

145 FERC ¶ 61,058
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Tennessee Gas Pipeline Company, L.L.C.

Docket Nos. RP12-514-000
RP12-514-001
RP11-1566-013
RP11-2066-002

ORDER ON TECHNICAL CONFERENCE AND DENYING REHEARING

(Issued October 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 On January 17, 2013, the Commission issued an order establishing a technical conference to discuss issues and concerns raised by Tennessee's filing,³ and on April 10, 2013, the Commission convened the referenced technical conference. As discussed below, in the instant order the Commission approves Tennessee's proposal, subject to Tennessee submitting actual tariff records matching its *pro forma* tariff records, within thirty (30) days of the issuance of this order, and denies rehearing of the 2013 Technical Conference Order. We also deny the requests for rehearing of our April 2012 order in Docket No. RP11-1566-003, et al.⁴

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 *Tennessee Gas Pipeline Co., L.L.C.*, 142 FERC ¶ 61,033 (2013) (2013 Technical Conference Order).

⁴ See *Tennessee Gas Pipeline Co., L.L.C.*, 139 FERC ¶ 61,050 (2012) (April 2012 Order).

I. Background

A. Tennessee's 2010 Scheduling Priority Proposal

2. On November 30, 2010, Tennessee filed under section 4 of the Natural Gas Act (NGA)⁵ (November 2010 Filing) to change its rates for existing services and to modify certain terms and conditions 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 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.⁶

3. On May 31, 2011, the Commission issued an order, which, among other things, rejected Tennessee's scheduling priority proposal.⁷ The Commission found that the proposal violated the policy that primary to primary point transactions must be afforded the highest scheduling priority, consistent with firm shippers' contractually guaranteed firm right to ship gas from the primary receipt points specified in their contracts to their 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 2011 Technical Conference Order.

4. On September 30, 2011, Tennessee filed an offer of settlement (Settlement), which the Commission approved on December 5, 2011.⁸ The Settlement resolved all the rate issues and most of the non-rate issues raised by Tennessee's November 2010 Filing but

⁵ 15 U.S.C. § 717c (2006).

⁶ *Tennessee Gas Pipeline Co.*, 133 FERC ¶ 61,266 (2010) (Suspension Order).

⁷ *Tennessee Gas Pipeline Co.*, 135 FERC ¶ 61,208, at P 27 (2011) (2011 Technical Conference Order).

⁸ *Tennessee Gas Pipeline Co.*, 137 FERC ¶ 61,182 (2011) (Settlement Order). The Parties provided in the Settlement that Tennessee and its customers would meet after 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).

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.

5. On April 19, 2012, the Commission generally denied rehearing of the 2011 Technical Conference Order with regard to its rejection of Tennessee's scheduling priority proposal.⁹ 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.¹⁰ With regard to the finding in the 2011 Technical Conference Order that Tennessee's proposal was discriminatory, however, the Commission granted rehearing to the extent that the language in the 2011 Technical Conference Order could have been construed as prohibiting a pipeline from giving a higher priority to service from secondary receipt points to primary delivery points than to service from primary receipt points to secondary delivery points, when both transactions are within each shipper's primary path.¹¹ The Commission acknowledged that it had approved one such methodology for Texas Eastern Transmission, LP (Texas Eastern), 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."¹² 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.

6. The Commission also noted that it may be just and reasonable to give 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

⁹ See April 2012 Order, 139 FERC ¶ 61,050 at PP 13-26.

¹⁰ The Commission also upheld its rejection of Tennessee's proposal to prioritize nominations for secondary capacity outside the contract path on the basis of price (highest rate first, lowest rate last).

¹¹ April 2012 Order, 139 FERC ¶ 61,050 at P 23.

¹² *Id.* (quoting *Texas Eastern Transmission, LP*, 102 FERC ¶ 61,198, at P 33 (2003) (*Texas Eastern*)).

extent a pipeline can demonstrate differences between service at delivery points as compared to receipt points.¹³

7. Several parties (Indicated Shippers;¹⁴ 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),¹⁵ filed requests for rehearing of the April 2012 Order. In general, those seeking rehearing contend that the April 2012 Order's findings with regard to the scheduling priority for secondary transactions based on a shipper's path are contrary to existing Commission policy and are preferential and discriminatory. Several parties also contend that those findings in the April 2012 Order pre-judged Tennessee's Scheduling Priority Filing. BG Energy and the Tennessee Customer Group also sought rehearing of the Commission's rejection of Tennessee's proposal to schedule certain secondary transactions by price. As discussed more fully below, we deny the requests for rehearing.

