

137 FERC ¶ 61,050
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Natural Gas Company

Docket Nos. RP11-60-002
RP11-60-003

ORDER ON REHEARING AND CLARIFICATION AND COMPLIANCE FILING

(Issued October 20, 2011)

1. On April 21, 2011, the Commission issued an order¹ accepting revised tariff records filed by Southern Natural Gas Company (Southern) to comply with the Commission's November 30, 2010 order in this proceeding.² In addition, pursuant to section 5 of the Natural Gas Act (NGA), the Commission also required Southern to either modify certain provisions in its tariff concerning reservation charge credits or show cause why it should not be required to do so. Requests for rehearing and clarification of the April 2010 Order were filed. On May 23, 2011, Southern filed the modifications to its reservation charge credit provisions to comply with the April 2010 Order and an explanation supporting why it should not be required to eliminate its 98 percent threshold for reservation charge credits (May 23 Compliance Filing). Protests to the May 23 Compliance Filing were filed. For the reasons discussed below, the Commission denies the requests for rehearing, grants a request for clarification, accepts the May 23 Compliance Filing, and requires Southern to make an additional change to its reservation charge crediting provisions pursuant to NGA section 5.

I. Background

2. On October 13, 2010, Southern filed revised tariff records to make miscellaneous updates, clarifications, and revisions to its tariff. Various parties objected to Southern's proposed tariff changes. In addition, Indicated Shippers and the Alabama Municipal

¹ *Southern Natural Gas Co.*, 135 FERC ¶ 61,056 (2011) (April 2011 Order).

² *Southern Natural Gas Co.*, 133 FERC ¶ 61,183 (2010) (November 2010 Order).

Distributors Group, the Austell Gas System, the Municipal Gas Authority of Georgia, and The Southeast Alabama Gas District (collectively the Municipals) objected to Southern's existing reservation charge crediting provisions which Southern did not propose to revise. In the November 2010 order, the Commission accepted and suspended Southern's proposed tariff records to become effective December 1, 2010, and required Southern to revise certain of its proposals. The Commission stated that it would address the parties' pleadings concerning Southern's reservation charge crediting provisions in a subsequent order.

3. On December 20, 2010, Southern filed revised tariff records in Docket No. RP11-60-001 to comply with the November 2010 Order. On April 21, 2011, the Commission found that Southern's filing complied with requirements of the November 2010 order and accepted its compliance filing. However, pursuant to NGA section 5, the Commission found that certain of Southern's existing tariff provisions concerning reservation charge crediting were inconsistent with the Commission's policy concerning reservation charge credits. In general, Commission policy requires that the pipeline provide partial reservation charge credits during periods when it cannot provide service because of a *force majeure* event in order to share the risk of an event for which neither party is responsible. With respect to non-*force majeure* outages, where the curtailment occurred due to circumstances within a pipeline's control, including scheduled maintenance, the Commission requires the pipeline to provide shippers a full reservation charge credit for the amount of primary firm service they nominated for scheduling which the pipeline failed to deliver.³ In *North Baja Pipeline, LLC v. FERC*,⁴ the Court of Appeals for the District of Columbia Circuit (D.C. Circuit) affirmed Commission orders requiring a pipeline to modify its tariff to conform to these policies.

4. The April 2011 Order required Southern either to modify its reservation charge crediting provisions in four respects or explain why it should not be required to do so. First, section 3(a)(i)(A) of Southern's Rate Schedules FT and FT-NN provides that Southern will provide reservation charge credits in the event it is unable to make deliveries of at least 98 percent of the shipper's nominated volumes (98 percent threshold).⁵ The Commission held that this provision is contrary to its policy that, where

³ See, e.g., *Tennessee Gas Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022 (1996), *order on reh'g*, Opinion No. 406-A, 80 FERC ¶ 61,070 (1997), *as clarified by*, *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 63 (2006) (*Rockies Express*).

