UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

102 FERC ¶ 61,075

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Tennessee Gas Pipeline Company — Docket Nos. GT02-35-000 and GT02-35-001

ORDER FOLLOWING TECHNICAL CONFERENCE, ACCEPTING TARIFF SHEETS, SUBJECT TO CONDITIONS

(Issued January 29, 2003)

1. On August 16, 2002, Tennessee Gas Pipeline Company, (Tennessee) filed tariff sheets[1] to revise the credit evaluation provisions in its tariff. The Commission issued an order on September 13, 2002, accepting and suspending the tariff sheets, subject to refund and conditions, and establishing a technical conference.[2] Staff convened a technical conference on November 5, 2002. On November 19, 2002, Tennessee filed data responses along with pro forma tariff sheets revising and clarifying the tariff sheets filed on August 16, 2002, in response to concerns expressed at the technical conference and Staff's November 8, 2002 data requests in this proceeding. The Commission conditionally accepts Tennessee's creditworthiness proposal, subject to Tennessee filing actual revised tariff sheets incorporating the modification discussed below. Accepting Tennessee's creditworthiness proposal, as modified, effective February 16, 2002, will reduce the financial risks to Tennessee and its creditworthy customers due to Tennessee's non-creditworthy customers, while protecting Tennessee's shippers from unduly burdensome creditworthiness standards.

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[1] Third Revised Sheet No. 338, Fifth Revised Sheet No. 404, Eighth Revised Sheet No. 405, Ninth Revised Sheet No. 405A, Third Revised Sheet No. 405A.01, and Original Sheet No. 405A.02 to FERC Gas Tariff, Fifth Revised Volume No. 1.

[2] Tennessee, 100 FERC ¶ 61,268 (2002) (September 13 Order).

I. Background

2. On August 16, 2002, Tennessee filed tariff sheets to revise the credit evaluation provisions in its tariff. The filing implements more stringent creditworthiness safeguards in Article XXXVIII of Tennessee's General Terms and Conditions (GT&C). Tennessee requested an effective date of September 16, 2002. A number of parties protested Tennessee's filing. On September 10, 2002, Tennessee filed an answer to the protests.

3. On September 13, 2002, the Commission issued an order accepting and suspending the tariff sheets, subject to refund, conditions and a technical conference. The order accepted the tariff sheets effective the earlier of February 16, 2003, or the date the Commission specifies in an order issued after the technical conference. The Commission found that the protesting parties had raised a number of issues that required further consideration and directed staff to convene a technical conference.

4. The September 13, 2002 order, also directed Tennessee to revise its tariff language to clarify, as agreed, that a good faith dispute over amounts owed will not cause Tennessee to find a shipper to be un-creditworthy. On September 30, 2002, Tennessee made a filing to comply with this requirement of the September 13, 2002 order. On October 15, 2002, the Process Gas Consumers Group (PGC) filed a protest to the compliance filing.

5. A request for rehearing was filed by Calpine Energy Services, L.P. (Calpine). A motion to intervene out of time and request for rehearing was filed by the Electric Power Supply Association (EPSA). A request for rehearing and request for stay was filed by PGC. On rehearing, these parties asserted that Tennessee's proceeding should be expanded into a generic proceeding. PGC asserted that the filing should have been summarily rejected because no policy exists, a policy is in the process of being created, and shipper interests are not sufficiently protected in a section 4 proceeding. On December 19, 2002, the Commission issued an order denying the requests for rehearing and stay.[3] The Commission found that the best approach was to continue to process each pipeline's creditworthiness filing on an individual basis, because each filing raises very specific issues and a case-by case approach is the best approach for putting any necessary changes in place as early as possible.[4]

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[3]Tennessee, 101 FERC ¶ 61,311 (2002).

[4]See Northern Natural Gas Company, Docket No. GT02-38-001, et al; Natural Gas Pipeline Company of America, Docket No. RP03-7-000; Gulf South Pipeline

(continued...)

6. On November 5, 2002, staff convened a technical conference. On November 8, 2002, staff submitted data requests to Tennessee. Initial comments on the technical conference were due December 3, 2002 with reply comments due December 13, 2002. The parties listed in the Appendix filed initial and/or reply comments. These comments are discussed below.

7. On November 19, 2002, Tennessee filed pro forma revised tariff sheets to reflect changes in response to comments at the technical conference and staff's November 8, 2002 data requests.

II. Notice, Interventions and Protests

8. There are numerous requests for late intervention in Docket No. GT02-35-000 that were received after the issuance of the September 13, 2002 order which have not been specifically granted by the Commission. The Commission finds that no party would be prejudiced by accepting the requests for late intervention nor would it disrupt the proceeding. Accordingly the Commission grants any motions to intervene out of time filed before the issuance of this order. Pursuant to Rule 214 of the Commission Rules of Practice and Procedure (18 C.F.R. § 385.214), the late interveners must accept the record as its stands.

9. Notice of Tennessee's compliance filing in Docket No. GT02-35-001 was issued on October 2, 2002. Interventions and protests were due as provided in Section 154.210 of the Commission's regulations, 18 C.F.R. § 385.210 (2002). Pursuant to Rule 214, 18 C.F. R. § 385.214 (2002), all timely filed motions to intervene and any motions to intervene out of time filed before the issuance of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. PGC protested the compliance filing.

III. Discussion

10. We accept Tennessee's pro forma creditworthiness proposal, subject to conditions. As modified below, Tennessee's proposal will reduce the financial risks to Tennessee and its creditworthy customers due to Tennessee's non-creditworthy customers, while

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[4](...continued)
Company, Docket No. RP03-64-000; PG&E Gas Transmission-Northwest, Docket No. RP03-70-000; and Trailblazer Pipeline Co., Docket No. RP03-162-000.

protecting Tennessee's shippers from unduly discriminatory or burdensome creditworthiness standards.

