

168 FERC ¶ 61,031
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

Atmos Pipeline – Texas

Docket Nos. PR17-60-001
PR17-60-002

ORDER ON STATEMENT OF OPERATING CONDITIONS AND TECHNICAL
CONFERENCE

(Issued July 18, 2019)

1. On January 25, 2018, Atmos Pipeline – Texas (Atmos) filed tariff records¹ to revise its Statement of Operating Conditions (SOC) and Rate Statement in Docket No. PR17-60-002 (Revised Filing), which revise and supersede its September 1, 2017 filing in Docket No. PR17-60-000 (Initial Filing).² Atmos made both filings pursuant to the optional notice procedures set forth in Section 284.123(g) of the Commission’s regulations.³ Subject to the conditions discussed below, we find that Atmos’ revised SOC is fair and equitable under section 311 of the Natural Gas Policy Act (NGPA), and accept the referenced tariff records with the original effective date of September 1, 2017, as requested.

¹ Atmos Pipeline-Texas, FERC NGPA Gas Tariff, Atmos Pipeline-Texas SOC and Rate Summary, SOC, Statement of Operating Conditions, 8.0.0 and Rates, Rate Summary, 5.0.0.

² Atmos also filed in Docket No. PR17-60-001 on January 24, 2018, but that submission contained a filing error that the subsequent Docket No. PR17-60-002 submission corrects. We deem both Atmos’ Initial Filing in Docket No. PR17-60-000 and its erroneous filing in Docket No. PR17-60-001 to be withdrawn.

³ 18 C.F.R. § 284.123(g) (2018).

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2. Atmos is a large intrastate pipeline, with a web-like, eight-zone system that runs almost the entire length and breadth of the state of Texas.⁴ In Waha, a major natural-gas trading center in southwestern Texas, Atmos operates the Waha Header, at the western end of its system. The Waha Header is a trading hub which interconnects directly with two interstate natural gas pipelines (Northern Natural Gas Company and El Paso Natural Gas Company, L.L.C.) and three intrastate pipelines (Enterprise Texas Pipeline, LLC; DCP Guadalupe Pipeline, LLC (Guadalupe); and ONEOK WesTex Transmission, L.L.C. (ONEOK)) which also provide interstate service pursuant to NGPA section 311. Some of these pipelines also operate their own hubs. Transactions using the Waha Header include transactions in which gas flows from upstream on Atmos across the Waha Header onto other interconnecting pipelines, transactions in which gas flows from upstream on interconnecting pipelines across the Waha Header onto Atmos, and transactions in which gas flows from one interconnecting pipeline across the Waha Header to another interconnecting pipeline without otherwise flowing on the Atmos system.

3. Guadalupe, which has protested Atmos's Revised Filing, states that it and its predecessors owned 100 percent of the Waha Header from its inception until November 2017, when Atmos acquired its present 25 percent ownership stake.⁵ However, since its inception, Atmos has operated the Waha Header as a unified part of the entire Atmos system⁶ pursuant to an Agreement for Construction, Ownership, and Operation (COO Agreement) which both Atmos and Guadalupe state was executed outside the Commission's jurisdiction.⁷

I. Summary of Filing

4. Atmos states it "is revising its rates to reflect the cost-of-service based rates recently approved by the Railroad Commission of Texas in its Gas Utility Docket No. 10580."⁸ At the intrastate level, Atmos offers two main firm rate schedules, City Gate Service (CGS-OTHER) and firm Pipeline Transportation (PT), plus a separate rate

⁴ A system map is filed as Attachment A to the Initial Briefs of Guadalupe, and is also available at <https://www.atmosenergy.com/apt/home>.

⁵ Guadalupe Comments at n.1.

⁶ Atmos Reply Brief at 6.

⁷ Atmos Reply Brief at 6.

⁸ Atmos September 1, 2017 Transmittal. We note that Atmos is not electing to adopt its state-approved rates pursuant to 18 C.F.R. § 284.123(b)(1), as it had previously done, but instead seeks Commission approval pursuant to 18 C.F.R. § 284.123(b)(2).

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schedule to accommodate its affiliate (CGS-MID-TEX). Atmos' published tariff lists a single, system-wide rate for each of these rate schedules.⁹ Through separate contracts not published in the tariff, Atmos also uses a "zone rate matrix" to assess a fuel use surcharge.¹⁰

5. In its Initial Filing, Atmos stated that it is completely eliminating firm service at the federal level, stating that it "no longer has any firm 311 shippers."¹¹ Atmos proposed, effective September 1, 2017, to adopt a single, system-wide rate for its remaining NGPA section 311 interruptible service, based on a maximum capacity charge of \$0.33549 per MMBTU-day, and a maximum volumetric usage charge of \$0.02785 per MMBTU.¹² Atmos also, without comment, proposed comprehensive, substantial revisions to the rest of its SOC.

