

102 FERC ¶ 61, 217  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Florida Gas Transmission Company

Docket Nos. RP00-387-001  
RP00-387-002  
RP00-583-002  
RP00-583-003  
RP03-165-000

ORDER ON REHEARING, CLARIFICATION, AND COMPLIANCE FILINGS

(Issued February 26, 2003)

1. On May 16, 2002, the Commission issued an order<sup>1</sup> addressing Florida Gas Transmission Company's (FGT) pro forma tariff filing to comply with the directives of Order Nos. 637,<sup>2</sup> 587-G<sup>3</sup> and 587-L.<sup>4</sup> The May 16, 2002 order accepted FGT's filing with several modifications and directed the pipeline to file actual tariff sheets. On June 17,

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<sup>1</sup>99 FERC ¶ 61,184 (2002).

<sup>2</sup>Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, FERC Stats. & Regs., Regulations Preambles (July 1996 - December 2000) ¶ 31,091 (Feb. 9, 2000); order on rehearing, Order No. 637-A, FERC Stats. & Regs., Regulations Preambles (July 1996 - December 2000) ¶ 31,099 (May 19, 2000); order on rehearing, Order No. 637-B, 92 FERC ¶ 61,062 (July 26, 2000); aff'd in part and remanded in part, Interstate Natural Gas Association of America v. FERC, 285 F.3d 18 (D.C. Cir. Apr. 5, 2002); order on remand, 101 FERC ¶ 61,127 (2002).

<sup>3</sup>Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587-G, FERC Stats. & Regs., Regulations Preambles (July 1996-December 2000) ¶ 31,062 at 30,677-80 (1998), reh'g, Order No. 587-I, FERC Stats. & Regs., Regulations Preambles (July 1996-December 2000) ¶ 31,067 at 30,735-37 (1998).

<sup>4</sup>Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587-L, FERC Stats. & Regs., Regulations Preambles (July 1996-December 2000) ¶ 31,100 (2000).

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2002, FGT filed actual tariff sheets to comply with the Commission's order. As discussed below, the Commission will accept certain tariff sheets to be effective March 1, 2003, subject to modification, and reject certain other tariff sheets. (see Appendix).

2. On June 17, 2002 several parties requested rehearing and/or clarification of the Commission's May 16, 2002 order in the captioned docket.<sup>5</sup> As discussed below, the Commission will deny the requests for rehearing and grant, in part, the requests for clarification of its May 16, 2002 order.

### **I. Background**

3. In Order No. 637, the Commission revised, among other things, its regulations relating to scheduling procedures, capacity segmentation, and pipeline penalties in order to improve the competitiveness and efficiency of the interstate pipeline grid. Order No. 587-G promulgated Section 284.12(b)(2)(ii)<sup>6</sup> of the Commission's regulations requiring pipelines to establish provisions for netting and trading of imbalances. In Order No. 587-L,<sup>7</sup> the Commission established November 1, 2000 as the date by which pipelines were required to implement imbalance netting and trading.

4. On July 14, 2000 FGT filed pro forma tariff sheets in Docket No. RP00-387-000 to comply with Order No. 637. On September 29, 2000, FGT filed actual tariff sheets in Docket No. RP00-583-000 to comply with Order Nos. 587-G and 587-L. On October 27, 2000, the Commission accepted FGT's Order No. 587-G and 587-L compliance filing subject to further review in FGT's Order No. 637 proceeding and directed FGT to file an explanation of how its existing tariff provisions complied with Order Nos. 587-G and 587-L.<sup>8</sup> In the May 16, 2002 order the Commission found that FGT had generally complied with the requirements of Order No. 637, subject to certain modifications and that FGT's Order Nos. 587-G and 587-L filings were in compliance with those orders.

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<sup>5</sup>The three parties requesting rehearing are: Florida Municipal Gas Association (FMGA), the Florida Cities (Cities), and FGT.

<sup>6</sup>18 C.F.R. § 284.12(b)(2)(ii) (2002).

<sup>7</sup>Standards for Business Practices of Interstate Gas Pipelines, Order No. 587-L, FERC Stats. and Regs. Regulation Preambles (July 1996 - December 2000) ¶ 31,100 (June 30, 2000).

<sup>8</sup>93 FERC ¶ 61,093 (2000).

