

135 FERC ¶ 61,056
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Natural Gas Company

Docket Nos. RP11-60-000
RP11-60-001

ORDER ACCEPTING TARIFF RECORDS SUBJECT TO CONDITIONS

(Issued April 21, 2011)

1. On October 13, 2010, Southern Natural Gas Company (Southern) filed revised tariff records to make miscellaneous updates, clarifications, and enhancements to various sections of Southern's currently effective tariff. On November 30, 2010, the Commission accepted and suspended the revised tariff sections to become effective December 1, 2010, subject to refund and conditions and further review.¹ On December 20, 2010, Southern filed revised tariff records² in Docket No. RP11-60-001 to comply with the November 30 Order (December 20 Compliance Filing). For the reasons discussed below, the Commission accepts the revised tariff records listed in the Appendix effective December 1, 2010, subject to conditions. Pursuant to section 5 of the Natural Gas Act (NGA), the Commission also requires Southern either to modify certain provisions in its tariff concerning reservation charge credits or show cause why it should not be required to do so.

Background

2. On October 13, 2010, Southern filed enhancements to various sections of its tariff, as well as miscellaneous updates, clarifications, and error corrections. Southern's filing included proposed tariff revisions to: (i) provide that all eligible shippers could utilize a single master agreement for multiple shippers under certain circumstances; (ii) allow sale

¹ *Southern Natural Gas Co.*, 133 FERC ¶ 61,183 (2010) (November 30 Order).

² Section 4, Measurement, 3.0.0 and Section 14, Resolution of Imb. and Adj., 3.0.0 to SNG FERC Tariff Volume 1, FERC NGA Gas Tariff.

of interim capacity in addition to the sale of capacity reserved for an expansion; (iii) increase the accuracy of measurement; and (iv) provide a nomination enhancement.

3. Southern's miscellaneous tariff updates included a proposal to remove references to the 2005 Settlement of its Docket No. RP04-523-000 NGA section 4 rate case (2005 Settlement) from the reservation charge crediting provisions of its tariff. Southern's rate schedules for its firm services include provisions requiring it to provide firm shippers partial credits against their reservation charges during periods when it cannot provide service because of *force majeure*. Those provisions also generally require Southern to provide full credits during periods when it cannot provide service because of circumstances within its control, subject to certain conditions. Those provisions were first adopted as part of the 2005 Settlement. Southern did not propose any other changes to its reservation charge crediting provisions.

4. Indicated Shippers and the Alabama Municipal Distributors Group, the Austell Gas System, the Municipal Gas Authority of Georgia, and The Southeast Alabama Gas District (collectively the Municipals) filed protests to the filing. Southern filed an answer to the protests requesting that the protests be denied, and Indicated Shippers filed an answer to Southern's answer.

5. In the November 30 Order, the Commission directed Southern to: (1) file a revised tariff record expressly providing that the determination of which method to use in its compressibility calculations be made on a not unduly discriminatory basis; (2) revise its proposed operational transaction provision to include a requirement that the operational gas for sale be posted for bid pursuant to the bidding procedures in section 20 of Southern's General Terms and Conditions (GT&C); and (3) propose tariff language ensuring that it appropriately annually report all its operational purchases and sales of natural gas.

6. Indicated Shippers and the Municipals contended that Southern's existing reservation charge crediting provisions are contrary to Commission policy in several respects. Southern responded that the Commission should deny those protests as beyond the scope of this limited section 4 proceeding. Southern also contended that, in any event, its reservation charge crediting provisions are carefully balanced provisions negotiated as part of a settlement and are consistent with Commission policy. The Commission stated it would address the parties' pleadings concerning Southern's reservation charge crediting tariff provisions in a subsequent order.

7. Southern filed revised tariff records to comply with the November 30 Order on December 20, 2010. Public notice of Southern's December 20 Compliance Filing was issued on January 4, 2011 with protests due January 7, 2011. No protests were filed.

Discussion

8. The Commission accepts the revised tariff sections listed in the Appendix to become effective December 1, 2010, subject to the conditions. The revised tariff records filed in the December 20 Compliance Filing are in satisfactory compliance with the November 30 Order. However, as discussed below, the Commission, pursuant to NGA section 5, directs Southern to make certain changes in the reservation charge crediting provisions in its tariff or explain why it should not be directed to do so.

Reservation Charge Credits

9. The Commission has a well-established and longstanding policy concerning the reservation charge credits which all interstate pipelines must provide their firm shippers during both *force majeure* and non-*force majeure* situations. In general, the Commission requires that the pipeline provide partial reservation charge credits during periods when it cannot provide service because of a *force majeure* event in order to share the risk of an event for which neither party is responsible. With respect to non-*force majeure* outages, where the curtailment occurred due to circumstances within a pipeline's control, the Commission requires pipelines to provide shippers a full reservation charge credit for the amount of primary firm service they scheduled which the pipeline failed to deliver.³ In *North Baja Pipeline, LLC v. FERC*,⁴ the Court of Appeals for the District of Columbia Circuit (D.C. Circuit) affirmed Commission orders requiring a pipeline to modify its tariff to conform to these policies.

