

128 FERC ¶ 61,032  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Tennessee Gas Pipeline Company

Docket No. RP09-194-000

ORDER FOLLOWING TECHNICAL CONFERENCE

(Issued July 16, 2009)

1. On March 31, 2009, a technical conference was held to address issues raised by Tennessee Gas Pipeline Company's (Tennessee) pooling proposal as directed by the Commission's February 13, 2009 order in the captioned docket.<sup>1</sup> As discussed below, the Commission finds the tariff sheets reflecting Tennessee's proposal to be just and reasonable, and accepts them to become effective July 16, 2009.

**I. Background**

2. On December 31, 2008, Tennessee proposed revised tariff sheets which it stated would enhance the flexibility for its shippers and increase the liquidity of the supply area pools. To accomplish this, Tennessee proposed several modifications to its pooling system.

3. Tennessee stated that it operated a supply area pool in Zone 0 of its system. This Zone 0 pool begins at the international border with Mexico and extends north, across Texas, to Tennessee's Natchitoches, Louisiana compressor station. Tennessee proposed to bifurcate this pooling area into: (1) a Zone 0 South Pool, which would begin at the border with Mexico and extend north to the E. Bernard compressor station in Texas, and (2) a Zone 0 North Pool, which would begin at the E. Bernard compressor station and extend north to the Natchitoches compressor station in Louisiana.

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<sup>1</sup> *Tennessee Gas Pipeline Co.*, 126 FERC ¶ 61,117 (2009)(February 13, 2009 Order).

4. Tennessee proposed to permit shippers with receipt points in three of the Supply Area Pooling Areas (i.e., 100 Leg – Zone 0 – North, 500 Leg – Zone 1, and 800 Leg – Zone 1) to aggregate nominations at the Pooling Area Point which is either the furthest downstream receipt point on Tennessee’s mainline within the applicable Supply Area Pooling Area, or the furthest downstream receipt point on Tennessee’s mainline within the immediately upstream Supply Area Pooling Area.

5. Under Tennessee’s current pooling system, shippers use pools as secondary points. Tennessee proposed to now include a primary point option as part of its pooling.<sup>2</sup> Under this proposal, all gas transported to a supply area pool under Tennessee’s pooling rate schedule (Rate Schedule SA) would be treated as firm secondary out of path. For those shippers that choose to select the pool as a primary point, the transportation out of the pool would be accorded primary point priority.

6. Tennessee asserted that these proposals would enhance the flexibility permitted to its shippers and would increase the liquidity of the supply area pools. Tennessee also stated that modifications to its systems would be required to implement these proposals and therefore it envisioned that these changes would be effectuated no later than fall of 2009, but Tennessee requested that the Commission take action on the tariff sheets by February 16, 2009.

## **II. Commission Suspension Order**

7. On February 13, 2009, the Commission issued an order accepting Tennessee’s proposed tariff sheets subject to the outcome of a technical conference. In its order, the Commission noted that Louisville Gas and Electric Company (Louisville) opposed Tennessee’s proposal to establish paper pooling points as primary receipt points in Zone 0 arguing, in sum, that such action would degrade existing firm services to shippers that hold rights to primary physical receipt points within the existing Zone 0 pool. Louisville was concerned that Tennessee’s proposal would create a class of super priority primary receipt point rights at the Pooling Area Points that would trump its rights regarding nominations from secondary points. Louisville also objected to the proposed bifurcation of the Zone 0 pool unless rights of existing firm shippers as to the entire Zone 0 pool could be protected.

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<sup>2</sup> Tennessee proposed to permit shippers to designate Pooling Area Points as primary points of receipt and/or delivery under Rate Schedules FT-A and FT-BH and as primary points of receipt under Rate Schedules FT-GS and FT-G.

8. The Commission found that Tennessee's filing raised issues including, but not limited to, the possible degradation of existing service, scheduling and nomination priorities, primary firm rights, and allocation of mainline versus receipt point capacity among proposed and existing points. The Commission also agreed with Louisville that a technical conference would be useful to fully explore these issues. Accordingly, the Commission accepted the tariff sheets proffered by Tennessee and suspended them to be effective the earlier of July 16, 2009, or a date set by subsequent Commission order, subject to the outcome of a technical conference.<sup>3</sup>

### **III. Technical Conference Comments**

9. On March 31, 2009, the Commission's Staff held a technical conference as directed by the February 13, 2009 Order. At the conclusion of the technical conference, a procedural schedule was adopted providing for the submission of Initial Comments by April 17, 2009, and for Reply Comments by May 1, 2009.