6. Following discussions with Commission staff concerning its Initial Filing, Atmos submitted its Revised Filing. The submitted redline version of its SOC shows that Atmos proposes to retain most of the revisions from its Initial Filing, including the proposed interruptible rate levels. Atmos proposes to revise SOC Section 3 and the Statement of Rates to expressly state its pre-existing policy that storage service is only offered as an integral component of transportation service, and is not billed separately. Atmos also proposes to modify Section 4 to clarify the methods of communication and to modify Section 16 to bring the definition of *force majeure* in line with Commission precedent.

7. In addition to these relatively minor changes, Atmos proposes a substantial revision to its scheduling priorities for interruptible transportation service. Atmos' prior SOC provided for capacity to be allocated on a first-come, first-served basis. In its Initial Filing, Atmos proposed a new Section 10, Priority of Service. Section 10.1 stated that interruptible transportation would be the lowest priority service provided by Atmos, without distinguishing between intrastate and interstate service. Section 10.2 provided that Atmos would schedule interruptible transportation service based on the effective date of the shipper's transportation agreement with older service agreements having priority

⁹ Available at <https://www.atmosenergy.com/apt/apt-rates-and-tariffs/atmos-pipeline-texas>.

¹⁰ Atmos August 31, 2018 Data Response at Ex. A p. 27.

¹¹ Atmos September 1, 2017 Transmittal.

¹² Atmos Pipeline-Texas - Atmos Pipeline-Texas SOC and Rate Summary, Rates, Rate Summary, 1.0.0. Atmos would continue its previous policies that allow discounted rates, and that authorize the retainage of lost and unaccounted-for natural gas based on actual amounts, capped at one percent of receipts.

over newer service agreements. However, if two service agreements had the same effective date, Atmos would give priority to the agreement with the highest rate.

8. In its Revised Filing, Atmos proposes two significant changes to proposed Section 10. First, Atmos proposes to revise Section 10.1 to specify that interstate interruptible service will be Atmos' lowest priority service. Second, Atmos proposes to eliminate its first-come, first-served scheduling priority, and instead schedule interruptible transportation service based on price.

9. The revised version states, in its entirety:

10. PRIORITY OF SERVICE

10.1 Priority of Service. Interstate Interruptible Transportation Service shall be the lowest priority service provided by Transporter.

10.2 Capacity Allocation for Interstate Interruptible Transportation Service.

- (a) In allocating capacity and scheduling Interruptible Service under Section 10.1 hereof, Transporter will give priority based upon the highest rate paid. If two (or more) Transportation Agreements have identical effective dates and rates, they will be allocated pro-ratably.
- (b) Transporter reserves the right to establish separate prioritization queues for its various identifiable pipeline system segments and incremental capacity, including various combinations of receipt and delivery points requested by Shippers. In the event separate queues are established, they will be communicated to all shippers simultaneously.
- (c) For any Month Transporter shall allocate capacity to and schedule Interruptible Transportation Service for the continuation of existing Service up to (but not exceeding) Shipper's Receipt and Delivery Point Nominated Quantities (as such terms are defined in Section 8 hereof) for the preceding Month before scheduling additional Interruptible Transportation Service under Section 8 hereof. No shipper receiving Interruptible Transportation Service may be interrupted during a Month to provide increased Service to another Interruptible shipper.

10.3 Curtailment. On any Day, Transporter may curtail or interrupt deliveries in accordance with the priorities set forth herein to the extent necessary to maintain the priority of Services set forth above. If interruptible storage is curtailed, natural gas in storage is still the property of the storing shipper.

II. Notice and Responsive Pleadings

10. Public notice of the Initial Filing was issued on September 5, 2017, with interventions and protests due on or before September 22, 2017. Public notice of the Revised Filing was issued on January 31, 2018, with interventions and protests due on or before February 15, 2018. Pursuant to Rule 214,¹³ all timely filed motions to intervene and any unopposed motion to intervene filed out-of-time 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. No party filed adverse comments or a protest with respect to Atmos' Initial Filing. However, ONEOK filed comments and Guadalupe filed a protest with respect to Atmos' Revised Filing.

11. Both ONEOK and Guadalupe argue that Atmos' proposal is "not explained or supported in any way,"¹⁴ and thus has not been demonstrated to follow Commission policy, as required by section 284.123 (e) of the Commission's regulations.¹⁵ They state that Atmos did not explain its filings, either on the record or privately, and suggest that Atmos' proposal may violate its contractual obligations as well.

12. Both parties protest the proposed new Section 10 concerning priority of service. ONEOK argues that proposed Section 10.1, which provides that "Interstate Interruptible Transportation Service shall be the lowest priority service provided by Transporter," could be interpreted as an unlawful proposal to "subordinate interruptible 311 transportation service to interruptible intrastate transportation."¹⁶ Guadalupe and ONEOK urge the Commission to confirm that section 311 interstate service will not be treated as inferior to intrastate service.