10. In a contemporaneous order⁵ on a petition by various industry associations requesting that the Commission take action to enforce its reservation charge crediting policy (NGSA Petition), the Commission states that it expects all pipelines to maintain tariffs that conform to Commission policy, including the reservation charge crediting policy.⁶ The Commission urges pipelines to voluntarily comply, but states that, if any

³ See, e.g., *Tennessee Gas Pipeline Co.*, 76 FERC ¶ 61,022 (1996) (Opinion No. 406), *order on reh'g*, Opinion No. 406-A, 80 FERC ¶ 61,070 (1997), *as clarified by*, *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 63 (2006) (*Rockies Express*).

⁴ *North Baja Pipeline, LLC v. FERC*, 483 F.3d 819 (D.C. Cir. 2007) (*North Baja*), *affg*, *North Baja Pipeline, LLC*, 109 FERC ¶ 61,159 (2004), *order on reh'g*, *North Baja Pipeline, LLC*, 111 FERC ¶ 61,101 (2005).

⁵ 135 FERC ¶ 61,055 (2011).

⁶ Where the pipeline and its shippers have entered into currently effective agreements that include provisions that differ from the Commission's reservation charge crediting policy, and which the Commission has accepted, those agreements need not be changed. See *Kern River Gas Transmission Co.*, 132 FERC ¶ 61,111, at P 16 (2010).

shipper or shippers on a particular pipeline believe that pipeline's tariff does not comply with Commission policy and the pipeline is not taking appropriate action to bring its tariff into compliance, they can file a complaint alleging non-compliance and seek section 5 relief, or raise the issue in any section 4 filing by that pipeline.

11. In this case, Indicated Shippers and the Municipals have taken the course of raising the issue whether Southern's existing reservation charge crediting provisions are consistent with Commission policy in protests to a section 4 filing by Southern in which Southern did not propose any substantive change to its reservation charge crediting provisions. For the reasons discussed below, the Commission finds that Indicated Shippers and the Municipals can raise the reservation charge crediting issues in this proceeding. The Commission finds that certain of the provisions objected to by Indicated Shippers and the Municipals are consistent with Commission policy and need not be changed. However, the Commission believes certain other provisions are inconsistent with Commission policy and requires Southern either to modify those provisions or show cause why it should not be required to do so.

Ability to Raise the Reservation Charge Crediting Issue in the Proceeding

12. Southern contends that Indicated Shippers and the Municipals should not be permitted to raise in this limited section 4 proceeding the issue of whether its existing reservation charge crediting provisions are consistent with Commission policy. Southern contends that it did not propose any substantive changes to those provisions and therefore the issue is beyond the scope of this proceeding. Southern asserts that Indicated Shippers and the Municipals circumvented the Commission's complaint policies and procedures by raising this section 5 challenge. Indicated Shippers and the Municipals respond that the Commission has required pipelines to make tariff revisions to comply with Commission policy in limited section 4 tariff filings even when the tariff filings dealt with other issues,⁷ and should do so in this case.

13. In *Tuscarora*,⁸ the Commission acted under section 5 to require that pipeline to modify its reservation charge crediting provisions, despite the fact the pipeline's limited section 4 filing had not proposed to modify its existing reservation charge crediting provisions. As the Commission explained in *Tuscarora*,⁹ when the Commission has been made aware that a provision clearly conflicts with Commission policy, the Commission

⁷ Citing *Tuscarora Gas Transmission Co.*, 120 FERC ¶ 61,022, at P 15-16 (2007) (*Tuscarora*).

⁸ *Tuscarora*, 120 FERC ¶ 61,022 at P 13.

⁹ *Id.*

may act pursuant to section 5 even though it is not directly related to the subject filing and no complaint has been filed. In both *Wyoming Interstate Gas Co., Ltd.*,¹⁰ and *Kern River*,¹¹ the Commission similarly required pipelines to modify their reservation charge crediting provisions in limited section 4 proceedings where the pipelines had not proposed to change those provisions. Southern points out that, contrary to its actions in *Tuscarora*, *Wyoming Interstate Gas Co., Ltd.*, and *Kern River*, the Commission did not permit the reservation charge crediting issue to be raised in *Columbia Gulf Transmission Co.*¹² In that case, the Commission held that the issue of demand charge credits was beyond the scope of that fuel tracker filing which was solely concerned with a tracking mechanism and the protests were rejected without prejudice to the parties raising this matter as a complaint. In our contemporaneous order on the NGS Petition, the Commission has determined that, in the interest of obtaining pipeline compliance with our longstanding reservation charge crediting policy, we will permit parties to raise the issue in any section 4 proceeding filed by a pipeline. As the Commission pointed out in *Wyoming Interstate Gas Co., Ltd.*, 129 FERC ¶ 61,022 at P 11, while we generally discourage parties from raising unrelated issues in section 4 proceedings, the Commission may use its discretion to act under section 5 of the NGA when it is made aware of a tariff provision that is clearly contrary to Commission policy. Accordingly, to the extent *Columbia Gulf* is contrary to our other precedent on this issue, we will not follow *Columbia Gulf*.