#### **A. Initial Comments**

##### **1. Louisville**

10. In its Initial Comments, Louisville argues that Tennessee's proposal would reduce the value of the existing firm services to customers that wish to retain their primary point rights at physical receipt points within the Zone 0 Pool. Louisville concedes that Tennessee's proposal would not affect Louisville's ability to use its existing rights in nominating gas for transportation from its primary receipt point, but argues that the proposal would undermine its right to schedule gas on a secondary basis from other points within the Zone 0 supply area by permitting shippers that transferred their primary rights to the proposed Pooling Area Points a higher scheduling priority than customers nominating gas from secondary receipt points.

11. Louisville asserts that it has contracted with Tennessee for firm transportation service with a maximum daily quantity of 40,000 MMBtu per day. Louisville states that its service agreement specifies the Channel-Agua Dulce Exchange, (Agua Dulce) located in Zone 0 in Texas, as the primary receipt point and Louisville's city gate in Kentucky as the primary delivery point. Louisville points out that Agua Dulce is located near the southern end of Tennessee's Zone 0. Louisville states that its primary point rights allow it to schedule up to 40,000 MMBtu per day of gas for transportation from Agua Dulce, Texas to Louisville, Kentucky with a primary-in-path scheduling priority.

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<sup>3</sup> *Id.* P 12.

12. Louisville argues that currently it may schedule gas from any receipt point in the Zone 0 supply area downstream of Agua Dulce and such gas will have a secondary-in-path scheduling priority from the receipt point all the way to Louisville's city gate. Louisville also asserts that it can schedule gas from receipt points in Zone 0 upstream of Agua Dulce on a secondary-out-of-path basis. Therefore, Louisville currently has the same secondary priority as any other firm shipper scheduling from a receipt point in the Zone 0 supply area upstream or downstream of its primary receipt point. Louisville asserts that Tennessee's proposal would upset this by placing two virtual Pooling Area Point primary receipt points in the Zone 0 supply area. Louisville argues that shippers utilizing these Pooling Area Points as primary receipt points would be afforded scheduling priorities at those points and downstream of those points that are superior to those Louisville could achieve in scheduling gas from any secondary receipt point in the Zone 0 supply area.

13. Louisville argues that firm shippers that transfer their primary point rights to these virtual pooling points could schedule transportation downstream of those points to their primary delivery points with a primary-in-path priority. This priority would apply to the entire path downstream of the Pooling Area Point. However, Louisville states that it could only achieve primary-in-path scheduling priority as to gas scheduled from its primary receipt point at Agua Dulce and that the inferior priority that would apply to Louisville's use of secondary receipt points would expose it to the risk of curtailment caused by constraints anywhere on the Tennessee system between the proposed Pooling Area Point and Louisville, Kentucky.

14. Louisville argues, therefore, that its service has been degraded, not because of any change to its primary point rights but because Tennessee has proposed to grant new superior rights to shippers that transfer their primary rights to virtual Pooling Area Points which would place Louisville at a competitive disadvantage for transportation north of Zone 0. Louisville argues that this disadvantage is demonstrated by the fact that its primary point rights at Agua Dulce give it primary-in-path rights only from a single receipt point. However, Tennessee's proposal would permit any shippers holding primary rights at the pools to schedule transportation downstream of Zone 0, to their primary delivery points, with a primary-in-path priority for gas sourced from any upstream receipt point in the Zone 0 supply area.

15. Louisville argues that a firm shipper's right to utilize secondary points, particularly within its primary path, is well established under Commission precedent and regulations. Louisville asserts that it could seek to transfer some or all of its primary point rights to either of the proposed Pooling Area Points, but argues that while this could afford Louisville superior priority in using secondary receipt points in Zone 0, it is not an attractive option for Louisville because Louisville would have to relinquish the point-specific rights it holds at Agua Dulce.

16. Louisville argues that it has shown that Tennessee's proposal is not just and reasonable and argues that it should be rejected. However, Louisville concedes that in light of the support for Tennessee's proposal, the Commission may determine to condition the proposal. Louisville recommends that the Commission direct Tennessee to modify its proposal to preserve Louisville's rights by: (1) affording existing firm shippers that elect to retain their primary rights at receipt points in Zone 0 the right to schedule gas sourced at secondary points on a primary-in-path basis at and downstream of the proposed Pooling Area Points; (2) allowing firm shippers to transport gas sourced from any point in the Zone 0 supply area to their primary receipt points using Tennessee's Rate Schedule SA and to transport such gas from their primary receipt points to their primary delivery points on a primary-in-path basis; or (3) affording primary-in-path and secondary-in-path transportation the same scheduling priority at and downstream of the proposed Pooling Area Points.

