

142 FERC ¶ 61,033
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellingshoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Tennessee Gas Pipeline Company, L.L.C.

Docket No. RP12-514-000

ORDER ESTABLISHING TECHNICAL CONFERENCE

(Issued January 17, 2013)

1. On March 23, 2012 Tennessee Gas Pipeline Company, L.L.C., (Tennessee) filed *pro forma* Tariff records¹ to modify the secondary in-the-path scheduling priority provisions of its FERC Gas Tariff (Scheduling Priority filing).² Several parties filed in support of Tennessee's proposal and numerous others protested it. For the reasons discussed below, we direct the Commission Staff to convene a technical conference to discuss the issues and concerns raised with respect to Tennessee's proposal.

Background

2. On November 30, 2010, Tennessee filed under section 4 of the Natural Gas Act³ (November 2010 Filing) to change its rates for existing services and to modify certain terms and condition of service. The November 2010 Filing included a proposal to elevate the scheduling priority of nominations from secondary receipt points to primary delivery points to the same level as nominations from primary receipt points to primary delivery

¹ Tennessee Gas Pipeline Company, L.L.C., FERC NGA Gas Tariff, TGP Tariffs; [pro forma Sheet No. 316, , 0.0.0](#), [pro forma Sheet No. 317, 0.0.0](#), [pro forma Sheet No. 318, , 0.0.0](#).

² See March 23, 2012 filing in Docket No. RP12-514-000, modifying Article IV, Sections 3 and 4 of the General Terms & Conditions (GT&C) of Tennessee's FERC Gas Tariff.

³ 15 U.S.C. § 717c (2006).

points. On December 29, 2010, the Commission issued an order accepting and suspending the rate changes effective June 1, 2011, subject to refund, setting the rate issues for hearing, and establishing a technical conference to consider the non-rate proposals, including Tennessee's scheduling priority proposal.⁴

3. On May 31, 2011, the Commission issued the Technical Conference Order, which, among other things, rejected Tennessee's scheduling priority proposal.⁵ The Commission found that the proposal violated its policy that primary to primary point transactions must be afforded the highest scheduling priority, consistent with the firm shippers' contractually guaranteed firm right to ship gas from the primary receipt points specified in their contracts to the primary delivery points. The Commission also found that Tennessee's proposal would potentially derogate the value of customers' primary in-the-path capacity by affecting their ability to transport gas from their primary receipt to primary delivery point. Finally, the Commission found that the proposal would have discriminated against shippers that seek to schedule through a primary path constraint from a primary receipt point to a secondary delivery point by not providing those shippers with the same elevated priority afforded to secondary receipt to primary delivery point shippers. Several parties sought rehearing or clarification of the Technical Conference Order.

4. On September 30, 2011, Tennessee filed an offer of settlement (Settlement), which the Commission approved on December 5, 2011.⁶ The Settlement resolved all the rate issues and most of the non-rate issues in Tennessee's NGA section 4 general rate proceeding but reserved for Commission determination several non-rate issues raised on rehearing, including the rejection of Tennessee's proposal to elevate the scheduling priority of nominations from secondary receipt points to primary delivery points to the same level as nominations from primary receipt points to primary delivery points. On April 19, 2012, the Commission granted rehearing and clarification of the Technical Conference Order with regard to its rejection of Tennessee's scheduling priority

⁴ *Tennessee Gas Pipeline Co.*, 133 FERC ¶ 61,266 (2010) (Suspension Order).

⁵ *Tennessee Gas Pipeline Co.*, 135 FERC ¶ 61,208, at P 27 (2011) (Technical Conference Order).

⁶ *Tennessee Gas Pipeline Co.*, 137 FERC ¶ 61,182 (2011) (Settlement Order). The Parties provided in the Settlement that Tennessee and its customers would meet once the Settlement was effective to discuss a proposal to elevate the priority of transactions to primary delivery points and that Tennessee would file such a proposal. Settlement Article XIV (B).

proposal.⁷ In the April 2012 Order, the Commission upheld its finding that Tennessee's original proposal violated the Commission's longstanding policy that primary to primary point transactions must be given superior priority to any transaction using a secondary point. With regard to the finding in the Technical Conference Order that Tennessee's proposal was discriminatory, however, the Commission granted rehearing to the extent that the language in the Technical Conference Order could have been construed as prohibiting a pipeline from giving priority to secondary service to primary delivery points over service from primary receipt points.⁸ The Commission acknowledged that it had approved one such methodology for Texas Eastern Transmission, LP, and that in doing so the Commission had stated that "to the extent there are scheduling conflicts over two secondary within-the-path transactions, the pipeline is free to choose any reasonable method for resolving such a conflict."⁹ Accordingly, the Commission clarified that its existing policy would permit a pipeline to establish a scheduling priority method that favored either secondary receipt to primary delivery point transactions over primary receipt to secondary delivery point transactions, or vice-versa, provided that all primary to primary point transactions have a higher priority than any transactions involving a secondary point.