⁴ *North Baja Pipeline, LLC v. FERC*, 483 F.3d 819 (D.C. Cir. 2007) (*North Baja*), *affg*, *North Baja Pipeline, LLC*, 109 FERC ¶ 61,159 (2004), *order on reh'g*, *North Baja Pipeline, LLC*, 111 FERC ¶ 61,101 (2005).

⁵ Section 3(a)(i)(B) exempts Southern from the requirement to provide credits during the first 10 days after a *force majeure* event. That provision is consistent with the

scheduled gas is not delivered due to a non-*force majeure* event (including planned maintenance), there must be a full reservation charge adjustment as to the undelivered amount. Therefore, the Commission directed Southern to revise its tariff to provide reservation charge credits when it does not provide 100 percent of scheduled service or provide a further explanation why that policy should not be applied to it.⁶

5. Second, section 3(a)(i)(B) of Southern's Rate Schedules FT and FT-NN provided that Southern need not give a credit when it fails to deliver the requested amount of firm service because Southern is performing seasonal shut-in tests at its storage fields. The Commission found that this provision is also inconsistent with the policy that pipelines must provide a full reservation charge credit for scheduled amounts not delivered when the failure to deliver is due to scheduled maintenance.

6. Third, section 3(a)(i)(A)(1) of Rate Schedules FT and FT-NN provided that in a non-*force majeure* event, Southern would provide a reservation charge credit equal to the lesser of a firm shipper's: (a) contract entitlement (i.e., maximum receipt or delivery daily entitlement); (b) the nominated quantities that Southern failed to deliver or schedule [as further defined therein]; and (c) "an average of the immediately previous 7 days' daily quantities ... [as further defined therein]." The Commission found that it is reasonable for Southern to use the shipper's prior seven days' utilization of firm capacity to calculate the reservation charge credit when the pipeline has given advance notice of the unavailability of service, i.e., due to an outage or scheduled maintenance, prior to shippers' scheduling nominations. As Southern argued, this approach minimizes the potential for gaming, where shippers submit scheduling nominations for high amounts knowing that the scheduling nomination will be rejected, while ensuring that shippers who do not nominate will receive credits based on their recent usage of the system. However, the Commission held that, when Southern has not given such advance notice of an outage and curtails a shipper's scheduling nomination during or after the NAESB scheduling process, the reservation charge credit must be based on the nominated amount. Therefore, the Commission directed Southern to revise its tariff to provide the previous seven days' average daily quantities will be used to determine the level of reservation charge credits only when the pipeline has notified the shipper prior to

(continued)

Commission's policy concerning the reservation charge credits for *force majeure* outages (*Texas Eastern Transmission Co.*, 62 FERC ¶ 61,015 (1993); *Natural Gas Pipeline of America*, 106 FERC ¶ 61,310, at P 20-24, *reh'g*, 108 FERC ¶ 61,170, at P 10-11 (2004) (*Natural*)) and is not challenged by Indicated Shippers or the Municipals.

⁶ The Commission stated that its current policy on the 100 percent requirement was established in *Rockies Express*, 116 FERC ¶ 61,272 at P 63.

scheduling that the capacity will be unavailable or provide a further explanation why it should not be required to do so.

7. Finally, the Commission directed Southern to clarify that shippers do not have to re-nominate in a later nomination cycle to receive the reservation charge credit.

8. The Commission rejected the Indicated Shippers' contention that Southern should be required to provide reservation charge credits if firm service is not provided at a secondary point where (1) the transaction involves gas flow only between the shipper's primary receipt point and the primary delivery point, and (2) the curtailment is due to a capacity constraint on the primary flow path, not at the nominated secondary receipt point and/or delivery point. The Commission held that its policy concerning reservation credits is related to primary firm service, not secondary service or the scheduling priority of such service. The Commission further held that the reservation charge crediting policy requirement is directed to the pipeline's responsibility to meet its contractual obligation to the shipper, and the firm shipper is guaranteed a firm right to delivery only at its primary points.

