

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell and Joseph T. Kelliher.

Florida Gas Transmission Company

Docket Nos. RP04-12-000  
RP04-12-001  
RP04-12-002

ORDER ON REHEARING, CLARIFICATION  
COMPLIANCE FILING, AND TECHNICAL CONFERENCE

(Issued April 20, 2004)

1. On October 31, 2003, the Commission issued an order (Suspension Order) which, in part, conditionally approved a new partial reservation charge crediting mechanism that Florida Gas Transmission Company (FGT) had proposed as part of a general rate filing under section 4 of the Natural Gas Act (NGA). The partial crediting mechanism would be applicable when FGT's deliveries are interrupted by a force majeure event. This order grants in part requests for rehearing regarding this approval, accepts, subject to further revision, FGT's filing to comply with the Suspension Order on this issue, grants waivers, and addresses two issues set for technical conference. This order benefits the public interest by ensuring that the terms and conditions of transportation on FGT's system are just and reasonable.

**Procedural Background**

2. On October 1, 2003, FGT filed under section 4 of the NGA to increase its revenues and revise its tariff effective November 1, 2003. FGT also included pro forma proposals to be effective prospectively following a settlement or Commission order on the merits. On October 31, 2003, the Commission issued the Suspension Order<sup>1</sup> which in part, accepted and suspended certain tariff sheets subject to refund, directed further tariff revisions, set two issues for technical

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<sup>1</sup> 105 FERC ¶ 61,171 (2003).

conference, and established hearing procedures. On November 25, 2003, FGT filed tariff revisions in compliance with the Suspension Order (Compliance Filing). Various parties protested the Compliance Filing, and also filed requests for rehearing and clarification of the Suspension Order. They contended that the Commission committed error when it approved certain aspects of a new proposal for partial reservation charge crediting that FGT included in the underlying rate filing. On December 18, 2003, FGT filed a response to the requests for rehearing and the protests.<sup>2</sup> On January 7, 2004, a technical conference was held on the two reserved issues, and comments were filed thereafter by FGT and several parties.

### **Suspension Order in Docket No. RP04-12-000 – Reservation Charge Credits**

3. Prior to the Suspension Order, FGT credited its shippers under Rate Schedules FTS-1, FTS-2 and FTS-WD based on the full value of their reservation charges for any days when FGT failed to make deliveries due to a force majeure event, as defined in section 8(c) of its General Terms and Conditions (GT&C), or due to FGT's negligence or willful misconduct. The credit was equal to the full unit reservation charge times the undelivered quantity, times the number of days that FGT's service was interrupted. In its filing, FGT proposed to base the credit on the return on equity and related income tax components of the reservation charge rather than the full charge.<sup>3</sup>

4. FGT justified the proposal by arguing that in a force majeure situation, it is as much a victim as its shippers, and "[a]t times, . . . must expend significant amounts to correct a force majeure problem."<sup>4</sup> Noting that its reservation charge was designed to recover all fixed costs, FGT stated that it was willing to forgo return on equity and related income taxes when it could not render service due to force majeure, but should not have to forgo recovery of other fixed costs while spending incremental amounts to restore service. FGT claimed that otherwise, it would suffer financial hardship from the combination of simultaneously decreased revenues and increased expenses. The proposal was protested.

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<sup>2</sup> Although generally not permitted, the Commission will accept FGT's answer to the protests and rehearings to the extent it aids the evaluation of the issues in this proceeding. 18 C.F.R. § 385.213 (2004).

<sup>3</sup> Third Revised Sheet No. 14, First Revised Sheet No. 22H, and Fourth Revised Sheet No. 59 to FERC Gas Tariff, Third Revised Volume No. 1.

<sup>4</sup> FGT's October 1, 2003 Filing, Basis for Change Statement, at 7.

