

136 FERC ¶ 61,048
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.

Tennessee Gas Pipeline Company

Docket No. RP11-1484-001

ORDER DENYING REHEARING AND GRANTING CLARIFICATION

(Issued July 21, 2011)

1. This order addresses requests for rehearing or clarification of the Commission's December 1, 2010 order¹ filed by National Fuel Gas Distribution Corporation (National Fuel), National Grid Gas Delivery Companies (National Grid), the New England Local Distribution Companies (the New England LDCs), and PSEG Energy Resources & Trade LLC (PSEG). The rehearing petitioners raise several arguments concerning whether the Commission erred in accepting Tennessee Gas Pipeline Company's (Tennessee) revisions to its routine maintenance tariff provisions. For the reasons discussed below, the Commission denies the requests for rehearing or clarification filed by National Grid, the New England LDCs, and PSEG, and grants the request for clarification filed by National Fuel.

I. Background

2. In its November 1, 2010 Filing, Tennessee proposed to amend Article XII, *Excuse of Performance*, of the General Terms and Conditions (GT&C) of its tariff to replace its existing prohibition on scheduling of routine, non-emergency maintenance except between May 1 and November 1 (Blackout Dates), with a prohibition on such maintenance during "periods of peak demand." Tennessee argued that its market conditions have changed from a winter peak to a dual summer/winter peak and that substantial areas of its pipeline system operate at a high load factor for extended periods on a year-round basis, so that the flexibility of planning routine, non-emergency maintenance during the full twelve months of the year would enable it to better plan work around periods of peak demand when they arise. Tennessee also proposed to reduce the maintenance outage notification period from 15 days to "as soon as reasonably

¹ *Tenn. Gas Pipeline Co.*, 133 FERC ¶ 61,191 (2010) (December 1, 2010 Order).

practicable, but no later than five days prior to the scheduled activity.” Tennessee asserted that numerous pipeline tariffs have a more flexible reasonable notice standard and no minimum notification requirement, and that there are occasions when a five-day notice period would benefit both the customers and Tennessee.

3. A number of commenters protested the proposal, arguing, *inter alia*, that Tennessee’s proposal to allow routine maintenance during winter months and to shorten the notice requirement would increase the risk of interrupted service to firm shippers and the costs related to arranging for alternate service. The commenters also asserted that Tennessee had not supported the need for the changes and urged that the proposal be set for technical conference or consolidated with Tennessee’s forthcoming rate filing under section 4 of the Natural Gas Act (NGA).

4. In the December 1, 2010 Order, the Commission found Tennessee’s proposed changes to be just and reasonable and accepted the revised tariff record. The Commission found Tennessee’s proposal to be a reasonable response to the changing market conditions on Tennessee’s system and that the proposal was adequately supported. The Commission also found that Tennessee’s proposed provision is consistent with the tariff provisions of other pipelines, many of which provide even more flexibility for pipelines to schedule maintenance throughout the year and only promise “reasonable notice” of maintenance outages. The Commission noted that the provisions of Tennessee’s tariff that require it to provide reservation charge credits whenever it is unable to schedule service for firm shippers because it is performing maintenance provides Tennessee a further incentive to minimize any service interruptions for firm shippers. The Commission also declined to set the proposal for technical conference or consolidate it with Tennessee’s forthcoming section 4 rate filing, concluding that Tennessee had provided sufficient information to support acceptance of its proposal.

5. On December 29, 2010, the Commission issued an order in Tennessee’s rate case in Docket No. RP11-1566-000 that, among other things, directed Commission Staff to convene a technical conference to examine the non-rate issues in Tennessee’s section 4 rate filing, including issues related to Tennessee’s reservation charge credit provision.² On February 15 and 16, 2011, Commission Staff convened a technical conference. On May 31, 2011, the Commission issued an order that, among other things, required Tennessee to modify its existing tariff provisions concerning reservation charge credits during non-*force majeure* periods or explain why it should not be required to modify those provisions.³

² *Tenn. Gas Pipeline Co.*, 133 FERC ¶ 61,266 (2010).

³ *Tenn. Gas Pipeline Co.*, 135 FERC ¶ 61,208 (2011) (May 31, 2011 Order).

6. Requests for clarification, or in the alternative, rehearing, of the December 1, 2010 Order were filed by National Fuel, National Grid, and the New England LDCs. PSEG filed a request for rehearing. Tennessee filed an answer to the requests. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure⁴ prohibits answers to requests for rehearing. Accordingly, we reject Tennessee's answer.

