UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell and Joseph T. Kelliher.

Natural Gas Pipeline Company of America Docket No. RP03-262-002

ORDER GRANTING CLARIFICATION

(Issued March 29, 2004)

1. On March 27, 2003, the Commission issued an order (the March 27 Order)[1] accepting the revised tariff sheets filed by Natural Gas Pipeline Company of America (Natural) on February 27, 2003, subject to certain conditions. On April 17, 2003, Natural filed revised tariff sheets to comply with the March 27 Order. On April 28, 2003, the Indicated Shippers[2] filed a request for clarification or alternatively for rehearing of the March 27 Order, together with a protest of Natural's April 17, 2003 compliance filing. On June 6, 2003, the Commission issued a letter order accepting Natural's April 17, 2003 compliance filing. The Commission grants clarification, and directs Natural to file revised tariff sheets as discussed below.

**The March 27 Order**

2. In its February 27, 2003 filing, Natural, among other things, revised section 23.6(ix) of its General Terms and Conditions (GT&C) to provide that an entity other than a shipper may accept responsibility for OFOs on behalf of a shipper or end-use facility. The March 27 Order accepted Natural's proposal subject to certain conditions.

3. In its protest to Natural's February 27, 2003 filing, the Indicated Shippers had requested that regardless of whether Natural interrupts firm service via an OFO or an operational limit posting, the Commission should require Natural to provide a reservation

[1] 102 FERC ¶ 61,326 (2003).

[2] The Indicated Shippers are Chevron, U.S.A. Inc., BP Energy Co., and BP America Production Co.

charge credit to the affected firm shippers. The March 27 Order cited to Opinion No. 406[3] where the Commission addressed the issue of reservation charge credits for instances of service curtailment, and held that Natural must provide reservation charge credits to affected shippers when it curtails service consistent with the Commission's findings in Opinion No. 406.

4. Opinion No. 406 requires that when the pipeline fails to deliver at least 98 percent of the shipper's scheduled deliveries and the failure is due to conditions under the control of the pipeline, there must be a full reservation charge credit as to the undelivered amount. However, Opinion No. 406 found that when there is a shortfall due to a force majeure event, all parties should bear the risk. In this circumstance, the pipeline should provide a partial credit to the affected firm shippers.

5. In Order No. 406 the Commission discussed what constituted an appropriate partial credit in the force majeure event. In that case, it approved a partial credit consisting of a credit that covered the portion of the transportation rate associated with the pipeline's return on equity and associated income taxes. Since the pipeline under the SFV rate design recovered those costs in its reservation charge, this placed the pipeline at risk for those costs, while the shipper was at risk for the balance of the reservation charge. The Commission explained that it previously approved other methods of risk-sharing. For example, in the Order No. 636 proceeding of Texas Eastern Transmission Corporation, which provided a limit on the length of time when the pipeline was excused from providing any reservation charge credits, the shipper was at risk until the excuse period ended since it received no credit during that time. Once the excused period ended, the pipeline was at risk for the entire reservation charge. Texas Eastern Transmission Corp., 62 FERC ¶ 61,015 (1993) (Texas Eastern).

**Natural's April 17 Filing**

6. On April 17, 2003, Natural filed revised tariff sheets to comply with the March 27 Order. Among other things, Natural in section 5.2(c)(2) of its GT&C set forth the reservation charge credit:

> Natural shall not be obligated to adjust the Reservation Charge under any contract pursuant to Section 5.2(c)(1) when Natural's failure to deliver on any Day at least 95% of the Firm Daily Volume: (i) is the

[3] Tennessee Gas Pipeline Co., 76 FERC ¶ 61,022 (1996) (Opinion No. 406), Order on Reh'g, 80 FERC ¶ 61,070 (1997) (Opinion No. 406-A) (also cited as Tennessee).

> result of the conduct of Shipper or the downstream operator of the facilities at the Delivery Point; (ii) is the result of Natural having operational flow orders in effect on such Day; (iii) is the result, during the period from April 1 through November 1 of any year, of Natural performing routine operational maintenance and repair prudently and with due diligence; (iv) is the result of Natural at any time performing prudently and with due diligence testing and repair and maintenance of its facilities to comply with applicable regulatory requirements; or, (v) occurs either (a) within ten (10) Days following a force majeure event as contemplated by Section 27 of the General Terms and Conditions, or (b) prior to the date Natural has or should have, in the exercise of due diligence, overcome the force majeure event, whichever occurs first.

