating secondary service by price achieves the Commission's goal of allocative efficiency. Great Lakes further argues that the *pro rata* allocation favored by the July 2011 Order does not efficiently allocate capacity and encourages gaming by allowing shippers to over-nominate capacity in order to obtain more capacity during the *pro rata* allocation.

8. Great Lakes also contends that secondary service differs from primary firm service in that secondary service is more akin to interruptible service. Great Lakes states that primary firm service is allocated *pro rata* based on the notion that "firm is firm" and all such service has equal priority regardless of price. In contrast, like secondary firm service, interruptible service is not guaranteed and all interruptible shippers are not alike. It asserts that to allocate interruptible service efficiently, the Commission requires such service to be allocated by price.

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[8] *Iroquois Gas Transmission System, L.P.*, 82 FERC ¶ 61,200, at 61,790 (1998).

[9] *Trunkline Gas Co.*, 64 FERC ¶ 61,141, at 62,124-125 (1993).

[10] *Tennessee Gas Pipeline Co.*, 135 FERC ¶ 61,208 (2011) (*Tennessee Order*).

9. Finally, Great Lakes contends that, given the robust competitive nature of the secondary market, which consists primarily of secondary point transactions, prioritizing the scheduling of secondary service by price is needed to ensure the efficient allocation of capacity in that market, and to ensure a competitive, well-functioning secondary market. It maintains that treating secondary service in the same manner as firm primary service fails to allocate the capacity used for secondary service efficiently.

B. Discussion

10. The Commission denies rehearing in part, and grants rehearing in part. We continue to find that Great Lakes' proposal is not just and reasonable because it discriminates against maximum rate short haul shippers. However, we clarify that Commission policy does not prohibit the scheduling of firm secondary transactions by price.

11. The July 2011 Order relied heavily on the *Tennessee Order*, which rejected a similar proposal and determined that scheduling by absolute price does not allocate capacity to the shipper that values it the most. However, on rehearing, the Commission reconsidered this finding.[11] In the *Tennessee Rehearing Order,* the Commission found that pipelines should be permitted to allocate out-of-path secondary firm capacity based upon absolute price provided that all maximum rate shippers are scheduled before non-maximum rate shippers.[12] The Commission recognized that the exact value that a shipper places on its secondary capacity in any given day is difficult to discern. Accordingly, the Commission concluded that the best proxy for the value a shipper places on secondary capacity may be the shipper's firm contract rate, which reflects the total package for firm services that includes those secondary rights.[13] The Commission also observed that *pro rata* allocation of secondary firm capacity is also imperfect.[14] Under that method, when secondary firm capacity is constrained, no shipper is able to schedule all the secondary firm capacity it desires, and a shipper's *pro rata* share of the available capacity may be insufficient to be of any value to the shipper.[15] Given that there is no perfect method of allocating secondary firm service, the Commission clarified in the

[11] *Tennessee Gas Pipeline Company, L.L.C.*, 139 FERC ¶ 61,050 (2012) (*Tennessee Rehearing Order*).

[12] *Id.* PP 40-48.

[13] *Id.* P 45.

[14] *Id.*

[15] *Id.*

Tennessee Rehearing Order that it is reasonable to permit pipelines to schedule secondary firm service according to price.

12. Although it is permissible to schedule firm secondary transactions by price, Great Lakes has not presented a just and reasonable proposal. Pursuant to Commission policy, pipelines are permitted to schedule firm secondary capacity by either the highest percentage of the applicable maximum rate or, as Great Lakes has proposed, by the highest absolute price.[16] In order to protect against undue discrimination, any proposal to schedule firm secondary capacity according to absolute price must include a provision that all shippers paying the maximum rate applicable to their service will be scheduled ahead of any shipper paying a discounted rate.[17] By ensuring that all shippers paying the maximum rate in any rate zone are equal for scheduling purposes, the concerns about scheduling inequalities between short-haul and long-haul shippers are ameliorated. Great Lakes' proposal does not provide such a guarantee and, additionally, would allow a long-haul shipper paying less than the maximum rate to be scheduled before a short-haul shipper paying the maximum rate. Therefore, Great Lakes' proposal is not just and reasonable, and the Commission rejects it without prejudice to Great Lakes' re-filing a proposal consistent with Commission policy on the allocation of secondary firm capacity.[18]

III. Compliance Filing

13. On August 24, 2011, Great Lakes filed revised tariff records[19] to comply with the Commission's July 2011 Order. The July 2011 Order directed Great Lakes to file revised tariff records (1) to remove any provision allowing Great Lakes to schedule firm secondary out-of-path capacity based on price and (2) to include clarifying language in its tariff regarding bumping.[20] Great Lakes requests an August 1, 2011 effective date for its compliance tariff records.

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[16] *Id.* P 41.

[17] *Id.* PP 41, 46.

[18] Any subsequent filing by Great Lakes would also need to explain, consistent with Commission policy, the treatment of capacity release agreements. *See id.* PP 49-56.

[19] Great Lakes Gas Transmission Limited Partnership, FERC NGA Gas Tariff, GLGT Tariffs, 6.11.1 - GT&C, Priorities, 2.1.0, 6.11.2 - GT&C, Bumping Provisions, 2.1.0.

[20] In its original filing, Great Lakes proposed a modification to its bumping provisions. That proposed modification is not subject to rehearing.

14. Notice of Great Lakes' compliance filing in the instant proceeding was issued on August 25, 2011, allowing for protests to be filed on or before September 6, 2011. No party filed a protest or adverse comments. We accept the compliance tariff records as complying with the Commission's July 2011 Order.

The Commission orders:

(A) The Commission denies rehearing in part, and grants rehearing in part as discussed in the body of this order.

(B) The Commission accepts the compliance tariff records effective August 1, 2011.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Great Lakes Gas Transmission Limited Partnership
GLGT Tariffs
FERC NGA Gas Tariff

Tariff Records Accepted to Become Effective August 1, 2011

6.11.1 - GT&C, Priorities, 2.1.0
6.11.2 - GT&C, Bumping Provisions, 2.1.0