11. New Jersey Natural Gas Company supports Tennessee's filing as a reasonable approach to credit issues and a rational balance between the financial concerns of the pipeline and interest of customers. A number of parties have expressed general concerns about Tennessee's proposal. They argue that Tennessee has not justified the need for the tariff changes, or shown that its current creditworthiness provisions are inadequate. They contend that the additional administrative and financial burden on shippers must be balanced against Tennessee's need for tariff changes. They wish to ensure that Tennessee will apply its proposed creditworthiness provisions in a reasonable and non-discriminatory manner. They assert that Tennessee's credit standards should be based solely on the financial risk to Tennessee if a shipper does not perform.

12. The Commission will address below whether the changes proposed by Tennessee to its credit-worthiness standards are just and reasonable. As discussed below, we have directed Tennessee to include objective criteria for determining whether a shipper is creditworthy in its tariff and to remove some of the provisions that are unsupported or unreasonable, such as Tennessee's ability to confiscate the gas of a defaulting shipper and giving shipper's found to be non-creditworthy only five business days to provide guaranties. In general, we conclude that the remaining credit standards, as modified, are commensurate with the financial risk to Tennessee if a shipper does not perform or the shipper become uncreditworthy.

13. PGC asks that Tennessee's proposal be rejected because it is inconsistent with Commission policy. PGC contends that the Commission and courts have determined, summary disposition and hence rejection of tariff filings is warranted when the facts are not in dispute and the new tariff contravenes valid and explicit Commission regulations or policy. They argue that outright rejection is equally appropriate here, since there is no policy in existence and the policy is in the throes of being created. PGC also argues that the Commission, not North American Energy Standards Board (NAESB), must formulate shipper creditworthiness policy.

14. We will not address these issues here. These issues have already been addressed in the order on rehearing in this proceeding[5] where the Commission rejected the premise that the filing must be rejected if the Commission's policy is unclear and found that the

[5]Tennessee, 101 FERC ¶ 61,311 (2002).

best approach at this time is to process each creditworthiness filing on an individual basis.

15. Now we will turn to a discussion of the filing and specific objections raised by the parties. The following discussion is divided into two categories: (1) Tennessee's proposed creditworthiness provisions; and (2) creditworthiness issues relating to capacity release.

A. Tennessee's Proposed Creditworthiness Provisions

What is a Reasonable Time Period for a Shipper to Provide Collateral?

16. Tennessee proposes two provisions in Article XXVIII, Section 4.3 and Section 4.4 respectively for a shipper to cure its creditworthiness and the time line for suspending service. Section 4.3 stipulates that Tennessee is not required to provide service for any shipper who becomes insolvent or fails within a reasonable period of time to demonstrate creditworthiness and loses its creditworthiness status as determined by Tennessee, unless the shipper provides one of four types of collateral to continue service. Section 4.4 provides that if a shipper becomes insolvent or loses its creditworthiness status subsequent to commencing service on Tennessee, Tennessee will notify the shipper that it has lost its creditworthiness. If the shipper wants to continue service, it will have to pay any outstanding balance due Tennessee and provide adequate assurance within five business days from notification of its loss of creditworthiness status that it will provide collateral equivalent to three months of service. The shipper at its election, can provide collateral as either: (1) an irrevocable letter of credit; (2) prepayment of service; (3) security interest; or (4) guarantee by another person or entity.

17. The Commission finds that Tennessee has failed to justify its proposal to require a shipper that loses its creditworthiness to provide security within five business days. Tennessee's proposal would require a shipper that has not defaulted or missed payments to Tennessee to obtain collateral within five business days. We are concerned that this is not a sufficient period of time given that the shipper may be faced with requests from multiple pipelines to provide collateral. Further, Tennessee failed to explain why it is reasonable to expect a shipper to be able to obtain three months of collateral within five business days. The amount of collateral a shipper would have to provide is potentially burdensome and could impede the movement of gas.[6] In addition, five business days

[6]For example, based on Tennessee's currently effective IT rate of $0.6263 per Dth

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provide an insufficient amount of time for the Commission to respond to a complaint filed by the shipper contending that it was unfairly treated by Tennessee. Therefore, we reject this provision.

18. While we reject Tennessee's proposal to require three months of collateral within five business days, Tennessee may file to justify a specific notice period as providing shippers with a reasonable opportunity to provide collateral or may adopt the following approach, which the Commission finds establishes a reasonable balance between Tennessee's legitimate need to obtain security and the shippers' need for a sufficient time to arrange for such security. Under this approach, when a shipper loses its creditworthiness status, the shipper must, within five business days, pay for one month of service in advance to continue service. This procedure would allow the shipper to have at least 30 days to provide the next three months of security for service. If the shipper fails to provide the required security within these time periods, Tennessee may suspend service immediately. Further, Tennessee may provide simultaneous written notice that it will terminate service in 30 days if the shipper fails to provide security. Tennessee should also provide written notice to this Commission at least 30 days prior to terminating a shipper's service.[7]

19. Such a procedure would provide Tennessee with additional security for the time period between the loss of creditworthy status and the time the shipper must provide the additional collateral. Prepayment of a month's charges is also similar to other industries that require advance payment as a guarantee for future service provision. For shippers that are already delinquent in service payments, Tennessee can require the delinquent shipper to pay its outstanding balance in five days and if that shipper fails to pay its delinquent account within the 5 days Tennessee can suspend service.

20. In addition, in the September 13 order, the Commission encouraged the parties to initiate the standards development process at the NAESB to see whether a consensus standard can be developed for creditworthiness, with NAESB and other parties filing a

[6](...continued)
(100 percent load factor rate, includes both demand and commodity charges) for transportation from the Gulf Coast production area (Zone 0) to the New York/New Jersey region (Zone 5), the collateral required for a three month period for a shipper who transports 50,000 Dth per day, would be $2,856,000.

[7]See 18 C.F.R. § 154.602 (2000).

report by June 1, 2003.[8] The Commission encourages NAESB and other parties to determine what a reasonable period of time is for a shipper who loses creditworthiness to obtain collateral to continue service and include such a finding in its June 1 report.

Credit Assurances

21. Tennessee's proposed tariff Article XXVIII, Section 4.4 requires a shipper to provide at least one of four specific forms of credit assurances in the event a shipper becomes insolvent or loses its creditworthiness following the commencement of service.

