

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Tennessee Gas Pipeline Company

Docket No. RP03-605-001

ORDER REJECTING COMPLIANCE FILING AND TARIFF SHEETS
AND DIRECTING FILING

(Issued January 19, 2007)

1. On October 20, 2003, Tennessee Gas Pipeline Company (Tennessee) filed a proposed revision to its tariff in compliance with an order issued by the Commission on October 10, 2003, which conditionally accepted and suspended a tariff sheet Tennessee filed on September 12, 2003, to revise the “Possession of Gas” provision of its tariff.¹ In its November 17, 2003 answer to comments filed with regard to its compliance proposal, Tennessee proposed a further change to its proposed tariff language. As discussed below, the tariff sheets filed September 12, and October 20, 2003, are rejected, without prejudice to filing a properly designed proposal, and Tennessee is directed to file a revised tariff sheet.

Background

2. On September 12, 2003, Tennessee filed a tariff sheet,² which proposed revisions to Article VII (Possession of Gas) of the General Terms and Conditions (GT&C) of its tariff, that Tennessee stated were to clarify the appropriate custody transfer points for gas that Tennessee receives from, or delivers to, third-party facilities. Underscoring and strike-through indicates Tennessee’s proposed revisions as follows:

Unless otherwise provided in the transportation contract or applicable Rate Schedule, as between Transporter and Shipper, Shipper shall be deemed to be in exclusive control and possession of the gas covered by a Rate

¹ *Tennessee Gas Pipeline Co.*, 105 FERC ¶ 61,058 (2003) (October 10, 2003 Order).

² FERC Gas Tariff, Fifth Revised Vol. No. 1, Substitute Eighth Revised Sheet No. 357.

Schedule SA Service Agreement³ or to be transported by Transporter: (i) prior to receipt by Transporter at the Receipt Point(s); (ii) after receipt by Transporter, when the gas is ~~in the custody of Shipper or Shipper's designee for separation, processing or other handling, located in facilities other than Transporter's facilities;~~ and (iii) after delivery by Transporter at the Delivery Point(s); otherwise, Transporter shall be in exclusive control and possession of the gas while the gas is in Transporter's facilities. The party ~~which shall be~~ in exclusive control and possession of the gas shall be responsible for all injury or damage caused thereby to any third party. In the absence of negligence or willful misconduct on the part of Transporter, Shipper waives any and all claims and demands against Transporter, its officers, employees or agents, arising out of or in any way connected with (i) the quality, use or condition of the gas after delivery from Transporter for the account of such Shipper and (ii) any losses or shrinkage of gas during or resulting from custody of Shipper or Shipper's designee.

3. Tennessee stated that Article VII of the GT&C provides the rules governing the transfer of custody of gas on its system. Tennessee stated that, because receipts of gas onto the Tennessee system (or deliveries to others, in certain instances) from offshore production platforms and certain onshore points often require transportation of gas through third-party facilities after having passed through Tennessee's off-system measurement facilities, Tennessee was proposing to make certain revisions to Article VII that clarify the appropriate custody transfer points for such gas. Tennessee stated that gas quality and quantity measurement will continue to be performed at the nearest practicable point (*i.e.*, the meter).

4. Tennessee contended that the proposed revision is necessary to address situations where the meter is physically separated from Tennessee's pipeline. Under the application of the current Article VII to the situations described above, Tennessee stated that it takes custody of gas at a meter prior to the gas reaching Tennessee's system (or delivers gas through a third-party line, in certain circumstances). Tennessee asserted that, because Tennessee does not have any control over gas in another party's facilities, and because the existing language potentially may be interpreted to hold Tennessee responsible for damage to such facilities notwithstanding Tennessee's lack of control over the gas, its proposed revisions to Article VII are just and reasonable.

5. The East Ohio Gas Company d/b/a Dominion East Ohio and the Peoples Natural Gas Company d/b/a Dominion Peoples (jointly, the Dominion LDCs); NUI Utilities, Inc.

³ Rate Schedule SA establishes a Supply Aggregation Service under which supplies from pooling areas can be aggregated and the aggregator assumes responsibility for supply nomination and balancing. In its subsequent October 20, 2003 compliance filing, Tennessee deleted, without explanation and without protest from the parties, the proposed reference to Rate Schedule SA service agreements.

