UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer, and
Philip D. Moeller

Tuscarora Gas Transmission Company Docket No. RP07-482-000

ORDER ACCEPTING TARIFF SHEET, AND DIRECTING ADDITIONAL TARIFF REVISION

(Issued July 6, 2007)

1. On June 7, 2007, Tuscarora Gas Transmission Company (Tuscarora) filed a revised tariff sheet[1] permitting the pipeline to offer firm transportation service with differing Maximum Transportation Quantity (MTQ) levels throughout a shipper's contract term. The Commission accepts the tariff sheets to be effective July 9, 2007, and directs a further tariff revision as discussed below.

Instant Filing

2. Tuscarora is proposing to add the following language to Paragraph 2.1 of its Firm Transportation (FT) Rate Schedule:

> A Shipper's Maximum Transportation Quantity shall be a uniform quantity throughout the contract term, except that Transporter may, on not unduly discriminatory basis, agree to differing monthly levels in the Shipper's Maximum Transportation Quantity during the term of Shipper's contract. Shipper's Maximum Transportation Quantity and any differing levels in the Maximum Transportation Quantity, as well as the period of such differing Maximum Transportation Quantity levels, shall be specified in the executed Firm Transportation Service Agreement.

3. Tuscarora states that this service flexibility reflects the fact that customers' transportation requirements may vary on a seasonal or monthly basis.

[1] First Revised Sheet No. 10 to FERC Gas Tariff, Original Volume No. 1.

Notice and Protests

4. Notice of Tuscarora's filing was issued on June 11, 2007. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 385.210. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2006), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Sierra Pacific Power Company (Sierra) filed a protest. On June 22, 2007, Tuscarora filed an answer to Sierra's protest. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 213(a)(2)(2006), prohibits answers to protests unless otherwise ordered by the decisional authority. We will accept Tuscarora's answer because it has provided information that assisted us in our decision-making process.

5. Sierra joins with Tuscarora in requesting that the Commission accept the tariff sheet. However, Sierra states that the tariff filing raises three concerns that the Commission should also address. First, Sierra requests that the Commission require Tuscarora to provide an open season for any seasonal capacity that becomes available due to Tuscarora's tariff revisions to ensure that the capacity is offered to all potential shippers on a non-discriminatory basis.

6. Second, Sierra requests that the Commission direct Tuscarora to revise its reservation charge adjustment provision. Sierra states that currently, section 19.2 of the General Terms and Conditions (GT&C) of Tuscarora's tariff provides for compensation only if curtailment is due to the Transporter's negligence or intentional misconduct. Sierra asserts that is not consistent with Commission policy and precedent, which requires a pipeline to provide a full reservation charge credit for curtailments within the control of the pipeline and a partial reservation charge credit for curtailments arising from a force majeure event.[2] Sierra requests that the Commission direct Tuscarora to revise its reservation charge adjustment provision so that it is consistent with Commission precedent.

7. Third, Sierra requests that the Commission require Tuscarora to revise its credit mechanism to ensure that all revenue Tuscarora receives as a result of firm services

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[2] Sierra cites *Tennessee Gas Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022 at 61,088-89 (1996), *order on reh'g*, Opinion No. 406-A, 80 FERC ¶ 61,070 at 61,200 (1997) (*Tennessee Gas*); *Florida Gas Transmission Co.*, 105 FERC ¶ 61,171 at P 34 (2003); *El Paso Natural Gas Co.*, 105 FERC ¶ 61,262 at P 13-15 (2003); *Natural Gas Pipeline Co.*, 106 FERC ¶ 61,310 (2004), *order on reh'g*, 108 FERC ¶ 61,170 (2004); and *Paiute Pipeline Co.*, 111 FERC ¶ 61,107 at P 16 (2005).

provided under any new capacity is shared with its firm transportation customers to the same extent as its shares interruptible transportation (IT) revenues. Sierra contends that the addition of new seasonal capacity will change this dynamic by reducing IT volumes, which will in turn reduce IT revenues to be shared with Tuscarora's firm shippers. Sierra further contends that revising Tuscarora's crediting mechanism will ensure that firm shippers are not adversely affected by a reduction in the IT revenue credits they would otherwise receive.