22. AES Londonberry, L.L.C. (AES) assert that Tennessee should be required to revise Section 4.4 to allow for other mutually agreeable forms of credit assurances. AES argues that such a revision would provide flexibility and without the change parties would be unreasonably restricted to only the forms of credit assurances listed in the tariff. In its reply comments, Tennessee states that it is not opposed to considering other forms of credit, provided that Tennessee and the shipper mutually agree on the form of credit and the value of the credit.

23. The requested change would benefit Tennessee and its shippers, since it would increase the parties' flexibility in curing a finding of un-creditworthiness. Tennessee has stated that it does not object to the change. Accordingly, Tennessee is directed to file tariff sheets to revise Section 4.4 to allow for other mutually agreeable forms of credit assurances. Tennessee is required to implement the provision in a non-discriminatory manner.

Confiscation of Gas

24. Tennessee proposes in Article XXVIII, Section 4.6, that if a shipper defaults on its payment obligation and all of that shipper's contracts have been terminated, then Tennessee may take title to the shipper's gas anywhere in the system to offset any outstanding amount the shipper owes. Tennessee will then sell the gas at market rates to offset the amount owed, crediting any revenue to the delinquent shipper.

25. Indicated Shippers argue that Tennessee has not cited any other pipeline's tariff as providing authority to confiscate gas and that Tennessee acknowledged at the technical conference that it was unaware of any other pipeline that has such authority. Indicated

[8] 100 FERC ¶ 61,268 at P 16 (2002).

Shippers contend that if the Commission approves the confiscation authority, it should require Tennessee to file an annual report on volumes confiscated, identifying the number of times it exercised its confiscation authority, the volumes involved, and the disposition of sales revenues.[9] Indicated Shippers also reported that Tennessee in its September 30, 2002 filing and the November 19 data response, satisfactorily addressed several issues on the confiscation of gas and creditworthiness provisions raised in its protests to the initial filing. PGC contends Tennessee failed at the Technical Conference and in the November 19 filing to justify permitting Tennessee to confiscate gas in the event of a default. PGC argues that the information demonstrates that taking title to gas would be a remedy of limited helpfulness to Tennessee while imposing substantial risk upon shippers. PGC contends that allowing Tennessee to take title to gas that may be associated with contracts which are not in default, could hurt creditworthy shippers by stripping them of all service rights.

26. The Commission rejects Tennessee's proposal to confiscate gas left on Tennessee's system by a non-creditworthy shipper whose contract has been terminated. Tennessee has not provided any legal justification of its right to confiscate a shipper's gas, and the Commission is concerned that such a provision does not adequately protect the rights of the shipper and other parties that may have an interest in the gas. However, Tennessee is free to assert any carrier liens or other interests that would be permitted under the applicable state law or the Uniform Commercial Code (UCC) against gas remaining on its system.[10] Under the UCC, transporters, including pipelines, are permitted to establish liens against the products they ship in the event that transportation or storage charges have not been paid. Accordingly, Tennessee's proposal is rejected without prejudice to Tennessee filing in its tariff a lien or interest that is consistent with applicable law.

Shipper's Affiliates

27. Proposed pro forma Article XXVIII Section 4.5 generally provides that Tennessee may deny a shipper's request for new service, if the shipper is in default on amounts owed for current or past service. Proposed pro forma Article XXVIII, Section 4.7

[9]Indicated Shippers do not propose that the report identify the shipper(s).

[10]See Uniform Commercial Code, § 7-307. Lien of Carrier (A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law)).

generally provides that Tennessee may deem a shipper's default on one contract as a loss of creditworthiness on any other contract the shipper has with Tennessee.

28. AES requests that Tennessee be required to clarify that under Sections 4.5 and 4.7, a default or other loss of creditworthiness by one shipper may not be deemed as a loss of creditworthiness by a different shipper, even an affiliate of the shipper. Tennessee has revised proposed Section 4.7 to state that, "[t]his Section 4.7 shall apply solely to the Shipper that is the contract holder." AES contends that further revisions are necessary to protect against the provisions being applied in an unreasonable manner. AES requests that Tennessee be required to add language clarifying that the term "Shipper" does not include affiliates of the contract holder and the revised language Tennessee added to Section 4.7 be added to Section 4.5.

29. Generally, a shipper should not be deemed non-creditworthy due to the default or other loss of creditworthiness by an affiliate. Therefore, Tennessee is directed to file a revised tariff sheet adding the revised language Tennessee added to Section 4.7 to Section 4.5. However, the Commission will not require Tennessee to clarify that the term "Shipper" does not include affiliates of the contract holder. It is sufficiently clear from the revised language that under Sections 4.5 and 4.7 a shipper will not be deemed non-creditworthy because of the credit status of an affiliate.[11]

Shipper Liability for Transportation Charges After Suspension or Termination of Services

30. Calpine contends that Tennessee clarified at the November 5 technical conference that a shipper whose contract is terminated would not be held liable for transportation charges subsequent to termination. Calpine argues that the proposed Section 4.4 at Article XXVIII could be read to hold a shipper liable for all transportation charges, including those remaining on the terminated portion of the contract. Calpine asserts that Section 4.4 should be altered to state that a shipper is not liable for transportation charges subsequent to the suspension or termination of its service agreement, thereby ensuring that the suspended or terminated shipper no longer bears an obligation to pay for a service that it no longer receives.

31. Tennessee contends that its tariff is already clear as to Tennessee's inability to collect future demand charges after a termination of contract for default or failure to

[11]Revised Article XXVIII, Section 4.3 does provide that a shipper is deemed insolvent in the event a parent company of the shipper voluntarily files for bankruptcy or is adjudged bankrupt or insolvent by the courts.

maintain creditworthiness.[12] Tennessee also contends that its tariff is also clear as to its right to collect service charges up to the date of termination and that Tennessee may pursue any other remedy, including litigation.