5. The Suspension Order accepted the crediting proposal as consistent with an order in Tennessee Gas Pipeline Company (Tennessee),<sup>5</sup> where the Commission found that partial reservation charge crediting appropriately balanced any financial consequences of a force majeure event between Tennessee and its customers when neither shippers nor the pipeline were at fault. The Suspension Order also noted that when the interruption is not due to a force majeure, Tennessee requires full transportation charge credits for all scheduled but undelivered gas. Therefore, the Suspension Order directed FGT to file tariff revisions, to be effective November 1, 2003, requiring FGT to credit reservation charges in full when non-force majeure events interrupted its deliveries.

### **Requests for Rehearing in Docket No. RP04-12-002**

6. Filing jointly, Tampa Electric Company and Peoples Gas System, a Division of Tampa Electric Company (Tampa/Peoples) request rehearing of the Suspension Order, alleging that FGT has not supported its claim of potential financial hardship. They argue that FGT does not meet the burden of proof required under section 4 to demonstrate that its tariff proposals are just and reasonable, in particular when such changes further restrict shippers' rights. They point out that FGT did not quantify how much fixed-cost recovery it lost due to force majeure events under the previous method of calculating reservation charge credits, nor did it discuss any impact on customers. They maintain that the Commission should have suspended the proposed tariff revisions for the full five-month statutory period, and set the proposal for hearing where all relevant facts could be examined. Finally, they assert that the Commission's prior approval of a similar proposal in Tennessee is not, by itself, a substitute for FGT meeting its burden of proof in this proceeding.

7. Tampa/Peoples maintain that, at the least, the Commission should have directed FGT to change the definition of force majeure in section 8(c) of its tariff.<sup>6</sup> Tampa/Peoples point out that planned system outages are among the various force majeure events described in the definition, unlike Tennessee's tariff, which includes only unplanned system outages in its description of force majeure events. Tampa/Peoples believe that the difference between the way each

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<sup>5</sup> Tennessee Gas Pipeline Company, 76 FERC ¶ 61,022, at 61,085-61,089 (1996) (Opinion No. 406); order on reh'g, 80 FERC ¶ 61,070 (1997) Opinion No. 406-A.

<sup>6</sup> First Rev. Sheet No. 112 to FERC Gas Tariff, Third Revised Volume No. 1.

tariff defines force majeure is a critical factual distinction which renders the ruling in Tennessee inapplicable to FGT's proposal, and shifts unwarranted risks to FGT's shippers. Therefore, they conclude that if and when FGT is permitted to implement partial reservation charge crediting, FGT must also change the way its tariff defines force majeure, or provide full credits for service outages within its control.

8. Florida Power Corporation (Florida Power) also requests rehearing on this issue, making arguments similar to Tampa/Peoples. In addition, Florida Power identifies specific circumstances listed in FGT's definition of force majeure which it believes should not trigger partial credits:

The term 'force majeure' as employed herein shall mean . . . breakage . . . to machinery or lines of pipe, the necessity of making repairs or alterations to machinery or lines of pipe, . . . planned or unplanned outages on Transporter's . . . pipeline system, the inability of Transporter's . . . pipeline to deliver gas . . . and any other cause, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome . . .<sup>7</sup> [underlines supplied by Florida Power]

9. Florida Power maintains that the underlined language, which purports to define force majeure, describes events that are within FGT's control, or which could be avoided by the exercise of due diligence. Florida Power notes that such events are included in the section along with "other causes . . . not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome . . ." Florida Power interprets this section as permitting FGT to provide partial reservation charge credits, even for circumstances which it controls and when it is not a "victim of circumstances," as alleged by FGT.