13. Guadalupe protests Section 10.2 (a) for adopting an economic dispatch approach under which service among interruptible contracts would be prioritized by the rate paid. Guadalupe argues that the economic dispatch proposal will harm the market center at the Waha Header. Guadalupe asserts that Atmos ignores commercial reality and longstanding commitments. Guadalupe claims that Atmos "charges all shippers a uniform rate of \$0.01 per dekatherm for transportation service through the Waha Header

¹³ 18 C.F.R. § 385.214 (2018).

¹⁴ ONEOK Comments at 2.

¹⁵ Guadalupe Protest at 7 (citing 18 C.F.R. § 284.123 (e)).

¹⁶ ONEOK Comments at 3 & n.7 (citing 18 C.F.R. § 284.9 (b) ("The provisions regarding non-discriminatory access ... apply to pipelines providing interruptible service under this section.")).

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facilities.”¹⁷ Guadalupe states that, under the proposed tariff, there is no distinction between service on the Waha Header and on other portions of the Atmos system. When a shipper accesses the Waha Header via another pipeline, it would, for economic dispatch purposes, be ranked according to the \$0.01 per dekatherm (Dth) rate. When a shipper accesses the Waha Header via Atmos’ own system, however, it would, for economic dispatch purposes, be ranked at \$0.01 per Dth plus whatever rate it paid Atmos for transportation on other parts of the Atmos system. Guadalupe argues that such a result would be unfairly discriminatory, because it would “unfairly favor shippers who use other portions of [Atmos’] system over shippers on the Waha Header ... [via] third party pipelines.”¹⁸ Guadalupe argues that, at the Waha Header, “the pro-rata allocation method should be the exclusive method for allocating capacity, given the uniform rate paid by all.”¹⁹ Guadalupe suggests that any other system could harm the market for all pipelines operating at the Waha Header.

14. Guadalupe also protests Section 10.2(b), in which Atmos “reserves the right to establish separate prioritization queues.” Guadalupe claims that, in private conversations with Atmos, Atmos assured Guadalupe that this new right could be used to address Guadalupe’s concerns about access to the Waha Header. Guadalupe argues, however, that Atmos has given no assurance that new Section 10.2(b) would indeed be used to address its concerns. Rather, Guadalupe argues, this vaguely worded provision could give Atmos arbitrary authority to change its own tariff rules.²⁰

15. Accordingly, Guadalupe urges the Commission to direct Atmos to modify its Priority of Service proposal so as to clarify that (1) NGPA section 311 service will not be treated as inferior to intrastate service, (2) allocation at the Waha Header will be strictly pro rata, and (3) any changes to prioritization queues must be submitted for Commission review.

16. ONEOK notes that Atmos’ proposed effective date of September 1, 2017 predates the January 25, 2018 filing date of the Revised Filing, and expresses concern that Atmos may be attempting to retroactively cover for unlawful conduct.²¹ Guadalupe argues that

¹⁷ Guadalupe Protest at 4.

¹⁸ *Id.* at 5.

¹⁹ *Id.* at 4.

²⁰ *Id.* at 6.

²¹ ONEOK Comments at 3 & n.8.

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retroactive effective dates are inappropriate for changes to non-rate terms of service, which can only be administered fairly if shippers have some notice of the change.²²

III. Technical Conference and Briefs

17. Pursuant to the procedures set forth in section 284.123(g)(5) of the Commission's regulations, Commission staff convened informal settlement conferences on April 18 and May 23, 2018. When these conferences failed to achieve a resolution, the Commission established a briefing schedule to resolve the proceeding, with initial briefs filed by all parties on June 13, 2018, and reply briefs on July 3, 2018.²³

18. Guadalupe and ONEOK, in their initial briefs, continue to contend that Atmos' "bundling" system will result in NGPA section 311 interruptible interstate service being subordinate to interruptible intrastate service. In other words, they argue that it is improper in the context of priority of service at the Waha Header for Atmos to favor shippers who enter the Waha Header via Atmos over shippers who enter the Waha Header via third parties.²⁴ Furthermore, ONEOK argues that revised Section 10.1 merely addresses the priority of interruptible interstate service relative to other interstate service.

19. Guadalupe states the Commission has ruled that economic dispatch must be tempered to protect the interest of short-haul shippers that are not able to pay a higher rate for their service as compared to long-haul shippers. Noting that all shippers are required to pay a one-cent rate at the Waha Header, Guadalupe argues that these short-haul shippers are effectively paying the maximum lawful rate. Guadalupe asserts that under Commission precedent, all shippers paying the maximum lawful rate for the same category of service should have the same scheduling and curtailment priority, even if some shippers are subject to a lower maximum lawful rate than others, for example, because they take a shorter-haul service.²⁵ Moreover, Guadalupe argues the proposed Section 10(b) of Atmos' SOC states Atmos could "establish separate prioritization

²² Guadalupe Protest at 8.

²³ See 18 CFR § 284.123(g)(5).