32. While Tennessee's tariff does not give it the right to collect charges for service after a contract is terminated, it is unclear what happens when a contract is suspended. When service is suspended, a shipper's service is stopped and that shipper should not be held responsible for future charges. Certainly the shipper must pay Tennessee for service up to the date service was suspended, but they are not responsible for charges after Tennessee suspended service. Tennessee is required to revise its tariff to provide that shipper's are not responsible for charges after service is suspended.

Change in Business Conditions

33. Tennessee proposes in Article XXVIII, Section 4.2 a list of five items of information and criteria that Tennessee may require at the time the contract is executed or at a future time to evaluate a shipper's creditworthiness. Such information includes: (a) bank references; (b) confirmation a shipper is not in bankruptcy; (c) confirmation that the shipper is not aware of business conditions that would cause a deterioration in its financial condition, insolvency, or inability to exist as an ongoing business; (d) no significant or material collection lawsuits or judgements affecting solvency; and (e) provide a list of owners and/or shareholders of the entity.

34. Calpine objects to the provision at Section 4.2 (c) that requires a shipper to confirm, in writing, that the shipper is "not aware of any change in business conditions which would cause a substantial deterioration in its financial condition, a condition of insolvency or the inability to exist as an ongoing business entity." Calpine contends that this requirement is vague, asking: (1) when would the shipper be aware of certain facts; (2) what standards constitute a "substantial deterioration in financial condition;" (3) how would a shipper know in the future when a change in business condition would lead to financial deterioration; and (4) how will Tennessee treat confidential financial information. Calpine argues that due to the ambiguous nature of Tennessee's proposal

[12]See Article X, Section 4, "[a]ny cancellation of the contract pursuant to the provisions of this paragraph shall be without prejudice to the right of Transporter to collect any amounts then due it for the natural gas service rendered prior to the time of cancellation...."

and the inherent difficulties in complying with this requirement, this provision should be deleted.

35. The Commission agrees with Calpine that the proposed wording in Section 4.2 (c) is unnecessarily vague and requires the shipper to make assumptions about future changes in its business condition which are subject to interpretation. Further, the shipper is required in other parts of Section 4.2 and also in Section 4.1 to provide substantial financial information on its current operations which Tennessee can use to make its own judgement about the shipper's financial viability without requiring the shipper to respond to vague requests about future financial viability in Section 4.2 (c). Similarly, the Commission finds the proposed wording in Section 4.2(d) unnecessarily vague and requires the shipper to make assumptions about what is a material or significant collection lawsuit or judgement and guess what ultimate affect they will have on the shipper's solvency. This provision may also lead to undue discrimination. Accordingly, Tennessee is required to remove Sections 4.2 (c) and 4.2(d) from its tariff.

Prepayments

36. Proposed revised Article III, Section 11.11(j) and Article XXVIII, Section 4 do not indicate whether interest will be paid on shippers' prepayments to Tennessee

37. Calpine requests that collateral held by Tennessee be required to be held in an interest-bearing escrow account, unavailable for transfer to affiliates. It argues that shippers need guarantees of Tennessee's performance. Calpine contends this is imperative, since Tennessee's parent, El Paso Corporation, has had its credit rating downgraded to junk status.

38. The Commission finds that the pipeline must provide the shipper with an opportunity to earn interest on prepayments.[13] Accordingly, within thirty days of the issuance of this order, Tennessee must refile its tariff sheets to provide a shipper with the opportunity to earn interest on prepayments, either by paying the interest itself, or giving the shipper the option to designate an escrow account to which Tennessee may gain access to payments for services provided if needed. Under such an agreement the shipper would retain the interest. This determination is consistent with the Commission's acceptance of a similar option in the Northern Natural Gas Company order in Docket No. GT02-38-001, et al., issued concurrently with this order.

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[13]Florida Gas Transmission Company, 66 FERC ¶ 61,140 at 61,261 (1994) and Florida Gas Transmission Company, 66 FERC ¶ 61,376 at 62,258 (1994).

Should Tennessee's Creditworthiness Standards Be Listed in its Tariff?

39. Various parties' argue Tennessee should provide objective standards for determining whether a shipper is creditworthy and that such standards should be incorporated into Tennessee's tariff.

40. Tennessee contends that a bright line test based solely on one criteria such as credit rating does not take into account the unique circumstances of each customer and may be too stringent. Further, Tennessee argues that if it were to rely solely on the actions of the major financial rating agencies in assessing creditworthiness, many of its shippers today would not be receiving service on Tennessee. Tennessee asserts that it must have the ability to work with its customers, in order to determine whether the shipper can meet its creditworthiness obligation, with the ultimate goal to keep shippers on its system.

41. We find that Tennessee must include objective criteria for determining whether a shipper is creditworthy in its tariff. Pursuant to Section 5 of the Natural Gas Act, we find that Tennessee's current tariff is unjust and unreasonable in that it allows Tennessee too much discretion in determining when a shipper becomes non-creditworthy and allows for possible undue discrimination. With the increased importance of the creditworthiness evaluation process it is important that the process be open and objective. Accordingly, Tennessee is required to set forth objective financial analysis and criteria to determine a shipper's creditworthiness in its tariff. Any shipper which meets the criteria would be deemed creditworthy. Tennessee argues that if it relies solely on financial rating agencies' credit ratings, many of its current shippers may not be deemed creditworthy. We recognize the need for Tennessee to consider the individual circumstances of its shippers and are not requiring Tennessee to use financial credit ratings as the sole determinant of creditworthiness. Tennessee, however, must set forth in its tariff the financial analysis and criteria that it will employ in evaluating the creditworthiness of a shipper that, for example, does not meet a credit rating standard to ensure that Tennessee is treating all shippers in a non-discriminatory manner.

42. Calpine in reference to Section 4.3, contends that Tennessee should not be able to exercise sole discretion in determining a customer's creditworthiness and that the Commission should require Tennessee to accept the assessment of a third party, hired by the customer, to determine the customer's creditworthiness to receive service on Tennessee. PGC also questions Section 4.3, contending that Tennessee's proposal for a shipper to demonstrate creditworthiness "within a reasonable period of time" could lead to discrimination against a shipper. PGC contends that Tennessee at a minimum must

provide ten business days for a shipper to establish creditworthiness. AES contends that Tennessee should allow for more mutually agreeable forms of credit in addition to the four provided in Section 4.4.