II. Requests for Rehearing and Clarification

7. National Fuel asserts in its request for clarification or, in the alternative, rehearing, that Tennessee's tariff requires it to provide credits for planned maintenance for "the quantity of natural gas which Shipper has scheduled for delivery," and that in approving Tennessee's proposal in the December 1, 2010 Order, the Commission noted the availability of such credits to customers. However, National Fuel states that it has had informal communications with Tennessee in which Tennessee took the position that if planned maintenance results in less capacity than is required to serve customers' total nominations, Tennessee will not schedule volumes for which capacity is not available during such maintenance. National Fuel states that Tennessee's position is that when maintenance is planned, customers would not have their nominated volumes confirmed, and thus the customers would have no volumes "scheduled" to the extent that capacity is not available, and thus no credits would be due. National Fuel therefore contends that the issue of Tennessee's crediting provisions should be reconsidered in the instant case or considered in full in the new general rate case filed in Docket No. RP11-1566-000, since the December 1, 2010 Order relied on Tennessee's reservation charge credits as a rationale for accepting Tennessee's revised maintenance provisions.⁵ National Fuel requests that the Commission clarify that the December 1, 2010 Order will not foreclose or prevent full reexamination of the scheduling provisions of Tennessee's tariff in the general rate case. If the Commission concludes that the issues addressed in the December 1, 2010 Order are final and cannot be addressed in the new general rate case, then National Fuel requests rehearing of the Commission's decision to approve Tennessee's revised scheduled maintenance procedures partly on the basis of the availability of credits for customers.

8. National Grid requests that the Commission clarify that the term "periods of peak demand," as used in Article XII of the GT&C, means any period in which a firm shipper notifies Tennessee that the loss of any service that Tennessee proposes to curtail or interrupt in order to perform routine maintenance will either unreasonably jeopardize the

⁴ 18 C.F.R. § 385.713(d)(1) (2011).

⁵ *Tenn. Gas Pipeline Co.*, 133 FERC ¶ 61,266 (2010). National Fuel notes that Tennessee's crediting provisions are an issue in Tennessee's pending general rate case.

shipper's ability to meet its service obligations or impose costs on the customer that appear to be disproportionate to the benefit of allowing Tennessee to disrupt firm service to perform routine maintenance. National Grid states that to its knowledge, neither Tennessee's tariff nor Commission precedent provides an applicable definition of the term "periods of peak demand." National Grid argues that the definition of "periods of peak demand" should permit Tennessee and its customers to ensure that the pipeline's routine maintenance activities will not impose greater-than-necessary gas costs on retail consumers. National Grid contends that it is not just or reasonable for the Commission to approve tariff language that gives the pipeline an indeterminate level of discretion to perform routine maintenance when doing so may visit significant adverse consequences on firm shippers. Further, National Grid argues that the terms of a contract must be sufficiently definite to be specifically enforced, and that the use of the term "periods of peak demand" in Tennessee's tariff does not provide a specific enough delineation of Tennessee's rights and obligations with respect to the performance of routine maintenance activities. If the Commission does not grant the requested clarification, then National Grid seeks rehearing of the December 1, 2010 Order on the basis that the Commission erred by failing to address, or require Tennessee to address, the meaning of the term "periods of peak demand," and failing to adopt a definition of that term that is sufficiently definite to be specifically enforced and that appropriately balances the interest of pipelines and their firm customers.

9. In their request for rehearing, or in the alternative, clarification, the New England LDCs contend that the December 1, 2010 Order failed to address the concern of the New England LDCs that Tennessee has provided no supporting data or evidence to support its assertions of changing market conditions; that service provided on peak days during the summer is firm, rather than interruptible; or that the current 15-day notice period has prevented Tennessee from conducting routine maintenance. The New England LDCs also claim that the Commission erroneously declined to hold a technical conference to give the parties an opportunity to examine Tennessee's proposal.

10. The New England LDCs also contend that the Commission may have erred in concluding that customers will receive reservation charge credits associated with service interruptions resulting from routine maintenance and that this would give Tennessee an incentive to avoid service interruptions, given Tennessee's position on the issue, as described by National Fuel.⁶ The New England LDCs argue that rehearing is appropriate

⁶ The New England LDCs cite National Fuel's protest filed in RP11-1566-000: "[National Fuel] has had informal communications with Tennessee in which Tennessee has taken the position that when planned maintenance will result in less capacity than is required to serve customers' total nominations, customers will not have volumes scheduled to the extent that capacity is not available during such maintenance." New England LDCs Request for Rehearing or Clarification, at p. 9.

in situations such as the instant case in which additional information becomes available after the order is issued. Furthermore, the New England LDCs argue that reservation charge credits are hardly adequate compensation for having to secure replacement supplies on short notice in a constrained area like New England in winter. Therefore, the New England LDCs request that the Commission examine the issues regarding the interpretation of Tennessee's crediting provision on rehearing because they argue that if it becomes clear that Tennessee may not provide reservation charge credits for service interruptions due to maintenance, a major basis underlying the December 1, 2010 Order becomes invalid. In the alternative, the New England LDCs request that the Commission clarify that section 7 of Tennessee's firm rate schedules requires Tennessee to provide reservation charge credits to firm customers not permitted to schedule or receive service due to routine maintenance.