14. Finally, Southern contends that its existing reservation charge crediting provisions are the result of the uncontested settlement in Docket No. RP04-523-000 with its customers which included the Municipals and Indicated Shippers. Southern asserts that since the Commission determined the uncontested settlement was fair, reasonable and in the public interest, and given the provision is similar in many respects to provisions approved by the Commission in other cases,¹³ Southern submits that its reservation charge credit provision is not clearly contrary to Commission policy. The Municipals contend that while the reservation charge credit was included in tariff sheets set forth in that Docket No. RP04-523-000 settlement, Southern has filed a superseding general rate case in Docket No. RP09-427-000, which was also resolved by settlement and did not modify or concern in any way the reservation charge credit.

¹⁰ 129 FERC ¶ 61,022, at P 11 (2009).

¹¹ *Kern River Gas Transmission Co.*, 129 FERC ¶ 61,262 at P 22 (*Kern River*).

¹² Citing *Columbia Gulf Transmission Co.*, 125 FERC ¶ 61,255, at P 17 (2008) (*Columbia Gulf*).

¹³ Citing *Tennessee Gas Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022.

15. Southern's reliance on the 2005 Settlement is mistaken. Article IV of that settlement provided for a rate moratorium during which Southern agreed not to make any filing under NGA section 4 proposing changes in any of the rate or tariff provisions agreed to in that settlement. The other parties also agreed that during the rate moratorium they would not seek such changes under NGA section 5. That moratorium expired on March 1, 2009. Article XII, section 2 of the 2005 Settlement provided that unless explicitly provided otherwise, the terms of the settlement would not survive beyond the Rate Moratorium. Article XII, section 3 provided that the 2005 Settlement was a negotiated settlement and no party would be deemed to have agreed to any principle or issue in the settlement or to have prejudiced any position that it might take in any other proceedings, except as expressly provided in the settlement. The settlement contained no provision requiring its reservation charge credit provisions to remain in effect beyond the end of the Rate Moratorium or limiting the positions that parties could take with respect to those tariff provisions after the March 1, 2009 end of the Rate Moratorium. On March 3, 2009, Southern filed a new general section 4 rate case in Docket No. RP09-427 and that case was resolved by a new settlement, which did not concern this provision.¹⁴ Therefore, the 2005 Settlement is no longer in effect, and nothing in that settlement prevents Indicated Shippers and the Municipals from contending in this proceeding that the reservation charge crediting provisions which originated in the 2005 Settlement are inconsistent with Commission policy.

16. Finally, Southern argues that Commission action pursuant to section 5 of the NGA in this section 4 proceeding would inappropriately shift the burden to Southern to prove that the reservation charge credit provision is just and reasonable, and Southern should be afforded the additional time and other procedural safeguards that the Commission's rules provide a challenged party in a section 5 proceeding. However, the court has held that, under the NGA, a proceeding may originate as a section 4 proceeding only to be transformed later into a section 5 proceeding.¹⁵ We recognize that, since Southern did not propose to modify its reservation charge crediting provisions in this proceeding, we have the burden under NGA section 5 to show that any tariff provisions we seek to change are unjust and unreasonable and that the replacement tariff provisions we require are just and reasonable.

17. As discussed in the following sections of this order, the Commission finds that the existing reservation charge credit provisions are contrary to clear Commission policy in three respects. However, the Commission rejects Indicated Shippers and the Municipals' challenges to several other aspects of Southern's reservation charge crediting provisions. Therefore, pursuant to section 5 of the NGA, the Commission directs Southern either to

¹⁴ Southern has already appropriately proposed to remove the reference to the settlement in Docket No. RP04-523-000 from Rate Schedules FT and FT-NN.

¹⁵ *Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1579 (D.C. Cir. 1993).

file revised tariff sections within thirty days of the date of this order consistent with the discussion below or explain why it should be permitted to retain the provisions which are contrary to Commission policy.

98 Percent Requirement

18. Section 3(a)(i)(A) of Southern's Rate Schedules FT and FT-NN provides that Southern will provide reservation charge credits in the event it is unable to make deliveries of at least 98 percent of the shipper's scheduled volumes.¹⁶ Indicated Shippers and Municipals contend that, whenever the pipeline fails to deliver any portion of the full amount of service the shipper scheduled because of events within its control, the Commission requires pipelines to provide reservation charge credits with respect to the undelivered amount.¹⁷ They argue that this requirement applies whenever the pipeline fails to deliver any amount less than the full 100 percent of scheduled volumes, and therefore, Southern's tariff provision exempting it from the requirement to provide credits if it delivers at least 98 percent of scheduled volumes is contrary to Commission policy.¹⁸

19. Southern contends that the 98 percent requirement has been recognized by the Commission as appropriately giving the pipeline a small, 2 percent threshold for operational difficulties that might occur outside of the pipeline's control.¹⁹ Southern asserts that the 2 percent delivery threshold was consistent with its prior measurement error threshold and this remedial action does not seem reasonable.²⁰ Southern asserts that the 98 percent limitation is merely a trigger and, while minor hiccups may occur that are so miniscule they do not warrant a reservation charge credit, it does not deny a shipper full compensation. Southern argues that the intent of the Commission's policy is to prevent shippers from bearing the risk associated with interruption of service within the