43. Tennessee responds that the Commission should reject Calpine's proposal for an assessment of a customer's creditworthiness by a third party. Tennessee argues that Calpine is requesting that Tennessee be forced to substitute its own business judgement with regard to its own services for that of a third party that is employed by the customer in question. Tennessee contends that Calpine's proposal is equivalent to requiring a credit card company to issue someone a credit card, even though the credit card company has found that party to be non-creditworthy, provided that the customer submits a credit analysis of its own creditworthiness.

44. We will not require Tennessee to accept the assessment of a third party to evaluate a customer's creditworthiness. Tennessee contends that it should be allowed to make its own evaluation. As previously mentioned, no party has filed a complaint claiming that they have been discriminated or been unfairly treated by Tennessee in determining their creditworthiness. If a party disagrees with Tennessee's finding on creditworthiness, Tennessee will explain the reasons for the decision. If the party still believes it has been harmed, they can file a complaint with the Commission. Tennessee is not required to revise its tariff to provide for a third party to evaluate a customer's creditworthiness.

45. The Commission finds Tennessee's proposed provision in Section 4.3 that a shipper who fails to demonstrate creditworthiness "within a reasonable period of time" to be unnecessarily vague and provides Tennessee with too much discretion. The provision is open to abuse and would allow for undue discrimination. Accordingly, Tennessee is required to revise this provision to expressly state the time period a shipper has to provide the requested financial information.

46. Tennessee has explained that it provides shippers with a written explanation of why they have been deemed not creditworthy. However, Tennessee's tariff does not specifically require Tennessee to inform the shipper in writing as to the reasons it has been deemed non-creditworthy. Tennessee must revise its tariff accordingly.

How is Security Deposit Applied in Event of Default?

47. ConEd and O&R seek clarification as to how a security deposit, which is the equivalent of three months of the highest estimated contractual charges, is applied in the event of a default of payment on a contract or contract(s) by a shipper. ConEd and O&R argue that how a security deposit is applied should not be subject to unwritten policies

that are implemented by Tennessee and further that Tennessee should ideally obtain enough security to cover all receivables from a defaulting shipper.

48. Tennessee claims that its existing tariff requires a security equivalent to its cost of providing service under any rate schedule for the customer for three months.[14] According to Tennessee, if a customer has to provide security, the security will cover payment for all costs for providing service (reservation charges, commodity charges and surcharges) for all contracts (including release contracts) that the customer holds on its system. Tennessee further explains that it requires enough security to cover surcharges, but does not collect security for fuel, since per its tariff, Tennessee generally recovers its fuel costs through a fuel and loss retention percentage of the quantity of gas flowed by the customer. The customer is not invoiced fuel, but rather Tennessee automatically retains a percentage of gas flowed as reimbursement of fuel costs.

49. Tennessee has adequately explained how it will apply security in the event of a shipper defaulting on payment. The security will cover Tennessee's cost for providing the service, including the reservation charge, commodity charges, and surcharges for all contracts that a customer holds with Tennessee. Further, the security is not applicable for fuel charges because the customer is not invoiced fuel. Tennessee is not required to make any revisions to its tariff to explain how the security would be applied.

Security Required for New Facilities

50. When new facilities are constructed, Tennessee proposes in Article XXVIII, Section 4.9, to require a shipper who is deemed to be uncreditworthy to post an irrevocable letter of credit up to the cost of the facilities.

51. The Municipal Group asks that Tennessee clarify that a letter of credit, posted pursuant to Section 4.9, is a potential one-time requirement that would be imposed only as a condition to Tennessee's agreement to construct new facilities and cannot be subsequently imposed. PGC argues that Section 4.9 is unnecessary and that Tennessee has failed to support this provision. PGC points to Tennessee's Data Request No. 4 in its November 19 filing, in which Tennessee indicated that no customer has defaulted on reimbursement payments for facilities that were constructed at their request because "[u]nder Article XVII of the GT&C, Tennessee requires that the costs for all facilities...constructed at a customer's request be reimbursed by the customer prior to the

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[14] See Article XXVIII, Section 4.2 at Seventh Revised Sheet No. 405 to Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1.

commencement of construction of such facilities, unless Tennessee has agreed to subsidize or waive the costs for such construction."[15] PGC argues that Tennessee by its own admission is sufficiently guarded from non-payment by shippers seeking expansion and that it has not justified the proposed revision.

52. Tennessee explains that concerning construction of facilities, it may require a letter of credit at the beginning of the construction process if the customer is not creditworthy at the time of the request, or at any time during construction process should the customer lose its creditworthiness during that phase. Tennessee is willing to provide further clarification to Section 4.9, adding the phrase "prior to in-service," which indicates that this provision only applies to the construction phase. After service is rendered, Section 4.9 would not be applicable. Tennessee is required to revise its tariff accordingly.

53. Tennessee, in responding to PGC's claim that Tennessee's current provisions provide adequate protection, contends that Section 4.9 is not an additional requirement, but rather provides an additional option not in its current tariff to non-creditworthy customers to have facilities built to provide them service. Tennessee argues that under its existing tariff, it will simply not build facilities for customers that cannot provide the full upfront reimbursement. Tennessee points out that allowing such customers to post other forms of credit in lieu of upfront reimbursement is a reasonable option that Tennessee is willing to extend to its customers and should be approved as such.

54. As currently written, Section 4.9 only provides for an irrevocable letter of credit and not other forms of credit as indicated by Tennessee. To provide a shipper with the other credit options other than a letter of credit, Tennessee is required to revise its tariff to provide for other forms of credit in lieu of upfront reimbursement. Except for this revision, Tennessee's proposal, as revised for other forms of credit, provides uncreditworthy shippers with more options to receive service than currently exists in the tariff and this provision with this modification should be approved.

[15]November 19 filing at p. 7.