II. Discussion

A. Rehearing and Clarification

1. Service at Secondary Points

9. Indicated Shippers request rehearing of the April 2011 Order, arguing that the Commission erred when it denied their request that Southern be required to provide reservation charge credits if firm service is not provided at a secondary point because of a constraint on the primary flow path. Indicated Shippers assert that the pipeline's contractual obligation extends not only to nominated points, but also to the shipper's reserved capacity path between the primary receipt and delivery points for which shippers have paid and where constraints occur most often. Indicated Shippers argue that the pipeline's contractual obligation should apply to secondary points in the primary path, particularly where the constraint occurs upstream of both the primary and secondary point and a firm shipper would not have received the service it requested at its primary or secondary points.⁷ Indicated Shippers further argue that, if a pipeline only sold capacity at points, it could sell far more capacity than exists on its mainline facilities. Indicated Shippers contend that a shipper should not bear the risk of pipeline mismanagement of operating its system to meet this contractual obligation. Indicated Shippers further

⁷ Indicated Shippers (at 11-12) present diagrams to illustrate their position applies only to constraints in the primary path, including the mainline, upstream of both the primary and secondary points in that path and not constrained secondary points outside the primary path whether or not service is available to the primary point.

contend that not providing the credits requested for secondary points will reduce the pipeline's incentive to manage its system to avoid interruptions and fail to reimburse the shipper for service that it would have been reimbursed for had it attempted to utilize its primary point.

10. Indicated Shippers argue that a shipper using a secondary point during the immediately preceding seven days would not be eligible to receive reservation charge credits even if it attempts to use its primary point during a constraint. Indicated Shippers assert that the resulting credits would be less than the shipper's daily contract requirements and entitlement. Indicated Shippers further assert that this result is directly contrary to the Commission's two rationales for requiring reservation charge crediting in the first place: ensuring that shippers do not bear the risk of pipeline mismanagement and providing an incentive for the pipeline to manage its system so that it can avoid interruptions.

Commission Determination

11. The Commission denies Indicated Shippers' request that we modify our policy so as to require full reservation charge credits for a pipeline's failure to provide firm service at secondary points. Reservation charge credits relieve shippers from their contractual obligation to pay the reservation charges required by their contracts with the pipeline. The Commission continues to find that such relief from a shipper's contractual obligation to the pipeline should be limited to situations where the pipeline has failed to meet its contractual obligation to provide guaranteed firm service to that shipper.

12. The Commission requires pipelines to provide full reservation charge credits during non-*force majeure* outages on the ground that a pipeline should be responsible for operating its system so that it can meet its contractual obligations. The Commission explained its position in Opinion No. 406,⁸ stating:

Because a pipeline is responsible for operating its system so that it can meet its contractual obligations, if the pipeline must curtail firm service due to an event within its control, or management, the Commission finds it inequitable for the pipeline's customers to bear the risk associated with such mismanagement. . . . The reservation charge credits also provide an incentive for the pipeline to manage its system so that it can avoid interruptions that it could have avoided if it had better managed its system.

The Commission has also consistently treated outages due to planned maintenance as non-*force majeure* events for which the pipeline must give full reservation charge credits,

⁸ Opinion No. 406, 76 FERC at 61,086.

even where the pipeline has little or no excess capacity and thus some scheduled maintenance outages could be uncontrollable.⁹

13. In *North Baja*,¹⁰ the D.C. Circuit upheld this policy, finding that the Commission has reasonably defined *force majeure* events as events that are not only uncontrollable but also unexpected.¹¹ The court held that, while some scheduled maintenance interruptions may be “uncontrollable” on a system operating at full capacity, they are not “unexpected.” The court concluded that “[t]here is nothing unreasonable about FERC’s policy that pipelines’ rates should incorporate costs associated with a pipeline ‘operating its system so that it can meet its contractual obligations,’ and that a cost-sharing mechanism should be reserved for uncontrollable and unexpected events that temporarily stall service.”¹²

14. Thus, the Commission’s policy requiring full reservation charge credits for undelivered amounts during non-*force majeure* outages is based on a requirement that a pipeline operates its system so as to meet its contractual obligations to provide firm service at all times, regardless of any operational need to restrict service on some parts of its system to carry out required maintenance. The policy also contemplates that pipelines may incorporate the costs of so operating their systems in their rates. In short, the crediting requirement places the pipeline at risk for any failure to meet its contractual obligations to firm customers during non-*force majeure* outages, while permitting the costs of meeting those obligations to be included in rates.