(NUI); and Indicated Shippers⁴ filed protests to the September 12, 2003 filing, to which Tennessee subsequently filed an answer on September 30, 2003.

6. The Dominion LDCs contended that Tennessee's proposal was an attempt to shift responsibility to the shipper in all situations where gas is located in third-party facilities, even if the gas is between the receipt point and the delivery point and irrespective of whether the shipper has custody at that time or even has knowledge that the gas is not in Tennessee's facilities. They asserted that the proposal should be accepted only if Tennessee limits its liability to those situations where the shipper—not Tennessee—has contracted with the third party and moves gas on the facilities behind Tennessee's meter.

7. NUI echoed the Dominion LDCs' comments and added that, at the very least, Tennessee's proposed tariff revision is grossly overbroad, given that the language proposed extends far beyond the claimed offshore production platform scenario or the unusual on-shore situation in which Tennessee's meter is physically remote from its pipeline facility. NUI stated that Tennessee's proposed abdication of "possession and control" for gas in transit under a Tennessee contract is also unreasonable. NUI contended that it would relieve Tennessee of liability associated with its possession and control of a shipper's gas during transportation if Tennessee had, for its own convenience, elected to utilize the facilities of another entity in order to perform its contractual obligation to transport shipper's gas. NUI pointed out that, under its existing tariff, Tennessee has explicitly reserved the authority to enter into such arrangements, citing GT&C Article XIX, "Off-System Capacity." NUI stated that Tennessee's claim that it should not be held responsible for damage to "facilities" where it does not have actual control over the gas falls flat in circumstances in which it is Tennessee—not the shipper—that has the contractual relationship with the third party on whose facilities the gas moves. NUI asserted it would be perverse and unreasonable in such circumstances to deem the shipper, and not Tennessee, to be "in exclusive control and possession of the gas" as Tennessee's proposed tariff language would do.

8. Indicated Shippers stated that they did not protest the proposal but sought clarification that the proposal is not intended to affix liability to third parties with respect to transportation on non-Tennessee facilities and that Tennessee is liable when the gas is in meters owned or operated by Tennessee.

9. In its September 30, 2003 answer, Tennessee stated that, to the extent gas is located in non-Tennessee facilities after Tennessee has received such gas, the owner of the gas (who Tennessee stated should also be the shipper of the gas) should have made contractual arrangements with the third party for the transportation of the gas through the

⁴ Indicated Shippers consist of: Amerada Hess Corporation; BP Energy Company and BP America Production Company; ChevronTexaco Natural Gas, a division of Chevron U.S.A., Inc.; ExxonMobil Gas & Power Marketing Company, a division of ExxonMobil Corporation; and Shell Offshore, Inc.

third party's facilities. Tennessee claimed it is in no position to do so and, indeed, should not be expected to do so. Tennessee concluded, therefore, except to the extent the gas is in facilities that represent off-system capacity under Article XIX of the GT&C of its tariff, "gas received by Tennessee should not find its way into facilities over which, relative to Tennessee, the Shipper of such gas has no ability to exercise real or contractual/constructive control."⁵

10. Tennessee set forth the following example to clarify what it asserted would be a common application of its proposed Article VII:

Gas is received at a meter owned by Tennessee that is located on an offshore platform. The gas then flows through a third-party pipeline (owned by the fictional 3PL Corp.) before passing into Tennessee's system at an un-metered sub-sea connection between the 3PL and Tennessee lines. The gas passes from the connection point through Tennessee's line to the Tennessee supply pool and/or to an eventual delivery point, depending on which contractual arrangement applies. Without warning, the 3PL line begins to leak, resulting in the loss of gas before it reaches the pool.⁶

11. Tennessee stated that only the party that had title to the gas and was the Shipper of such gas while the gas was within the 3PL line at the time of the loss need be concerned with the application of Article VII. As to gas in facilities representing off-system capacity held by Tennessee under Article XIX, Tennessee stated that it had no intent to treat such facilities as anything other than its own facilities for purposes of determining custody and control under Article VII. In response to the comments that the proposed Article VII does not address liabilities related to transportation of gas through facilities Tennessee does not own, Tennessee stated that Article VII clearly states that as between Tennessee and its shippers, custody and control of gas lies with the shipper (unless it expressly rests with Tennessee) and, therefore, there are no circumstances that Article VII does not address. Tennessee further stated that it should not be deemed responsible for gas in facilities it merely operates and stated that the Commission should reject Indicated Shippers' proposal to inject such a concept in Article VII.