5. The Commission also noted that it may be just and reasonable to give a priority to primary delivery point service over service from primary receipt points in order to protect end-use consumers who have minimal flexibility to vary where they receive service. The Commission pointed out that LDCs must deliver gas to their city gates to serve residential and other consumers behind that point, and similarly an industrial or electric generator must deliver gas to the delivery point serving the location of its plant or generator. Therefore, a scheduling proposal that distinguished between receipt and delivery point services on the basis of their disparate impact on consumers may be supportable to the extent a pipeline can demonstrate factual circumstances between services at delivery points as compared to receipt points.¹⁰

6. The Commission also found in the April 2012 Order that the clarification that Tennessee may reasonably give secondary receipt to primary delivery point transactions a

⁷ See *Tennessee Gas Pipeline Co., L.L.C.*, 139 FERC ¶ 61,050, at PP 13-26 (2012) (April 2012 Order).

⁸ April 2012 Order, 139 FERC ¶ 61,050 at P 23.

⁹ *Id.*, (quoting *Texas Eastern Transmission, LP*, 102 FERC ¶ 61,198, at P 33 (2003)).

¹⁰ April 2012 Order, 139 FERC ¶ 61,050 at P 26.

scheduling priority over primary receipt to secondary delivery point transactions reasonably addressed the concerns of the LDC proponents of Tennessee's original proposal, without the need to modify Commission policy. The Commission noted that the LDCs advocated approval of Tennessee's proposal based on the factual circumstances on which Tennessee relied in the rate case, namely the shifts in the natural gas market on Tennessee's system due to the availability of new gas supplies sourced from the Marcellus shale and the Rockies Express pipeline, which are received directly into Tennessee's market area downstream of its traditional Gulf of Mexico production area. The proponents claimed that Tennessee's proposal would ensure that Tennessee's LDC customers serving major northeastern markets that have primary receipts in the production area could access these new supplies from secondary receipt points within their primary path.¹¹ The Commission found that because Tennessee must reserve sufficient mainline capacity between the primary receipt and primary delivery points (capacity paths) of all its firm shippers to be able to serve their contract demand volumes, to the extent a shipper nominated service from a secondary receipt point in its path, the pipeline should have enough mainline capacity to schedule service from the secondary receipt point to the shipper's primary delivery point. The Commission thus concluded that it was not necessary to accept Tennessee's proposal to give the same scheduling priority to secondary to primary point transaction as primary to primary point transactions to allow LDCs to take advantage of the new supply sources in most instances.

7. Indicated Shippers,¹² BG Energy Merchants LLC (BG Energy), Enbridge Marketing (US) LP, (Enbridge) collectively with Independent Oil and Gas Association of West Virginia, Inc., (IOGA), and the Tennessee Customer Group,¹³ filed requests for

¹¹ April 2012 Order, 139 FERC ¶ 61,050 at P 28.

¹² The Indicated Shippers for purposes of the rehearing request are Apache Corporation, ConocoPhillips Company, ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation, Hess Corporation, Shell Energy North America (US), L.P. and Shell Offshore Inc.

¹³ The Tennessee Customer Group includes the following entities: CenterPoint Energy; City of Clarksville Gas and Water Department, City of Clarksville; City of Corinth Public Utilities Commission; Delta Natural Gas Company, Inc.; Greater Dickson Gas Authority; Hardeman Fayette Utility District; Henderson Utility Department; Holly Springs Utility Department; Humphreys County Utility District; Town of Linden; Morehead Utility Plant Board; Portland Natural Gas System, City of Portland; Savannah Utilities; Springfield Gas System, City of Springfield; City of Waynesboro; and West Tennessee Public Utility District; Athens Utilities; City of Florence, Alabama; Hartselle

(continued...)

rehearing of the April 2012 Order. The requests for rehearing will be addressed in an order following the technical conference established herein.

A. Tennessee's Scheduling Priority filing

8. As noted, on March 23, 2012, Tennessee made the Scheduling Priority filing to again propose revisions to its secondary in-path scheduling priority for purposes of allocating firm transportation capacity on its pipeline system. In its filing, Tennessee proposes to create two additional scheduling priority categories just below the scheduling priority of nominations for firm service from primary receipt points to primary delivery points, such that nominations for firm service from secondary receipt points to primary delivery points would be given a higher priority and scheduled before nominations for firm service from primary receipt points to secondary delivery points when there is a constraint within the shipper's primary path.

