UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Tennessee Gas Pipeline Company | Docket Nos. RP04-233-001
RP04-233-002

ORDER ON COMPLIANCE
AND CLARIFICATION

(Issued July 13, 2004)

1. On May 17, 2004, Tennessee Gas Pipeline Company (Tennessee) filed a revised tariff sheet in compliance with the Commission's order issued on April 30, 2004, to be effective May 1, 2004.[1] Additionally, on that same date, Tennessee filed a request for clarification or rehearing of the April 30 Order with regard to the circumstances under which a pipeline may terminate a replacement shipper's contract and included proposed clarifying tariff language. In this order, the Commission accepts Tennessee's revised tariff sheet, effective May 1, 2004, grants Tennessee's request for clarification, and directs Tennessee to file a revised tariff sheet within 15 days of this order to reflect the proposed tariff language in its request for clarification. This order benefits customers because it permits Tennessee's tariff to be clarified consistent with the Commission's policy with respect to the termination of contracts held by replacement shippers.

I. Background

2. On March 29, 2004, Tennessee filed to incorporate a new tariff provision detailing the circumstances under which it may terminate a replacement shipper's contract in the event that the releasing shipper's contract will be terminated. Tennessee stated that its proposed tariff language was consistent with Commission policy. However, Duke Energy Trading and Marketing, L.L.C. and Duke Energy Marketing America, L.L.C. (collectively, Duke Energy) filed a protest arguing that the proposed tariff language would allow the pipeline to seek to terminate the replacement shipper's contract prior to termination of the releasing shipper's contract, thereby requiring the replacement shipper to renegotiate its contract while the releasing shipper's contract was still in effect.

[1] Tennessee Gas Pipeline Co., 107 FERC ¶ 61,097 (2004) (April 30 Order).

3. The April 30 Order acknowledged Duke Energy's concern and required Tennessee to revise its tariff language to comport with Commission policy that the releasing shipper's contract must be terminated before it seeks to terminate the replacement shipper's contract.

II. <u>Compliance Filing</u>

4. In compliance with the April 30 Order, Tennessee filed a revised tariff sheet[2] to modify the subject tariff provision (modification in italics):

> 11.11(p) Upon thirty days written notice to Replacement Shipper that Releasing Shipper's contract *has been* terminated, Transporter may elect to terminate Replacement Shipper's Agreement if (1) the rate stated in the effective Replacement Shipper's Agreement is less than the maximum Reservation Rate and Commodity Rate for the contracted for Service and (2) the Replacement Shipper has not, prior to the expiration of the notice period, executed an amendment to such Replacement Shipper's Agreement, agreeing to pay, beginning the first day after the end of the notice period and for the remainder of the term of the Replacement Shipper's Agreement, the lesser of (a) the Releasing Shipper's contract rate (b) the maximum tariff rate for the service, or (c) a mutually agreed upon rate.

5. Tennessee requests that the Commission grant all waivers necessary to accept its compliance filing and approve the proposed tariff sheet to be effective May 1, 2004.

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[2] Substitute First Revised Sheet No. 339C to FERC Gas Tariff, Fifth Revised Volume No. 1.

III. Public Notice and Interventions

6. Public notice of the compliance filing was issued on May 26, 2004. Interventions and protests were due as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2003)), 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 will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.[3]

IV. Request for Clarification

7. Tennessee states that it intended that under its tariff proposal, Tennessee would provide notice of termination to both the releasing shipper and the replacement shipper at the same time. Thirty days later, and after the termination of the releasing shipper's contract, Tennessee would terminate the replacement shipper's contract unless the replacement shipper agreed to pay the lesser of: (a) the releasing shipper's contract rate; (b) the maximum tariff rate for service; or (c) a mutually agreed upon rate. In its request for clarification, Tennessee asks the Commission to clarify that pipelines may provide notice of termination to both the replacement shipper and the releasing shipper at the same time.[4]

8. In making this request, Tennessee states that it seeks to determine that the Commission has not changed its policy such that pipelines are now required to wait 60 days before they can terminate a replacement shipper's contract (i.e., 30 days' notice to releasing shipper, plus an additional 30 days' notice to replacement shipper after the releasing shipper's contract is terminated.) Tennessee states that the Commission has held that replacement shippers are entitled to at least the same 30 days' notice that is

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[3] On June 3, 2004, Duke Energy filed a protest to Tennessee's compliance filing. However, on June 10, 2004, Duke Energy withdrew its protest, explaining that its protest actually was directed at the alternative tariff language Tennessee proposed in its May 17, 2004 Request for Clarification or, Alternatively, Rehearing, but was inadvertently filed in the sub-docket for the compliance filing. Duke Energy states that the language proposed in the compliance filing is consistent with the Commission's directives in its April 30 Order.