Tennessee's Affiliates

55. The Municipal Group[16] asserts that Tennessee should also be required to periodically provide public information on the financial status of each affiliate shipping on Tennessee as well as the financial assurances required of those affiliates to ensure that Tennessee does not impose affiliate favoritism. The Municipal Group argues that Tennessee has an obvious incentive not to require the same degree of financial assurance from affiliates and Tennessee's failure to require financial assurances from affiliates will be difficult to detect.

56. Tennessee claims that the Municipal Group has not shown just cause why Tennessee's creditworthiness assessments of Tennessee's affiliates should be made public while the assessments of other shippers remain undisclosed. Tennessee claims that requiring disparate treatment of Tennessee's affiliates credit assessments would be unduly discriminatory and is not included in Tennessee's existing tariff. Tennessee contends that parties have not mentioned one instance of affiliate preference with regard to credit evaluations, and no complaint has been filed alleging that Tennessee has acted in an unduly discriminatory fashion with regard to affiliate creditworthiness evaluations.

57. Under section 5 of the Natural Gas Act, Tennessee's existing tariff must be shown to be no longer just and reasonable before the Commission can require a change in the existing tariff. The Municipal Group has not met this burden. The Municipal Group does not contend that Tennessee's existing tariff is unjust and unreasonable. Furthermore, the Municipal Group has not demonstrated the need for the Commission to require Tennessee to make public information on the credit status of its affiliates and its credit evaluations of its affiliates when such information on other shippers remains non-public. This would treat Tennessee's affiliates in a discriminatory fashion. The Municipal Group has not indicated any changed circumstances which make the existing tariff provisions on this matter previously approved as just and reasonable now unjust and unreasonable. The Municipal Group has not shown that Tennessee has acted in an unduly discriminatory manner with regard to creditworthiness evaluations and the Municipal Group's claim of potential discrimination is speculative.

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[16] The Cities of Clarksville, Springfield, Portland, and Waynesboro, Tennessee, the Corinth Public Utilities Commission, Mississippi, the West Tennessee Public Utility District, the Greater Dickson Gas Authority, Tennessee, and the Humphreys County Utility District, Tennessee (Municipal Group).

Interaction with Bankruptcy Code

58. Several protests to Tennessee's filing questioned about the interaction of Tennessee's creditworthiness provision and the U.S. Bankruptcy Code. In its November 19 initial comments Tennessee states it has added pro forma language to clarify this issue. Tennessee proposes to add Article XXVIII, Section 4.10 which states, "[t]ransporter intends that this Section 4 shall be read in harmony, and not in conflict, with the Bankruptcy Code." No party took issue with this proposed language in either the initial comments or reply comments.

59. The Commission accepts the proposed language. This provision only reflects the fact that Tennessee's tariff cannot conflict with the U.S. Bankruptcy Code.

B. Capacity Release Provisions

Shipper's Choice of Assurance Options

Positions of the Parties

60. ConEd and O&R request that Tennessee revise proposed Article XXVIII, Section 4 to provide that, if a releasing Shipper and a replacement shipper agree as part of a release transaction to a specific form of assurance, Tennessee shall adhere to the agreed upon selection. ConEd and O&R contend that this change would provide a releasing shipper some discretion over the form of assurance the releasing shipper uses to secure payment which is important because the releasing shipper is responsible if the releasing shipper's security is inadequate. Tennessee asserts that the requested change is not necessary as a releasing shipper can easily make the type of assurance selected as a requirement of the release. Tennessee argues that the only purpose of the change is for Tennessee to police the releasing shipper's agreement with the replacement shipper.

61. On January 6, 2003, ConEd and O&R filed a request for clarification. ConEd and O&R state that Commission precedent appears to indicate that releasing shippers do not have the right to assess the creditworthiness of replacement shippers or impose independent creditworthiness conditions on replacement shippers. Therefore, ConEd and O&R request that the Commission clarify whether releasing shippers have the right to assess the creditworthiness of a replacement shipper and impose independent creditworthiness conditions on replacement shippers. If the Commission determines that releasing shippers do not have such rights, ConEd and O&R argue that it is unjust and unreasonable for the Commission to require releasing shippers to stand as guarantors for reservation charges and interest owed to pipelines by replacement shippers.

Commission Response

62. The Commission clarifies that releasing shippers do not have the right to impose creditworthiness conditions on a replacement shipper independent of the creditworthiness conditions imposed by the pipeline. Accordingly, the Commission will not require Tennessee to revise proposed Article XXVIII, Section 4 to require Tennessee to accept the form of assurance agreed to in the release agreement between the releasing and replacement shipper. In Order No. 636-A the Commission indicated that the replacement shipper must satisfy the pipeline's provisions on creditworthiness, since the replacement shipper is contracting with the pipeline.[17] The Commission has also determined that the releasing shipper cannot establish separate creditworthiness standards, because they might conflict with the pipeline's standards, or specify more stringent standards than the pipeline's standards.[18] Creditworthiness standards are designed to assure the availability of capacity on an open access basis to all shippers. Permitting the releasing shipper to establish a higher creditworthiness standard than the pipeline would conflict with the requirement that pipeline service be available on an open access, non-discriminatory basis to all shippers.

Obligations of Releasing Shippers

Positions of the Parties

63. Various parties request that the Commission change its policy that, in the case of temporary release, the releasing shipper remains obligated for the reservation charges set forth in the releasing shipper's contract with Tennessee, plus interest. ProLiance Energy, LLC (ProLiance) claims that, in the current open access environment, if the Commission allows Tennessee to increase its creditworthiness scrutiny and set the creditworthiness priorities, then Tennessee should assume the credit risks. ProLiance asserts that if replacement shippers are required to sign contracts with the pipeline and meet the creditworthiness standards of the pipeline, then some, if not all, of the risk of credit should be transferred to the pipeline.

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[17] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, FERC Stats. & Regs., Regulations Preambles (January 1991-June 1996) ¶ 30,950 at 30,558 (1992).

[18] See, El Paso Natural Gas Company, 61 FERC ¶ 61,333 at 62,299 (1992); Panhandle Eastern Pipe Line Company, 61 FERC ¶ 61,357 at 62,417 (1992); Texas Eastern Transmission Corporation, 62 FERC ¶ 61,015 at 61,098 (1993); and CNG Transmission Corp., 64 FERC ¶ 61,303 at 63,225 (1993).