¹⁶ Section 3(a)(i)(B) exempts Southern from the requirement to provide credits during the first 10 days after a *force majeure* event. That provision is consistent with the Commission's policy concerning the reservation charge credits for *force majeure* outages (*Texas Eastern Transmission Co.*, 62 FERC ¶ 61,015 (1993); *Natural Gas Pipeline of America*, 106 FERC ¶ 61,310, at P 20-24, *reh'g*, 108 FERC ¶ 61,170, at P 10-11 (2004) (*Natural*)) and is not challenged by Indicated Shippers or the Municipals.

¹⁷ *Bison Pipeline LLC*, 131 FERC ¶ 61,013 at P 50 (2010) (*Bison Pipeline*).

¹⁸ Citing *Bison Pipeline*, 131 FERC ¶ 61,013, at P 50.

¹⁹ Citing, *e.g.*, Opinion No. 406, 76 FERC ¶ 61,022; *SCG Pipeline, Inc.*, 104 FERC ¶ 61,159 (2003).

²⁰ Southern asserts that the Commission has approved similar provisions in the tariffs of other pipelines (citing, *e.g.*, *Natural*, 106 FERC ¶ 61,310 at P 17).

pipeline's control. Southern further argues that the Commission should provide a balance in its approach by recognizing that 98 percent is an exemplary performance level under any standard and that establishing this threshold only allows for very minor variations of flow that could occur in everyday situations unrelated to operational maintenance or other situations where a reservation charge credit is appropriate.

20. Southern is mistaken. While Southern cites prior Commission acceptance of similar proposals concerning the 98 percent requirement, the Commission's current policy regarding non-*force majeure* or planned maintenance events is that where gas is not delivered the shipper should receive the full reservation charge credit for the undelivered amount.²¹ Southern's 98 percent requirement clearly conflicts with this policy. The Commission established its current policy on the 98 percent requirement in *Rockies Express*, where the Commission rejected a provision similar to that at issue here: The Commission explained:

The Commission's policy regarding reservation charge adjustments is that where scheduled gas is not delivered due to a non-*force majeure* or planned maintenance event, there must be a full reservation charge adjustment as to the undelivered amount. This is because the failure was due to the pipeline's conduct and was within its control. We agree with BP that Rockies Express' proposal not to provide reservation charge credits when it schedules at least 98 percent of a shipper's nominations in non-*force majeure* situations does not adequately comply with Commission policy. We acknowledge that we accepted a similar proposal in *Tennessee* [Opinion No. 406], but in that case the Commission did not specially address the merits of that provision. Upon consideration here, we find that Rockies Express' proposal is unjust and unreasonable because it requires its customers to bear the risk associated with interruption of service within the pipeline's control.²²

In subsequent cases, the Commission has consistently followed the holding in *Rockies Express*.²³

21. The Commission accordingly finds that Southern's 98 percent threshold for reservation charge credits is unjust and unreasonable and inconsistent with the

²¹ *Rockies Express*, 116 FERC ¶ 61,272, at P 63.

²² *Id.*

²³ See *Petal Gas Storage, L.L.C.*, 126 FERC ¶ 61,199, at P 25-26 (2009); *Orbit Gas Storage, Inc.*, 126 FERC ¶ 61,095, at P 69 (2009); *SG Resources Mississippi, L.L.C.*, 122 FERC ¶ 61,180, at P 6 (2008).

Commission's reservation charge credit policy because it requires customers to bear the risks associated with the interruption of service within the pipeline's control.²⁴ Southern's reliance on the previous 2 percent measurement error, now revised to 1 percent, does not establish that the failure to deliver this amount was not within the pipeline's control. Finally, while Southern claims it provides full compensation when the undelivered amount exceeds the 2 percent requirement, it does not provide compensation for the undelivered amount when that limitation is not met and, therefore, conflicts with Commission policy. Therefore, the Commission directs Southern to eliminate the 98 percent requirement and revise its tariff to provide reservation charge credits when it does not provide 100 percent of scheduled service consistent with Commission policy, as discussed above or provide a further explanation why that policy should not be applied to it.

Scheduled Maintenance

22. Section 3(a)(i)(B) in Rate Schedules FT and FT-NN provides that Southern need not give a credit when it fails to deliver the requested amount of firm service because Southern is performing seasonal shut-in tests at its storage fields. The Municipals assert that provision is contrary to Commission policy. The Municipals assert that the Commission has repeatedly ruled that a pipeline must provide a full credit for its failure to deliver the requested firm volumes in non-*force majeure* situations, including scheduled maintenance and that the Commission has stressed that requiring a full credit provides an incentive to schedule such maintenance to avoid reductions in firm service. The Municipals further assert that Southern's current provision would not merely reduce, but eliminate the credit entirely if the failure is due to Southern testing at its storage fields.