## 2. Tennessee's Initial Comments

17. Tennessee argues that its proposal would enhance the pooling benefits recognized by Tennessee's shippers who elect to utilize Tennessee's supply area and/or market area pools. Tennessee contends that the increased flexibility afforded its shippers by the proposed changes will not be detrimental to its firm shippers and will, instead, afford shippers additional flexibility by increasing liquidity in the Supply Area Pooling Area. Tennessee points out that while several of its customers filed to support its proposal,<sup>4</sup> only Louisville objected.

18. Tennessee argues that Louisville's contentions that the pooling proposal would: (1) degrade Louisville's firm primary and secondary rights, and; (2) require additional clarification are without merit.

19. Tennessee asserts that its proposal will have no impact on or otherwise degrade a firm shipper's primary or secondary service rights. Tennessee points out that a shipper's currently existing capacity path from its primary receipt point(s) to its primary delivery point(s) will remain unchanged unless the shipper elects to amend its primary receipt and/or delivery points under its firm transportation service agreement. Further, Tennessee asserts that there is no degradation to a shipper's priority of service from

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<sup>4</sup> Tennessee Initial Comments at 3, noting that Enstor Operating Company, LLC; Gavilon LLC; MGI Supply Ltd.; National Fuel Gas Distribution Corporation; New Jersey Natural Gas Company and NJR Energy Services Company; Rhode Island State Energy Statutory Trust 2000; Tennessee Valley Authority; Total Gas & Power North America, Inc.; and Virginia Power Energy Marketing, Inc. filed to support its proposal.

secondary points because Tennessee did not propose any changes to its existing scheduling priorities by virtue of the pooling enhancements.

20. Tennessee states, for example, that the ranking of a shipper's currently existing use of a pool for deliveries to a primary delivery point under its firm transportation service agreement as a secondary within-the-path nomination gives the delivery priority over out-of-path and interruptible service nominations but not over primary nominations. Tennessee states that this remains unchanged under Tennessee's Enhanced Pooling Filing if the delivery is within-the-path. Tennessee states that shippers electing to move their primary points to the Pooling Area Points will have a different primary capacity path than they do presently, but their primary point rights will be no different under Tennessee's Enhanced Pooling Filing. Tennessee asserts that a shipper's primary rights will remain superior to secondary rights, and each shipper will continue to determine whether it chooses to avail itself of its primary or secondary rights in each transaction.

21. Tennessee asserts that its Enhanced Pooling Filing is clear and that only the clarifications set forth below are necessary. Tennessee states that during the technical conference, it agreed that while the Commission accepted and suspended Tennessee's proposed tariff sheets in this proceeding to be effective the earlier of July 16, 2009, or a date set by subsequent Commission order, Tennessee would not place the subject tariff sheets into effect until it is able to fully perform the services proposed in its Enhanced Pooling Filing, which Tennessee expects to be no later than fall 2009.

22. Second, Tennessee states that at the technical conference it also agreed to clarify in its Initial comments that under its Enhanced Pooling Filing shippers electing Pooling Area Points as primary points of receipt and/or delivery do not receive primary rights at any Pooling Area Point(s) other than the Pooling Area Point(s) designated as primary on the applicable transportation service agreement. Tennessee states that shippers that elect to purchase gas from one of the three Supply Area Pooling Areas where the option is available may nominate at either the applicable Pooling Area Point within the Supply Area Pooling Area or the immediately upstream Pooling Area Point depending upon which point is used by the supply aggregator under Tennessee's Rate Schedule SA. Tennessee asserts that currently on its system, gas nominated to or from points, not designated as primary on a shipper's transportation service agreement, will be treated as a secondary transaction and that this will not change under the new proposal.

### 3. Other Initial Comments

23. Several parties to the instant proceeding filed Initial Comments supporting Tennessee's position.<sup>5</sup> The National Grid Gas Delivery Companies<sup>6</sup> state that its review of Tennessee's proposal reflects that the proposal will not degrade any firm shipper's rights to schedule its primary point capacity. Moreover, National Grid states that Tennessee's proposals do not change the way Tennessee will determine the amount of primary firm or secondary capacity available on its system, or the amount of mainline capacity available on the Tennessee system. National Grid asserts that Tennessee's proposal may affect the amount of secondary capacity that can be scheduled in the future at particular locations at a particular time, however, it maintains that no firm shipper is guaranteed capacity at secondary points.<sup>7</sup> National Grid states that Tennessee's proposals will provide greater supply flexibility and therefore requests the Commission to approve them.