B. Tennessee's 2012 Scheduling Priority Proposal

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. Tennessee proposed 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 within-the-path service from secondary receipt points to primary delivery points would be given a higher priority and scheduled before nominations for firm service from

¹³ April 2012 Order, 139 FERC ¶ 61,050 at P 26.

¹⁴ 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., (Indicated Shippers I).

¹⁵ According to its filing, 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 Utilities; City of Huntsville, Alabama; Municipal Gas Authority of Mississippi; North Alabama Gas District; Tuscumbia Utilities and Sheffield Utilities.

primary receipt points to secondary delivery points when there is a constraint within the shipper's primary path.

9. According to Tennessee its new proposal is just and reasonable because it would promote access to diverse supply sources, including the new Marcellus shale gas in the middle of its system, by increasing the reliability of transportation transactions between secondary receipt points and primary delivery points. Tennessee stated its proposal also recognizes the need to provide a higher scheduling priority to LDCs who have purported human needs of last resort service obligations, and it avoids the issue of placing secondary service on the same level as primary service. Tennessee also argued that the Commission had approved a similar scheduling priority for Texas Eastern as discussed in the April 2012 Order. Tennessee claimed that giving its existing long-haul shippers reliable access to supply sources across its system, including the Marcellus shale gas, would encourage those shippers to maintain long-haul contracts when those contracts expire, instead of switching to short-haul contracts.

10. Numerous parties filed comments¹⁶ or protests¹⁷ to the Scheduling Priority Filing. National Grid filed an answer to the protests. 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, supported the proposal, while producers and marketers generally opposed it.

11. Virtually every protester asserted that Tennessee's proposal is unduly discriminatory in one manner or another. A large number of protesters claimed that Tennessee's proposal is unduly discriminatory because it favors one set of firm shippers

¹⁶ The Tennessee Valley Authority (TVA), Tennessee Customer Group, 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.

¹⁷ PSEG Energy Resources & Trade LLC (PSEG ER&T), Talisman Energy USA Inc. and Tenaska Marketing Ventures (Talisman and Tenaska), Statoil Natural Gas LLC (Statoil) and South Jersey Resources Group, LLC (SJRG), Calpine and US Gypsum Energy Services, L.P. and United States Gypsum Company (Calpine and US Gypsum), ConocoPhillips Company, ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation, Shell Energy North America (US), LP and Shell Offshore Inc. (collectively, Indicated Shippers II), 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.

over another.¹⁸ Others argued that the proposal is discriminatory because it would inhibit delivery point flexibility, which they contend is critical, particularly given the development of the Marcellus Shale. Others asserted 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.¹⁹

12. In support of Tennessee's proposal on the discrimination point, Tennessee Customer Group stated the 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 argued 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.²⁰

13. Several protesters contended 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). Several protesters claimed that Tennessee's proposal, because of its detrimental effect on the secondary market, would be harmful to the reliability of the electrical generation market. They also contended that Tennessee's proposal is contrary to the Commission's natural gas/electric coordination initiative. National Grid argued that claims concerning the effect of Tennessee's proposal on the electric generation market are meritless and factually unsound.

C. 2013 Technical Conference Rulings and Comments

1. 2013 Technical Conference Order

14. On January 17, 2013, the Commission issued the 2013 Technical Conference Order, directing the Commission Staff to convene a technical conference regarding the issues and concerns raised with respect to Tennessee's Scheduling Priority Filing. The Commission noted in that order that its regulations require pipelines to reserve sufficient mainline capacity between the primary receipt and primary delivery points of its firm shippers to be able to serve all those shippers' contract demand, even if those shippers were going to in path secondary points. Tennessee's firm agreements obligate it to

¹⁸ See, e.g., *Protests of Apache, Cabot Oil, Calpine and US Gypsum, Chesapeake, Enbridge and IOGA, Indicated Shippers II, New Jersey Natural and NJR, PSEG ER&T, Sequent, Statoil and SJRG, and Talisman and Tenaska.*

¹⁹ *Enbridge and IOGA Protest* at 3, 5.