15. The Commission finds it just and reasonable to limit such a blanket at-risk requirement to the pipeline’s failure to provide primary firm service. A firm shipper has a guaranteed firm contractual right to service only at its primary points, not secondary points. As the Commission stated in *Tennessee Gas Pipeline Co.*, 73 FERC ¶ 61,083, at 61,206 (1995):

A shipper pays reservation charges based on primary points not on secondary points. The secondary rights to delivery points are based on Commission regulations and are by definition inferior to primary point rights. *The reservation charge a customer pays is based on its contract with the pipeline for receipt and delivery of gas at particular primary points, and corresponding reservation charge credits should*

⁹ *North Baja Pipeline, LLC*, 111 FERC ¶ 61,101.

¹⁰ 483 F.3d 819 (D.C. Cir. 2007).

¹¹ *Citing* Opinion No. 406, 76 FERC at 61,088.

¹² *North Baja*, 483 F.3d 819, at 823 (emphasis added).

*ordinarily be given when the pipeline fails to provide service to those particular points. The contract does not guarantee the same level of security if other points are used; rather the Commission's regulations require [a pipeline] to provide service to those other points if it can. If a customer wants to be able to receive reservation charge credits for service at a particular point, then that customer should reserve that point as a primary point. [emphasis added]*¹³

16. Pipelines design their systems in order to have the capacity to satisfy their primary firm obligations, and the Commission has never required pipelines to maintain sufficient capacity to give firm shippers a guaranteed right to service at secondary points. The Commission is also concerned that expanding the requirement of full reservation charge credits to failure to provide secondary firm service could increase the pipeline's costs of operating its system and ultimately lead to higher rates for shippers. Therefore, the Commission continues to find that relief from a shipper's contractual obligation to pay the agreed-upon reservation charge for the capacity reserved for its use should be limited to situations where the pipeline has failed to meet its contractual obligation to provide primary firm service on that capacity.

17. The Commission also rejects Indicated Shippers' contention that permitting use of the seven days' average of firm service prior to the outage to calculate the reservation charge credit supports requiring crediting for secondary points. Use of secondary service during that period is unrelated to determination of the appropriate credit for the reserved primary capacity for which the shipper has paid. As discussed above, the required reservation charge credit is the amount of primary firm service the shipper nominated for scheduling but the pipeline is unable to deliver. However, as the Commission found in the April 2011 Order, in circumstances where the shipper is notified of the outage prior to the scheduling of nominations service, the shippers' nominations may not reflect the amount they would have nominated without such knowledge.¹⁴ Therefore, use of an appropriate historical average of primary firm service usage to determine reservation charge credits, *i.e.*, the seven days' average prior to the outage, is reasonable. If a shipper does not use primary firm service during the seven-day period and instead uses secondary

¹³ See also, *Tennessee Gas Pipeline Co.*, 94 FERC ¶ 61,097, at 61,402 (2001) (“When firm shippers contract with Tennessee for firm transportation service, their contracts specify the receipt and delivery points to which the shipper will have primary rights. The shipper then has a guaranteed firm right to use those designated primary receipt and delivery points.”); and *Regulation of Short-Term Natural Gas Transportation Services*, 101 FERC ¶ 61,127, at P 48 (2002).

¹⁴ April 2011 Order, 135 FERC ¶ 61,056 at P 33.

service, it is entirely appropriate to not provide a primary service reservation charge credit for nominated secondary service during an outage.