10. Accordingly, Florida Power asks the Commission to suspend the tariff proposal for the full statutory period, and to set for hearing the question of whether FGT should be required to modify its definition of force majeure so that

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<sup>7</sup> First Revised Sheet No. 112 and Substitute First Revised Sheet No. 113 to FERC Gas Tariff, Third Revised Volume No. 1.

full reservation charge credits are required when a force majeure event is in FGT's control or could have been avoided by its exercise of due diligence.<sup>8</sup>

11. Florida Power & Light Company (FPL), in a combined protest of the Compliance Filing and request for rehearing or clarification of the Suspension Order, asks the Commission to clarify that scheduled maintenance and planned outages constitute non-force majeure situations.<sup>9</sup> In its Alternative Request for Rehearing, FPL states that (1) “[n]othing in the Suspension Order permits FGT to limit credits for service interruptions in non-force majeure situations only to interruptions associated with FGT’s negligence or willful misconduct”, and (2) “[l]imitation of FGT’s liability for credits for service interruptions in non-force majeure situations only to those caused by FGT’s negligence and willful misconduct is inconsistent with prior Commission precedent in Tennessee<sup>10</sup> and El Paso<sup>11</sup> and nothing in the Suspension Order justifies any deviation from that policy.

#### **FGT’s Compliance Filing in Docket No. RP04-12-001**

12. On November 25, 2003, FGT filed to comply with the Suspension Order. FGT proposed to revise section 4 of Rate Schedules FTS-1, FTS-2, and FTS-WD as follows:

Facility Charge - The Facility Charge multiplied by the sum of the MDTQ for the billing month. For purposes of computation of the Facility Charge, service shall commence as of the date specified in section 2 above. If, on any day, Transporter fails to make available

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<sup>8</sup> The balance of Florida Power’s filing is a request for clarification or, in the alternative, rehearing addressing the Suspension Order’s ruling on FGT’s pro forma filing on the “within-the-path” method for allocating nominations at alternate delivery points. The Commission ruled on this part of Florida Power’s filing in an order issued in Docket No. RP00-387. 106 FERC ¶ 61,160 (2004).

<sup>9</sup> Citing KN Energy, Inc., 50 FERC ¶ 61,290 (1990); Transcontinental Gas Pipe Line Corp., 101 FERC ¶ 61,154 (2002); National Fuel Gas Supply Corp., 99 FERC ¶ 61,354 (2002); Cleco Utility Group, Inc., 100 FERC ¶ 61,323 (2002); Kinder Morgan Interstate Gas Transmission, 92 FERC ¶ 61,075 (2000).

<sup>10</sup> Opinion No. 406

<sup>11</sup> El Paso Natural Gas Company, 105 FERC ¶ 61,262 (2003).

for delivery, ~~by reason of Transporter's force majeure, or~~ by reason of Transporter's negligence or willful misconduct, the lesser of the applicable MDTQ or such quantity as Shipper has nominated and Transporter has scheduled, the Reservation Charge otherwise payable shall be reduced for the month by an amount equal to the quantity not made available for delivery times the number of days that Transporter failed to make such quantity available for delivery times the daily Facility Charge; provided however, that in the case of a failure to make available for delivery by reason of Transporter's force majeure, only the return on equity and related income tax components of the daily Facility Charge will be included in the above referenced calculation. In the case of failure to make available for delivery due to Transporter's negligence or willful misconduct, nothing herein shall be construed to limit Shipper's remedies to the reservation fee credit provided in this section.<sup>12</sup> [Strikeout and underline markings supplied by FGT, in relation to currently effective tariff language.]

### **Notice**

13. Public Notice of the Compliance Filing was issued with comments and interventions due as provided by the Commission's regulations. Protests were filed by Tampa/Peoples, Florida Power, Florida Cities, FPL and Seminole.

### **Protests in Docket No. RP04-12-001**

14. Several of the protestors reiterate arguments made in the rehearing requests, in particular that FGT's definition of force majeure should be revised, consistent with Commission precedent, to exclude planned or scheduled maintenance.<sup>13</sup>

15. Florida Cities, and Seminole point out that the Compliance Filing violates Commission policy by narrowing reservation charge crediting to only service interruptions caused by FGT's negligence or willful misconduct. They urge the

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<sup>12</sup> (Substitute Third Revised Sheet No. 14, Substitute First Revised Sheet No. 22H, and Substitute Fourth Revised Sheet No. 59 to FERC Gas Tariff, Third Revised Volume No. 1. (Redlined version)

<sup>13</sup> Citing El Paso Natural Gas Co., 105 ¶ 61,262 at 5 (2003), citing Alliance Pipeline, L.P., 84 FERC ¶ 61,239 at 62,214.