9. Tennessee contends that its revised proposal, which places the priority of transactions involving secondary points to a priority level below that of primary to primary point transactions, does not implicate the Commission's previous concerns regarding the degradation of the primary to primary point policy and devaluing of a primary to primary point customer's service. Tennessee also contends that its proposal is consistent with the Commission's general policy goal to maximize consumer benefits as mandated by the Wellhead Decontrol Act of 1989 and the goal of open access to ensure that consumers have access to an adequate supply of gas at a reasonable price. Tennessee asserts that its proposal furthers these goals by providing a scheduling priority to primary delivery rights coupled with secondary receipt rights, which emphasizes access to diverse supply and liquid pooling locations for human needs end users.

10. Tennessee also argues that providing different sets of customers with different terms of service does not violate section 4(b) of the NGA if the customers are not "similarly situated."¹⁴ Tennessee states that most of its firm maximum rate transportation contracts are held by LDCs who have human needs supplier of last resort service obligations.¹⁵ Tennessee thus argues that its revised proposal does not unduly discriminate against primary receipts to secondary delivery transactions because

Utilities; City of Huntsville, Alabama; Municipal Gas Authority of Mississippi; North Alabama Gas District; Tuscumbia Utilities and Sheffield Utilities.

¹⁴ Scheduling Priority Filing at 3-4 (quoting *Transcontinental Gas Pipe Line Corp.*, 130 FERC ¶ 61,043 (2010)).

¹⁵ Scheduling Priority Filing at 4.

customers that utilize such transactions are not similarly situated to the LDCs with public service obligations to serve end-users that primarily use Tennessee's secondary to primary transportation services.

11. Tennessee also contends that its proposal is consistent with Commission policy as set forth in Order No. 637.¹⁶ Tennessee states that in its Order No. 637 compliance proceeding, the Commission clarified that Order No. 637 did not mandate a specific order of priority for in-path transactions between one secondary and one primary point. Tennessee states that the Commission held that, "to the extent there are scheduling conflicts between two secondary within-the-path transactions, the pipeline is free to choose any reasonable method of resolving such a conflict."¹⁷

12. Tennessee also states that its proposal promotes access to diverse supply sources by increasing the reliability of transportation transactions between secondary receipt points and primary delivery points and encourages shippers to use supplies that are not connected to primary receipt points. Tennessee contends that when shippers have reliable access to diverse supply sources across Tennessee's system, including the shale plays in Texas and Louisiana and the Marcellus Shale in Appalachia, they will also be more likely to maintain long-term, long-haul contracts rather than letting these contracts expire in favor of short-term, short-haul contracts.¹⁸ Tennessee further states that the longer terms and increased billing determinants associated with this trend will provide a system benefit to all shippers on Tennessee's system.

13. Finally, Tennessee states that its proposal to elevate the priority of transactions from secondary receipt points to primary delivery points will promote the Commission's goal of reliability by ensuring those entities with primary firm delivery points that their gas will have a higher likelihood of not getting curtailed in the event of a capacity constraint.

¹⁶ *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America 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. American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005)

¹⁷ Scheduling Priority Filing at 4 (quoting, *Tennessee Gas Pipeline Co.*, 104 FERC ¶ 61,063, at P 40 (2003)).

¹⁸ Scheduling Priority Filing at 5.

B. Comments, Protests, and Responses

14. Public notice of Tennessee's filing was issued on March 27, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2012). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2012), all timely filed motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Comments¹⁹ or protests²⁰ were filed by numerous parties. National Grid filed an answer to the protests.

15. In general, the LDCs (including the New England LDCs, National Grid, and National Fuel Distribution), the TVA and other electric generators holding firm capacity on Tennessee, support the proposal, while producers and marketers generally oppose it.

1. Undue Discrimination

16. Virtually every protester asserted that Tennessee's proposal is unduly discriminatory in one manner or another. We summarize Tennessee's and the protesters positions on these issues below.

a. Priority Based on "Use" of Capacity

17. First, several protesters rely on the Technical Conference Order to argue that Tennessee's proposal is unduly discriminatory toward a shipper that seeks to schedule

¹⁹ The Tennessee Valley Authority (TVA), Tennessee Customer Group (TCG), The New England Local Distribution Companies (New England LDCs), The National Grid Gas Delivery Companies (National Grid), National Fuel Gas Distribution Corporation (National Fuel), and Louisville Gas and Electric Company (Louisville) filed comments in support of Tennessee's proposal.