²⁰ *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)).

reserve capacity along each shipper's "capacity path" such that if two shippers share a capacity path, Tennessee should be able to deliver both shippers' volumes without curtailment. Accordingly, the Commission questioned why the proposal was necessary at all, and under what particular circumstances Tennessee would implement it. The Commission also inquired whether Tennessee had previously experienced situations where the proposal would have been utilized, and whether it had experienced or anticipated points of constraint on its system that the proposal was meant to address. Tennessee and the New England LDCs sought rehearing of the 2013 Technical Conference Order and Tennessee Customer Group filed a motion for reconsideration of that order. As discussed more fully below the requests for rehearing and Tennessee Customer Group's motion are denied.

15. Based on these factual issues identified in the 2013 Technical Conference Order, Staff sent a data request to Tennessee requesting information about how often during the last four calendar years Tennessee experienced mainline constraints that required allocation, and regarding the number of electric generators connected to Tennessee's system and the nature of the contracts under which those generators received service.²¹

16. The Staff held a technical conference on April 10, 2013. Tennessee's responses to the data request and at the technical conference indicated that Tennessee would only implement the new proposal in an extended maintenance or *force majeure* situation, and that it has not had to restrict secondary in-path service at all in the past four years. Supplemental data submitted by Tennessee shows that approximately 32 electric generators receive service from Tennessee, including at least 13 in New England. The supplemental data show that over 99 percent of Tennessee's deliveries to the points serving those generators were made pursuant to firm transportation contracts. The data further show that approximately 56 percent of deliveries serving New England electric generators were made using firm contracts held by someone other than the generator, indicating that New England generators rely heavily on purchasing gas at their downstream delivery points from other shippers holding firm transportation contracts on Tennessee. Similarly, about, 61 percent of deliveries to non-New England generators were also made using firm contracts held by someone other than the generator.

2. Comments in Support

17. The parties' post-technical conference comments were generally consistent with their earlier positions. Tennessee and the LDCs contend that the proposal is consistent with Commission policy and precedent, particularly the scheduling priority methodology the Commission approved in *Texas Eastern*.²² They claim that the recent changes in the industry relating to the development of the vast shale gas supplies support the need for a

²¹ See Data Request dated February 8, 2013.

²² See, e.g., Tennessee Comments at 2-3.

priority scheme that facilitates shippers' ability and willingness to access alternative supplies.²³ Tennessee claims its proposal would provide firm shippers a greater opportunity to avail themselves of new sources of supply along Tennessee's system on a secondary basis, while maintaining primary delivery point reliability. The backers of Tennessee's proposal further assert that enhancing the priority of delivery points will increase shipper's confidence in the use of new alternate supply sources, thereby increasing the universe of buyers of those supplies, and providing incentives for producers and marketers to continue to develop them.²⁴

18. The proponents of Tennessee's proposal contest the opponents' assertions that it will reduce the willingness of producers and marketers to participate in expansions to ship Marcellus shale gas. National Fuel Distribution and National Grid assert that the opponents fail to recognize the relevant factual evidence of Texas Eastern's operating experience under a similar scheduling priority arrangement.²⁵ They claim that Texas Eastern's system is similar to Tennessee's in that they both provide primarily southwest to northeast long-haul transportation service, they both run through the Marcellus and Utica shale areas, they both expanded their systems to meet the demand for this new supply, and they both serve a large and growing electric generation load. They also note that many of those criticizing Tennessee's proposal are major customers of Texas Eastern that have entered into new long term contracts with Texas Eastern in the past five years. National Fuel Distribution and National Grid also assert that claims that Tennessee's scheduling modification will discourage marketers and producers from supporting new capacity are belied by the fact that at least two of the entities making such claims have executed contracts for capacity on Texas Eastern's recent expansion project.²⁶ The commenters point out that these agreements were executed recently - since the changes in market conditions described above. National Fuel Distribution and National Grid Delivery Companies conclude that if Tennessee's proposal would cause the detrimental effects claimed by the opponents, then one would have seen similar results on Texas Eastern. They assert there is no such evidence in the record here.

²³ *Id.*, at 3-6.

²⁴ *See, e.g.*, Post-Technical Conference Comments of National Fuel Distribution and National Grid Delivery Companies (National Fuel/National Grid comments).

²⁵ Reply Post-Technical Conference Comments of National Fuel Distribution Corporation and the National Grid Gas Delivery Companies (National Fuel/National Grid Reply comments) at 3-5.