Commission to require FGT to remove the proposed words “by reason of Transporter’s negligence or willful misconduct,” from section 4 of Rate Schedules FTS-1, FTS-2, and FTS-WD. They maintain that Commission policy requires full reservation charge crediting for non-force majeure service interruptions, irrespective of whether non-delivery is caused by the pipeline’s negligent or willful misconduct. FPL also maintains that the Compliance Filing should be rejected because this limitation was not required by the Suspension Order.<sup>14</sup>

### **FGT’s Response to the Requests for Rehearing and the Protests**

16. On December 18, 2003, FGT made a filing which responded collectively to the requests for rehearing and the protests. FGT believes there is adequate support in the record for acceptance of its partial crediting proposal without setting the issue for hearing. FGT asserts that the parties do not identify what, if any, additional information on this issue could be presented at a hearing. It notes that the protestors do not question the Commission’s underlying rationale that partial reservation charge crediting equitably apportions the financial burden of a force majeure event between the pipeline and its shippers, since neither is at fault.

17. FGT also insists that planned outages must continue to be included in its definition of force majeure. FGT notes that in other proceedings, the Commission did not engage in a detailed analysis of the tariff’s definition of force majeure when it approved partial crediting, even though such definition varies from tariff to tariff. FGT, however, believes the common thread among the tariffs is that pipelines have no discretionary control over force majeure events.

18. For this reason, FGT believes its definition appropriately includes planned as well as unplanned outages, both of which could be non-discretionary. FGT maintains that some force majeure events could be foreseeable, planned outages which occur as a result of the pipeline having to perform routine but necessary (i.e. non-discretionary) maintenance, or as a result of the pipeline having to engage in operations to comply with non-discretionary federal and state regulatory requirements.

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<sup>14</sup> Citing to 18 CFR §154.203(b): “Filings made to comply with Commission orders must include only those changes required to comply with the order.”

19. FGT cites testing and modification of pipeline segments required by the federal Pipeline Safety Improvement Act of 2002 and regulations overseen by the Department of Energy's Office of Pipeline Safety as examples of periodic, non-discretionary activities that could impact its deliveries but are required for the safe operation of its system. Similarly, FGT mentions a major pipe relocation project that it anticipates will be required by the Florida Department of Transportation. FGT notes that such actions must be completed within mandatory timeframes.

20. FGT explains that to the extent it has flexibility over scheduling a planned outage, it works with its customers and makes every effort to minimize service disruptions and to provide service alternatives. However, FGT maintains that it cannot guarantee that no loss of capacity will result from such activities. FGT also believes that circumstances on its system differ from many other pipelines, given its very diverse demand profile, large geographical market area, and uniformly high capacity usage throughout the year due to heating demand in the winter and air conditioning demand in the summer. This demand profile creates complex challenges for FGT when it attempts to minimize the disruptions caused by planned outages.

21. FGT mentions that it is aware of the Commission's decision in El Paso Natural Gas Company,<sup>15</sup> but believes El Paso is factually distinguishable from its own circumstances.<sup>16</sup> FGT claims that whereas El Paso experiences its highest capacity usage in the winter heating season, its own demands for transportation are uniformly high throughout the year due to its more diverse demand profile. FGT asserts that the absence of seasonal downtime on its system increases the likelihood that service will have to be disrupted for planned outages. FGT also notes that El Paso has set aside firm capacity for system management whereas FGT has no capacity set aside for such purpose.

22. FGT adds that while it has some unsubscribed capacity in the winter, governmental deadlines may require work to be done in other periods, when no unsubscribed capacity exists. Further, FGT maintains that it does not have the issues of firm service reliability that were referred to in El Paso, since FGT has a

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<sup>15</sup> 105 FERC ¶ 61,262 (2003).