²⁰ PSEG Energy Resources & Trade LLC (PSEG ER&T), Talisman Energy USA Inc. and Tenaska Marketing Ventures (Talisman and Tenaska), Statoil Natural Gas LLC and South Jersey Resources Group, LLC (Statoil), Calpine and US Gypsum Energy Services, L.P. and United States Gypsum Company (Calpine and US Gypsum), Indicated Shippers, New Jersey Natural Gas Company and NJR Energy Services Company (New Jersey Natural), Sequent Energy Management, L.P. (Sequent), Enbridge Marketing (US) LP and Independent Oil & Gas Association of West Virginia, Inc. (Enbridge and IOGA), Cabot Oil & Gas Corporation (Cabot), Chesapeake Energy Marketing, Inc. (Chesapeake), and the Apache Corporation (Apache) filed protests to Tennessee's proposal.

through a primary path constraint from a primary receipt point to a secondary delivery point by not providing such a shipper the same elevated priority as a shipper seeking to schedule from a secondary receipt point to a primary delivery point.²¹ These parties argue that while Tennessee's new proposal may have alleviated one of the Commission's initial concerns with Tennessee's scheduling priority proposal, that it would elevate a partial secondary point transaction to the same level as a wholly primary point transaction, it does not remedy the discrimination concern expressed in the Technical Conference Order. The protesters claim that Tennessee has offered no basis to avoid or reverse the clear discrimination ruling made in the Technical Conference Order, and that the current proposal suffers from the same problem of giving preferential treatment to one group of customers based on shipper identity or use, to the detriment of the value of other customers' primary receipt point capacity. Statoil and South Jersey argue that the Technical Conference Order correctly found Tennessee's initial proposal to be unjust and unreasonable because of its discriminatory effect, and that the current proposal suffers from the same deficiency, namely according a higher priority to certain capacity based on its use.²²

18. A large number of protesters claim that Tennessee's proposal is unduly discriminatory because it favors one set of firm shippers over another.²³ Talisman and Tenaska, for example, state that Tennessee's proposal is unduly discriminatory because it affords a higher degree of firmness to LDCs than it does to marketers, producers, asset managers, and other entities that are more likely to use secondary delivery points. Calpine and US Gypsum state that Tennessee's proposal is unduly discriminatory because it confiscates secondary point value from one set of firm capacity holders, and transfers it to a favored set of firm shippers at no additional cost, giving shippers nominating from secondary receipt points to primary delivery points an unfair economic advantage. CEMI claims that Tennessee's proposal discriminates against marketers and producers by inhibiting service on their primary paths.²⁴

²¹ See, e.g., Protest of Indicated Shippers at 4-5, Joint Protest of Statoil and South Jersey at 3-4, Protest of Enbridge and IOGA at 2-4.

²² See also Cabot Protest at 4.

²³ See, e.g., Protests of Apache, Cabot Oil, Calpine and US Gypsum, CEMI, Enbridge and IOGA, Indicated Shippers, New Jersey Natural and NJR, PSEG ER&T, Sequent, Statoil and SJRG, and Talisman and Tenaska.

²⁴ CEMI Protest at 3.

19. Statoil and Talisman and Tenaska argue that secondary service is intended as a means of allowing firm shippers to better optimize use of their capacity and is meant to provide economic benefits, rather than to be used for reliability purposes. They argue that because all firm shippers are “similarly situated” to one another in this regard, Tennessee’s proposal gives one set of shippers an unfair advantage.²⁵ They argue that the effect of the proposal is still to discriminate against one group of firm customers based on the use of the capacity.

20. Several protesters argue that the proposal is discriminatory because flexibility of delivery point access is as important as receipt point flexibility, particularly given the development of the Marcellus Shale. New Jersey Natural, for instance, contends that in today’s robust market with a broad diversity of capacity holders, producers and marketers in the Marcellus Shale are contracting for their own capacity in order to ensure access to markets. According to NJR, those producers are interested in secondary delivery point options to ensure the highest price for their supply.²⁶ Enbridge and IOGA similarly emphasize the importance of alternative delivery points for producers who hold firm capacity at a specific receipt point near their production, such as the Marcellus Shale. They assert that in the same transportation path the economic motivation of an LDC for access to the best supply sources and maximum transportation flexibility for their customers is no different from any other firm shipper.²⁷