²⁴ Guadalupe Initial Brief at 6.

²⁵ *Id.* at 11 n.12 (citing *Tennessee Gas Pipeline Co., LLC*, 139 FERC ¶ 61,050, at PP 41, 47 (2012) (finding that it would be unduly discriminatory against short-haul shippers to apply pure economic dispatch to secondary firm service without some accommodation to recognize their inability to pay higher than the maximum lawful rate for their service)).

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queues for its various identifiable pipeline system segments and incremental capacity.”²⁶ Guadalupe contends that this confirms that Atmos has the ability to maintain a separate queue for an “identifiable pipeline system segment” like the Waha Header facilities.

20. Guadalupe also argues that Atmos’ economic dispatch approach is in contrast to the Commission’s policy of encouraging the development and healthy functioning of market centers.²⁷ Moreover, Guadalupe states the COO Agreement requires Atmos to maintain a separate identity and presence for the Waha Header and its services in addition to requiring that the Administrative Committee provide approval for “the terms of any transportation agreement or tariff under which gas is transported through the Header.”²⁸

21. Atmos states, in its initial brief, that its SOC has always provided that NGPA section 311 interruptible interstate transportation service is subordinate to interruptible intrastate transportation service. Atmos also argues the economic dispatch method allocates capacity to shippers that value it the most. Atmos argues, “[it] is only natural that transportation paths involving longer transportation hauls are valued more highly by shippers than shorter transportation hauls.”²⁹

22. In their reply briefs, Guadalupe and ONEOK argue that subordinating NGPA section 311 interruptible interstate transportation to interruptible intrastate transportation is unlawful, and Atmos should be directed to afford equal priority to the same type of interstate and intrastate transportation service. Moreover, Guadalupe reiterates that it does not object to the economic dispatch method, but to Atmos’ application of that method on a “bundled” basis across two separately-owned and distinct pipeline systems.³⁰ ONEOK argues that the “bundled” dispatch arrangements are anti-competitive due to the tying of two distinct services. ONEOK reasons Atmos should

²⁶ *Id.* at 17.

²⁷ *Id.* at 13 n.15 (citing *Empire Pipeline, Inc. & National Fuel Gas Supply Corp.*, 150 FERC ¶ 61,181, at P 71 (2015) (describing market centers as places where sellers or buyers of gas come together that “are likely to develop in areas where several pipelines come together” and reiterating the Commission’s regulations which prohibit any provision in a pipeline’s tariff that inhibits the development of market centers.)).

²⁸ *Id.* at 16 (citing COO Agreement at Section 3.5.6).

²⁹ Atmos Initial Brief at 5.

³⁰ Guadalupe Reply Brief at 6.

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establish different queues to apply to these separate facilities and services, as originally requested by Guadalupe.³¹

23. Guadalupe argues it does not propose to prioritize short-haul over long-haul capacity, but rather to establish a separate allocation queue that has the Waha Header facilities as a distinct facility from Atmos' intrastate pipeline system. Guadalupe also argues that shippers that take service on the Waha Header facilities and Atmos' system do not demonstrate they value the service more than Waha Header only shippers; it just shows they happen to take service on Atmos' system rather than a competitor of Atmos. Finally, Guadalupe argues the Commission should "...order Atmos to independently allocate Waha Header System capacity from the Atmos wholly-owned system in order to protect the health and integrity of the Header as a market center, where shippers can fairly choose among multiple pipelines and markets."³²

24. Atmos argues in its reply brief that its proposal to add the word "interstate" in Section 10.1 was only intended to prioritize service based on the economic dispatch method as opposed to the age of contract. Atmos reiterates that interstate service was always subordinate to intrastate service and that Atmos' SOC only governs its interruptible interstate transportation service, not the interruptible intrastate transportation service. Atmos claims the Commission has never clearly specified that intrastate pipelines may not favor interruptible intrastate service over interruptible interstate service and that *Tejas*, cited by Guadalupe, has significant differences to the instant filing.³³ Atmos also argues that it is not an "undue" preference to prioritize a shipper using a contract with a higher economic value over a shipper with a contract with a lower economic value. Atmos contends that the \$0.01 per Dth charge is not a maximum rate, but just a rate that was set by the owners of the Waha Header, Atmos and Guadalupe.

25. Atmos further responds that the proposed Section 10.2(b), which establishes separate prioritization queues, was proposed in case there were constraints on one part of Atmos' system but not another. Atmos also argues that Guadalupe's solution of Atmos operating the Waha Header facilities as a separate pipeline would frustrate multi-pipeline transactions.

26. Atmos also argues that the proposed revisions will not impede the Waha Header's ability to function as a market center, and that Guadalupe's proposal would cause a greater disruption. Lastly, Atmos argues that the issue of whether it is fully complying

³¹ ONEOK Reply Brief at 4.

³² Guadalupe Reply Brief at 6.