12. In the October 10, 2003 Order, the Commission found that Tennessee's proposal is unclear and may benefit from further clarification and revisions. The Commission noted that Tennessee's September 30, 2003 answer provided four pages of clarification but only a few words of tariff changes. Further, the Commission found that Tennessee did not appear to respond fully to the parties' concerns. The Commission also found, however, that Tennessee's proposed revision in its answer is reasonable. Accordingly, the Commission accepted and suspended the effectiveness of Tennessee's proposed tariff

⁵ Tennessee September 30, 2003 Answer at 4.

⁶ *Id.*

revision, permitting it to become effective until the earlier of March 1, 2004, or subsequent Commission order, subject to refund and conditions, and subject to further Commission action. The Commission found that the parties had raised valid concerns and directed Tennessee to revise its proposal in a subsequent compliance filing. Specifically, the Commission directed Tennessee to: (1) revise Article VII to add the following underscored language “otherwise, Transporter shall be in exclusive control and possession of the gas while the gas is in Transporter’s facilities or in facilities associated with off-system capacity held by Transporter pursuant to Article XIX herein”; (2) file revised tariff language in Article VII, incorporating the clarifications set forth in Tennessee’s answer, so that the language of the provision itself states clearly what Tennessee’s intentions are, and so that the tariff language can stand on its own without the need for further clarification; and (3) delete the opening phrase of existing Article VII, *i.e.*, “Unless otherwise provided in the transportation contract or applicable Rate Schedule.”

13. On October 20, 2003, Tennessee submitted revisions to its tariff sheet in compliance with the October 10, 2003 Order.

Notice and Protests to the October 20, 2003 Compliance Filing

14. Public notice of the October 20, 2003 filing was issued on October 23, 2003, with protests due as provided in section 154.210 of the Commission’s regulations (18 C.F.R. § 154.210 (2006)). Indicated Shippers filed a protest, to which Tennessee filed a response.

Details of the October 20, 2003 Compliance Filing

15. In its October 20, 2003 compliance filing, Tennessee proposed to significantly revise the language in Article VII of its tariff to state as follows:

As between Transporter and Shipper, Transporter shall be in exclusive control and possession of the gas while the gas is in Transporter’s facilities or in facilities associated with off-system capacity held by Transporter pursuant to Article XIX herein; otherwise, Shipper shall be in exclusive control and possession of its gas. As between Transporter and Shipper, the party which shall be in exclusive control and possession of the gas shall be responsible for all injury or damage caused thereby to any third party.

16. In the Transmittal to its October 20, 2003 compliance filing, Tennessee stated that the revised tariff sheet submitted in the compliance filing addresses all of the revisions Tennessee was directed to make to clarify Article VII’s intent without resort to extra-tariff sources. It asserted that the proposed language was “now abundantly clear and

tracks the concepts approved by the October 10 Order”⁷ that as between Tennessee and the shipper (whether the shipper is a transportation customer, supply aggregator, storage customer, or any other shipper as defined by the tariff), Tennessee is responsible for gas within its facilities and the shipper is responsible at all other times for the gas to which it holds title.

Indicated Shippers’ Protest to the October 20, 2003 Compliance Filing

17. In its protest to the compliance filing, Indicated Shippers agreed that Tennessee’s filing complied with the Commission’s requirement that Tennessee insert a phrase it had proposed in its answer to the protests filed in the initial proceeding to address the issue of off-system capacity held by Tennessee and to delete the beginning language of the existing provision. Indicated Shippers stated that it did not object to these revisions.