23. In its answer, Southern asserts that its reservation charge crediting provisions are carefully balanced provisions negotiated as part of a settlement and are consistent with Commission policy. Southern asserts that, as part of the settlement in Docket No. RP04-523-000, in developing this tariff provision, Southern and its customers negotiated intricate details to avoid any ambiguity about when a reservation charge credit was due. Southern asserts that notice of its shut-in testing dates is provided well in advance to

²⁴ *Rockies Express*, 116 FERC ¶ 61,272 at P 63. The *Natural* order cited by Southern rejected the pipeline's proposal to reduce its threshold for reservation charge credits from 98 percent to 95 percent. The Commission held that proposal was inconsistent with Opinion No. 406, where the Commission had rejected a similar proposal and required the pipeline to provide full reservation charge credits when it failed to provide 98 percent of scheduled volumes. Because *Natural* relied on Opinion No. 406, the Commission's reversal of that aspect of Opinion No. 406 in *Rockies Express* applies equally to the same ruling in *Natural*.

allow shippers adequate time to make alternate arrangements. Southern further asserts that it schedules the tests during the spring and fall shoulder months when demands on the system are lower to minimize any impact on shippers, but the shut-in testing must be performed to ensure the integrity of Southern's storage fields. Southern argues this exemption affords performance-related flexibility, does not place an undue burden on shippers, and is fair and provides for a safe and reliable system.

24. The Commission finds that Southern's limitation of reservation charge credits for seasonal shut-in tests is in direct conflict with Commission policy. As pointed out above, the Commission has held that the full reservation charge credit must be provided for scheduled amounts not delivered if the failure to deliver is due to scheduled maintenance. The Commission explained its position in Opinion No. 406,²⁵ stating:

[b]ecause a pipeline is responsible for operating its system so that it can meet its contractual obligations, if the pipeline must curtail firm service due to an event within its control, or management, the Commission finds it inequitable for the pipeline's customers to bear the risk associated with such mismanagement.

Furthermore, the Commission found that requiring a pipeline to pay for scheduled maintenance interruptions "provide[s] an incentive for the pipeline to manage its system so that it can avoid interruptions that it could have avoided if it had better managed its system."²⁶

25. The Commission consistently applied that position in subsequent cases.²⁷ In *El Paso Natural Gas Co.*,²⁸ the Commission held that the rule applies even to pipelines with little excess capacity. The Commission explained that "[t]he Commission's policy on this issue as set forth in the *Florida Gas* decision is not dependent upon specific operating conditions on the pipeline."²⁹

²⁵ Opinion No. 406, 76 FERC at 61,086.

²⁶ *Id.*

²⁷ See *Alliance Pipeline L.P.*, 84 FERC ¶ 61,239 (1998) (*Alliance*); *Florida Gas Transmission Co.*, 105 FERC ¶ 61,171, at P 34 (2003) (*Florida Gas*).

²⁸ *El Paso Natural Gas Co.*, 105 FERC ¶ 61,262 (2003) (*El Paso*).

²⁹ *El Paso*, 105 FERC ¶ 61,262 at P 15.

26. In *North Baja Pipeline, LLC*,³⁰ the pipeline argued that certain planned maintenance should be considered *force majeure* events under certain circumstances. It argued that Opinion No. 406 emphasized “control” and asserted that a pipeline, when it operates at full capacity, cannot avoid interrupting service at some point to perform necessary maintenance. Thus, it contended, at least for a pipeline that has little or no excess capacity, scheduled maintenance outages were therefore uncontrollable. The Commission rejected the pipeline’s contention.

27. On appeal, in *North Baja*, the D.C. Circuit upheld the Commission’s longstanding policy that scheduled maintenance in not a *force majeure* event for which only partial credits need be given. The court stated that the Commission has held that *force majeure* events are “events that are not only uncontrollable, but also unexpected.”³¹ The court referred to Opinion No. 406 where the Commission defined *force majeure* events as events that are not only uncontrollable but also unexpected and to subsequent Commission decisions to the same effect, citing the rehearing of *Florida Gas, Florida Gas Transmission Co.*, 107 FERC ¶ 61,704, at P 28-29 (2004), and *Alliance* cases.³² The court stated that “[i]n its orders here, FERC expressly relied on these precedents and applied its well-established and reasonable definition of a *force majeure* event to the case before it.”³³ The court held that, while some scheduled maintenance interruptions may be “uncontrollable” on a system operating at full capacity, they are not “unexpected.” The court concluded that “there is nothing unreasonable about FERC’s policy that pipelines’ rates should incorporate costs associated with a pipeline ‘operating its system so that it can meet its contractual obligations,’ and that a cost-sharing mechanism should be reserved for uncontrollable and unexpected events that temporarily stall service.”³⁴

28. Therefore, Southern is directed to eliminate this provision which does not allow reservation charge credits for failure to deliver due to seasonal shut-in tests or provide a further explanation why the policy discussed above should not be applied to it.