#### B. Reply Comments

##### 1. Louisville

24. Louisville argues that Tennessee's claims that Louisville's firm service would not be degraded under Tennessee's proposal because the proposal does not change the provisions of Tennessee's tariff do not address Louisville's concerns. Louisville asserts that, its rights to use secondary receipt points under its existing Rate Schedule FT-A service agreement would be degraded because shippers that elect to transfer their primary rights to the proposed Pooling Area Points would be afforded higher scheduling

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<sup>5</sup> Virginia Power Energy Marketing Inc., Gaviion LLC.; Rhode Island State Energy Statutory Trust 2000; Tennessee Valley Authority; New Jersey Natural Gas Company and NJR Energy Services Company; Total Gas & Power North America, Inc.; MGI Supply Ltd.; United Energy Trading LLC.

<sup>6</sup> The National Grid Gas Delivery Companies comprise: The Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corporation d/b/a National Grid; Boston Gas Company, Colonial Gas Company, and Essex Gas Company, collectively d/b/a National Grid; EnergyNorth Natural Gas Inc., d/b/a National Grid NH; Niagara Mohawk Power Corporation d/b/a National Grid; and The Narragansett Electric Company d/b/a National Grid, all subsidiaries of National Grid USA, Inc. (collectively, National Grid).

<sup>7</sup> National Grid Initial Comments at 3, *citing, Tennessee Gas Pipeline Co.*, 84 FERC ¶ 61,083, at 61,406 (1998), *order on rehearing*, 84 FERC ¶ 61,319 (1998).

priorities, for gas sourced from Zone 0 and transported north of the Pooling Area Points, than Louisville could achieve using secondary receipt points in Zone 0.

25. Louisville states that this degradation flows from Tennessee's proposal to create a new class of super-receipt points. Louisville argues that currently, all firm shippers that hold primary rights at receipt points in Zone 0 have primary-in-path priority from their single primary receipt point and secondary priority from all other receipt points. However, under Tennessee's proposal, Louisville asserts that the new Pooling Area Points would permit shippers using those points to receive primary-in-path scheduling priority, north of the Pooling Area Points, that would apply to transportation of gas sourced from any of the more than fifty receipt points in Zone 0. Whereas Louisville would only be able to receive primary-in-path priority for gas sourced from its primary point at Aqua Dulce. Louisville asserts that it would only be able to achieve secondary scheduling priority for gas sourced from other receipt points in Zone 0.

26. Louisville argues that it has demonstrated that Tennessee's proposal is not just and reasonable and should be rejected. Louisville again suggests its proposed modifications for Tennessee's proposal and reiterates that Tennessee's assertion that it has adequately supported its filing is without merit. Under Tennessee's proposal, Louisville argues it would continue to be able to transport gas from secondary receipt points downstream of Aqua Dulce to its distribution system in Louisville, Kentucky with a secondary-in-path priority. Shippers that elect to transfer their primary rights to the proposed Pooling Area Points would use Rate Schedule SA service, with a secondary out-of-path priority, to transport gas to the Pooling Area Points and would receive a primary-in-path priority on transportation north of the Pooling Area Points. Therefore, Louisville asserts that it would have a higher priority upstream of a Pooling Area Point and a lower priority downstream of the Pooling Area Point. Louisville claims that Tennessee's proposal is unclear because it does not specifically indicate whether Louisville's higher priority in the Zone 0 supply area would control in the event of a curtailment or whether, instead, other shippers' superior takeaway rights at the proposed Pooling Area Points would trump Louisville's rights.

27. Louisville also points out that the option of transferring its primary rights to one of the proposed Pooling Area Points is not a viable alternative because such a transfer would require Louisville to relinquish the point-specific rights it holds at Aqua Dulce, effectively shortening Louisville's primary path by more than 150 miles and exposing Louisville to the risk of curtailment due to local constraints in Zone 0.

## 2. Tennessee

28. Tennessee argues that Louisville's contention that Tennessee's proposal to allow virtual pooling points to be used as primary points by its firm shippers will degrade Louisville's secondary rights is without merit. Tennessee argues that even in the absence of its instant filing, anytime Louisville elects to use secondary points, its transaction is inferior to the transactions of shippers electing to use primary rights. Tennessee argues that the decision to use primary or secondary rights resides with Louisville and that Louisville will decide whether or not it wants to retain its primary firm rights at Agua Dulce or avail itself of primary firm rights at the pooling points; this decision to move to a pooling point on a primary basis is optional, not mandatory.