Natural asserted that this tariff provision was virtually identical to the reservation charge credit provision the Commission already approved in Texas Eastern and referred to approvingly in Opinion No. 406.

7. Section 5.2(c)(1) also specified that "except as provided in section 5.2(c)(2) of these General Terms and Conditions, in the event Natural fails to deliver on any Day under any firm contract at least 95% of Shipper's Firm Daily Volume for that Day, then the applicable Reservation Charge for the shortfall shall be reduced to 70% of the Reservation Charge otherwise applicable under the firm contract."

**Indicated Shippers' Filing**

8. On April 28, 2003, Indicated Shippers filed a protest to Natural's April 17 compliance filing, and included a request for clarification or rehearing of the March 27 Order. Indicated Shippers raise a number of concerns pertaining to Natural's reservation charge credits proposal. Indicated Shippers argue that Natural's proposed credit exemptions in section 5.2 (c)(2) are contrary to Commission policy which requires that the pipeline must provide a full reservation charge credit whenever there is a service interruption in a non-force majeure event, citing Opinion No. 406.[4]

[4] Indicated Shippers also cite to Southern Natural Gas Co., 99 FERC ¶ 61,345 at Appendix A, Section 3(H) (2000), and El Paso Natural Gas Co., 99 FERC ¶ 61,244 at 62,013 (2002).

9. The Indicated Shippers assert that under section 5.2 (c) in non-force majeure situations there will be no credit if Natural provides service at a level equal to 95 per cent percent of the Shipper's confirmed nomination. The Indicated Shippers also object to Natural's proposal that, even when there is credit, "there should be only a partial 70 per cent credit that leaves the shipper responsible for 30 percent of the reservation charge."[5] The Indicated Shippers argue that there is no justification for this 95 per cent threshold, and the 70 per cent credit. The Indicated Shippers also contend that Natural will credit only the base reservation charges, and not include reservation surcharges, and requests that the Commission clarify that the March 27 Order requires that the reservation charge credit also encompass reservation surcharges, such as Gas Research Institute (GRI) surcharges.

10. As to the force majuere situation, where Commission policy dictates a sharing of the risk, Indicated Shippers urge the Commission to reject Natural's proposal which stipulates a limited period with no credit, and replace it with a provision requiring a partial credit from the onset of the force majeure event.

11. Indicated Shippers also request clarification concerning termination of an OFO agent. They request the Commission to direct Natural to include on its termination notice a written explanation why it was necessary for Natural to terminate the OFO agent.

## Discussion

### A. Non-Force Majeure Situations

12. The Indicated Shippers argue that a number of aspects of Natural's filing are contrary to Commission policy. They contend that Natural should not strip shippers of reservation charge credits in non-force majeure events when they are not in violation of Natural's tariff, which would occur under the various exemptions set forth in Natural's GT&C section 5.2 (c)(2). Indicated Shippers assert that even though the Commission accepted these exemptions in Texas Eastern[6], as Natural stated in support of its filing, no party opposed Texas Eastern including them as tariff provisions, unlike the subject proceeding. Moreover, Indicated Shippers note that in Texas Eastern, the Commission stated that a rate case is the proper forum to fully address issues involving reservation charge credits.

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[5] Rehearing request at 3.

[6] 62 FERC ¶61,015 (1993).

13. We find merit in Indicated Shipper's concern, and agree that Natural's reliance upon Texas Eastern is misplaced. While the Commission accepted Texas Eastern's reservation charge credit provisions in Texas Eastern's Order No. 636 restructuring proceedings, subsequent to that proceeding the Commission clarified its policy on reservation charge credits in Opinion No. 406.