³³ Atmos Reply Brief at 3 n.9 (citing Guadalupe Initial Brief at 10, citing *Tejas Gas Pipeline Co.*, 81 FERC ¶ 61,053 (1997) (*Tejas*)).

with the COO agreement is immaterial to this proceeding, and that if Guadalupe believes Atmos is in breach of the COO agreement, FERC is not the proper authority to adjudicate such claims.

IV. Data Request

27. On August 17, 2018, Commission staff issued a data request to Atmos in order to assist the Commission in its analysis of Atmos' proposal. Commission staff requested Atmos to file the 2017 ownership agreement in order to determine if the Commission has primary jurisdiction over the contract interpretation issue. Commission staff also requested information regarding the separate cost-based rate for the Waha Header facilities, as well as detailed shipper and throughput information on the Waha Header facilities.

28. In Atmos' data response,³⁴ Atmos stated that in 2017 its percentage ownership of the Waha Header facilities increased from zero percent to 25 percent pursuant to a provision in the COO Agreement, which was filed as an attachment to Guadalupe's Initial Post-Technical Conference comments. Atmos states that documents reflecting this change have been prepared, but Atmos has not yet received executed copies of those documents.

29. In addition, Atmos states the one-cent rate is a separate non-cost-based rate established by the Administration Committee pursuant to the COO Agreement. Atmos states this rate is reflected in more than 500 contracts and service agreements that use the Waha Header, and that this one-cent rate is part of Atmos' system-wide city-gate rate which is the basis for the state rate election. Atmos also provided further information on why Atmos should not be required to treat the Waha Header as a separate system.

V. Commission Determination

30. In general, we find that Atmos' unopposed revisions to its rates and SOC are fair and equitable, and we accept them effective September 1, 2017, as requested. As discussed below, however, we require several revisions to Atmos' proposed Priority of Service proposal in Section 10 of its SOC.

³⁴ Atmos submitted a data response on August 31, 2018; however, due to the inadvertent omission of the Certificate of Service and a Protective Agreement, Atmos re-submitted the data response on September 6, 2018 with the same responses.

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A. Priority of Interstate Interruptible Service

31. Proposed Section 10.1 states, “Interstate Interruptible Transportation Service shall be the lowest priority service provided by Transporter.” Atmos states that this provision continues its existing practice of giving intrastate interruptible service priority over NGPA section 311 interstate service.

32. In *Tejas*,³⁵ the Commission found a similar provision giving intrastate interruptible service priority over NGPA section 311 service to be unduly discriminatory. Atmos seeks to distinguish *Tejas* on the ground that there were other issues with the SOC proposed in that case, including, for example, a provision that the pipeline could modify the priority of service at its sole discretion. However, regardless of the Commission’s other concerns with the SOC proposed in that case, the Commission specifically held, “As for the interruptible priority method, *Tejas* is discriminating between classes of customers (intrastate transportation v. section 311 transportation).”³⁶ Thus, just as the Commission has held that, to the extent an intrastate pipeline chooses to provide firm interstate service pursuant to NGPA section 311, it must do so without undue discrimination between its interstate and intrastate service.³⁷ The Commission has established the same policy with respect to interruptible service. Atmos argues that the Commission’s non-discrimination policy should not apply here because Atmos “has always subordinated section 311 NGPA interstate interruptible transportation service to its intrastate interruptible transportation service.”³⁸ The fact that Atmos has been violating Commission policy in the past does not warrant the extension of such a violation.

33. We find that Atmos’ proposed Section 10.1 unduly discriminates against NGPA section 311 interruptible service by giving it a lower priority than equivalent intrastate interruptible service. We direct Atmos to revise its SOC so as not to subordinate NGPA section 311 interruptible service to intrastate interruptible transportation.

³⁵ 81 FERC ¶ 61,053, at 61,266 (1997).

³⁶ *Id.*

³⁷ *Transok, Inc.*, 54 FERC ¶ 61,229, at 61,673 (1991). *ONEOK WesTex Transmission, L.L.C.*, 161 FERC ¶ 61,128, at P 21 (2017) (*ONEOK*) (involving dispute between Atmos and ONEOK over the application of curtailment policy to both interstate and intrastate services). *See also* 18 C.F.R. § 284.9 (b) (2018).

³⁸ Atmos Initial Brief at 5-6.

B. Scheduling by Price and the Waha Header Facilities

1. Priority

34. Proposed Section 10.2 (a) adopts an economic dispatch approach to scheduling and curtailing interruptible service, providing that Atmos will schedule and curtail interruptible shippers “based upon the highest rate paid.” Guadalupe contends that this proposal unreasonably discriminates against interruptible shippers who use only the Waha Header without scheduling service on any other portion of Atmos’ system. As the parties agree, Atmos’ contracts with shippers for interruptible service at the Waha Header provide for a rate of \$0.01 per Dth. Guadalupe asserts that Atmos will therefore schedule interruptible shippers using other portions of the Atmos system in addition to the Waha Header before interruptible shippers using only the Waha Header, because they will pay more than the shippers using only the Waha Header. Guadalupe requests that the Commission require Atmos to schedule service on the Waha Header separately from service on the rest of its system, for example by creating a separate rate zone for the Waha Header in which all interruptible shippers paying the maximum zone rate would have the highest scheduling and curtailment priorities.