## II. Rehearing and Clarification

### A. Mainline Priority at Secondary Points

#### 1. Commission Requirement

5. Of importance here is one of the modifications required by the Commission in order for FGT to fully comply with Order No. 637. The May 16, 2003 order noted that Order No. 637-A provides that each pipeline must afford a higher priority over mainline capacity to shippers seeking to use a secondary point within their capacity path than shippers seeking to use mainline capacity outside of their path, unless the pipeline can demonstrate that such an approach is operationally infeasible or leads to anticompetitive outcomes on its system.<sup>9</sup>

6. FGT's compliance filing did not provide for a within the path allocation methodology and FGT requested the Commission not require it to implement such an allocation methodology but rather, allow it to maintain its existing pro rata allocation methodology. FGT argued that the imposition of a within-the-path priority leads to anti-competitive outcomes because it dictates that only a few parties will be in a position to serve incremental loads. FGT also argued that it is not always possible to assign a physical path to each delivery since a "grid" has been formed over the years by interconnecting its mainlines. FGT requested that, even if the Commission did not deviate from its general policy, the Commission allow it to retain its existing alternative point pro rata priorities methodology because the within-the-path allocation methodology was operationally infeasible on some portions of its system and will lead to anti-competitive outcomes.<sup>10</sup>

7. In the May 16, 2002 order, the Commission noted that when FGT made its compliance filing, rehearing of Order No. 637-A's adoption of a policy requiring a within-the-path scheduling priority was pending before the Commission. The Commission found that FGT made essentially the same arguments in its compliance filing as it had in its request for rehearing of Order No. 637-A. The May 16, 2002 order stated:

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<sup>9</sup>Order No. 637-A, FERC Stats. & Regs. Regulations Preambles (July 1996-December 2000) ¶ 31,099, at 31,596-98.

<sup>10</sup>FGT Transmittal letter at 4.

Florida Gas raised no new policy arguments to persuade us to alter the Commission's decision in Order No. 637-B, which denied Florida Gas' and others' rehearing request on this issue. In that order the Commission addressed each of the arguments raised here and affirmed its determination that within-the-path allocation priority generally will best facilitate competition in the capacity release market and reiterated its Order No. 637-A finding that competition and capacity release will be more efficient if one party has a defined right that can be exchanged, rather than two or more shippers having equal rights.<sup>11</sup>

8. The Commission also found that FGT's argument that it is not always possible to assign a physical path to each delivery on its system because a "grid" had formed over the years by the interconnection of its mainlines, and, therefore, for this operational reason the Commission's within-the-path methodology cannot be adopted was without merit because FGT was able to assign paths for segmentation of capacity on its system. Therefore, the Commission directed FGT to revise its tariff to grant priority to those shippers whose secondary points are within their capacity path.

## **2. Requests for Rehearing**

9. The three parties requesting rehearing of the Commission's May 16, 2002 order all contend that the Commission erred by requiring FGT to implement a within-the-path allocation methodology for secondary point allocation purposes, rather than permitting FGT to retain its current pro rata allocation methodology.

10. FGT argues that the Commission failed to make the requisite findings under Section 5 of the NGA in order to replace FGT's existing allocation methodology. FGT argues that the Commission did not make a finding that the existing pro rata methodology was unjust and unreasonable before determining to replace this methodology with the within-the-path allocation methodology as required by Section 5 of the NGA. FGT argues that the Commission merely determined that the new within-the-path methodology was better than the currently existing pro rata methodology.

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<sup>11</sup>99 FERC ¶ 61,184 at 61,732 (2002), citing, Order No. 637-B at 61,169.

11. All parties requesting rehearing argue that the within-the-path allocation methodology reduces competition. FGT and Florida Cities argue that the pro rata method provides shippers with primary points in a zone with equal access to use the secondary points in each zone but that under the within-the-path method the shipper furthest downstream has a preferential right to use the delivery point to the exclusion of upstream shippers and this fact reduces the number of effective competitors. FGT contends that this favors a select group of shippers with preferred rights while excluding other shippers that pay the same rate for the same facilities and service in the same rate zone. Therefore, FGT argues that the imposition of the within-the-path methodology constitutes undue discrimination.

12. FMGA offers a similar argument stating that the imposition of the within-the-path allocation methodology will devalue the capacity of certain shippers while bestowing an economic advantage on others.<sup>12</sup> It argues that this forced subsidy is inherently anti-competitive when an upstream shipper and a downstream shipper are competing against each other for the same load in the secondary capacity market.

13. The parties requesting rehearing also point out that the pro rata allocation methodology utilized by FGT was instituted on FGT's system by virtue of a settlement and that no party objected to FGT's proposal to continue its use of this methodology to allocate capacity.

### **3. Commission Ruling on Rehearing Request**

14. The Commission denies the requests for rehearing on this issue. However, as discussed below, the Commission will permit FGT to implement the within-the-path allocation methodology in conjunction with its next general NGA Section 4 rate case which FGT must file by October 1, 2003.