<sup>16</sup> FGT does not directly address the holding in El Paso but states its belief that the decision is flawed. In El Paso, the Commission rejected a tariff proposal to implement partial reservation charge crediting during periods of pipeline maintenance. El Paso is discussed in detail later in this order.

history of working with its customers to schedule outages so as to minimize disruptions. Thus, no beneficial purpose would be served by requiring FGT to provide full reservation charge crediting because of a planned outage. Finally, FGT points out that no party has identified a specific instance when it inappropriately managed the scheduling of maintenance work.

### **Discussion**

23. The requests for rehearing contend that FGT did not adequately demonstrate that its proposal for partial reservation charge crediting in force majeure situations is just and reasonable, and that a hearing is necessary for consideration of the proposal. They also maintain that because FGT's currently effective definition of force majeure includes events that are within FGT's control, the proposal violates Commission policy which requires full reservation charge crediting when service interruptions are caused by non-force majeure events.

24. The Commission does not believe a hearing is necessary for consideration of FGT's crediting proposal. The Commission permits pipelines to implement different approaches to reservation charge crediting as long as the crediting mechanism is "a reasonable implementation of the risk sharing principle."<sup>17</sup> In various proceedings, the Commission has taken into account the pipeline's rate design, circumstances that would trigger the mechanism, what specific objections, if any, are raised by customers concerning the equities of the proposal, and how the proposal impacts operational concerns that are specific to the pipeline in question.<sup>18</sup> The Commission believes the record established in this proceeding contains enough information on such factors to render a decision without the necessity of hearing.

25. As to the impact of FGT's SFV rate design, the Commission has found in other proceedings involving pipelines which utilize an SFV rate design, that a partial crediting mechanism such as FGT's provides an equitable balance of

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<sup>17</sup> Tennessee Gas Pipeline Co., 76 FERC ¶61,022 (1996) (Opinion No. 406), Order on Reh'g, 80 FERC ¶61,070 (1997) (Opinion No. 406-A) (also cited as Tennessee).

<sup>18</sup> See, e.g., Natural Gas Pipeline Company of America (Natural), 106 FERC ¶ 61,310 (2004); and El Paso Natural Gas Company (El Paso), 105 FERC ¶ 61,262 (2003).

financial burdens in a force majeure situation.<sup>19</sup> Therefore, a hearing is not required to establish the reasonableness of this approach to reservation charge crediting. However, the Commission has also held that since reservation charges also include fixed cost surcharges, such as the Gas Research Institute (GRI) surcharge, any credit based on a full reservation charge should also include such demand surcharges.<sup>20</sup> FGT is directed to clarify its tariff in this regard.

26. The Suspension Order directed FGT to file tariff revisions to provide for full credits for undelivered gas in non-force majeure situations, to be effective November 1, 2004. FGT has attempted to do so by making tariff revisions in its firm rate schedules. As discussed below, such tariff sheets will require further revision. In addition, in order to comply with this directive, FGT will need to revise its definition of force majeure in GT&C section 8(c) of its tariff. That section defines the term “force majeure” by enumerating types of events that would fall within that definition, and therefore trigger partial reservation charge crediting. Although this definition was appropriate when FGT provided full reservation charge crediting for both force majeure events and non-force majeure events, it is no longer consistent with Commission policy in the context of partial reservation charge crediting.

27. In other proceedings, the Commission has stated that pipelines must provide full reservation charge crediting in non-force majeure situations within a pipeline’s control and that, while unscheduled maintenance is considered a force majeure event, scheduled maintenance and repairs are to be treated as non-force majeure events.<sup>21</sup> Since FGT’s definition of force majeure includes “the necessity for making repairs or alterations to machinery or lines of pipe,” “planned outages on Shipper’s facilities,” “planned outages on Transporter’s or Transporting Pipeline’s pipeline system,” and “the inability of Transporter’s or Transporting Pipeline’s pipeline system to deliver gas,” references to such events expressly within FGT’s control, or which could be read to as within its control, should be deleted or revised.<sup>22</sup>

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<sup>19</sup> Id.