Use of the Previous Seven Day’s Average Quantities

29. Section 3(a)(i)(A)(1) of Southern’s Rate Schedules FT and FT-NN provides that in a non-*force majeure* event, Southern will provide a reservation charge credit equal to the

³⁰ 111 FERC ¶ 61,101.

³¹ 483 F.3d at 823.

³² 483 F.3d at 822-23.

³³ 483 F.3d at 823.

³⁴ *Id.*

lesser of a firm shipper's: (a) contract entitlement (i.e., maximum receipt or delivery daily entitlement); (b) the nominated quantities that Southern failed to deliver or schedule [as further defined therein]; and (c) "an average of the immediately previous 7 day's daily quantities ... [as further defined therein]." Indicated Shippers and the Municipals contend that this provision is contrary to the Commission policy in non-*force majeure* situations that the pipeline must provide a shipper a reservation charge credit for the full amount of firm service it scheduled which the pipeline failed to deliver. They assert that use of the average of the last seven day's daily quantities may allow Southern to calculate a curtailed shipper's credit based on a quantity that is significantly below the contract entitlement or volumes nominated for the day that service is not fully provided and, therefore, could understate the amount which was undelivered. They further assert that this possible result conflicts with the Commission's requirement that a full reservation charge credit must be given where scheduled gas is not delivered.³⁵

30. Southern argues that its three-pronged test is actually fairer than randomly using one day of scheduled volumes. Southern asserts that, when it gives advance notice of a scheduled maintenance event it is likely that the gas will not be scheduled, or on any given day the shipper might have circumstances on its system where it is not taking any gas. Therefore, it contends the averaging of seven day's flow provides a better representation and less arbitrary means of reflecting how the shipper is utilizing the system. Southern contends that the seven day average is meant to accurately reflect the volumes that a shipper would have transported to its delivery point if service was available.³⁶ Southern argues that pipelines typically schedule maintenance outages during periods of low demand and, therefore, the shipper will always get the benefit of the credit by application of the average volumes if no nominations are scheduled on the first day of the outage. Southern further contends that the purpose of the reservation charge credit is not a windfall and MDDQ (Maximum Daily Delivery Quantity) is not always the most reasonable volume to be used because shippers do not flow their MDDQ every day of the year. Southern further argues that, therefore, the MDDQ is the least accurate measure of the volumes that would have flowed but for an outage due to scheduled maintenance. Southern asserts that one of the reasons that the Commission requires scheduled maintenance activities to be posted in advance is so that shippers may have the opportunity to schedule their own maintenance activities, and pipelines and producers or plants have been known to schedule outages at the same time to reduce

³⁵ Citing *Bison Pipeline*, 131 FERC ¶ 61,013 at P 50.

³⁶ Southern asserts that the seven day period is fair and reasonable because it accounts for weekends and other swings in daily flow patterns and more comprehensive at determining the volume that the shipper would have flowed but for the scheduled maintenance event and gives the shipper the benefit of the doubt if no nominations are in place.

disruption on both parties' facilities. Southern contends that the use of average deliveries prevents shippers from gaming the system by submitting nominations above their actual needs when they know that an outage is planned, while at the same time avoiding the possibility that a shipper would get no credits when it does not nominate at all.

31. Southern contends that there is a lack of clarity in the *Bison Pipeline* decision cited by the protestors. Southern asserts that, in the case of planned maintenance, the reference to scheduled quantities could lead to no gas being scheduled and, consequently, no volumes being credited. Southern further asserts that the seven day average is not outside the Commission's policy and is much more fair, accurate, and descriptive than the Commission's stated standard which requires that the gas is scheduled. Southern argues that this provision is the result of a settlement and prevents shippers from "gaming the system" by submitting nominations above their actual needs when they know that an outage is planned or has occurred, solely to obtain a larger credit. Southern further argues that the reservation charge credit should not provide the shippers with a credit for service which they do not use and that its provision accurately defines the volumes to be credited.

32. As described above, the amount of reservation charge credits a pipeline must give in the non-*force majeure* situation is measured by the amount of service which the shipper scheduled but the pipeline was unable to deliver. The reservation charge credit is not measured by a shipper's contractual entitlement for service if the shipper scheduled less than its contractual entitlement. Thus, if the shipper scheduled service equal to 50 percent of its total contractual entitlement and the pipeline was unable to deliver any of the scheduled service, the reservation charge credit would be equal to 50 percent of the shipper's reservation charge for that day, not the entire reservation charge. When the pipeline gives notice of the non-*force majeure* service interruption at any time after the shipper's first opportunity to schedule service for the day in question,³⁷ the amount of service which the shipper scheduled but the pipeline was unable to perform is easily measured. Accordingly, in that situation, the reservation charge should be based on the volume the shipper scheduled but the pipeline was unable to deliver.