18. However, Indicated Shippers contended that Tennessee’s other proposed revisions of Article VII result in over-broad language. Indicated Shippers asserted that the revisions Tennessee had proposed in the October 20, 2003 filing would broaden the scope of the control and possession provision with regard to gas not in Tennessee’s facilities. Indicated Shippers observed that Tennessee proposed to change the language of the existing provision from “otherwise *Transporter* shall be in exclusive control and possession of the gas” to “otherwise, *Shipper* shall be in exclusive control and possession of the gas.” (Emphasis added.) Indicated Shippers argued that the proposed insertion of this new language, combined with the pre-existing, overbroad language, exacerbates Indicated Shippers’ basic concern with the provision. Indicated Shippers asserted that Tennessee’s tariff has no business assigning liability to particular entities for damages or injuries resulting from gas not in Tennessee’s custody or control. Indicated Shippers argued that “*Tennessee’s* tariff need only address precisely when *Tennessee* is and is not responsible.”⁸

19. Indicated Shippers asserted that shippers on Tennessee’s pipeline should not be required to agree in advance that, if the pipeline of a third party transporting the shippers’ gas between a remote measurement facility and Tennessee’s system springs a leak, the shipper, not the third-party pipeline, is liable for resulting injuries or damages. Indicated Shippers argue that for Tennessee’s purposes it should be sufficient to show that Tennessee itself is not responsible. Indicated Shippers stated that it may be, as Tennessee speculates, that the shipper could or should have a contract with the third-party transporter. If so, Indicated Shippers maintained that such contract would govern responsibility as between the shipper and the third party, and that Tennessee’s tariff need not and should not address that issue, beyond establishing that Tennessee is not responsible.

⁷ October 20, 2003 Filing Transmittal at 2.

⁸ Indicated Shippers Protest at 6 (emphasis in original).

20. Indicated Shippers argued that other pipelines' tariffs reflect Indicated Shippers' understanding of how such provisions should be structured. For example, Indicated Shippers noted that the corresponding provision in Texas Eastern Gas Transmission Corporation's (Texas Eastern) tariff provides in pertinent part as follows:

12. POSSESSION OF GAS

12.1 Control

Pipeline shall be deemed to be in control and possession of the gas hereunder upon receipt of such gas until it shall have been delivered for Customer's account, and Customer shall be deemed to be in control and possession of such gas prior to such receipt by Pipeline and after such delivery for Customer's account.

12.2 Responsibility

Pipeline shall have no responsibility with respect to the gas or on account of anything done, occurring or arising with respect to the gas before receipt of such gas by Pipeline or after delivery of the gas for Customer's account, and Customer shall have no responsibility with respect to the gas or on account of anything done, occurring or arising with respect to the gas while such gas is in Pipeline's possession; provided, however, in the event any gas flows through facilities of Customer prior to such delivery to or for Customer's account, Pipeline shall have no responsibility with respect to such gas or on account of anything which may be done, happen or arise with respect to such gas while in the facilities of Customer.[⁹]

21. Indicated Shippers noted that, rather than identifying the shipper as liable to third parties for damages arising during transportation of the shipper's gas by a third party, Texas Eastern's GT&C section 12.2 simply states that Texas Eastern "shall have no responsibility" in such a circumstance.

22. Indicated Shippers asserted that the Commission should require Tennessee to limit its control and possession provision consistent with the proper purpose of such provisions and as reflected in the corresponding provisions in other pipelines' tariffs. Indicated Shippers propose that the Commission direct Tennessee to amend its revised proposal as provided below. Indicated Shippers proffered the following language to replace what Tennessee had proposed:

⁹ Texas Eastern, FERC Gas Tariff, Seventh Revised Vol. No. 1, Sheet No. 606 (emphasis added).

Transporter shall be deemed to be in exclusive control and possession of the gas while the gas is in Transporter's facilities or in facilities associated with off-system capacity held by Transporter pursuant to Article XIX herein. Transporter shall have no responsibility for injury or damage caused to any third party with respect to or on account of anything done, occurring or arising with respect to the gas when the gas is not in Transporter's exclusive control and possession, and Shipper shall have no responsibility with respect to or on account of anything done, occurring or arising with respect to the gas while such gas is in Transporter's exclusive control and possession.