29. Tennessee also re-emphasizes its point that under its proposal, Louisville's secondary rights are unimpaired. Tennessee argues it is attempting to provide its customers with more flexibility and its proposal is no more disruptive to secondary rights than new supply attachments to or pipeline interconnections with Tennessee's system. Tennessee also points out that it is not creating primary point capacity in that in each instance where a firm shipper elects to utilize a pooling point as a primary point, corresponding primary rights are given up elsewhere. Tennessee asserts it cannot predict the manner in which its firm shippers choose to utilize their primary and secondary rights. However, Tennessee assures Louisville that its secondary-in-path nominations will be superior to interruptible transportation and secondary-out-of-path nominations and inferior only to primary-in-path nominations which, prior to Tennessee's Enhanced Pooling Filing, were not available from Tennessee's pooling points.

30. Tennessee asserts that Louisville's suggested modifications merely expand Louisville's primary rights to the point where Louisville will be treated as having primary-in-path rights from every point within the Supply Area Pooling Areas up through its primary delivery point.

## 3. Other Reply Comments

31. The New England LDCs assert that Tennessee's proposal may be improved by adopting Louisville's suggestion to afford existing firm shippers that elect to retain their primary rights at receipt points in Zone 0 the right to schedule gas sourced at secondary points on a primary-in-path basis at and downstream of the proposed Pooling Area Points. They argue that this will eliminate Louisville's concerns and have little to no impact on the proposed service.

32. PSEG Energy Resources & Trade, LLC (PSEG ER&T) asserts that the modifications proposed by Louisville have not been sufficiently explained and that their possible impacts have not been adequately considered to be adopted at this juncture. Specifically, how these suggested modifications would affect the competitive positions of other shippers. They also state that the operational implications of Louisville's proposals

are unclear with respect to their impact on the pipeline and the respective priorities of service for each of its customers. Accordingly, PSEG ER&T opposes adoption of Louisville's proposed modifications.

#### IV. Interventions

33. In the February 13, 2009 Order, the Commission granted all timely motions to intervene and any motions to intervene out-of-time filed before February 13, 2009 issue date of the Commission's order.<sup>8</sup> Since that time several entities have filed out of time motions to intervene in the instant proceeding.<sup>9</sup> The Commission finds, as it did in its earlier order, that granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Accordingly, the Commission will grant the late filed motions to intervene filed in this proceeding as of the date of the instant order.

#### V. Discussion

34. In Order No. 636, the Commission established several goals, one of which was the implementation of a pipeline structure that would facilitate the meeting of gas purchasers and sellers in a national gas market.<sup>10</sup> The Commission envisioned that this marketplace could occur either at points of interconnection between pipelines or at pooling points,

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<sup>8</sup> *Tennessee Gas Pipeline Co.*, 126 FERC ¶ 61,117, at P 6 (2009).

<sup>9</sup> Atmos Energy Corporation, Atmos Energy Marketing, LLC, BP America Production Company and BP Energy Company, ConocoPhillips Company, Constellation Energy Commodities Group, Inc., Duke Energy, Enstor Operating Company, LLC, Gaviion, LLC, MGI Supply Ltd., Total Gas & Power North America, Inc., United Energy Trading LLC, and Virginia Power Energy Marketing, Inc.

<sup>10</sup> *Transcontinental Gas Pipe Line Corp.*, 86 FERC ¶ 61,175, at 61,613 (1999); *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations; Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs., Regulations Preambles January 1991 - June 1996 ¶ 30,939, *order on reh'g*, Order No. 636-A, FERC Stats. & Regs., Regulations Preambles January 1991 - June 1996 ¶ 30,950, *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *notice of denial of reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Distrib. Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *cert. denied*, 520 U.S. 1224 (1997), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997), *reh'g denied*, Order No. 636-D, 83 FERC ¶ 61,210 (1998). Order No. 636 at 30,427-28.

where shippers can aggregate supplies from multiple receipt points.<sup>11</sup> The advantage of pooling to both shippers and producers is that pooling permits a producer to aggregate gas from different wells and laterals in the production area to a single pool and then sell to customers out of the pool. This allows the customer to submit a single nomination to the producer's pool for the gas it requires rather than having to submit individual nominations to particular receipt points within the production area. Pooling also creates a more liquid gas market as shippers and producers can buy and sell gas at pooling points.<sup>12</sup>