[4] Tennessee styled its pleading as a request for clarification, or in the alternative, rehearing. Since the Commission is providing clarification in this order, Tennessee's alternative request for rehearing is dismissed as moot.

provided to releasing shippers.[5] However, Tennessee states that if an additional 30-day notice period is imposed, pipelines may be unfairly bound during the second 30-day notice period to a lower rate that had been agreed to by the releasing and replacement shippers.

9. In an attempt to clarify the intent of its proposal, Tennessee seeks approval to revise its tariff provision to specify as follows (modification in italics):

> 11.11(p) Upon thirty days written notice to *Releasing Shipper and* Replacement Shipper that Releasing Shipper's contract will be terminated, *and provided that Releasing Shipper's contract is subsequently terminated pursuant to such notice,* Transporter may elect to terminate Replacement Shipper's Agreement if (1) the rate stated in the effective Replacement Shipper's Agreement is less than the maximum Reservation Rate and Commodity Rate for the contracted for Service and (2) the Replacement Shipper has not, prior to the expiration of the notice period, executed an amendment to such Replacement Shipper's Agreement, agreeing to pay, beginning the first day after the end of the notice period and for the remainder of the term of the Replacement Shipper's Agreement, the lesser of (a) the Releasing Shipper's contract rate (b) the maximum tariff rate for the service, or (c) a mutually agreed upon rate.

10. Tennessee states that while this language does not preclude Tennessee from beginning negotiations with the replacement shipper while the releasing shipper's contract is still in effect, this language satisfies the requirements that: (1) the replacement shipper be provided at least the same notice as the releasing shipper; and (2) the replacement shipper's contract will never be terminated prior to the releasing shipper's contract.

V. <u>Discussion</u>

11. The Commission finds that Tennessee's revised tariff sheet fully complies with the directives contained in the April 30 Order. The Commission will also grant Tennessee's request for clarification and clarify that notice of termination may be given to both the releasing shipper and replacement shipper at the same time. The Commission further clarifies that pipelines are not required to provide the replacement shipper with an

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[5] *Citing* Canyon Creek Compression Co., 100 FERC ¶ 61,283 at P 12 (2002).

additional 30-day notice period after the releasing shipper's contract has been terminated. Instead, the 30-day notice period for both the releasing and replacement shipper may run concurrently, as set forth in the proposed tariff language in its request for clarification.

12. The Commission recognizes that the tariff language proposed by Tennessee (in its request for clarification) will require that a replacement shipper renegotiate its contract rate while the releasing shipper's contract is still in effect.[6] Notwithstanding, the Commission finds that Tennessee's proposal is not contrary to Commission policy because the proposed tariff language ensures that the pipeline will terminate the releasing shipper's contract before it can terminate the replacement shipper's contract. Accordingly, the revised tariff sheet filed on May 17, 2004 is accepted, subject to Tennessee re-filing the sheet to reflect the modification proposed by Tennessee in its request for clarification.

13. The Commission concludes that it will not be a burden for a replacement shipper to renegotiate its contract with Tennessee within the 30-day notice period. If, in fact, a releasing shipper's contract is terminated at the end of the notice period, there is likely to be little negotiation as to the replacement shipper's rate. Commission policy is clear – if the replacement shipper is currently paying less than the maximum rate, then the replacement shipper may continue its contract by paying the lesser of: (1) the releasing shipper's contract rate; (2) the maximum tariff rate applicable to the releasing shipper's capacity; or (3) a mutually agreed upon rate.[7]

[6] In the April 30 Order, the Commission held that "the releasing shipper's contract must be terminated before *it seeks* to terminate the replacement shipper's contract." (Emphasis added.) The Commission, however, clarifies that the verbiage "it seeks" was not intended to bar the pipeline from negotiating with the replacement shipper (during the 30-day notice period) while the releasing shipper's contract is still in effect. Instead, the Commission's intent was only to specify that pipelines are required to terminate a releasing shipper's contract before terminating the replacement shipper's contract.

[7] *See, e.g.*, Texas Eastern Transmission, LP, 101 FERC ¶ 61,071 (2002).

The Commission orders:

Tennessee's revised tariff sheet filed on May 17, 2004 is hereby accepted, to be effective May 1, 2004, subject to Tennessee filing a revised tariff sheet within 15 days of this order to reflect the proposed tariff language modification as reflected in Tennessee's request for clarification, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.