35. We find that Atmos’ proposal to schedule and curtail interruptible service based on “highest price paid” is generally consistent with Commission policy, but the Commission requires clarifications, as discussed below. As the Commission stated in *Equitrans, L.P.*,³⁹ “The Commission routinely accepts tariff proposals by pipelines to schedule and curtail interruptible service based on economic value.” The Commission has explained that using the rate paid as the primary basis to schedule interruptible services is consistent with the principle that capacity should be awarded to those who value it the most.⁴⁰ Moreover, both the D.C. Circuit and the Commission have held that it is not unduly discriminatory for a pipeline to schedule a long-haul discounted rate interruptible transaction using several rate zones before a short-haul maximum rate interruptible transaction using a single rate zone, if the long-haul transaction produces more revenue.⁴¹ Accordingly, the Commission has approved use of the absolute rate

³⁹ 135 FERC ¶ 61,001, at P 6 (2011). *See also El Paso Natural Gas Co.*, 114 FERC ¶ 61,305, at P 316 (2006); *Northern Border Pipeline Co.*, 69 FERC ¶ 61,114, at 61,444 (1994).

⁴⁰ *Koch Gateway Pipeline Co.*, 69 FERC ¶ 61,115, at 61,449 (1994); *Northern Natural Gas Co.*, 62 FERC ¶ 61,075, at 61,428 (1993).

⁴¹ *PG&E Gas Transmission, Northwest Corp. v. FERC*, 315 F.3d 383, 388-389 (D.C. Cir. 2003), *order on remand, PG&E Gas Transmission, Northwest Corp.*, 104 FERC ¶ 61,025, at PP 30-32 (2003).

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paid for purposes of scheduling and curtailing interruptible service, without imposing any limits in order to give short-haul interruptible shippers a greater opportunity to obtain capacity, such as requiring all maximum rate shippers to be given priority over discounted rate shippers.⁴²

36. This policy enables the pipeline to maximize the use of capacity available on its system for interruptible service and minimize situations in which a short-haul service would require another part of the system to be left idle. It also enables the pipeline to maximize its revenues from interruptible service, which in turn enables the pipeline's costs to be spread over more units of service in its next rate case.⁴³ Accordingly, even if Atmos established a separate rate zone for the Waha Header with a relatively low maximum rate, as requested by Guadalupe, Commission policy would still permit Atmos to schedule interruptible shippers paying a higher discounted rate for service across several rate zones before scheduling shippers paying the maximum rate for service only in the Waha Header rate zone.

37. Guadalupe cites Commission orders requiring pipelines scheduling secondary firm service by price to protect short-haul firm shippers' access to that service by either (1) using percentage of maximum rate paid rather than absolute price paid or (2) if they use absolute price paid, providing that all shippers paying the maximum rate will be

⁴² *Id.* PP 27-35. See also *El Paso Natural Gas Co.*, 114 FERC ¶ 61,305 at PP 316-317, in which the Commission accepted a proposal to schedule secondary firm and interruptible service based on absolute price paid, with a provision that firm shippers paying the maximum rate in any zone would be considered equal for purposes of scheduling secondary firm service. Guadalupe points out in its Initial Brief (at 10-11) that in *Enterprise Texas Pipeline LLC*, 130 FERC ¶ 61,153, at PP 42-45 (2010), the Commission accepted a proposal under which the pipeline would schedule all maximum rate interruptible service before it scheduled any discounted interruptible service. However, Atmos need only show that its proposed scheduling and curtailment priorities are reasonable. The fact that another priority scheme might also be found reasonable does not prevent Atmos from choosing any reasonable priority scheme approved by the Commission. *PG&E Gas Transmission, Northwest Corporation v. FERC*, 315 F.3d at 387; *Columbia Gas Transmission LLC*, 131 FERC ¶ 61,193, at P 21 (2010).

⁴³ *PG&E Gas Transmission, Northwest Corp.*, 104 FERC ¶ 61,025 at P 29 (Allocating interruptible service by price “will necessarily favor a bidder who bids on a longer haul ... over a bidder who bids on a shorter haul... This method allocates capacity to the shipper who will produce the greatest revenue and the least unsubscribed capacity. As such, it is an economically efficient way of allocating capacity and is consistent with Commission policy.”).