64. Public Service Commission of New York (New York PSC) argues that, if a releasing shipper is ultimately responsible for the default of a replacement shipper, the releasing shipper will act to protect itself with provisions similar to those proposed by Tennessee, and the replacement shipper will end up subject to creditworthiness requirements from both Tennessee and the releasing shipper. New York PSC submits that the cost to replacement shippers of such "double coverage" will discourage retail competition. New York PSC claims that there is no need for the releasing shipper to be the guarantor, since the proposed provisions give Tennessee all the tools necessary to avoid or mitigate the risk of nonpayment.

65. KeySpan Delivery Companies (KeySpan) argues that, if the releasing shippers do not establish the creditworthiness criteria that apply to replacement shippers and cannot enforce the creditworthiness criteria, they should not be required to guarantee replacement shippers' obligations. KeySpan submits that releasing and replacement shippers are the same, since both enter into service agreements with Tennessee establishing the terms and conditions of service and both must meet the same creditworthiness requirements.

66. ConEd and O&R agree that since the replacement shippers must meet the pipelines' creditworthiness tests and enter into service agreements with the pipelines, there is no reason to require any other entity to act as a guarantor. They raise the additional issue that pipelines generally take the position that, if a replacement shipper enters bankruptcy, a releasing shipper does not have the right to recall its capacity absent bankruptcy court approval, even if the recall is based on a condition imposed in the release. ConEd and O&R contend that it is a serious liability issue if the replacement shipper fails to schedule gas necessary to meet the needs of firm customer in the releasing shipper's territory and the pipelines will not honor recall requests.

67. Tennessee insists that if the Commission wants to reconsider this basic tenant of Order No. 636 it should do so in a rulemaking proceeding, not in this limited proceeding. Tennessee argues that the releasing shipper is not required to release capacity. Tennessee states that while it performs a credit check on replacements shippers it does not pick and choose the replacement shipper. The replacement shipper is chosen by the releasing shipper or through the auction process. Thus, Tennessee contends the releasing shipper may decide it does not want to do business with a particular replacement shipper, even if the replacement shipper meets Tennessee's credit standards, and nothing requires a shipper to release capacity, it does so by choice.

Commission Response

68. Under Commission regulations, when a releasing shipper releases capacity, its contract remains in full force and effect and the net proceeds of any release is credited against the releasing shipper's reservation charge. (18 C.F.R. § 284.8 (f)). Thus, under the regulations, releasing shippers remain fully liable under their contracts if a replacement shipper defaults, and the parties have not provided sufficient justification for the Commission to waive this regulation only on Tennessee's system. Moreover, the parties contesting this provision have failed to show that it is unjust and unreasonable.

69. The capacity release system was established in Order No. 636 to provide releasing shippers with an opportunity to reduce those demand charges through re-sale and was not designed to reduce the total revenue due to the pipeline. Releasing shippers have freely entered into service agreements with Tennessee obligating them to pay reservation charges for service. The releasing shipper's obligation should not be adjusted simply because a replacement shipper fails to pay under a release contract. In the event that the replacement shipper fails to pay and its contract is terminated, the releasing shipper will be free to remarket that capacity, and the parties do not provide sufficient justification for permitting releasing shippers to shift the risk of default to the pipelines. Indeed, to the extent that Tennessee's proposal increases the security for pipeline capacity, it similarly increases the security with respect to released capacity.

70. Furthermore nothing requires a shipper to release its capacity: it does so by choice. Unless the capacity is released through bidding, the releasing shipper chooses the replacement shipper, not Tennessee.[19]

71. We disagree with New York PSC's claim that there will be "double coverage. As provided above, the replacement shippers are held only to the creditworthiness standards of the pipeline; the releasing shipper cannot impose more stringent standards. We also do not find ConEd and O&R's argument regarding bankruptcy proceedings compelling. Once a replacement shipper is in bankruptcy, the bankruptcy court has jurisdiction over its contracts. The Commission cannot interfere with this jurisdiction.

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[19]On a pre-arranged release (which constitute the vast majority of releases), the releasing shipper can choose the replacement shipper with which it will deal. It is only on non-prearranged biddable releases where the releasing shipper is unable to exercise a choice with respect to the determination of the replacement shipper.

Recall Rights

72. Tennessee has stated that its tariff does not prohibit a releasing shipper from placing conditions on a replacement shipper, such as the releasing shipper providing in its release agreement that the releasing shipper has the right to terminate the release agreement upon the replacement shipper's loss of creditworthiness or default on amounts owed.

73. The East Ohio Gas Company d/b/a Dominion East Ohio and The Peoples Gas Company d/b/a Dominion Peoples (Dominion LDCs) request that Tennessee be required to include a tariff provision that states a releasing shipper may provide in its release agreement with a replacement shipper that a releasing shipper may immediately recall capacity or terminate its agreement with the replacement shipper when the replacement shipper loses its creditworthy status or is in default on payments. Dominion LDCs believe that this is appropriate, since it is unclear that a releasing shipper may impose more stringent creditworthiness standards as a condition of release since, Tennessee's Article III, Section 11.11(f) states that , "[all] terms and conditions of all releases must be consistent with the terms and conditions of the Releasing Shipper's Service Agreement and with Transporter's FERC Gas Tariff...."

74. It is unnecessary for Tennessee to add the requested language to its tariff. First, as discussed previously, the terms and conditions of a release cannot require more stringent creditworthiness standards or higher prepayment amounts than required by the pipeline. Releasing shippers, however, are permitted under the regulations to include a provision in the release allowing the releasing shipper to recall capacity at the releasing shipper's discretion.