33. However, as Southern points out, it often gives advance notice of the unavailability of service, i.e., due to an outage or scheduled maintenance, before shippers have submitted scheduling nominations for the day (or days) of the outage. In that circumstance, shippers' scheduling nominations may not accurately reflect what they

³⁷ The North American Energy Standards Board (NAESB) standards currently provide shippers four nomination opportunities: the Timely Nomination Cycle (11:30 a.m. Central Clock Time (CCT) the day prior to gas flow); the Evening Nomination Cycle (6 p.m. CCT the day before gas flow); Intra-Day Cycle 1 (10 a.m. CCT the day of gas flow); and Intra-Day Cycle 2 (5 p.m. CCT the day of gas flow).

would have scheduled without advance knowledge that the scheduling nominations would not be accepted. Therefore, the Commission finds that it is reasonable for the pipeline to use an appropriate historical average of usage as a substitute for use of actual scheduled amounts to determine the level of the shipper's reservation charge credits under circumstances where the pipeline has given advance notice of the unavailability of service, i.e., due to an outage or scheduled maintenance, prior to shippers' scheduling nominations. As Southern argues, this approach minimizes the potential for gaming, where shippers would submit scheduling nominations for high amounts knowing that the scheduling nomination will be rejected, while ensuring that shippers who do not nominate will receive credits based on their recent usage of the system. Accordingly, the Commission finds that it is reasonable for Southern to use the shipper's prior seven day's utilization of firm capacity to calculate the reservation charge credit when the pipeline has given such advance notice, i.e., where either no volumes are nominated or the nominations on that day exceed average recent actual use.

34. However, when Southern has not given such advance notice of an outage and curtails a shipper's scheduling nomination during or after the NAESB scheduling process, the reservation charge credit must be based on the scheduled amount. Therefore, Southern is directed to revise its tariff to provide the previous seven day's average daily quantities will only be used to determine the level of reservation charge credits when the pipeline has notified the shipper prior to scheduling that the capacity will be unavailable or provide a further explanation why it should not be required to do so.

WIC Decision

35. Indicated Shippers assert that the Commission recently recognized in a decision concerning Wyoming Interstate Gas Company, Ltd. (WIC) that a shipper whose Timely Cycle nomination is curtailed by WIC should receive the credit if the shipper nominates the curtailed quantities on a different pipeline and, hence, does not re-nominate the quantities on WIC in the Evening Cycle.³⁸ Indicated Shippers argue that the Commission should require Southern to implement tariff language to the same effect in this proceeding.

36. Southern argues that the *WIC* decision is not applicable here. Southern asserts that, unlike WIC, Southern's shippers typically do not have multiple pipeline outlets and most of Southern's delivery points provide direct service to local distribution companies and other end-users. Southern further asserts that its nomination procedure rolls nominations through the term of the nomination and the only time a shipper has to re-nominate is if the term of the nomination has expired or if the shipper wants to change his nomination. Southern states that it does not intend to fail to provide a credit if a shipper

³⁸ Citing *Wyoming Interstate Gas Co., Ltd.*, 130 FERC ¶ 61,091, at P 17 (2010) (*WIC*).

nominated gas on the Timely Cycle and could not receive service, or, in other words, it does not intend to force a shipper to continue to nominate all the way into the Evening Cycle in order to obtain a credit.

37. In *WIC*, the Commission held that when a pipeline curtails a shipper's scheduling nomination after the Timely Nomination Cycle and the shipper then nominates the curtailed quantities on another pipeline, the shipper need not re-nominate service on the curtailing pipeline during subsequent nomination cycles to obtain a reservation charge credit for the curtailed amounts.³⁹ Southern states that it does not intend to require re-nomination in the Evening Cycle or fail to provide a reservation charge credit if a shipper nominated gas on the Timely Cycle and could not receive service. Consistent with that statement, Southern is directed to clarify its tariff to expressly provide that a shipper, whose nominations were curtailed in the Timely Cycle, would not have to re-nominate in a subsequent nomination cycle in order to obtain a reservation charge credit if the shipper's gas was scheduled on another pipeline consistent with the *WIC* decision or provide a further explanation why it should not be required to do so.

Secondary Points

38. Indicated Shippers also assert that Southern should be required to provide reservation charge credits if Southern does not provide secondary firm service where (1) the transaction involves gas flow exclusively on the portion of Southern's pipeline system that is between the shipper's primary receipt point and primary delivery point and (2) the curtailment is due to capacity constraints on the primary flow path, not at the nominated secondary receipt and/or delivery point. Indicated Shippers argue that, under such circumstances, the shipper's firm entitlements encompass the primary flow path and, the shipper's reservation charge should ensure that the shipper can utilize the primary flow path, even if the shipper is relying on a secondary receipt and/or delivery point. Indicated Shippers assert that this approach is reflected in an uncontested settlement filed by Columbia Gas Transmission Company on September 1, 2010, in Docket No. RP10-401-000, *et al.*, requiring the pipeline to provide the reservation charge credit in connection with both primary firm service nominations and secondary firm service nominations. Indicated Shippers also assert that a shipper's contractual entitlement to its primary flow path capacity, if the shipper is utilizing secondary points within that primary flow path, is reflected in Commission policy that a within-the-path nomination must have a higher scheduling priority than other secondary firm nominations.⁴⁰ Indicated Shippers assert that many pipelines go one step further by

³⁹ *WIC*, 130 FERC ¶ 61,091 at P 17. The Commission clarified that if the shipper nominating on another pipeline subsequently uses more capacity in the intraday cycles its credits may appropriately be reduced. *Id.*

⁴⁰ Citing *Columbia Gas Transmission Co.*, 100 FERC ¶ 61,344, at P 39 (2002).

giving the same scheduling priority to a primary firm nomination and a secondary firm nomination.