21. Sequent claims that Tennessee’s proposal is “highly anti-competitive” because it provides an absolute scheduling priority to shippers nominating to primary delivery points (mainly incumbent LDCs) over all other entities seeking to transport gas to that point, even though both the LDC and the competing entity may have identical in-path rights to that delivery point. Sequent argues that the Commission must reject Tennessee’s discriminatory proposal and suggest a “walk-the-pipe” approach as an alternative remedy to address scheduling issues. Sequent states that under such an approach Tennessee would isolate the constraint and schedule capacity accordingly, allocating capacity first to transactions using primary firm path rights regardless of the priority of point rights. According to Sequent, in the situation where there is a mainline constraint, the nature of point rights is irrelevant because there is no competition for space at the delivery point itself. Sequent claims this approach will protect all shippers’ primary path rights and provide all firm shippers the equal opportunity to use alternative points of their choice. Sequent notes that if the constraint is at a receipt or delivery point,

²⁵ Talisman and Tenaska Protest at 5

²⁶ New Jersey Natural Protest at 7.

²⁷ Enbridge and IOGA Protest at 3, 5.

then point capacity should appropriately be allocated first to the shippers with primary rights at the point.²⁸

22. In support of Tennessee's proposal on the discrimination point, the TCG states that new proposal is justified because it does not degrade the priority of transactions that use primary receipt and primary delivery points and is thus not unduly discriminatory. National Grid and the New England LDCs argue that Tennessee's proposal does not violate the NGA's prohibition against undue discrimination because the Commission has already approved scheduling priorities that favor secondary to primary transactions over primary to secondary transactions, and indeed rejected claims that such scheduling priority was unjust, unreasonable and unduly discriminatory.²⁹ In its answer, National Grid asserts that Tennessee's proposal is not unduly discriminatory because it treats all similarly situated shippers transporting from secondary receipt to primary delivery points, whether they are LDCs, producers, marketers or end-users, alike. The supporters of Tennessee's proposal also assert that the vast benefits, including importantly the opportunity to access different sources of supplies that may become available along a shipper's firm capacity path, make the proposal just and reasonable.

b. Similarly Situated Arguments

23. As noted, Tennessee argues that its proposal is not discriminatory because it would provide different terms of service to customers that are not similarly situated. Tennessee's argument that it is just and reasonable to differentiate between different classes of customers is based on the claim that its LDC customers have "human needs supplier of last resort service obligations" and thus are not similarly situated to primary receipt to secondary delivery point transaction customers.³⁰

24. The TCG, National Fuel and National Grid state that Tennessee's proposal is just and reasonable because it recognizes the greater importance of shippers serving human needs end-use customers such as LDCs. The TCG argues that Tennessee's proposal recognizes the primacy of the public interest obligation of LDCs in providing for the firm requirements of their retail customers, a consideration that TCG argues is greater than simply achieving economic efficiencies, and one that therefore justifies a difference in service priority.

²⁸ Sequent Protest at 4-5.

²⁹ National Grid Comments at 6 (citing *Texas Eastern Transmission, LP*, 98 FERC ¶ 61,215, at PP 44-53 (2002), *order on reh'g*, 102 FERC ¶ 61,198 (2003)).

³⁰ Scheduling Priority Filing at 4.

25. National Grid states that Tennessee's proposal will allow firm shippers who have "provider of last resort" obligations an enhanced ability to acquire gas at an evolving set of receipt points while preserving those shippers' ability to meet their delivery obligations.³¹ National Grid further argues that because the Commission has recognized that it must provide service protections to high priority customers during periods of curtailment, it should also recognize that it is reasonable to provide a somewhat higher scheduling priority to shippers scheduling between secondary receipt points and primary delivery points. National Fuel adds that no "undue discrimination" arises from recognizing the differing needs of LDCs versus other shippers.

26. Numerous protesters challenge Tennessee's "human needs" argument. Several parties claim that Tennessee's human needs assertions are vague and unsupported.³² PSEG asserts that Tennessee has made no showing that LDC's "human needs" obligations are the only ones the Commission should consider, and point out that the needs of electric customers is another. Calpine and US Gypsum note that Tennessee's argument in favor of LDCs "proves too much" in that there would be no end to the preferences that could be justified if LDCs were deemed to be not similarly situated to other shippers based on their state imposed service obligations. BG Energy Marketers argue similarly that if approved Tennessee's proposal would require the Commission to look behind every transportation arrangement to assess the ultimate value of a capacity's use to determine whether shippers are similarly situated.