23. Indicated Shippers stated that their proposed amendments would revise Tennessee's tariff provision such that it does not directly assign legal responsibility to either Tennessee or the shipper, but rather would indicate when either Tennessee or the shipper is not responsible.

24. Indicated Shippers asserted that Tennessee should be required to justify its position that it should not be deemed to have control or possession of gas in facilities it operates. Indicated Shippers observed that in their comments on the September 12, 2003 filing, they contended that Tennessee had control or possession of gas in facilities "owned or operated" by Tennessee. Indicated Shippers observed further that, in Tennessee's September 30, 2003 answer, Tennessee took sharp issue with this contention, arguing that "[m]aking Tennessee have custody or control over gas in third party facilities that Tennessee merely operates would be unreasonable," because the shipper should have "its own" contractual relationship with the owner of the third-party facilities.¹⁰

25. Indicated Shippers maintained that Tennessee's current tariff language in Article VII does not draw the distinction between Tennessee-owned and Tennessee-operated facilities urged by Tennessee in its September 30, 2003 answer. Indicated Shippers argued that if a shipper schedules gas at a remote Tennessee receipt meter connected to Tennessee's system by a pipeline owned by a third party but operated by Tennessee, Tennessee apparently takes the position that control and possession is exclusively an issue between the shipper and the owner of the third-party pipeline, and Tennessee's tariff conclusively relieves it of any responsibility in connection with such transportation service.

26. However, Indicated Shippers stated that Article VII, either in its current form or as Tennessee would modify it in the compliance filing, makes no reference to Tennessee-"owned" facilities to make the ownership limitation clear. Indicated Shippers asserted that a shipper receiving transportation service from Tennessee would not, from a reading

¹⁰ Indicated Shippers Protest at 10 (citing Tennessee's September 30, 2003 Answer at 5-6).

of the proposed tariff, necessarily understand that within the meaning of the tariff Tennessee does not have control or possession of the shipper's gas while transported in facilities that Tennessee "merely" operates, which connect a Tennessee-owned remote measurement facility with Tennessee-owned facilities.

27. Indicated Shippers concluded that Tennessee should not be permitted to relieve itself automatically of responsibility for transportation of its shippers' gas over facilities owned by another party but operated by Tennessee, and should be required to clarify its tariff to that effect. At a minimum, however, Indicated Shippers asserted that if the Commission accepts Tennessee's argument, the Commission should direct Tennessee to clarify the distinction it is drawing between Tennessee-owned and Tennessee-operated facilities.

Tennessee's November 17, 2003 Answer to Indicated Shippers' Protest

28. In its November 17, 2003 answer, Tennessee contended that its proposed language in its compliance filing is properly limited to the relationship between Tennessee and the shipper. Tennessee stated that Indicated Shippers incorrectly contended that the proposed language establishes liability as between Tennessee or shippers on its system and third parties. Tennessee asserted that its compliance filing's proposed language clearly applies only "[a]s between Transporter and Shipper," and does not address whether Tennessee or Shipper has liability to a third party based on the allocation of custody over gas covered by a service agreement pursuant to Tennessee's tariff. Instead, Tennessee maintained, the language is limited to establishing, as between Tennessee and the shipper, the circumstances under which each party has custody of such gas. Tennessee asserted that Indicated Shippers' attempts to expand the plain meaning of the proposed language should be rejected.

29. Tennessee stated that, after distorting the plain meaning of Tennessee's proposed language to support their position, Indicated Shippers offer ill-conceived language that creates the very problem of which Indicated Shippers complain. Tennessee contended that while its proposed language is clearly limited to the Tennessee-Shipper relationship, Indicated Shippers' proposal just as clearly is not so limited. Tennessee asserted that Indicated Shippers' attempt to insert into the tariff an apportionment of liability as between Tennessee or its shippers and third parties inappropriately goes beyond the scope of Tennessee's original filing. Accordingly, Tennessee exhorted the Commission to approve Tennessee's proposed language, which is clear and just and reasonable, over Indicated Shippers' unreasonable and ill-advised proposal.