Notice Provided to Releasing Shipper Upon Default of Replacement Shipper

75. Tennessee's currently effective tariff does not require Tennessee to make public the financial status of or financial assurance required from any shipper on its system, affiliate or non-affiliate. However, under Article III, Section 11.11(j), in the event a releasing shipper does not permanently release a contract to a replacement shipper, Tennessee may invoice the releasing shipper for the reservation charges plus interest upon the replacement shipper's default. In its pro forma filing, Tennessee proposes to revise Article III, Sections 11.11(j) and Article 12.5(d) to provide for notification to the releasing shipper if a replacement shipper has failed to pay amounts due to Tennessee for thirty days after payment is due.

76. Several parties contend that Tennessee should provide notice to the releasing shipper earlier than the time at which the replacement shipper fails to pay. They request notice be provided when Tennessee determines the replacement shipper is no longer creditworthy. The parties argue that since the releasing shipper is responsible for any default by the replacement shipper, the releasing shipper is entitled to receive adequate notice of the replacement shipper's uncreditworthiness. Further, ConEd and O&R assert that Tennessee must provide to the releasing shipper: (1) notice once a replacement shipper's payment is ten days past due; (2) notice of Tennessee's determination that a replacement shipper has lost its creditworthiness; (3) notice that a replacement shipper has failed to provide adequate assurance of performance under Tennessee's tariff; and (4) notice that replacement shipper's service is being suspended.

77. Tennessee argues that requiring additional tariff provisions providing notice to the releasing shipper is not required by the Commission and is unnecessary. Tennessee contends that the Commission only requires that the pipelines notify the releasing shipper as soon as practicable, or provide a minimum time by which the releasing shipper will be notified that the replacement shipper is delinquent or has defaulted.[20] Tennessee asserts that making the notice requirement part of the tariff is wholly unnecessary and that the releasing shipper can accomplish this goal by requiring in its agreement with the replacement shipper, that the replacement shipper is required to inform the releasing shipper of its financial conditions through the release contract and of any notices it receives in connection with such financial condition.

78. Since the releasing shipper is ultimately responsible for any default by the replacement shipper, the releasing shipper should promptly be made aware of replacement shipper non-creditworthiness or default. Once Tennessee determines a replacement shipper is no longer creditworthy and notifies the replacement shipper, Tennessee should provide notice to the releasing shipper. Tennessee is required to revise its tariff to simultaneously notify the releasing shipper of the uncreditworthiness, past due notice, or default of the replacement shipper. Such a provision promotes transparency, ensuring that all parties are made aware of potential problems on a timely basis. As the guarantor of a non-permanent release, the releasing shipper needs to be informed of any financial difficulties with the replacement shipper at the earliest possible date.

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[20] ANR Pipeline Company, 64 FERC ¶ 61,140 (1993) and Mississippi River Transmission Corporation, 63 FERC ¶ 61,185 (1993).

Tennessee's Obligation to Pursue Defaulter

79. Northern Indiana Public Service Company, Columbia Gas of Kentucky, Inc., Columbia Gas of Ohio, Inc. and Columbia Gas of Pennsylvania, Inc. (NiSource) argues that Tennessee's tariff should state that Tennessee will make good faith efforts to collect delinquent amounts from a defaulting replacement shipper, including becoming involved in bankruptcy proceedings of bankrupt replacement shippers owing amounts for service agreements with Tennessee. Proliance argues that Tennessee's tariff lacks significant provisions for addressing Tennessee's attempt to recover from replacement shippers in default.

80. The Commission clarifies that Tennessee must attempt to collect delinquent amounts from a defaulting replacement shipper with the same diligence that it attempts to collect delinquent amounts from any other shipper. The Commission does not believe a tariff revision is necessary for Tennessee to follow this directive.

IV. Compliance Filing in Docket No. GT02-35-001

81. The September 13, 2002 order, directed Tennessee to revise its tariff language to clarify that a good faith dispute over amounts owed will not cause Tennessee to find a shipper to be un-creditworthy. In compliance, on September 30, 2002, Tennessee filed to revise Article XXVIII, Sections 4.5 and 4.7 of its GT&C to state that, "this provision shall not affect amounts disputed by Shipper in good faith." PGC protested the filing only because it was in compliance with the September 13, 2002 order and PGC sought rehearing of the September 13, 2002 order.

82. We find that the revised tariff language adequately complies with the requirement in the September 13, 2002 order. Therefore, the proposed tariff language in Tennessee's September 30, 2002 filing is accepted as in compliance with the September 13 order, effective February 16, 2003, subject to the modifications directed in this order.

<u>The Commission orders</u>:

(A) We accept Tennessee's proposal as reflected in the November 19, 2002 <u>pro forma</u> tariff filing, subject to the conditions and modification discussed above. We direct Tennessee to file actual tariff sheets, to be effective February 16, 2003, within 30 days of the issuance of this order, incorporating the discussed changes in the body of this order.

(B) Tennessee's compliance filing in GT02-35-001 is accepted as in compliance with the September 13, 2002 order, effective February 16, 2003, subject to the modifications directed in this order.

(C) The motions to intervene out of time received before the issuance of this order are granted as discussed above.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix

Docket No. GT02-35-000
Tennessee Gas Pipeline Company
Commenters to Technical Conference

AES Londonderry, L.L.C.
Calpine Energy Services, L.P.
The Cities of Clarksville, Springfield, Portland, and Waynesboro, Tennessee, the Corinth Public Utilities Commission, Mississippi, the West Tennessee Public Utility District, the Greater Dickson Gas Authority, Tennessee, and the Humphreys County Utility District, Tennessee
Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.* @
The East Ohio Gas Company d/b/a Dominion East Ohio and The Peoples Gas Company d/b/a Dominion Peoples
Indicated Shippers
KeySpan Delivery Companies'
Nashville Gas Company #
National Fuel Gas Distribution Corporation *
New Jersey Natural Gas Company #
Northern Indiana Public Service Company, Columbia Gas of Kentucky, Inc., Columbia Gas of Ohio, Inc. and Columbia Gas of Pennsylvania, Inc. *
Process Gas Consumers Group
ProLiance Energy, LLC
Public Service Commission of New York
Tennessee Gas Pipeline Company *

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* These parties also filed reply comments.

\# These parties did not file initial comments, only filing reply comments.

@ Filed a request for clarification of Tennessee's reply comments.