<sup>20</sup> Natural, 106 FERC ¶61,310 (2004)

<sup>21</sup> Opinion No. 406, as cited in El Paso, 105 FERC at 62,351.

<sup>22</sup> First Revised Sheet No. 112.

28. Similarly, the Commission does not agree with FGT's assertion that non-discretionary but planned events are appropriately included in its definition of force majeure. FGT maintains that "some force majeure events could be foreseeable, planned outages which occur as a result of the pipeline having to perform routine but necessary (i.e. non-discretionary) maintenance, or as a result of the pipeline having to engage in operations to comply with non-discretionary federal and state regulatory requirements." FGT offers several examples of federally required, non-discretionary "periodic activities that could impact its deliveries but are required for the safe operation of its system."

29. FGT also refers to an anticipated major pipe relocation project that will be required by the Florida Department of Transportation. FGT notes that such actions must be completed within mandatory timeframes. However, in other proceedings, the Commission has held that scheduled maintenance is a necessary non-force majeure event within the control of the pipeline, and that because a pipeline is responsible for operating its system so that it can meet its contractual obligations, full reservation charge crediting is an incentive to perform maintenance with minimal service disruption.<sup>23</sup>

30. Nevertheless, the Commission disagrees with several parties who object to FGT retaining in its definition of force majeure the phrase "any other cause . . . not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome".<sup>24</sup> This phrase aptly describes characteristics of a force majeure event, i.e., an event beyond a party's control which it could not reasonably avoid.

31. Commission recognizes, as pointed out by FGT, that there may be operational differences between itself and other pipelines, but it does not follow that such differences should exempt FGT from the Commission's force majeure policy. The Commission permits pipelines to fashion their proposals in ways which enable them to comply with reservation charge crediting policy and still meet planned but non-discretionary regulatory obligations. For example, the Commission has approved delivery thresholds above which a pipeline is not obligated to provide a reservation charge credit.<sup>25</sup>

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<sup>23</sup> El Paso at 62,351-62,352.

<sup>24</sup> Substitute First Revised Sheet No. 113.

<sup>25</sup> See Natural.

32. An appropriately designed force majeure provision should complement the pipeline's regulatory obligations. In this regard, the Commission recognizes that there may be circumstances in which it would be appropriate for FGT to declare a force majeure, as provided in section 8(c), due to the actions of an administrative or regulatory agency, provided such circumstances otherwise fit its definition of force majeure.<sup>26</sup>

33. As pointed out by the protestors, one effect of the proposed revisions is to narrow FGT's basis for providing full reservation charge credits to non-force majeure service interruptions caused by FGT's negligence or willful misconduct. There is no Commission precedent that supports such a restricted crediting proposal. Therefore, the Commission will reject the Compliance Filing as contrary to Commission policy on reservation charge crediting, and to the Suspension Order. FGT is directed to comply with the Suspension Order, by filing revised tariff sheets implementing full reservation charge crediting for scheduled but undelivered gas in non-force majeure situations, to be effective November 1, 2003.

#### **Technical Conference**

34. The Suspension Order established a technical conference to discuss two issues: (1) FGT's proposal to establish a minimum nomination quantity of 25 Dth per day under Rate Schedule NNTS, and (2) FGT's proposal to allow shippers that converted from Rate Schedule SFTS to FTS-1 service to reconvert back to SFTS service only in the context of a general section 4 rate case. Prior to this proposal, such shippers could convert to FTS-1 service and reconvert back to SFTS service every 12 months.

35. The technical conference was held on January 7, 2004. The parties reached a settlement in principle whereby FGT agreed to withdraw its minimum nomination proposal in exchange for NNTS shippers agreeing not to nominate de minimis quantities. The Commission therefore rejects First Revised Sheet No. 33 as moot.