30. Furthermore, Tennessee contended that it should not be deemed responsible for gas in facilities it merely operates. In order to ensure that the term "Transporter's" within the subject provision connotes ownership, and not simply operation, of facilities, Tennessee stated that it is willing to revise its proposal to state "Transporter shall be in exclusive control and possession of the gas while the gas is in facilities Transporter owns

or in facilities associated with off-system capacity.” Tennessee asserted that this further change should adequately address Indicated Shippers’ concerns by demonstrating that Tennessee is only in custody of gas in facilities Tennessee owns or those constituting “off-system capacity.” Thus, in its November 17, 2005 answer to Indicated Shippers’ comments, Tennessee proposes to further amend its proposed provision, revised on compliance, to read:

As between Transporter and Shipper, Transporter shall be in exclusive control and possession of the gas while the gas is in ~~Transporter’s~~ facilities Transporter owns or in facilities associated with off-system capacity held by Transporter pursuant to Article XIX herein; otherwise, Shipper shall be in exclusive control and possession of its gas. As between Transporter and Shipper, the party which shall be in exclusive control and possession of the gas shall be responsible for all injury or damage caused thereby to any third party.¹¹

Discussion

31. Upon evaluation of its proposed language in its October 20, 2003 compliance filing, as further revised in its November 17, 2003 answer, and considering all comments and protests in the proceeding, we find that Tennessee’s proposal is unjust and unreasonable and will reject it. We find that Tennessee has failed to fully comply with the overarching directive to submit revised tariff language to incorporate clarifying language that addresses the protests to its September 12, 2003 filing.¹² As discussed below, Tennessee’s compliance filing and proposed tariff revision, as revised further in its November 17, 2003 answer, do not adequately address why, as between it and the shipper, Tennessee should not be liable for damages or losses once it has received gas under a transportation agreement.

32. At the outset, contrary to Tennessee’s characterization in the transmittal letter to its October 20, 2003 compliance filing, the Commission did not “approve” any concept or proposal included in either Tennessee’s September 12, 2003 filing or in its September 30, 2003 answer. The October 10, 2003 Order simply directed Tennessee to file revised language to make its proposal clear so that the Commission could evaluate what Tennessee intended to implement. The Commission found that the proposed tariff

¹¹ November 17, 2003 Answer at 2-3 (emphasis added).

¹² Tennessee has complied with the Commission’s directive to delete the opening phrase of Article VII, *i.e.*, “Unless otherwise provided in the transportation contract or applicable Rate Schedule.” Tennessee has also complied by inserting the following language in Article VII: “or in facilities associated with off-system capacity held by Transporter pursuant to Article XIX herein.” However, the latter revision is rendered moot by our rejection of Tennessee’s proposal.

language had not been shown to be just and reasonable and suspended its effect pending review of the compliance filing and any comments and protests thereto, and stated that the Commission would issue a subsequent order addressing the merits of such revised proposal.

33. Tennessee's last iteration of its proposals as set forth in paragraph 30 above must be reviewed in the context of the scenario it posed in its original filing that formed its justification for the proposal, *i.e.*, where Tennessee takes custody of gas at its meter prior to the gas reaching Tennessee's system or delivers gas through a third-party line on which it has not already contracted for capacity under Article XIX of the GT&C of its tariff. Tennessee sought to revise its tariff so that it would not be responsible for any injury or damage caused to any third party or for loss of the shipper's gas while the gas is in such third-party facilities. Tennessee's latest proposal removes references to the commonly-used "receipt" and "delivery" of gas as the points that distinguish Transporter's from Shipper's "exclusive control and possession" and focuses on ownership of facilities as the determinant of control and possession, except when it contracts for off-system capacity under Article XIX. Under its proposal, as between Tennessee and the shipper, Tennessee will be liable while the gas is either in facilities it owns or in third-party transportation facilities where Tennessee has acquired the capacity under Article XIX. As between Tennessee and the shipper, the shipper would be liable in all other circumstances. Thus, although not expressly set forth in clear tariff language, by process of elimination, when the gas is not in Tennessee's facilities or in third-party facilities under an Article XIX agreement, Tennessee would not be liable. Hence, although still not entirely clear how it intends the "otherwise" language of its proposal to be applied,¹³ its proposal presumes that, in the scenario initially posed, despite Tennessee's receipt of gas at Tennessee's offshore meter from a shipper pursuant to a transportation agreement with the shipper, Tennessee would not have contracted under Article XIX for the third-party pipeline capacity necessary to move the gas from that point to Tennessee's main system and that, apparently irrespective of whether the shipper knew it had such an obligation to separately contract for such third-party transportation services, Tennessee would not be liable if, for example, the third-party line later ruptures and the shipper's gas is lost.