27. Protesters also claim that Tennessee's analysis ignores the equally significant service obligations of non-LDC shippers. Enbridge and IOGA note that in many of the retail markets served by Tennessee and other interstate pipelines, non-LDC producers and marketers participate in state residential choice programs and serve schools, hospitals, nursing homes and even residential customers, all of whom deserve the same level of reliable service as an LDC's "human needs" customers. Cabot Oil and Calpine and US Gypsum point out that non-LDC shippers delivering gas from primary receipt points to secondary delivery points have contractual delivery obligations that are no less important than those of LDC's delivering to primary delivery points, and that those obligations may well be to points at which gas is delivered to LDCs.

28. NJR points out that due to Commission's open access and other policies designed to ensure the efficient use of interstate capacity, the old model of LDCs being the sole or primary human needs provider of last resort no longer applies. CEMI argues that in the situation where an LDC cannot get its gas to its city gate, the current market is set up so

³¹ National Grid Comments at 7

³² Statoil/South Jersey Protest at 5.

that marketers and others can, and should be, granted an even playing field. Statoil and CEMI also state that drawing a distinction between primary delivery and primary receipt points is arbitrary as it does not fulfill Tennessee's stated goal of ensuring human needs end-users access to diverse supplies of natural gas. Statoil states that producers, marketers, and even human needs end-users often rely on secondary delivery points to reach the burner tip and to supply essential natural gas consumed by human needs end-users serving the same customer base as secondary to primary shippers. Statoil further states that Tennessee's proposed scheduling priorities will not dictate who will receive gas during curtailments but rather will only determine whose capacity will be used to deliver the gas.

29. Indicated Shippers further state that there is no difference between LDC and non-LDC customers that would merit a difference in scheduling priority. Indicated Shippers argue that by definition LDCs seeking to fulfill a supplier-of-last-resort obligation cannot rely on access to secondary receipt point capacity because such obligations must be supported by primary-to-primary firm transportation rights to satisfy their state regulatory requirements.

2. Effects on the secondary market

30. Several protesters contend that Tennessee's proposal would have a detrimental effect on the secondary capacity release market and the development and use of asset management arrangements (AMA). Sequent, for example, claims that by giving preference to primary delivery points, Tennessee would impair asset managers' ability to optimize excess firm capacity rights, in turn, reducing the value of secondary capacity to those seeking unneeded capacity. Calpine and US Gypsum make a similar argument noting that in most situations when an end use shipper releases its capacity, the replacement shipper moves volumes to a secondary delivery point, so under Tennessee's proposal the capacity would be less attractive because of its lower priority, and thus harder to resell. Calpine and US Gypsum further state that Tennessee's proposal would disrupt the secondary market by creating a scheduling hierarchy that moves replacement shippers using secondary delivery points to the lowest scheduling priority, while significantly hampering the efforts of end-use shippers to release capacity in the secondary market. Apache and Indicated Shippers also claim that Tennessee's proposal would cause disruptions in the capacity release market because replacement shippers could choose to nominate primary points on sections of a pipe where capacity is released to them even though the releasing shipper may not have nominated a primary point on that capacity.

31. In its answer, National Grid claims that the arguments that Tennessee's proposal would undercut the development of AMAs are invalid. National Grid contends that because the cornerstone of AMAs is the asset manager's delivery or purchase obligation, from the standpoint of LDCs and end-users, providing a higher scheduling priority for transactions to primary delivery points will give releasing shippers entering into AMAs

greater confidence in their asset managers' ability to meet their delivery obligations even though the asset manager may be using the releasing shipper's primary receipt point capacity to optimize the value of the capacity.³³ They assert this would result in higher secondary in-path scheduling priority for segmented replacement shippers scheduling to their own designated receipt point.

3. Impact on the reliability of electrical generation

32. Several protesters claim that Tennessee's proposal, because of its detrimental effect on the secondary market, will be harmful to the reliability of the electrical generation market. They also contend that Tennessee's proposal is contrary to the Commission's natural gas/electric coordination initiative. NJR states that many electric generators rely heavily on marketers and others, including LDCs, to flexibly meet their gas requirements in an efficient cost effective manner. NJR also asserts that the priority afforded to secondary delivery rights plays a large part in the ability of marketers to reliably meet the demands of electric generators, and that degradation of this priority could have a negative impact on their ability to meet the demands of gas fired generators.

33. PSEG asserts that Tennessee's proposal could frustrate the achievements and continuing efforts for gas electric coordination. PSEG states that electric generators seeking firm capacity rights often utilize the secondary market recognizing such capacity is unlikely to have primary to primary point priority but relying nonetheless on the fact that secondary firm service is currently highly reliable. PSEG claims that Tennessee's proposal would undermine those customers' reliance on the firmness of the secondary market and dampen their willingness to make a financial commitment to firm service payments. NJR also asserts that Tennessee's proposal runs contrary to the natural gas electric coordination initiative to explore ways to enhance the reliability of supply to electric generators. According to NJR, Tennessee's scheduling priority proposal would disadvantage shippers using their capacity to supply electric generators at secondary points, and those shippers releasing capacity to marketers or generators themselves, as well as those shippers' end-use customers, thus potentially impacting electrical reliability.