2. Nominated Volumes

18. In the April 2011 Order, the Commission stated that the amount of reservation charge credits a pipeline must give for outages during a non-*force majeure* situation is measured by “the amount of service which the shipper *scheduled* but the pipeline was unable to deliver.”¹⁵ Indicated Shippers request clarification that the Commission’s statements concerning “scheduled” amounts mean that a pipeline must pay reservation charge credits when it fails to deliver 100 percent of the amount a firm shipper nominates, up to its maximum daily quantity or contractual entitlement, not the amount that is ultimately scheduled by the pipeline. Indicated Shippers contend that the references in the April 2011 Order to the amounts a shipper “schedules,” as opposed to “nominates,” will cause confusion since a shipper submits a nomination and only the pipeline schedules the service.

19. The Commission grants the requested clarification. As pointed out in *Tennessee*,¹⁶ a shipper’s scheduling nominations are often referred to as amounts the shipper “scheduled,” despite the fact that only the pipeline “schedules” service. As we explained in the April 2011 Order,¹⁷ the amount of reservation charge credits a pipeline must give in the non-*force majeure* situation is measured by the amount of service which the shipper nominated to be scheduled by the pipeline but the pipeline was unable to schedule or deliver.

3. Use of the Seven Days’ Historical Average

20. In the April 2011 Order, the Commission held that, when Southern gives advance notice of the unavailability of service before shippers have submitted scheduling nominations for the day (or days) of the outage, it is reasonable for the pipeline to use an appropriate historical average of usage as a substitute for use of actual scheduled amounts to determine the level of the shipper’s reservation charge credits. Indicated Shippers request clarification, and the Municipals request rehearing, to require that Southern clarify that the seven days’ historical average will not include gas days during the event when firm service is unavailable or curtailed to avoid distorting the average through lower credits. The Municipals argue that the easiest way to clarify is to provide a credit

¹⁵ *Id.*, P 32 (emphasis added).

¹⁶ *Tennessee Gas Pipeline Co.*, 135 FERC ¶ 61,208, at P 74 (2011) (*Tennessee*).

¹⁷ April 2011 Order, 135 FERC ¶ 61,056 at P 32.

based on the average of the customer's daily delivered quantities for the seven days immediately prior to the interruption of service.

21. We agree that it would improperly distort the shippers' average usage of firm service to include nominations during days when service was unavailable during the interruption of service. However, Southern's May 23 Compliance Filing adds language defining the applicable seven days' average as that "immediately preceding the service interruption."¹⁸ Therefore, these requests for rehearing and clarification are denied as unnecessary.

B. The Compliance Filing

1. The May 23 Compliance Filing

22. Southern filed modifications to its reservation charge credit provisions to comply with the April 2011 Order: (1) limiting use of a seven days' average immediately prior to the event to determine reservation charge credits to situations where it provided notice of a *non-force majeure* service interruption prior to the Timely Nomination Cycle, (2) eliminating provisions which did not allow reservation charge credits for failure to deliver due to seasonal shut-in tests, and (3) providing clarification that shippers that nominate curtailed volumes on another pipeline do not have to re-nominate in a later nomination cycle to receive the reservation charge credit.

23. However, Southern contends that it should not be required to modify Section 3(a)(i)(A) of Rate Schedules FT and FT-NN, which exempts Southern from providing reservation charge credits if it makes deliveries of at least 98 percent of the shipper's nominated volumes. As the Commission pointed out in the April 2011 Order, the Commission established its current policy requiring pipelines to provide reservation charge credits whenever the pipeline fails to deliver any amount less than the full 100 percent of nominated volumes in *Rockies Express*. Southern states that it has good cause to maintain its existing 98 percent threshold. Southern contends that, in contrast to *Rockies Express*, it provides shippers a significantly greater level of tolerance in calculating penalties. Southern asserts that, for example, when it issues an Operational Flow Order (OFO), a two percent tolerance for imbalances accrued in violation of the OFO is provided before imposing daily imbalance penalties. Southern contends that this tolerance level recognizes the fact that it is operationally impossible to manage imbalances to a zero percentage each day. Southern further asserts that the tariff considered in *Rockies Express* penalizes shippers with a charge of five times the monthly index price per Dth delivered in violation of an OFO without any tolerance.