34. Tennessee has not explained why, in its example of a Tennessee receipt point on an offshore meter attached to third-party transportation facilities apparently not subject to

¹³ In the same comments wherein it proposed to be liable when gas is in third-party facilities under a contract for third-party capacity under Article XIX, Tennessee, nonetheless, claimed that only the owner of the gas, *i.e.*, the shipper, should ever be liable and, further, that Tennessee's proposal is that it only should be liable if the gas is in facilities it owns and the shipper is to be liable in all other circumstances. Moreover, in its November 17, 2003 Answer, Tennessee asserted that it should not be liable if only operates the facilities. These comments render unclear its proposal to leave to open-ended language that "otherwise" Tennessee is not to be liable.

any contract with the third-party, it should not be deemed to be in exclusive control and possession of the gas while in transit in the third-party facilities for purposes of establishing liability as between Tennessee and the shipper under Tennessee's tariff. Once it receives gas at a receipt point under a transportation service agreement, Tennessee has commenced a transporter-shipper relationship with respect to the gas under that agreement. From that point on until delivery of the gas, Tennessee is providing a transportation service for the shipper, even if third-party transportation facilities must be utilized to effectuate the ultimate delivery of the gas under its contract. It cannot claim an obligation on the part of the shipper to be liable for injury or damage caused to any third party or for loss of the shipper's gas once receipt of the shipper's gas occurs under the Tennessee transportation contract unless the shipper has, in fact, separately contracted with the third-party for service on the third-party's facilities. Liability should follow pursuant to the terms of the contract that governs transportation services provided on such third-party facilities and, in the absence of such any contract, Tennessee should be deemed liable by default under the tariff. Moreover, the fact of a lack of ownership of facilities through which transportation gas passes is no basis to disclaim liability as Article XIX of the GT&C of its tariff specifically sets forth provisions for Tennessee's acquisition and use of off-system capacity on third party facilities to be able to implement such transactions. In the absence of notice from Tennessee up front that the shipper is obligated to do so, the shipper should be able rely on an expectation that Tennessee will enter into all contractual arrangements necessary to effect delivery of the shipper's gas once Tennessee has received the gas under the shipper's transportation contract with Tennessee and, lacking such arrangements, Tennessee will, nonetheless, remain liable for all injury or damage caused to any third party or for loss of the shipper's gas once it has taken receipt of the gas under its contract with the shipper. Neither Tennessee's October 20, 2003 compliance filing nor its November 17, 2003 answer provided an explanation or support for leaving such a potential gap in its liability. Further, Tennessee did not respond to the concern that the shipper might not even know that the shipper's gas is passing into third-party owned facilities that would trigger such a contracting obligation on its part such that, perhaps years later, the shipper might be apprised for the first time of Tennessee's lack of liability for injury to third parties or for loss of the shipper's gas in third-party facilities.

35. Accordingly, we find that Tennessee's proposal may unreasonably shift responsibility to the shipper to assume liability while the shipper's gas is in third-party facilities without any obligation on Tennessee's part to apprise the shipper of such liability. Moreover, we find that Tennessee's contention that it should not be deemed responsible for gas in facilities it merely operates, but does not own, also may improperly shift liability to its shippers in such circumstances.

36. Upon consideration of Tennessee's penultimate tariff proposal as set forth in paragraph 30 above, in light of the comments in the protests and answers in the record herein, we find that the proposed changes are unjust and unreasonable and should be rejected. The premise for these and its earlier iterations of changes is unfounded. If

Tennessee enters into a contract to take receipt of gas under a transportation contract at a given point, it should bear the liability as between it and the shipper until delivery of the gas under the contract irrespective of whether the receipt point is at a measurement facility or some other Tennessee facility that does not directly connect to its own downstream pipeline facilities, unless the shipper has separately contracted with the third-party. Its proposal also inappropriately injects issues of ownership and actual control, potentially leading to future interpretative problems and litigation.