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scheduled ahead of any discount rate paying firm shipper.⁴⁴ However, the Commission has different scheduling and curtailment policies for firm services than for interruptible services. That is because firm shippers, unlike interruptible shippers, generally pay a reservation charge to obtain a guaranteed contractual right to use their primary firm service. Accordingly, if a pipeline is unable to schedule all primary firm service, the Commission requires a *pro rata* allocation of primary firm service, without regard to the rate each firm shipper pays. The Commission has permitted price to be taken into account in scheduling secondary firm service, because firm shippers do not have an “absolute entitlement to service at a secondary point.”⁴⁵ Nevertheless, given that both short and long-haul firm shippers pay reservation charges in order to obtain a contractual priority over interruptible shippers, the Commission has been concerned that secondary firm capacity be allocated in a manner that does not discriminate against the short-haul firm shippers.⁴⁶ Accordingly, the Commission has required the protections for short-haul firm shippers, including giving a priority to all maximum rate shippers or scheduling by percentage of maximum rate rather than absolute price paid.

38. However, interruptible shippers, unlike firm shippers, do not pay any reservation charge in order to obtain a contractual priority over any other shippers. Thus, as described above, the Commission has allowed pipelines to schedule and curtail interruptible service using absolute price paid, regardless of any preference this gives long-haul interruptible shippers over short-haul interruptible shippers.

39. Guadalupe also argues that the Commission’s policy that distinct services should be unbundled requires Atmos to schedule service on the Waha Header separately from service on the rest of its system. Guadalupe states that the Commission held that its unbundling policy applies to NGPA section 311 intrastate pipelines, as well as interstate pipelines regulated under the Natural Gas Act.⁴⁷ The Commission’s unbundling policy is inapplicable here. That policy requires pipelines to unbundle separate services, such as

⁴⁴ *Tennessee Gas Pipeline Co.*, 139 FERC ¶ 61,050, at P 41 (2012).

⁴⁵ *Iroquois Gas Transmission System, L.P.*, 80 FERC ¶ 61,199, at 61,801 (1997).

⁴⁶ *Panhandle Eastern Pipe Line Co.*, 78 FERC ¶ 61,202, at 61,872 (1997) (“[A]ll firm transportation is contracted for based upon a reservation fee and each firm shipper expects and deserves a similar level of quality service based upon paying that reservation fee. Whether the shipper is a long haul or a short haul shipper should not be a factor in allocating constrained firm receipt/delivery points. Contrary to the contention that firm service at secondary points is interruptible service, firm service is still a firm service, even if it is conditional service.”).

⁴⁷ Citing *GulfTerra Texas Pipeline, L.P.*, 106 FERC ¶ 61,184 (2004) (*GulfTerra*).

(continued ...)

unbundling sales service from transportation service or, as in *GulfTerra*, unbundling transportation and gathering services. The interstate interruptible service at issue here is a single service of the same quality and subject to the same terms and conditions whether performed on the Waha Header or the rest of the Atmos system; it is not two distinct types of services of the type to which our unbundling policy applies. Moreover, the fact that Atmos has leased the Waha Header from Guadalupe does not justify treating service on the Waha Header as separate from service on the rest of the Atmos system. The Commission requires pipelines that lease capacity from another pipeline to treat that capacity as part of their own system and sell it pursuant to the terms and conditions in their own tariffs.⁴⁸ Thus, Atmos' treatment of the Waha Header as part of its system is consistent with Commission policy.

40. However, we require Atmos to clarify its proposal as discussed below. The Commission has required pipelines to permit interruptible shippers with discounted rates the option to pay a higher rate up to the maximum interruptible rate during a constrained period in order to obtain a higher scheduling priority or avoid curtailment.⁴⁹ Therefore, Atmos must revise proposed Section 10.2 to clarify that interruptible shippers, including those using only the Waha Header, have the option to pay up to the applicable maximum rate to obtain a higher scheduling priority or avoid curtailment. This revision should give interruptible shippers using only the Waha Header the ability to compete with interruptible shippers using a greater portion of Atmos' system for capacity during constrained periods.

41. In this order, we are approving Atmos' proposed single, system-wide maximum interruptible rate consisting of a maximum capacity charge of \$0.33549 per MMBTU-day, and a maximum volumetric usage charge of \$0.02785 per MMBTU. That maximum rate applies to transactions using only the Waha Header, as well as to transactions using a greater portion of the Atmos system.

⁴⁸ See *Midcontinent Express Pipeline Inc.*, 124 FERC ¶ 61,089 at P 30 (citing *Texas Eastern Transmission Corp.*, 94 FERC ¶ 61,139, at 61,530 (2001)); *Columbia Gulf Transmission Co. v. Tennessee Gas Pipeline Co.*, 116 FERC ¶ 61,139, at P 10 (2006) (citing *Tennessee Gas Pipeline Co. & Columbia Gulf Transmission Co.*, 78 FERC ¶ 61,182, at 61,751 (1997)).

⁴⁹ *Texas Eastern Transmission Corp.*, 53 FERC ¶ 61,144, at 61,492 (1990); *South Georgia Natural Gas Co.*, 64 FERC ¶ 61,251, at 62,760-62,761 (1993).