²⁶ National Fuel/National Grid Reply Comments at 4 (noting that Chesapeake and Statoil have signed twenty-year contracts for 425,250 dekatherms (dth) per day and 204,750 dth per day, respectively, on Texas Eastern's New Jersey – New York Expansion Project (NJ-NY Project) in Docket No. CP11-56.

19. In response to claims that its proposal is discriminatory, Tennessee argues its proposal is justified because primary receipt to secondary delivery point transactions are not similarly situated to secondary receipt to primary delivery point transactions. Tennessee argues that gas deliveries should be afforded a higher priority than receipts because the need for gas to be delivered at a primary delivery point where the gas is put to a specific end-use is intrinsically different than the need for gas to be received by the pipeline at a primary receipt point at the supply end of the system for a delivery to a secondary delivery point. According to Tennessee, the consequence of a failure to deliver gas to a primary delivery point, i.e., the absence of gas to be consumed as needed, outweighs the potential failure to bring gas on the system at a particular primary receipt point because it is easier for a shipper to arrange for its supply to be received at a different point. Tennessee contends thus that shippers' ability to obtain gas from alternative sources exceeds shippers' ability to forego the consumption of gas entirely.

20. The proponents of Tennessee's proposal also claim that it will entice long-haul shippers with primary receipt points in the Gulf to retain those agreements instead of moving their primary receipts to the shale supply regions. Tennessee claims that absent assurances that such shippers' end-use deliveries will not be curtailed, those shippers may move their primary receipt points closer to the Shale production regions, resulting in stranded capacity and increased costs to other shippers on Tennessee's system.

21. Tennessee and its supporters also argue that the proposal will not have a detrimental effect on electric generators. They claim that generators that make a decision to rely on secondary service or capacity release are not entitled to the same priority as LDCs with their own firm contracts. Tennessee notes that its position here and in the Commission's electric-gas coordination proceeding is that generators should be given an incentive to contract for primary firm service. Tennessee argues that if generators truly value guaranteed deliveries then they should contract for service that provides such reliability.

3. Comments in Opposition

22. The opponents of Tennessee's proposal, generally producers and marketers, reiterate their protest claims that Tennessee's proposal discriminates against entities that have contracted for firm transportation on pipeline expansions to serve new supplies in Marcellus shale and other areas, and against any end-users who buy gas on a delivered basis from marketers. They claim producers and marketers typically have primary receipt points where their supplies are located and sell to a variety of end-users at secondary points within their primary paths. Accordingly, Tennessee's proposal would reduce the priority of those sales.

23. Several of those opposing the proposal also challenge Tennessee's reliance on *Texas Eastern*. They claim that Commission approval ten years ago for a scheduling method on Texas Eastern's system cannot be used as an operational basis for such a

structure on Tennessee's current system.²⁷ These commenters assert that changed circumstances dictate reversal or modification of *Texas Eastern*. In support they claim the natural gas industry has vastly changed in terms of its increased reliance on marketers, increased capacity releases and AMAs, and the development of natural gas and electric industry coordination issues.²⁸ They assert that these changes are linked in part to generators' reliance on secondary and marketer capacity and an increase in producer involvement in pipeline infrastructure development. They conclude that these changes make it unreasonable and unjustifiable to have a scheduling priority method that favors shippers that happen to use primary delivery points. Others argue that because of the changed market conditions, *Texas Eastern* is no longer controlling.²⁹

24. The opponents also argue that Tennessee's proposal will harm many end-users, including high priority end-users. They claim that in the current gas market, end-users (including generators) are more likely to rely on producers and marketers to obtain gas supplies than to purchase their own primary transportation capacity. Thus, they assert, Tennessee's proposal will harm power plants that purchase delivered gas on a firm basis.

25. The producers and marketers also argue that Tennessee's human needs argument is unsupported.³⁰ They assert that in today's robust natural gas marketplace, it is not only LDCs that serve high priority end-users such as electric generators but that marketers now serve those users as well. Moreover, the opponents claim the real issue is the ability to access lower cost supplies during *force majeure* outages. They note that in such a situation LDCs can still purchase gas in the Gulf of Mexico and get the higher primary to primary priority, although they may have to pay a higher price for the supply.