35. To foster its goal, the Commission prohibited pipelines from adopting policies that would inhibit the development of market centers at pipeline interconnects<sup>13</sup> or the development of pooling.<sup>14</sup> Order No. 636 did not mandate that pipelines establish pooling areas; however, the industry and the Commission subsequently recognized the importance of pooling in creating a more competitive and liquid gas market. Accordingly, in Order No. 587,<sup>15</sup> the Commission required pipelines to offer pooling and also adopted North American Energy Standards Board (NAESB) Standard 1.3.17, providing that if requested by a shipper or supplier on a transportation service provider's system, the transportation service provider should offer at least one pool.<sup>16</sup>

36. The Commission finds that Tennessee's proposal is consistent with the Commission's goals in establishing a pipeline structure that facilitates the needs of

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<sup>11</sup> Pooling is defined as (1) the aggregation of gas from multiple physical and/or logical points to a single physical or logical point, and/or (2) the disaggregation of gas from a single physical or logical point to multiple physical and/or logical points. 18 C.F.R. § 284.10(b)(1)(i) (2008), Nominations Related Standards 1.2.3.

<sup>12</sup> 18 C.F.R. § 284.10(b)(1)(i) (2008), Nominations Related Standards 1.3.64 (pooling points used to effectuate title transfer nominations).

<sup>13</sup> 18 C.F.R. § 284.7(b)(3) (2008); 18 C.F.R. § 284.9(b) (2008).

<sup>14</sup> Order No. 636, FERC Stats & Regs. ¶ 30,939, at 30,428; Order No. 636-B, 61 FERC ¶ 61,272, at 62,012 (pipelines may not implement rates or terms and conditions of service that inhibit the creation or development of pooling areas).

<sup>15</sup> *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587, FERC Stats. & Regs., Regulations Preambles July 1996 – December 2000 ¶ 31,038 (1996).

<sup>16</sup> 18 C.F.R. § 284.12(a)(1)(i) (2008), Nominations Related Standard 1.3.17.

natural gas sellers and buyers in the national gas market. Tennessee has found that one of the weaknesses of its current pooling system is that shippers' flexibility to use pooling may be limited because nominations out of the pool are on a secondary basis. Under Order Nos. 636 and 637, the Commission has required pipelines to implement transportation priorities in scheduling gas. Transportation from a primary point receives the highest priority, transportation from a secondary point within the shipper's primary path is second in priority, transportation from a secondary out-of-path point is third in priority, and transportation on an interruptible basis has the lowest priority.

37. On an extremely cold day when shippers are concerned about the potential for mainline constraints, shippers may be reluctant to nominate from a secondary point pool because such a nomination will have a lower priority than a nomination from a primary point. When shippers are concerned about downstream constraints, they therefore may find it necessary to forgo the benefits of pooling and submit individual nominations to receipt points to preserve their transportation priority. Tennessee's instant proposal solves this problem by permitting shippers to select a pool as a firm primary point, so that shippers electing to use the pool for their primary point do not have to lose the efficiencies of pooling when the system is constrained in order to maintain priority for the delivery of their gas. Because this proposal solves one of the difficulties in implementing pooling, the Commission finds the proposal just and reasonable.

38. In implementing its proposal, Tennessee established that shippers could elect to change their primary points to the newly established pools. In so doing, shippers would lose their primary points to individual receipt points upstream of the pool. Under Tennessee's tariff, producers or other marketers moving gas to the pool would do so on a secondary-out-of-path basis (only one step above interruptible service). Shippers with primary points at the pool would then be able to ship gas downstream to their delivery points on a primary basis.

39. This new option provides shippers with tradeoffs. For example, a shipper designating the pool on a primary basis may not be able to purchase all of its gas needs from a particular producer if, due to constraints and its secondary-out-of-path priority, the producer is unable to transport all of the gas it wants to the pool. On the other hand, a shipper designating the pool as its primary point may obtain primary priority for shipments out of the pool. These are the decisions shippers will have to make in determining whether to avail themselves of this new option.

40. Louisville objects to Tennessee's proposal to permit shippers the option of choosing these pooling points as primary points. Louisville contends that the proposed option degrades its firm guaranteed rights.

41. We do not agree that this proposal unfairly changes rights to which Louisville is entitled under its contract with Tennessee. Louisville's current contract with Tennessee has a primary point at Agua Dulce in the far southern reaches of Tennessee's Zone 0. If for business reasons, Louisville chooses to retain its Aqua Dulce primary point and not change to the pool, Louisville will retain its primary priority all the way north to its city gate in Kentucky. This primary point priority is unaffected by Tennessee's proposal to permit shippers to choose a pool as a primary point. Louisville will still have primary point rights from Aqua Dulce and will be at no disadvantage to other shippers. Moreover, because all shipments to the pool are under secondary out-of-path priority, Louisville will have a higher priority (secondary within path priority) for any use of a secondary point downstream of Aqua Dulce.