¹⁸ Rate Schedule FT-NN, section 3(a)(i)(A)(2); Rate Schedule FT-NN, section 3(a)(i)(A)(2).

24. Southern asserts that, given its OFO tolerance level and its tariff as a whole, its reservation charge credit provision represents a just and reasonable approach. Southern further asserts that, since it allows a reasonable tolerance level, it should be permitted a comparable level of lenience in the context of reservation charge credits. Southern contends that its 98 percent threshold does not undermine the Commission's goal of providing pipelines an incentive to resolve non-*force majeure* interruptions as quickly as possible since it is incentivized to deliver 98 percent of scheduled quantities to avoid having to provide reservation charge credits and effectively guarantees such quantities, an exemplary performance standard.

2. Notice and Protests

25. Public notice of the May 23 Compliance Filing was issued on May 25, 2011. Comments were due as provided in section 154.210 of the Commission's regulations.¹⁹ Pursuant to Rule 214, 18 C.F.R. § 385.214 (2011), any unopposed motions to intervene filed before the issuance of this order are granted. Protests were filed by Indicated Shippers, the Municipals, and PCS Nitrogen Fertilizer, L.P. (PCS).

26. The Municipals, Indicated Shippers, and PCS protest Southern's failure to eliminate the 98 percent threshold. They contend that the balancing and penalty provisions cited by Southern are unrelated to reservation charge credits.

27. The Municipals argue that Southern should be required to revise its proposed clarification of the seven days' average to eliminate the underscored word "immediately" used in the phrase "(ii) an average of the immediately previous seven days' daily quantities allocated to the primary firm service at the Receipt Point(s) immediately preceding the service interruption . . ."²⁰ The Municipals contend that the underscored word is confusing and appears to be inadvertently included.

28. PCS argues the credit should be based on 100 percent of scheduling entitlement regardless of the volumes actually scheduled because the option to use up to 100 percent of its reserved capacity, whether actually used or not, is what customers are paying for when they contract for firm service. PCS further argues that customers bear significant costs associated with securing alternate transportation during outages, and the pipeline should not be allowed to add the retention of credits to these costs.

¹⁹ 18 C.F.R. § 154.210 (2011).

²⁰ Rate Schedule FT-NN, section 3(a)(i)(A)(2).

3. Commission Determination

29. The Commission finds that Southern's proposed tariff revisions comply with the April 2011 Order's requirements concerning: (1) use of a seven days' average usage to determine reservation charge credits, (2) allowing reservation charge credits for failure to deliver due to seasonal shut-in tests, and (3) limiting the requirement to re-nominate in a later nomination cycle to receive the reservation charge credit. Accordingly, the Commission accepts those tariff revisions to be effective the date this order issues. However, Southern's request to retain its exemption from providing reservation charge credits if it delivers at least 98 percent of nominated volumes is rejected.

30. In the April 2011 Order, the Commission found that Southern's 98 percent threshold is in conflict with the Commission's current policy regarding non-*force majeure* events requiring pipelines to provide reservation charge credits whenever the pipeline fails to deliver any amount less than the full 100 percent of nominated volumes, citing *Rockies Express*, at P 63.²¹ Southern attempts to distinguish *Rockies Express* on the ground that the pipeline in *Rockies Express* provides no tolerance before imposing penalties on imbalances violating an OFO, while Southern provides a two percent tolerance before imposing such penalties. However, consistent with our finding in the April 2011 Order rejecting Southern's similar reliance on the tolerance allowed for its measurement errors,²² reservation charge crediting is required when a shipper requests and the pipeline fails to provide the primary firm service for which the shipper has paid through the reservation charge. Southern's penalty tolerances or claims of operational impossibility do not establish that the failure to deliver the nominated amount was not within the pipeline's control.