II. Discussion

26. For the reasons discussed below, the Commission accepts Tennessee's proposal to modify its scheduling priorities for secondary firm transactions within a shipper's primary path. Under the statutory scheme adopted by the NGA, a pipeline has the primary initiative to propose the rates, terms, and conditions for its services under NGA section 4. If the rates, terms, and conditions proposed by the pipeline are just and

²⁷ See, e.g., Joint Comments of Sequent, Talisman and Tenaska Marketing at 3-4.

²⁸ See Joint Post Technical Conference Comments of New Jersey Natural Gas Company and NJR Energy Services Company and PSEG Energy Resources & Trade, LLC, at 4-6.

²⁹ See, e.g., Post Technical Conference Comments of Statoil Natural Gas, LLC and South Jersey Resources Group, LLC, at 3.

³⁰ See, e.g., comments of Sequent, Talisman and Tenaska, Calpine and US Gypsum, Statoil and South Jersey Resources, New Jersey Natural and NJR Energy Services Company and PSE&G Energy Resources and Trade.

reasonable, the Commission must accept them, regardless of whether other rates, terms, and conditions may be just and reasonable.³¹ We find that Tennessee's proposal reasonably gives a higher scheduling priority to secondary firm service using a primary delivery point than to secondary service using a primary receipt point.

27. In Order No. 637-A, the Commission required each pipeline to afford a higher priority over mainline capacity to shippers seeking to use secondary points within their capacity path than shippers seeking to use mainline capacity outside of their path, rather than allocating all mainline capacity using secondary points on a *pro rata* basis.³² The Commission found that a within-the-path scheduling priority better promotes efficient allocation of capacity because it gives shippers greater certainty as to their scheduling rights for secondary transactions. The Commission did not, however, require a specific order of priority to allocate capacity between shippers that are either within or outside the path. As we held in *Texas Eastern*,³³ there is no comparable justification for allocating capacity among shippers that are either in or outside the path, and a pipeline, therefore, is free to choose any reasonable method for resolving scheduling conflicts over two secondary within-the-path transactions. While a pipeline may choose *pro rata* allocation in such circumstances, the Commission has not required that pipelines choose that method.

28. Tennessee's responses to the Staff data requests indicate that it nearly always has sufficient capacity to schedule all requests for within-the-path firm service.³⁴ In fact, the record in this proceeding indicates that Tennessee has not rejected any request to schedule in-path secondary firm service since November 2008, nearly five years ago.³⁵ Tennessee's proposal is a reasonable method of allocating capacity during the rare occasions when Tennessee cannot schedule all requests for in-path secondary firm service.

³¹ *Consolidated Edison Co. v. FERC*, 165 F.3d 992, 998, 1002-1004 (D.C. Cir. 1999), and cases cited.

³² *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637-A, FERC Stats.& Regs. ¶ 31,099, at 31,596-98 (2000).

³³ *Texas Eastern Transmission, LP*, 98 FERC ¶ 61,215, at PP 44-53 (2002), *order on reh'g*, 102 FERC ¶ 61,198 at PP 30-34.

³⁴ See Tennessee's February 8, 2013 Response to Data Request No. 1.

³⁵ National Fuel/National Grid Comments at 14; Motion for Reconsideration of National Fuel Gas Distribution Corporation, dated March 8, 2013, at 7.

29. The data obtained through the technical conference process shows that a broad spectrum of such LDCs, industrial plants, and electric generators have contracted for primary firm delivery rights on Tennessee at their high priority delivery points. Tennessee's proposal would give such shippers greater certainty as to their ability to access low cost gas supplies on different parts of Tennessee's system, on the rare occasions when *force majeure* events or planned maintenance render Tennessee unable to accept all within-the-path scheduling nominations. Tennessee's proposal reasonably gives a higher scheduling priority to those shippers who need to make deliveries at a particular point to serve consumers located behind that point.

30. Those opposed to Tennessee's proposal have not provided sufficient evidence for us to find Tennessee's approach unjust and unreasonable. The opponents of Tennessee's proposal assert that it unduly discriminates against producers and marketers who use their firm capacity to sell gas to a variety of end-use consumers at secondary delivery points within their primary paths. They also argue that Tennessee's proposal will harm the end-use consumers that rely on such marketers to obtain their gas, rather than contract for their own firm capacity on Tennessee. They state that such end-use consumers include high priority consumers such as electric generators.