42. Of course, should Louisville choose to retain Aqua Dulce as its primary point, any use by Louisville of a secondary point will be a lower priority than the use of primary points from the pool. But that is the very nature of secondary rights, and is part of the consideration Louisville needs to make in deciding whether to avail itself of the new primary point pooling option.

43. While Louisville concedes that Tennessee's proposal would not affect Louisville's ability to use its existing rights in nominating gas for transportation from its primary receipt point, Louisville asserts that, under some scenarios, the proposal might reduce its priority if it chooses to nominate gas on a secondary basis. Louisville argues that a firm shipper's right to utilize secondary points, particularly within its primary path, is well established under Commission precedent and regulations.<sup>17</sup>

44. We cannot find that Tennessee's proposal is unjust and unreasonable simply because it may change the calculus Louisville uses to determine how to nominate its gas. In Order No. 636, the Commission specifically permitted shippers to change primary

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<sup>17</sup> Louisville Initial Comments at 3, *citing*, Order No. 636; *see also Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs., Regulations Preambles July 1996 - December 2000 ¶ 31,091, *order on reh'g*, Order No. 637-A, FERC Stats. & Regs., Regulations Preambles July 1996 - December 2000 ¶ 31,099, *order on reh'g*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part*, *Interstate Natural Gas Ass'n v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. Am. Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005); 18 C.F.R. § 284.221(g), (h) (2008)

points to all available primary points.<sup>18</sup> In earlier Tennessee orders, we accepted Tennessee's proposal to permit all such changes to primary points as long as the primary point selected by the shipper is available.<sup>19</sup> Therefore, Tennessee is following its tariff in allowing shippers to choose to change primary points to the newly established pooling point. As Louisville concedes, permitting such a change does not degrade its existing primary point rights if it decides for business reasons to retain its existing primary point at Aqua Dulce.

45. While the Commission allows shippers also to use secondary points (without losing their primary point capacity), the Commission has made clear that such a choice is secondary to the rights of primary point shippers.<sup>20</sup> Thus, should Louisville choose to retain its primary point at Aqua Dulce and use secondary points, it runs the risk that the use of such secondary points will result in a lower priority nomination. This is no different than the risk it runs under the existing Tennessee tariff if it chooses to use a secondary point and other shippers use primary points.

46. Louisville appears to argue that by providing the right to select a pool as a primary right, Tennessee will reduce Louisville's right, under some scenarios, to higher within the path secondary priority that it obtained by being so fortunate as being able to select Aqua Dulce as its primary receipt point. In one scenario, Louisville maintains that prior to this proposal if it decides to nominate on a secondary basis and other shippers nominate from the pooling point on a secondary basis, both nominations will be treated as secondary within the path capacity in the event of a downstream constraint. Louisville maintains, however, that under the Tennessee proposal if it nominates on a secondary basis, and other shippers choose the pooling point on a primary point basis, this will unfairly result in Louisville receiving a lower priority.

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<sup>18</sup> Order No. 636 at 30,428.

<sup>19</sup> *Tennessee Gas Pipeline Co.*, 91 FERC ¶ 61,053, at 61,192 (2000), *aff'd*, 94 FERC ¶ 61,097 (2001), *aff'd*, *Process Gas Consumers Group v. FERC*, 292 F.3d 831 (D.C. Cir. 2002).

<sup>20</sup> In Order No. 636-A, the Commission clarified that:

firm shippers' use of designated alternate/flexible delivery points is subject to the rights of firm shippers using those points as primary delivery points but is superior to the right of interruptible shippers to those points. *Id.* at 30,583 (footnote omitted).

47. It is not possible, nor productive, to attempt to spin out all possible scenarios and compare relative priorities among shippers. We find Tennessee's proposal just and reasonable, because all shippers will continue to receive the priority to which they are entitled depending on the point choices they make. All shippers' primary points will still receive equal priority. If Louisville retains its primary point at Aqua Dulce, it will still receive higher within the path secondary point priority as compared to shippers moving gas to the pool, because Louisville's nominations from Aqua Dulce will have priority over all of the pooling nominations which are treated by Tennessee as firm outside of the path. However, if Louisville chooses to use a secondary point, it is not entitled to priority equal to or greater than a shipper that has chosen to change its primary point. Moreover, this is a risk that Louisville runs even under Tennessee's current system. If Louisville chooses to use a secondary point, and all other shippers decide not to use the pool but to move to their primary points, Louisville loses priority.