14. In Opinion No. 406 the Commission expressly required pipelines to grant full reservation charge credits in non-force majeure situations. The Commission stated "the Commission will continue to require Tennessee to provide full reservation charge credit for those interruptions within its control.…"[7] Thus, while in Opinion No. 406 the Commission stated that Texas Eastern's method of sharing the risk in the force majeure situation was an acceptable method, this did not constitute approval of how Texas Eastern granted reservation charge credits in the non-force majeure situation. In El Paso Natural Gas Company[8] (El Paso) the Commission reiterated that in non-force majeure events, the pipeline must grant the full reservation charge credits for all scheduled gas not delivered, citing Florida Gas Transmission Co.[9] where the Commission stated "providing only partial credits related to non-force majeure interruption of service is inconsistent with Commission policy."

15. In El Paso the Commission also explained that scheduled maintenance and repairs are considered within the control of the pipeline and thus are to be treated as non-force majeure events, but unscheduled maintenance is considered a force majeure event. However, here Natural proposes to provide no credits at all in various non-force majeure situations. For example, sections 5.2(c)(1)(iii) and (iv) exempt Natural from providing credits when it performs maintenance during April 1 through November 1 of any year, and does testing or repair and maintenance at any time to comply with regulatory requirements. Also, section 5(c)(1)(ii) exempts Natural from providing credits whenever there is an operation flow order (OFO) in effect, regardless of whether the OFO is the result of a force majeure event. Accordingly, Natural must revise its crediting provision

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[7] 76 FERC at 61,086.

[8] 105 FERC ¶ 61,262 (2003).

[9] 105 FERC ¶ 61,171 at P 34 (2003).

in section 5.2 (c)(2), to eliminate these exemptions from its obligation to provide reservation credits,[10] consistent with Commission policy.

16. Indicated Shippers also argue that section 5.2(c)(1) of Natural's GT&C is contrary to Commission policy in the non-force majeure event because it provides that the reservation credit applies only when Natural fails to deliver at least 95 percent of the Shipper's Firm Daily Volume for that Day rather than 98 percent, and second, when the credit applies "the applicable Reservation Charge for the shortfall shall be reduced to 70 percent of the Reservation Charge otherwise applicable under the firm contract." Indicated Shippers assert that there is no basis for these limitations on the reservation charge credits provided in the force majeure situation, and Natural must provide a full, not a partial, reservation charge credit to affected shippers for all service interruptions in a non-force majeure event.

17. We agree with Indicated Shippers. In Opinion No. 406, the Commission denied the pipeline's proposal to reduce its reservation charge credit threshold from 98 percent to 95 percent and required the pipeline to provide full reservation charge credits when it failed to provide 98 percent of scheduled volumes. We see no reason to permit the lower percentage amount here. Similarly, in non-force majeure situations, when shippers should receive a reservation charge credit Commission policy requires a full reservation charge credit, not a partial credit as Natural proposes here.[11] Partial reservation charge credits apply only in the force majeure situation, discussed below.

18. Finally, Indicated Shippers' concern is that Natural will only credit the shipper with the reservation charges and not any surcharges, such as the Gas Research Institute (GRI) surcharge. It requests that the Commission clarify that it requires the reservation

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[10] We will permit Natural to retain section 5.2(c)(2)(i) exempting it from providing credits when failure to provide service is due to the conduct of the shipper or downstream facility operator.

[11] GT&C section 5.(c)(1) states that when the credit applies "the applicable Reservation Charge for the shortfall shall be reduced to 70 percent of the Reservation Charge otherwise applicable under the firm contract." This seems to be a 30 percent credit, and Natural's filing at 3 so states. However, Indicated Shippers read this as a 70 percent credit, which "leaves the shipper responsible for 30 percent of the reservation charges." Rehearing request at 3. In any event, we require Natural to grant a full credit to the shipper as to the shortfall amount.

charge credit to include surcharges as well, since it is part of the fixed charges. Indicated Shippers note that the crediting provisions of other pipelines' tariffs include surcharges.[12]

19. We agree since a shipper's fixed costs include reservation surcharges. Thus any reservation charge credits should include surcharges as well. We direct Natural to clarify its tariff accordingly.

### B. The Force Majeure Situation

20. In the force majeure situation, Commission policy is that the pipeline and its shippers must share the risk because neither party is responsible. In that situation, Natural proposed in GT&C section 5.2(c)(2)(v), that the applicable reservation charge credit would not apply to a shortfall that:

> … occurs either (a) within ten (10) Days following a force majeure event as contemplated by Section 27 of the General Terms and conditions, or (b) prior to the date Natural has or should have, in the exercise of due diligence, overcome the force majeure event, whichever occur first.