34. National Grid argues that NJR's claim is meritless and factually unsound. National Grid asserts that there is no evidence to support NJR's assertion that "the priority afforded to secondary delivery rights plays a large part in the ability of marketers to reliably meet the demand of electric generators," and that even if there were, it is in the public interest to encourage electric generators to secure primary capacity at delivery points or make other arrangements to ensure that they meet their human needs obligations. The TVA, which itself operates electric generators, states that the proposal

³³ National Grid Answer at 6.

aids firm shippers and adds to the reliability of gas-fired generators that utilize firm transportation because the proposal recognizes the importance of transactions that use contracted primary receipt or primary delivery points over transactions that use only secondary receipt and delivery points.

4. Miscellaneous Issues

35. Protesters raise a number of other arguments against Tennessee's proposal. Statoil argues that without reliable capacity to move gas from production to market, producers could be discouraged from investing in the infrastructure to bring new and "diverse gas supplies" online. It also claims that by shifting transportation rights and entitlements from shippers with firm supply commitments and diverse delivery obligations to shippers with varying supply commitments and single delivery obligations, Tennessee's proposal could potentially strand interstate capacity held by shippers with firm primary receipts and diverse deliveries, thereby reducing market efficiency.

36. CEMI states that Tennessee's proposal would limit the ability of producers to move natural gas to city-gates within the primary path for which they contracted, which would limit the security of supply to LDCs who might turn to these producers and marketers for incremental or replacement supply.

37. National Grid states that Tennessee's proposed changes will help the Commission achieve its policy goals of improving the structure of the pipeline industry to maximize the consumer benefits of the competitive wellhead gas market and ensuring that all consumers have access to an adequate supply of gas at a reasonable price by better enabling shippers such as National Grid to access pooling points and other diverse supply locations for the benefit of their human needs customers.

38. Several parties also contend that contrary to its assertions, Tennessee's proposal is inconsistent with the Wellhead Decontrol Act and Commission policy.³⁴ Indicated Shippers state that one of the main goals of the Wellhead Decontrol Act was to improve the competitive structure of the natural gas industry and that Tennessee's proposal contradicts this goal by giving an unfair advantage to a certain class of shippers.

39. Protesters also challenge Tennessee's claims that its proposal is consistent with Order Nos. 637-A and 637-B and related orders. As noted above, National Fuel and TCG state that the Commission has approved other, similar, pipeline proposals. National Grid also states that the proposal is consistent with Order No. 637.

³⁴ See, e.g., *Protests of Apache, Calpine and US Gypsum, Enbridge and IOGA, and Indicated Shippers.*

40. Calpine and US Gypsum state that the Commission has never previously authorized the allocation of capacity based on a pipeline's assessment of capacity's end use, and it should not do so here. Apache and Indicated Shippers argue that differentiating secondary in-path scheduling priority based on whether the delivery point is a primary point introduces a new level of uncertainty that would undermine the objective of creating a tradable in-path priority, contrary to Order No. 637-A. Enbridge and IOGA argue that Tennessee's proposal is at odds with Order 637-B where the Commission explained that its in-path priority policy would apply equally to primary to secondary or secondary to primary movements.

Discussion

41. The Commission has reviewed Tennessee's filing, and the comments and protests and responsive pleadings. As a result of our review of the pleadings, we find that Tennessee's proposal raises operational and technical issues that will best be addressed at a technical conference where staff and all parties will have an opportunity to further discuss the issues presented by Tennessee's proposal. Accordingly, the Commission Staff is directed to convene a technical conference to address the issues raised by Tennessee's filing and to report the results of the conference to the Commission within 120 days of the date this order.

42. The impetus for Tennessee's original rate case scheduling priority proposal and the instant proposal is concerns regarding access to the Marcellus Shale and other supply sources that are currently being developed in relatively close proximity to the market area of Tennessee's system. Tennessee's proposal here would provide LDCs, electric generators and other entities holding firm primary delivery point capacity to serve their own needs a higher scheduling priority for secondary in-path transactions than other entities, including marketers and producers, shipping gas to secondary delivery points. Tennessee's proposal raises significant policy issues concerning whether and in what circumstances such a scheduling priority should be permitted. Before resolving those issues, the Commission requires clarification of various relevant factual issues concerning the potential effects of Tennessee's proposal.