37. Consistent with this ruling, we will reject the additional tariff language Tennessee filed to comply with the directive of the October 10, 2003 Order regarding Article XIX off-system capacity, as well as Indicated Shippers' counter-proposals, as moot. The Commission did not render a decision on the merits of either Tennessee's original September 12, 2003 tariff proposal or its revisions proffered in its September 30, 2003 answer and only directed Tennessee to file additional language suggested in its answer to make a clear proposal reflecting Tennessee's intent that the Commission and parties could evaluate. Upon evaluation of the submitted language in the context of its other subsequently-proposed revisions and comments, we find that the proposal as a whole, including that language, is unjust and unreasonable and is, therefore, rejected without prejudice to making a new, fully supported filing properly designed consistent with the discussion herein. In the end, we find that, with deletion of the "Unless otherwise provided in the transportation contract or applicable Rate Schedule" language of the existing tariff, as reflected in Tennessee's October 20, 2003 compliance filing, the existing tariff remains just and reasonable as it leaves no gap in liability and, as between Tennessee and the shipper, properly deems Tennessee liable from receipt until delivery of the gas as the default situation unless the gas is in the custody of the shipper or its designee for separation, processing, or other handling. Within 15 days of this order, Tennessee must file revised tariff language to restore the language of its original Article VII as modified to reflect the deletion of the foregoing language, to be effective prospectively as of the date of this order.

38. We recognize, however, that Tennessee may have a valid business purpose in executing transportation contracts that require the shipper to contract with a third party for a portion of the transportation path and, with respect to such third-party services, Tennessee would not wish to incur any liability. Although we are rejecting Tennessee's proposed tariff revisions, as discussed below we clarify that Tennessee may propose revised tariff language in a fully supported filing in a new docket that would prospectively authorize Tennessee to offer transportation contracts where the shipper is apprised up front that the shipper must contract for third-party transportation service for a portion of the transportation path in order to obtain the transportation service from Tennessee. Service under such a third-party transportation contract would allocate liability as between the third-party service provider and the shipper in accordance with that contract and relevant tariff and not the contract with Tennessee. Tennessee would only be liable for services it provides under its own contract with the shipper.

39. To properly implement such mixed third-party/Tennessee transportation scenarios under a single Tennessee contract, each leg of the transportation path that the gas takes pursuant to the Tennessee contract must reflect a Tennessee receipt and delivery point under that contract. Thus, under its originally-stated scenario under which Tennessee receives gas at a remote offshore Tennessee meter facility under a transportation contract with a shipper, but the gas then must flow on a third-party transmission system to reach Tennessee's onshore facilities for continued transportation under the Tennessee contract, the offshore meter must be the locus of both a Tennessee receipt point at the inlet to the meter and a delivery point at the outlet of the meter where the gas enters the facilities of the third-party transmission provider with whom the shipper has separately contracted. The Tennessee contract would also have to specify an exact downstream receipt point where the gas enters Tennessee's facilities from the third-party transportation facilities where the services would resume under Tennessee's contract with the shipper. In that manner, liability would follow each respective transportation contract when each such contract applies. Finally, Tennessee must offer such mixed third-party/Tennessee transportation contracts on a not unduly discriminatory basis. However, any such proposed further tariff revisions must be fully supported and properly designed and will be subject to review by the Commission following an opportunity for protest and comment.

The Commission orders:

(A) Eighth Revised Sheet No. 357 filed September 12, 2003, and Substitute Eighth Revised Sheet No. 357 filed October 20, 2003, to Tennessee's FERC Gas Tariff, Fifth Revised Vol. No. 1, are rejected.

(B) Within 15 days of the date of this order, Tennessee must file a revised tariff sheet to revise Article VII of the GT&C of its tariff consistent with the discussion in paragraph 37 above, to be effective as of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.