11. PSEG asserts that the Commission erred by approving Tennessee's proposal by relying on orders addressing conditions on other pipeline systems without factual demonstration that Tennessee faces similar conditions, and by approving the scope of unrestricted freedom conferred on Tennessee to undertake routine maintenance at any time of the year and without any guidance regarding the duration of routine maintenance episodes. PSEG requests that the Commission establish technical conference procedures to more fully explore Tennessee's proposal. PSEG asserts that the Commission relied too heavily on the tariff provisions regarding routine maintenance on other pipelines because the particular operating characteristics of those pipelines may not be relevant to the operational situations presented by the Tennessee system of today or the future. PSEG admits that Tennessee's assertion that its pipeline system is experiencing new flow periods and that its peak operation periods have changed is "undoubtedly true and certainly relevant," but claims that this does not lead to the conclusion that winter-time service provided to Tennessee's firm customers must now be exposed to higher operational risks and may actually lead to the opposite conclusion that additional protections are needed to ensure that customers who rely on natural gas for high priority uses continue to receive adequate service. If the Commission fails to grant rehearing by establishing a technical conference, it should at a minimum act on rehearing to limit any routine maintenance event to no more than a single 48-hour period.

III. Discussion

12. As discussed below, we will deny the requests for rehearing or clarification filed by National Grid, the New England LDCs, and PSEG, but will grant the request for clarification filed by National Fuel.

13. We affirm our finding that Tennessee's proposed modifications to its routine maintenance provisions are just and reasonable. Tennessee explained that its market conditions have changed from a winter peak to a dual summer/winter peak, so that the existing Blackout Dates no longer correlate to the peak periods on its system. One party that requested rehearing of the December 1, 2010 Order even admits that Tennessee's

assertion that its peak operation periods have changed is “undoubtedly true.”⁷ Tennessee explained that being able to perform routine maintenance during periods of relatively low use of its system would allow it to perform maintenance more efficiently. Tennessee also explained that reduction of the notice period from 15 to five days is necessary to allow Tennessee to take advantage of throughput drop-offs associated with brief periods of warm weather and weekend demand declines. We find that Tennessee provided adequate support for its proposal. In addition, as we stated in the December 1, 2010 Order, Tennessee’s proposed provision is consistent with, and in some cases more generous than, the tariff provisions of other pipelines.

14. New England LDCs assert in their request for rehearing that the Commission erred by approving Tennessee’s proposal without Tennessee providing sufficient information to prove that it experiences periods of peak demand in the summer, whether peaks are due to the provision of interruptible transportation service, and whether the 15-day notice period actually prevented Tennessee from conducting planned maintenance. However, Tennessee has no burden to show that the existing tariff provision is no longer just and reasonable in light of changed conditions. The Commission has found that: “The burden in a section 4 tariff filing is to demonstrate that the proposal is just and reasonable. There is no corresponding burden to demonstrate that the current tariff provision is unjust and unreasonable.”⁸ Furthermore, “[n]othing in Section 4 requires the pipeline to prove that its proposal is more just and reasonable than the existing” tariff provision.⁹ Tennessee provided information explaining the need for its proposal in light of changing market conditions on its system. As Tennessee noted, the proposed tariff changes do not affect Tennessee’s obligation to schedule maintenance so as to minimize or avoid service interruptions. We affirm our finding that Tennessee has provided sufficient information to support a finding that the proposed modifications are just and reasonable.

15. The December 1, 2010 Order noted that Tennessee’s tariff requires it to provide reservation charge credits whenever it is unable to schedule service for firm shippers because it is performing maintenance. National Fuel and the New England LDCs raise the issue that Tennessee has indicated that it might not give customers reservation charge credits associated with service interruptions resulting from routine maintenance. They state that Tennessee has suggested that its tariff only requires it to provide reservation

⁷ PSEG Request for Rehearing at 4.

⁸ *PG&E Gas Transmission Corp.*, 94 FERC ¶ 61,114 at 61,438 (2001), *affirmed sub nom, Duke Energy Trading and Marketing, L.L.C.*, 315 F.3d 377, 380 (D.C. Cir. 2003) (*Duke Energy*).