42. Atmos charges all shippers a discounted rate of \$0.01 per Dth for transportation service through the Waha Header facilities,⁵⁰ and it states that this rate is included in more than 500 contracts and service agreements that use the Waha Header. Under SOC Section 10.2, as revised pursuant to this order, Atmos must give interruptible shippers using only the Waha Header the option to pay a rate higher than the discounted \$0.01 per Dth rate in their contracts, up to the maximum interruptible rate, in order to obtain a higher scheduling priority or avoid curtailment during a constrained period. To the extent a shipper on the Waha Header places a higher than \$0.01 value on that service during a constrained period, it should have the opportunity to pay a rate reflecting that value. This will enable such shippers to compete with longer-haul shippers for use of the Waha Header, consistent with the goal of awarding capacity to those who value it the most.

43. Proposed Section 10.2 (b) states that Atmos “reserves the right to establish separate prioritization queues.” A pipeline cannot amend the conditions of NGPA section 311 service without filing with the Commission to revise its SOC. We direct Atmos to revise Section 10.2 (b) to make clear that any new prioritization queues will be established through the standard practice of filing a revised SOC for Commission review. In the alternative, Atmos may delete this section as superfluous, given that all NGPA section 311 pipelines have the inherent right to propose new conditions of service.

44. Atmos shall file to revise its SOC as directed above within 30 days of the date of this order. We find that resolving the protesters’ substantive concerns will also resolve their concern over the possibility that an unlawful policy could be implemented retroactively. Subject to Atmos filing in compliance with the above guidance, we find that Atmos may retain the original effective date of September 1, 2017, as requested.

2. Operating Agreement

45. Guadalupe also contends that Atmos’ operation of the Waha Header is inconsistent with both (1) the confidential “Agreement for Construction, Ownership, and Operation of the Waha Header” (COO Agreement) between the predecessors of Guadalupe and Atmos and (2) the Lease Agreement pursuant to which Atmos operates the Waha Header. Guadalupe contends that the Lease Agreement requires Atmos to

⁵⁰ Atmos asserts that the “rate charged to transport gas over the Waha Header facilities is in no way comparable to a FERC jurisdictional maximum tariff rate,” but rather is “a rate set by the Administrative Committee that administers the Waha Header pursuant to Article III of Part B of the COO Agreement” (Atmos Data Response at 2) who “could meet and agree to change that rate at any time.” Atmos Reply Brief at 9. In these circumstances, the \$0.01 per Dth rate for service over the Waha Header must be treated as a rate discounted from the higher system-wide maximum rate for interruptible transportation service set forth in Atmos’ SOC.

maintain a separate identity and presence for the Waha Header and its services. It also asserts that the COO Agreement requires Atmos to present to the Administrative Committee, which includes representatives of Guadalupe, for approval “the terms of any transportation agreement or tariff under which gas is transported through the Header.” Guadalupe asserts that these provisions are both consistent with and support a determination that the Waha Header should be operated as an independent facility, and therefore Atmos should allocate capacity for Waha Header shippers on an unbundled basis.

46. However, Guadalupe also states that it “does not ask or expect the Commission to make any decision related to the agreements themselves or either parties’ obligations thereunder, which are contractual matters.”⁵¹ Atmos also asserts that the agreements related to the Waha Header are not subject to the Commission’s jurisdiction or interpretation and states that the Commission need not consider Guadalupe’s allegations relating to breach of those agreements.

47. We find it unnecessary to address in this order any issue concerning the COO Agreement or the Lease Agreement. The issue before us is whether the SOC proposed by Atmos, including its provisions concerning the scheduling and curtailment priorities for interruptible service, are fair and equitable. We have addressed that issue in the preceding sections and required Atmos to make certain changes in SOC Sections 10.1 and 10.2 in order to render Atmos’ proposed SOC fair and equitable. No party asks us to decide whether Atmos is in breach of any of its obligations under the COO Agreement or Lease Agreement concerning its operation of the Waha Header. Having ensured that Atmos’ current operation of its own facilities together with the leased facilities complies with Commission policies and the NGPA, we will go no further in this order.⁵²

The Commission orders:

(A) Atmos’ revised tariff records filed in Docket No. PR17-60-002 and referenced in footnote No. 1 are accepted subject to the conditions discussed above, effective September 1, 2017, as requested.

⁵¹ Guadalupe Initial Brief at 4 n.3.

⁵² See generally *Farmland Industries Inc. v. Louisiana Intrastate Gas Corp.*, 56 FERC ¶ 61,257, at 61,954 (1991) (applying the Commission’s test for whether to assert primary jurisdiction over a contract interpretation dispute, *Arkansas Louisiana Gas Company v. Frank F. Hall et al.*, 7 FERC ¶ 61,175 (1979), to a section 311 NGPA proceeding).

(B) Atmos shall file to revise its Statement of Operating Conditions as directed above within 30 days of the date that this order issues.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.