31. The Commission recently rejected a similar argument relying on a penalty tolerance in *Tennessee*. The Commission stated that:

[T]he determination of whether a pipeline should provide reservation charge credits in connection with service provided during a particular period is part of determining what amount the pipeline should bill shippers for the service provided during that period. Reservation charge credits do not entail penalties for shipper conduct adversely affecting the system. When a pipeline bills for service provided, it bills for an exact amount of service provided, regardless of what meter error may be inherent in the measurement of the service provided. If the amount of service measured by

²¹ The Commission (at n.23) also cited *Petal Gas Storage, L.L.C.*, 126 FERC ¶ 61,199, at P 25-26 (2009); *Orbit Gas Storage, Inc.*, 126 FERC ¶ 61,095, at P 69 (2009); *SG Resources Mississippi, L.L.C.*, 122 FERC ¶ 61,180, at P 6 (2008).

²² April 2011 Order, 135 FERC ¶ 61,056 at P 21.

the meters for billing purposes is less than the scheduled deliveries, then it is appropriate for the pipeline to be required to provide reservation charge credits for the under-delivered amount. [²³]

32. Southern's attempt to distinguish *Rockies Express* on the basis of its penalty tolerance level is also meritless, since the Commission applies its policy requiring full reservation charge credits to all pipelines, which commonly have penalty and imbalance tolerances. Finally, Southern claims that the 98 percent threshold provides a proper incentive and exemplary performance standard. However, pipelines expect shippers to pay 100 percent of the amount they bill shippers for service, without any tolerance level for measurement errors inherent in determining the amount of service provided. Similarly, it is reasonable to require pipelines to provide reservation charge credits for any amount by which the measured amount of service provided is less than the amount of service requested because of a non-*force majeure* outage.

33. Therefore, the Commission reaffirms its finding in the April 2011 Order that Southern's 98 percent threshold is unjust and unreasonable and inconsistent with the Commission's reservation charge credit policy, because it requires customers to bear the risks associated with the interruption of primary firm service within the pipeline's control. Accordingly, the Commission directs Southern, within thirty days of the date of this order, to eliminate the 98 percent threshold and revise its tariff to provide reservation charge credits when it does not provide 100 percent of scheduled service consistent with Commission policy.

34. PCS's assertion that the credits must be 100 percent of a shipper's daily contract demand regardless of how much service it nominated for the day in question is mistaken. A non-*force majeure* outage does not harm a shipper if the shipper did not desire to use its reserved capacity on the day in question, and therefore there is no basis to require the pipeline to provide reservation charge credits for service not nominated. Moreover, tying the provision of reservation charge credits to whether the pipeline failed to provide requested service encourages the pipeline to schedule such outages for periods when its firm shippers will not be using their capacity. If the Commission required pipelines to provide credits regardless of the firm shippers' need for the capacity during the day in question, then the pipeline's incentive to minimize adverse effects on firm shippers would be reduced.

35. The Municipals' request that Southern be required to remove the word "immediately" from the phrase "an average of the immediately preceding seven days' daily quantities" as inadvertent and confusing is denied as unnecessary. Southern's use

²³ *Tennessee*, 135 FERC ¶ 61,208 at P 65.

of the word “immediately” properly clarifies that the seven days’ average will not include gas days during the event, as discussed above.

36. Finally, Southern’s tariff record erroneously numbers section 3(a)(ii) in its reservation surcharge provisions in Rate Schedule FT-NN as section 3(a)(iii). Southern is directed to file revised tariff records to correctly renumber that section 3(a)(ii).

The Commission orders:

(A) Southern’s revised tariff records are accepted to be effective the date this order issues, as discussed in the body of this order.

(B) Southern must, within 30 days of the date of this order, file tariff records to (1) eliminate the 98 percent threshold for reservation surcharge credits for non-*force majeure* events and (2) correctly renumber section 3(a)(ii) of its reservation charge provisions, consistent with the discussion in this order.

(C) The request for rehearing of Indicated Shippers concerning reservation charge credits for secondary points is denied, as discussed in the body of this order.

(D) The requests for clarification and rehearing are granted and denied, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.