⁹ *Duke Energy*, 315 F.3d at 382.

charge credits when it cannot make scheduled deliveries and that, when it has given advance notice of a service outage due to routine maintenance, it would not schedule deliveries. New England LDCs claim that Tennessee's interpretation of its reservation charge credit provision would invalidate a major basis underlying the December 1, 2010 Order.

16. We will grant National Fuel's request for clarification that the December 1, 2010 Order does not prevent a reexamination of the reservation charge crediting provisions of Tennessee's tariff in the pending general rate case. In fact, parties have already raised this issue in the section 4 rate case. In the May 31, 2011 Order in that proceeding, the Commission interpreted Tennessee's reservation charge crediting provision for non-*force majeure* situations as requiring it to provide credits for nominated amounts that are not scheduled.¹⁰ However, the Commission stated that Tennessee may, as part of a compliance filing directed by the order, propose alternate tariff language to address Tennessee's concern that shippers may take advantage of advance notice of scheduled maintenance by submitting scheduling nominations that do not accurately reflect what they otherwise would have scheduled.¹¹ On June 30, 2011, Tennessee made its compliance filing, in which it proposed to measure against an historical average the amount of service not delivered when the pipeline has given advanced notice of the unavailability of service due to an outage or scheduled maintenance.¹² Thus, parties will have the opportunity to comment on Tennessee's proposed changes to its reservation charge crediting provision in the rate case proceeding.

17. PSEG argues that the Commission erred in the December 1, 2010 Order by relying on the tariff provisions of other pipelines in accepting Tennessee's proposal without careful consideration of whether the Tennessee system is operationally similar to such other pipelines. In the December 1, 2010 Order, the Commission noted that Tennessee's proposed tariff provision was consistent with the tariff provisions of other pipelines, which provide even more flexibility for pipelines to schedule maintenance throughout the year.¹³ There are at least five pipelines in the northeast United States with similar

¹⁰ May 31, 2011 Order, 135 FERC ¶ 61,208 at P 74-76.

¹¹ *Id.* P 77.

¹² Tennessee Gas Pipeline Co., Compliance Filing, Docket No. RP11-1566-004, at 3 (filed June 30, 2011).

¹³ December 1, 2010 Order, 133 FERC ¶ 61,191 at P 17.

provisions.¹⁴ PSEG has not shown that Tennessee is somehow uniquely situated such that its proposed provisions cannot be compared to those of other pipelines serving the same region.

18. We dismiss PSEG's request to institute a maximum duration for routine maintenance as unnecessary. We find that PSEG's concerns about periods of prolonged maintenance are adequately addressed by Tennessee's existing tariff. Tennessee's proposal does not change its existing obligation under its tariff to exercise reasonable due diligence in scheduling maintenance to minimize or avoid service interruptions. Therefore, we will dismiss its request to institute a maximum duration for routine maintenance.

19. National Grid argues that the term "periods of peak demand" is not sufficiently defined in Tennessee's proposed provision, urges the Commission to define or require Tennessee to define the term, and proposes its own definition. Tennessee asserted that "peak" is a common industry term and was used in prior versions of this provision without a specific definition. We agree that "peak" is a common industry term and find that National Grid has not demonstrated that it is now necessary to require Tennessee to amend its tariff to provide a specific definition. National Grid's proposed definition is untimely because it was proposed for the first time in National Grid's request for rehearing.

20. As discussed above, we find that Tennessee has met its burden to show that its proposal is just and reasonable. We therefore affirm our finding that a technical conference is unnecessary.

¹⁴ Transcontinental Gas Pipe Line Company, Fifth Revised Volume No. 1, Section 11, Force Majeure Provision and Contract Entitlements, 1.0.0 ("Seller shall exercise reasonable diligence to schedule maintenance so as to minimize disruptions of service to Buyers and shall provide reasonable notice of the same."); Maritimes & Northeast Pipeline, L.L.C., Maritimes Database 1, 26., Force Majeure, 0.0.0. ("Pipeline shall exercise due diligence to schedule routine repair and maintenance so as to minimize disruptions of service to Customers and shall provide reasonable notice of the same to Customers."); Algonquin Gas Transmission, LLC, Algonquin Database 1, 16., Force Majeure, 0.0.0; Dominion Transmission, Inc., DTI Tariffs, Tariff Record 40.14.6, GT&C Section 11A.6 - Routine Maintenance, 0.1.0; Texas Eastern Transmission, LP, Texas Eastern Database 1, 17., Force Majeure, 0.0.0.

The Commission orders:

(A) The requests for rehearing or clarification filed by National Grid, the New England LDCs, and PSEG are denied.

(B) National Fuel's request for clarification is granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.