21. Indicated Shippers argue that the Commission should not allow the ten-day period because although it is limited by the due diligence caveat, as a practical matter, it will be difficult for shippers to obtain the information needed to apply the due diligence provision. Instead it argues "that the risk of a service interruption due to force majeure be shared via a partial credit, such as a credit that covers the portion of the transportation rate associated with the pipeline's return on equity and associated income taxes,"[13] citing Opinion No. 406, and it requests that the Commission require Natural to provide that type of credit.

22. Natural's proposal is similar to the force majeure reservation charge credit provision that the Commission accepted in Texas Eastern, which the Commission described in Opinion No. 406 as "a form of risk-sharing through the establishment of

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[12] As examples, Indicated Shippers cite section 6 of Southern Star Central Pipeline's Rate Schedule FTS, and section 4.1 of CIG's Rate Schedule TF-1, both of which specify that reservation charge credits should include surcharges as well.

[13] Request at 10.

limits on the length of time in which a pipeline may be excused from providing reservation charge credits."[14]

23. In Tennessee, the ALJ adopted a different approach for the reservation charge credit in the force majeure situation. That approach required Tennessee to provide a credit from the onset of the shortfall in deliveries equal to Tennessee's return on equity and associated income taxes for the undelivered amount. The Commission noted that "While there may be other ways, such as the Texas Eastern approach, to effectuate a sharing of the risk of force majeure interruptions," it approved the ALJ's method because "the ALJ's ruling for partial credits is a reasonable implementation of the risk sharing principle."[15]

24. Thus, in Tennessee, the Commission held that there may be different ways to implement the sharing of risk requirement in the force majeure situation, including the "10 day time period" approach adopted in Texas Eastern. Since Natural's proposal here for the partial credit is similar to the one adopted in Texas Eastern, we will not require Natural to modify its proposal since the Commission previously accepted this approach as an appropriate method of sharing the risk. However, when the shipper becomes entitled to the reservation charge credit once the 10 day period ends, Natural must grant the shipper full reservation charge credits, not the 70 percent ratio as proposed in GT&C section 5.2 (c)(2)(v).

### C. Written Justification for Rejection of OFO Agent

25. In the March 27 Order, the Commission accepted Natural's proposal to allow a shipper or point operator to designate responsibility to an OFO agent for the shipper's

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[14] 76 FERC at 61,089.

[15] Id. Where the pipeline recovers some of its fixed costs in the commodity or usage charge and there is a failure to deliver in a force majeure situation, no reservation charge credit is required as to the shortfall amount because there is no usage charge as to that amount, and thus the pipeline is sharing the risk since it is not recovering those fixed costs from the shortfall amount. Thus, when Tennessee modified its rate design by recovering a portion of its fixed costs through its commodity rate, the Commission granted rehearing in Opinion No. 406-A and required the shipper to pay the full reservation charge on the undelivered amount with no credit, but Tennessee shared the risk because there is no commodity charge applicable to the undelivered amount. See 80 FERC at 61,200.

compliance with any OFOs that Natural issues. That agent would assure operational and/or financial responsibility for any OFO compliance. Section 23.6 of Natural's GT&C requires that, if a shipper is to designate an OFO agent, it must request permission from Natural. Section 23.6 also gives Natural two business days to decide whether to approve the OFO agent.

26. Indicated Shippers ask that should Natural reject a shipper request to designate an OFO agent, Natural must provide a written explanation why it rejected the shipper's OFO agent. Indicated Shippers contend that the explanation will ensure that Natural justifies any rejection. It notes that, in a related setting, the Commission requires pipelines to provide a written justification when they reject a request by a shipper for a special rate or service condition.

27. We agree with Indicated Shippers' request. Requiring Natural to provide a written explanation should it reject a designation for an OFO agent would make any rejection transparent to other shippers. We direct Natural to revise its tariff accordingly.

The Commission orders:

(A) Indicated Shippers request for clarification is granted as set forth in the body of this order.

(B) Natural must file revised tariff sheets within 15 days from the date this order issues.

By the Commission. Commissioner Kelly not participating.

( S E A L )

Linda Mitry,
Acting Secretary.