36. With regard to the issue of reconversion to Rate Schedule SFTS, the parties presented their respective positions but did not reach settlement. At the conclusion of the conference, a schedule for comments and reply comments was

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<sup>26</sup> GT&C section 8(c) provides in part: "The term force majeure shall mean . . . acts of civil . . . authority (including, but not limited to, courts or administrative or regulatory agencies) . . ."

established. FGT's comments reiterated its argument that if a customer converts back to subsidized SFTS rates after its rates have been established in this proceeding, it will no longer be contributing to the costs allocated to FTS service while at the same time receiving a subsidy from FTS revenues. FGT also provided attachments purporting to demonstrate its potential revenue loss. Finally, it argues that there is nothing in either the Settlement establishing the reconversion right,<sup>27</sup> in the NGA, or in Commission policy which restricts its right to limit conversion between rate schedules. In its comments, FGT offered to allow affected shippers a one-time right to reconvert to SFTS service prior to March 15, 2004, before its revised rates are established.

37. Florida Municipal Natural Gas Association (Municipals) filed comments arguing that FGT's claims of potential under recovery are speculative, that FGT has section 4 remedies available to it to ensure that it is kept whole. Municipals also maintain that it reasonably relied on the fact that tariff rights existing at the time it converted to FTS service would enable it to convert back to SFTS within the time frame specified therein. Municipals also suggest another approach to resolution of the reconversion issue through a one-time election to reconvert after March 15, 2004, providing that customers choosing not to make the election would take a reduced level of FTS service.

38. Florida Cities states that FGT's offer of a one-time reconversion prior to March 15, 2004 is not helpful to those customers whose capacity release agreements will not end until after that date, precluding them from taking advantage of the offer. They also stated that Municipals' suggested approach involving an MDTQ reduction would not be helpful to them.

## **Discussion**

39. The Commission will accept the proposed tariff sheets permitting customers who have converted to Rate Schedule FTS from Rate Schedule SFTS to reconvert back to Rate Schedule SFTS only in the context of a rate proceeding. The protestors have cited no Commission precedent that would require FGT to continue to offer shippers the right to reconvert back to SFTS service.

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<sup>27</sup> FGT cites Article VIII of the "Stipulation and Agreement of Settlement and Request for Waivers" filed on August, 5, 1997 in Florida Gas Transmission Company, Docket Nos. RP96-366-000 and FA94-15-002.

40. However, in so doing, the Commission will grant two waivers in the interest of equitable considerations. First, waiver is granted to those customers who are prevented from reconverting until their capacity release arrangements expire. The Commission believes such customers, at the time they initiated conversion to FTS service, reasonably relied upon the expectation that the tariff provision, which provided conversion from SFTS service to FTS service and back again, would remain in place at least until they had the opportunity to exercise the reconversion right to which they were then entitled as small customers.<sup>28</sup> This one-time waiver is granted to each affected customer for 30 days after the expiration of its capacity release arrangement.

41. To balance the waiver granted herein, the Commission will also grant waiver to permit FGT to design its rates in the current rate proceeding utilizing billing determinants from outside the test period related to customers that exercise the aforementioned election.

The Commission orders:

(A) The respective requests for rehearing and/or clarification are granted in part and denied in part, as discussed above.

(B) FGT is directed to file further tariff revisions within thirty days of the issuance of this order, consistent with the discussion above.

(C) As detailed in the body of this order, the substitute tariff sheets<sup>29</sup> filed in Docket No. RP04-12-001 are accepted, subject to further revision within 30 days of the date of this order.

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<sup>28</sup> See, e.g., Florida Cities' Initial Comments Following Technical Conference at 3 and 4.

<sup>29</sup> Substitute Third Revised Sheet No. 14, Substitute Third Revised Sheet No. 14, and Substitute Third Revised Sheet No. 14 to FERC Gas Tariff, Third Revised Volume No. 1.

(D) First Revised Sheet No. 33 is rejected as moot, as discussed in the body of this order.

By the Commission. Commissioner Kelly not participating.

( S E A L )

Magalie R. Salas,  
Secretary.