43. In the April 2012 Order, the Commission noted that Tennessee must maintain sufficient mainline capacity between the primary receipt and delivery points of all its firm shippers in order to be able to serve all their contract demands.³⁵ Accordingly, the Commission found that when a firm shipper nominates service up to its mainline contract demand from a secondary receipt point within its primary path, Tennessee should

³⁵ *Id.*, P 29 (citing Undersigned Parties June 30, 2011 Rehearing Request at 27-28).

ordinarily have sufficient mainline capacity to schedule service to that shipper's primary delivery point, without the need to give such transactions the same priority as primary receipt to primary delivery point transactions.³⁶

44. Tennessee's current proposal to give secondary receipt point to primary delivery point transactions a higher priority than primary receipt point to secondary delivery points raises similar questions as to how often and under what circumstances Tennessee would reject primary receipt to secondary delivery point scheduling nominations if its proposal were accepted. Tennessee's *pro forma* firm transportation (FT-A) agreement requires Tennessee to accept and deliver on a firm daily basis up to the maximum daily contract quantity of natural gas, and to reserve capacity equal to a shipper's contract quantity between its primary receipt and delivery points, which Tennessee defines as a shipper's "capacity path."³⁷ Thus if a shipper along a route that shares the same capacity path as another shipper elects to move its gas to an upstream delivery point on that capacity path, regardless of any constraint on the system, Tennessee should have reserved both shippers' contract quantity along their entire capacity paths, including necessarily from the first shipper's primary receipt point to its secondary delivery point.³⁸ Tennessee therefore should be able to deliver both shippers' volumes without having to allocate capacity. Thus, depending on the location of the point of constraint, it does not seem that there should be any instances where there would be a conflict between transactions involving secondary points along a shipper's capacity path, absent a point capacity issue or a mainline *force majeure* outage. Tennessee has not explained in its filing the circumstances under which its proposal would affect priority among shippers that are both within their primary paths nor the likely location of any capacity constraints which could require such a capacity allocation.³⁹

³⁶ *Id.*, P 29.

³⁷ Tennessee's tariff, GT&C section I.35.

³⁸ If the shipper sought to use a secondary point downstream of its primary point, and a constraint existed downstream of the primary point, that shipper would already receive a lower priority because its secondary point transaction would be out of path.

³⁹ While Tennessee cites to human needs as a justification, it would appear that the shipper using its primary delivery point would not be cut off from its supply of natural gas. If the issue is simply the price paid for that gas, Tennessee has not explained why those customers would be entitled to a lower price than customers that may have paid for transportation to access lower cost gas supplies.

45. In order for Tennessee to demonstrate that its proposal is just and reasonable, it must provide a better explanation of the location of any relevant system constraints that its proposal is meant to address, and whether Tennessee considers those constraints to be in-the-path of various shippers. Therefore, Tennessee should be prepared to discuss at the technical conference how many days during 2012 it had mainline constraints requiring the allocation of within-the-path firm capacity, the location of each such constraint, and what operational problems such as *force majeure* outages may have caused such constraints. Also, Tennessee should be prepared to discuss how it determines whether a particular constraint is within a firm shipper's primary path. For example, if a shipper has a primary receipt point in the Gulf of Mexico and a primary delivery point in Zone 4 on Tennessee's 200-line, would a point of constraint in the Marcellus Shale area in Pennsylvania on Tennessee's 300 Line be treated as within that shipper's primary path? Also, if constraints are in the near vicinity of certain shippers' primary receipt points, does that fact argue against lowering their priority for secondary firm service? Tennessee's responses to these questions should be accompanied with maps and/or flow diagrams.

46. In summary, at the technical conference Tennessee should be prepared to address all the issues raised by the parties in their pleadings and to provide additional technical, engineering, and operational support for its proposal as appropriate. Tennessee should be prepared to discuss scenarios that would require the implementation of the new delivery point priority tier, including examples with different points of constraint in the supply and market areas of Tennessee's system, and on each of Tennessee's supply and mainline legs. Tennessee should also discuss the specific pathing for each transaction and the ultimate allocation resolution.

47. Finally, to ensure that the Commission and the parties are working with the most current information, Tennessee should be prepared to discuss the status of any expansion or other project either currently underway or recently completed that may affect or be affected by the instant proposal.

The Commission orders:

The Commission's staff is directed to convene a technical conference to address the issues raised by Tennessee's filing and to report the results of the conference to the Commission within 120 days of the date this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.