31. As noted above, a pipeline is free to choose any reasonable method for assigning priority to in-path transactions involving primary and secondary points, provided it does so on a not unduly discriminatory and just and reasonable basis. We find that Tennessee's proposal is not unduly discriminatory because Tennessee may reasonably conclude that customers using secondary receipt to primary delivery point transactions are not similarly situated to those using primary receipt point to secondary delivery point transactions for in-path scheduling purposes. As Tennessee points out, there are intrinsic differences between the need for gas to be delivered at a primary delivery point where the gas is put to a specific end-use and the need for gas to be received by the pipeline at a primary receipt point at the supply end of the system for a delivery to a secondary delivery point. LDCs, power plants and other industrial operations with primary delivery points at their end-use consumption location are unable to move their primary delivery points. As we stated in the April 2012 Order, a pipeline may show that it is just and reasonable to give priority to primary delivery point service over service from primary receipt points to the extent a pipeline can demonstrate differences between service at delivery points as compared to receipt points. Tennessee has made such a showing here. Moreover, in *Texas Eastern*, the Commission approved a scheduling priority method that favors secondary to primary transactions over primary to secondary transactions, and rejected claims that such scheduling priority was unjust, unreasonable and unduly discriminatory. Further, Tennessee's proposal treats all similarly situated shippers transporting from secondary receipt to primary delivery points alike, whether they are LDCs, producers, marketers or end-users.

32. Moreover, while the record supports the contention that market conditions have changed since the *Texas Eastern* decision, the arguments that those changes require reversal or modification of our policy that a pipeline may reasonably choose a method for

prioritizing two secondary in path transactions are not compelling. As National Fuel Distribution and National Grid Delivery Companies point out, Texas Eastern has operated a pipeline system similar to Tennessee's, under a methodology extremely similar to that proposed by Tennessee, without Texas Eastern's customers experiencing any of the consequences predicted by the opponents. Additionally, the record data indicates that implementing Tennessee's proposal would rarely affect producers and marketers nominating from primary receipt to secondary delivery points because Tennessee nearly always has sufficient capacity to make all its in-path deliveries. Further, some of the very marketers and producers that challenge Tennessee's proposal on the grounds that it would have a chilling effect on participation in future expansions have themselves signed long term contracts for expansion capacity on Texas Eastern's system.³⁶

33. Finally, as Tennessee argues, implementing its revised scheduling method should provide an incentive for shippers with primary receipt points in the Gulf to retain those agreements instead of moving their primary receipts to the shale supply regions. Tennessee's long haul primary firm contracts should become more valuable with the added assurance that end-use deliveries on those contracts are less likely to be curtailed under the revised priority method, thus improving Tennessee's ability to retain and market long haul transportation contracts. The benefits to Tennessee from retaining such agreements would be shared among all the customers on its system.

III. Requests For Rehearing

34. As discussed, the April 2012 Order stated that to the extent pipelines can demonstrate disparate factual circumstances between services at delivery points as compared to receipt points, or vice-versa, a proposal to provide a higher scheduling priority to receipt or delivery points based on those disparate circumstances may be just and reasonable. Those requesting rehearing of that order generally argue that finding is contrary to the Commission's open access policy, including the flexible point policy developed in Order Nos. 636 and 637. Enbridge and IOGA, for example, assert that Order No. 637-B treats secondary receipt and delivery points identically for its in-path versus out-of-path analysis, and the same must hold for the priority of secondary receipt or delivery points in-path. They further claim that the Order No. 637-B finding that in-path shippers should be treated the same whether service is from a secondary receipt to a primary delivery point or from a primary receipt to a secondary delivery point must apply equally to out-of-path priority.³⁷

³⁶ See *Texas Eastern Transmission LP and Algonquin Gas Transmission, LLC*, 139 FERC ¶ 61,138, at P 6 (2012).

³⁷ Enbridge/IOGA Rehearing Request at 7.