39. Southern argues, in its answer, that, consistent with other tariffs,⁴¹ no reservation charge credits apply when “(x) deliveries can be made to the shipper’s primary point and (w) when a shipper is using a secondary point instead of its primary point.”⁴² Southern asserts that under its tariff, deliveries to a secondary point are on a preferred interruptible basis. Southern argues that because these deliveries are not firm, pipelines should not be obligated to provide a credit for secondary firm service. Southern further argues that Commission policy requires pipelines to design their systems to have the capacity to deliver firm quantities to primary points, but shippers are not obligated to move from their primary points and any choice on their part to avail themselves of this flexible option does not obligate the pipeline to provide reservation charge credits.

40. Indicated Shippers’ request that the Commission require that reservation charge credits apply under certain circumstances to secondary nomination points is denied. Commission policy concerning reservation credits are related to primary firm service not secondary service or the scheduling priority of such service.⁴³ The Commission’s

⁴¹ Citing Rockies Express Pipeline LLC, FERC Gas Tariff, Second Revised Volume No. 1, Original Sheet No. 139; Tuscarora Gas Transmission Company, FERC Gas Tariff, Second Revised Volume No. 1, Part 6.19.2, and Part 6.19.3, Reservation Charge Credit, v.0.0.0.

⁴² Southern’s Answer, at 12.

⁴³ See *Tennessee Gas Pipeline Co.*, 73 FERC ¶ 61,083, at 61,206 (1995), where the Commission stated that:

A shipper pays reservation charges based on primary points not on secondary points. The secondary rights to delivery points are based on Commission regulations and are by definition inferior to primary point rights. The reservation charge a customer pays is based on its contract with the pipeline for receipt and delivery of gas at particular primary points, and corresponding reservation charge credits should ordinarily be given when the pipeline fails to provide service to those particular points. The contract does not guarantee the same level of security if other points are used; rather the Commission's regulations require [a pipeline] to provide service to those other points if it can. If a customer wants to be able to receive reservation charge credits for service at a particular point, then that customer should reserve that point as a primary point.

reservation charge crediting policy requirement is directed to the pipeline's responsibility to meet its contractual obligation to the shipper, and the firm shipper is guaranteed a firm right to delivery only at its primary points. Finally, provisions in settlements do not establish Commission policy.⁴⁴

The Commission orders:

(A) The tariff records listed in the Appendix to this order are accepted to become effective December 1, 2010, subject to conditions, as discussed in this order.

(B) The December 20 Compliance Filing is accepted as in satisfactory compliance with the November 30 Order.

(C) Southern is directed to file revised tariff records in compliance with the directives found in this order within thirty (30) days of the date of this order or explain why it should not be required to do so.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁴⁴ See, e.g., *El Paso Natural Gas Co.*, 112 FERC ¶ 61,150, at P 75 (2005).

APPENDIX

Southern Natural Gas Company SNG FERC Tariff Volume 1 FERC NGA Gas Tariff

Tariff Records Accepted, Effective December 1, 2010, Subject to Conditions:

Docket No. RP11-60-000

Overview, Table of Contents, 2.0.0
Overview, Preliminary Statement, 2.0.0
Statement of Rates, Negotiated Rates, 2.0.0
Rate Schedule, FT, 2.0.0
Rate Schedule, FT-NN, 2.0.0
Rate Schedule, IT, 2.0.0
Rate Schedule, CSS, 2.0.0
Rate Schedule, ISS, 2.0.0
Rate Schedule, Reserved, 2.0.0
Rate Schedule, PAL, 2.0.0
Section 1, Definitions, 3.0.0
Section 2, Inquiries and Cond. for Svc., 2.0.0
Section 4, Measurement, 2.0.0
Section 5, Measuring Equipment, 2.0.0
Section 8, Liability of Shipper and Co., 2.0.0
Section 12, Nominations, 3.0.0
Section 14, Resolution of Imb. and Adj., 2.0.0
Section 16, Allocation of Capacity, 2.0.0
Section 20, Pregranted Abandonment, 2.0.0
Section 23, Off-System Capacity, 2.0.0
Section 35, Fuel Mechanism, 2.0.0
Section 42, Discount Terms, 2.0.0
Appendix D, Supply Pool Balancing, 2.0.0
Form of Serv. Agreements, FT and/or FT-NN, 2.0.0
Form of Serv. Agreements, IT, 2.0.0
Form of Serv. Agreements, CSS, 2.0.0
Form of Serv. Agreements, ISS, 2.0.0
Form of Serv. Agreements, Liquefiabiles, 2.0.0
Form of Serv. Agreements, PAL, 2.0.0

Docket No. RP11-60-001

Section 4, Measurement, 3.0.0
Section 14, Resolution of Imb. and Adj., 3.0.0