Tuscarora's Answer

8. Tuscarora argues that Sierra bases its argument for an open season on the faulty premise that acceptance of the revised tariff sheet will create additional capacity. Tuscarora states that its tariff revisions accomplish no such thing, and therefore, there is no new capacity to allocate pursuant to an open season. In addition, Tuscarora points out that Commission precedent permits pipelines to sell capacity on a first-come, first-served basis, so long as the pipeline posts all available firm capacity.[3]

9. Tuscarora asserts that Sierra's second argument is beyond the scope of this proceeding because it requests Commission review of tariff provisions unrelated to the changes proposed in Tuscarora's filing. Tuscarora argues that to the extent Sierra believes Tuscarora's reservation charge adjustment tariff provision is inconsistent with Commission policy, Sierra should raise the concerns in a complaint brought under section 5 of the Natural Gas Act (NGA), and not in response to a limited section 4 filing.

10. Finally, Tuscarora argues that the Commission should not require it to credit revenue from the sale of seasonal firm service because the proposed tariff sheet does not create new capacity from which revenues could be credited. Tuscarora explains that the revised tariff sheet only facilitates the sale of existing, available capacity.

Discussion

11. The Commission accepts Tuscarora's proposed tariff language permitting the pipeline to offer firm transportation service with differing MTQ levels throughout a shipper's contract term, subject to the conditions discussed below. The Commission has

[3] Tuscarora cites *Tennessee Gas Pipeline Co.*, 119 FERC ¶ 61,126 at P 20 (2007) (citing *Northern Natural Gas Co.*, 110 FERC ¶ 61,131 at P 10 (2005)).

previously accepted filings containing variable MTQ levels[4] and the language Tuscarora proposed in the instant filing is nearly identical to the language accepted in these previous filings.[5] Since Tuscarora's proposed tariff revisions are consistent with Commission precedent, we accept the revised tariff sheet, but direct a further tariff revision as discussed below.

12. The Commission rejects Sierra's request to require Tuscarora to sell capacity created by the tariff changes during an open season. The Commission agrees with Tuscarora's argument that permitting variable MTQ levels does not create additional firm capacity; this change simply allows the pipeline to sell existing firm capacity more efficiently. Since Tuscarora's proposed tariff revisions do not create any additional capacity, there is no need for an open season,[6] and Sierra's request is rejected.

13. Sierra also requests that the Commission direct Tuscarora to revise its reservation charge adjustment provision to be consistent with Commission precedent and policy. Tuscarora states that the Commission should not act to conform section 19.2 of its tariff to Commission policy because the provision is not directly related to the subject filing and no complaint has been filed. These factors are not conditions precedent to Commission action under section 5 of the NGA where the Commission is made aware of a tariff provision that is clearly contrary to Commission policy. Section 19.2 of Tuscarora's GT&C, which addresses reservation charges, provides the following, in relevant part:

> Shipper's obligation to pay applicable Reservation Charges shall not be suspended by any failure of Transporter to deliver gas to or on behalf of Shipper for any reason or cause whatsoever, whether or not described in

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[4] *Texas Eastern Transmission, LP*, 106 FERC ¶ 61,066 (2004); *Texas Eastern Transmission, LP*, Docket No. RP99-480-007, Letter Order Approving Tariff Sheets (March 3, 2004).

[5] *Id.*

[6] Even assuming that permitting varying MTQ levels did create additional capacity, so long as the pipeline posts all available firm capacity, the Commission permits it to sell that capacity on a first-come, first-served basis. *Tennessee Gas Pipleline Co.*, 119 FERC ¶ 61,126 at P 20 (2007) (*citing Northern Natural Gas Co.*, 110 FERC ¶ 61,131 at P 10(2005)).

> this Section 19, except in the event that such failure is caused by the negligence or intentional misconduct of Transporter.

14. Section 19.2 only provides for suspension of reservation charges in the event that the failure to deliver gas is caused by the negligence or intentional misconduct of the Transporter.[7] Sierra argues that Commission precedent and policy clearly require Tuscarora to compensate shippers for undelivered gas beyond this limited situation.[8] We agree.