35. Indicated Shippers I argue that in Order No. 637, *et al.*, the Commission developed a “capacity path” approach for establishing priority rights as a method of creating “tradable” capacity rights. They claim that the April 2012 Order creates “new uncertainty” regarding the scope of such rights, by creating the potential for new secondary-in-path mainline scheduling priority distinctions that rank primary-to-secondary and secondary-to-secondary below secondary-to-primary service, although according to Indicated Shippers I, all three secondary in-path services are subject to the same maximum rates. Indicated Shippers I conclude that establishing different classes of secondary firm in-path service conflicts with these purported policy objectives.³⁸

36. BG Energy and Indicated Shippers I also claim that the Commission erred by giving a preference to one use of capacity over another. They assert that the Commission has previously refused in the open access context to value one type of capacity use over another. They argue that the April 2012 Order creates a preference for the use of delivery points over receipt points, and is thus unduly discriminatory and preferential. They assert the Commission has not justified its apparent preference for use of delivery points by LDCs. They also challenge the Commission’s rationale for the preference as flawed because an LDC seeking to fulfill a supplier-of-last-resort obligation must have primary-to-primary firm service to support that obligation.³⁹

37. Certain parties claim that the April 2012 Order pre-judged Tennessee’s Scheduling Priority Filing or undermined the procedures set forth in the Settlement to address this issue. They argue that while the Commission acknowledges that it will evaluate Tennessee’s filing in accordance with the clarifications provided therein regarding the scheduling priority policy, the April 2012 Order addresses and purports to resolve that base issue.⁴⁰ Enbridge and IOGA claim that the Commission inexplicably went beyond the limited scheduling issue proposed by parties on rehearing by clarifying that pipelines could establish scheduling priorities below primary-to-primary service levels that favor primary deliveries over primary receipts. They argue that by making the clarification in this proceeding, the Commission improperly addressed an issue not before it.

38. The Tennessee Customer Group and BG Energy also sought rehearing of the Commission’s rejection of Tennessee’s proposal to schedule according to absolute price.

39. The Commission denies the requests for rehearing. As stated above, Commission policy is that pipelines may choose a reasonable method for scheduling secondary transactions provided that all primary to primary point transactions have priority over any transaction involving a secondary point. Further, the April 2012 Order did not create a

³⁸ Indicated Shippers I Rehearing Request at 10.

³⁹ Indicated Shippers I Rehearing Request at 12-13.

⁴⁰ Indicated Shippers I rehearing request at 13-14.

preference for one use of capacity over another, and thus is not discriminatory or preferential. Those arguments are similar to the ones made in the original protests and post-technical conference comments, and thus are addressed above. Finally, we reject the contentions that the determinations in the April 2012 Order pre-judged or pre-determined the outcome of Tennessee's Scheduling Priority Filing. To the contrary, as noted herein, the Commission thoroughly evaluated Tennessee's submissions, questioned the necessity of the proposal, issued data requests to Tennessee to gather further information and held a technical conference to examine the issues raised by Tennessee's proposal. The Commission considered this additional technical data and the parties' post-technical comments in determining that Tennessee's proposal is just and reasonable.

40. We also reject Tennessee Customer Group's and BG Energy's rehearing requests regarding Tennessee's proposal to schedule secondary transactions according to price. The April 2012 Order upheld the Commission's original rejection of Tennessee's proposal to schedule secondary transactions on the basis of absolute price because, as proposed by Tennessee, it would have discriminated against short haul shippers paying maximum rate. To date, Tennessee has not filed a revised proposal to schedule secondary transactions by price in accordance with the guidance provided in the April 2012 Order. Accordingly the Commission currently has no proposal pending before it and the rehearing requests are moot.

41. Finally, we deny the requests for rehearing and reconsideration of the 2013 Technical Conference Order. The crux of the parties' arguments in those requests is that the existing record was sufficient to support the approval of Tennessee's proposal, and that the Commission should have done so without establishing a technical conference.

42. The Commission, like other agencies, is generally master of its own calendar and procedures. It is within the Commission's purview to determine how best to allocate its resources for the most efficient resolution of matters before it. To permit petitioners to dictate procedure to the Commission and to allocate agency resources in conformance with the petitioners' notions of efficiency would hamstring the agency in carrying out its statutory mandates.⁴¹ Additionally, our determination herein approving Tennessee's proposal is based in part upon evidence gathered through the technical conference process. The rehearing requests are therefore moot and are hereby denied.

The Commission orders:

(A) Tennessee is directed to submit actual tariff records consistent with the *pro forma* tariff records included in its March 23, 2012 filing within thirty (30) days of the date of issuance of this order.

⁴¹ *Stowers Oil and Gas Company, et al.*, 27 FERC ¶ 61,001 (1984).

(B) The requests for rehearing of the April 2012 Order and the 2013 Technical Conference Order are denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.