48. Even if Louisville did suffer some reduction in secondary point rights, the Commission also has made clear that a shipper has no right to any particular secondary point priority. Shippers rights to capacity are determined by the primary points in their contracts with the pipeline:

unlike service at a primary point, a shipper has no guaranteed firm right to use a secondary point, since shippers using the point as their primary point have priority over shippers using the point as a secondary point. Thus, the pipeline need not reserve capacity to be able to serve a firm shipper at a secondary point.<sup>21</sup>

In fact, in the very order establishing the within the path priority to which Louisville claims it is entitled, the Commission recognized that shippers scheduling within their path had no equitable or other right to enhanced secondary priority, since they were paying the same rate as all the other shippers. The Commission adopted within-the-path scheduling solely for the pragmatic reason that it would enhance the capacity release

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<sup>21</sup> *Transcontinental Gas Pipe Line Corp.*, 104 FERC ¶ 61,171, at P 25 (2003) *order on reh'g* 107 FERC ¶ 61,156, at P 11 (2004) ("the shipper has no guaranteed firm right to use these secondary points, however, since shippers using their primary firm capacity have priority."), *aff'd*, *Exxon Mobil Corp., et al., v. FERC*, 430 F.3d 1166 (2005); *see also Tennessee Gas Pipeline Co.*, 84 FERC ¶ 61,083, at p. 61,406 (1998) ("The shipper is not guaranteed capacity availability at any of the secondary points, so if it desires firm capacity at any points in addition to its designated primary points, Section 4.7 of Rate Schedule FT-A permits the shipper to achieve its goal by amending its service agreement.").

mechanism.<sup>22</sup> Moreover, the Commission recognized that changes in secondary or primary point designation may have differential effects on shippers depending on their business needs. Some shippers objected to the adoption of within-the-path scheduling, arguing that it would create an adverse incentive for shippers to sign up for capacity at the upstream end of a zone because such a point would be the most valuable point.<sup>23</sup> The Commission determined that the enhancement of the capacity release program was worth the possibility of creating such an incentive, and that shippers would have to choose the configuration of points would best fit their business needs:

It may well turn out that there is not a great incentive to move primary points to the end of the zone because . . . shippers may not want to risk giving up their primary point rights at their former delivery points where they need the gas.<sup>24</sup>

In this case, we similarly find that Tennessee's primary pooling proposal has significant benefits to shippers that warrants whatever re-evaluation of primary and secondary point selections shippers need to make.

49. Tennessee's proposal provides Louisville with the same choices as other shippers and adheres to the Commission's regulations and policies regarding the selection of primary points and the priority for secondary points. We therefore cannot find this proposal unjust and unreasonable as Louisville would have us do. Louisville has suggested other possible approaches to pooling, but the fact that other just and reasonable approaches may exist does not warrant the rejection of Tennessee's proposal if it too is just and reasonable.<sup>25</sup>

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<sup>22</sup> Order No. 637-A, at 31,597-31,598.

<sup>23</sup> In adopting within-the-path scheduling, the Commission recognized that shippers scheduling within their path had no equitable right to enhanced priority, since they were paying the same rate as all the other shippers. The Commission adopted within-the-path scheduling solely for the pragmatic reason that it would enhance the capacity release mechanism. Order No. 637-A, at 31,597-31,598.

<sup>24</sup> Order No. 637-B, 92 FERC ¶ 61,062 at 61,170 (2000) (footnote omitted).

<sup>25</sup> *Petal Gas Storage, L.L.C. v. FERC*, 496 F.3d 695, 703 (D.C. Cir. 2007) (FERC is not required to choose the best solution, only a reasonable one); *ExxonMobil Oil Corp. v. FERC*, 487 F.3d 945, 955 (D.C. Cir. 2007) (We need not decide whether the Commission has adopted the best possible policy as long as the agency has acted within the scope of its discretion and reasonably explained its actions); *United Distribution*

(continued...)

The Commission orders:

Tennessee's proposed tariff sheets are accepted to become effective July 16, 2009.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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*Companies v. FERC*, 88 F.3d 1105, 1169 (D.C. Cir. 1996) (“the fact that AEPCO may have proposed a reasonable alternative to SFV rate design is not compelling. The existence of a second reasonable course of action does not invalidate the agency’s determination”).