15. In *Tennessee Gas* the Commission required partial reservation charge credits in instances of force majeure.[9] In Tennessee's case, the partial credits were equal to Tennessee's return on equity and associated income taxes for the under-delivered amount. This resulted in a sharing by Tennessee and its customers of the risk during force majeure interruptions of service, since neither the shipper nor the pipeline is at fault for the interruption. In non-force majeure situations, *Tennessee Gas* requires full credits for all scheduled gas not delivered. The Commission had consistently affirmed its position on this issue.[10]

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[7] Section 19.1 of the GT&C of Tuscarora's tariff provides, in relevant part (emphasis added):

> Neither Transporter nor Shipper shall be liable in damages to the other for any act, omission or circumstances occasioned by or in consequence of any event constituting force majeure and, *except as otherwise provided in Section 19.2*, the obligations of Transporter and Shipper shall be excused during the period thereof to the extent affected by such events of force majeure.

[8] Sierra's June 19, 2007 Motion to Intervene and Comments, Docket No. RP07-482-000 at 3.

[9] *Tennessee Gas Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022 at 61,088-89 (1996), *order on reh'g*, Opinion No. 406-A, 80 FERC ¶ 61,070 at 61,200 (1997).

[10] *Florida Gas Transmission Co.*, 105 FERC ¶ 61,171 at P 34 (2003); *El Paso Natural Gas Co.*, 105 FERC ¶ 61,262 at P 13-15 (2003); *Natural Gas Pipeline Co.*, 106 FERC ¶ 61,310 (2004), *order on reh'g*, 108 FERC ¶ 61,170 (2004); and *Paiute Pipeline Co.*, 111 FERC ¶ 61,107 at P 16 (2005).

16. Tuscarora's section 19.2 addressing reservation charges does not provide for partial credits in the case of force majeure, nor does it require full credits when curtailment is within the control of the pipeline, as required by *Tennessee Gas*. As such, we find that section 19.2 of Tuscarora's GT&T does not meet the criteria for reservation credits established by Commission precedent and is, therefore, unjust and unreasonable. Pursuant to section 5 of the Natural Gas Act, the Commission directs Tuscarora to submit a compliance filing within thirty (30) days of this order revising section 19.2 of the GT&C of its tariff so that it is consistent with Commission policy.

17. The Commission rejects Sierra's request that Tuscarora revise its revenue crediting mechanism to ensure that all revenues Tuscarora receives from the sale of seasonal firm service are shared with firm transportation customers to the same extent it shares IT revenues. Sierra contends that revising Tuscarora's credit mechanism is appropriate because the addition of new seasonal firm capacity will reduce IT volumes, which will in turn reduce the IT revenues credited to firm shippers. We disagree, and find that this simply reflects the nature of interruptible service as interruptible.

18. As explained above, permitting variable MTQ levels simply facilitates the sale of existing, available capacity. It does not create additional capacity from which revenues can be credited and does not require a change in the pipeline's revenue crediting mechanism. Tuscarora is only required to credit firm shippers for revenue generated from the sale of interruptible service, not firm service.[11] Tuscarora's proposal may allow more firm service to be sold more efficiently, but this does not provide a basis for expanding interruptible revenue crediting to include firm revenue credits. The ability to vary MTQ levels should decrease reservation and demand charges, and lead to a more efficient use of available firm capacity. For the foregoing reasons, Sierra's request that Tuscarora modify its crediting mechanism is denied.

<u>The Commission orders</u>:

(A) Tuscarora's revised Sheet No. 10 of its FERC Gas Tariff, Original Volume No. 1 is hereby accepted, effective July 9, 2007.

(B) Tuscarora is directed to make a compliance filing within 30 days of the date this order issues to revise section 19.2 the GT&C of its tariff to require, consistent with Commission policy, full reservation charge credits in non-

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[11] Third Revised Sheet No. 87 to Tuscarora's FERC Gas Tariff, Original Volume No. 1 (Section 29.1, Interruptible Transportation Revenue Credits).

force majeure situations, and partial reservation charge credits in force majeure situations.

By the Commission. Commissioner Wellinghoff not participating.

(S E A L)

Kimberly D. Bose,
Secretary.