15. In Order No. 637-A, the Commission determined that providing priority to the shipper moving within its path would strengthen competition and promote capacity release because it would provide greater certainty as to the capacity rights of each of the shippers. Under pro rata allocation, the Commission found that neither the upstream nor downstream shipper would have definitive rights to the mainline capacity and that such uncertainty would make capacity trading difficult. Capacity allocation is at its most efficient when capacity can be exchanged so that the shipper placing the highest value on the capacity can purchase it. Competition and capacity release will be more efficient if

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<sup>12</sup>FMGA Request for Rehearing at 6.

one party has a defined right that can be exchanged, rather than two or more shippers having equal rights.<sup>13</sup> Based upon this reasoning, the Commission found that in the compliance filings, each pipeline must use the within-the-path allocation method unless it can demonstrate that such an approach is operationally infeasible or leads to anticompetitive outcomes on its system.

16. Here, parties argue that the Commission did not take into account allegations made by the parties in their comments to FGT's Order No. 637 compliance filing that imposition of the within-the-path allocation methodology will have an anti-competitive or discriminatory effect on the FGT system. The parties state that FGT should be exempted from the within-the-path allocation methodology as provided for in Order No. 637-A because of the anticompetitive effect that such a methodology will have on FGT's system. The parties' arguments, in the instant filing and in their comments to FGT's Order No. 637 filing are generally based upon the structure of the FGT system, in that they argue that because of the postage stamp rate design on FGT's system, under the within-the-path allocation methodology, the shipper furthest downstream will have a preferential right to use the delivery point to the exclusion of upstream shippers and this fact reduces the number of effective competitors and confers an economic advantage to the downstream customers.

17. Although the Commission permits parties to make a specific showing of anticompetitiveness in order to support an exemption to the within-the-path methodology, parties here have responded with only general arguments which were previously rejected by Order No. 637. The Commission finds that the parties requesting rehearing have not raised any circumstances or provided evidence not considered in Order Nos. 637-A and 637-B. The Commission reasoned in Order No. 637-A that in a large rate zone, such as the postage stamp rate design employed by FGT, the upstream shippers will pay the same rate as a downstream shipper and receive less valuable rights under the within the path allocation methodology. The Commission explained that to give the downstream shippers priority rights at points within its capacity path was the only method of creating tradable capacity rights to such points.<sup>14</sup>

18. In Order No. 637-B, the Commission expanded on its reasoning for imposing this allocation methodology to promote competition and explained further why the upstream

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<sup>13</sup>Order No. 637-A, 65 FR at 35734 & n.126, III FERC Stats. & Regs. Regulations Preambles ¶ 31,099, at 31,596 & n.126 (citing, R. Posner, Economic Analysis of Law, § 3.1, at 28 (2d ed. 1977)).

<sup>14</sup>Order No. 637-A at 31,597-98.

shipper received less valuable capacity while being subjected to the same rate. The Commission explained that the allocation of the priority to the downstream shipper under the within-the-path allocation methodology is not unduly discriminatory, because the upstream and downstream shippers are not similarly situated. This is because the downstream shipper already has the ability to preempt the upstream shipper's use of a downstream point by virtue of the primary point rights in their respective transportation contracts. Therefore, the Commission reasoned that its imposition of the within-the-path methodology for the allocation of capacity for secondary points did not create a situation that discriminated against the upstream shipper but, rather, the Commission "simply react[ed] to the facts as they stand to facilitate more effective capacity allocation."<sup>15</sup> The Commission found that its determination was consistent with the conclusion reached in Order No. 637 that while upstream shippers can select downstream points in the same zone, the shipper will be using those points on a secondary basis, subject to a higher priority to shippers using primary points.<sup>16</sup>

19. FGT also argues that the Commission's rationale for discarding the pro rata allocation methodology is that the new within-the-path methodology provides an absolute, guaranteed, right to firm capacity which could be traded. FGT argues that a pipeline has no obligation to deliver to secondary points if the requested capacity is not available and, therefore, the downstream shipper has only secondary rights to obtain deliveries at the secondary point and the Commission's purpose in requiring a change in allocation methodologies is not met because there is no guaranteed right to capacity at the new point to trade. Therefore, FGT argues that the Commission did not meet its obligation to show that the new within-the-path methodology imposed on FGT's system is just and reasonable. The Commission finds that this argument carries little weight.

20. In Order No. 637-A, the Commission addressed this argument and found that the potential use of a secondary delivery point did not compromise the enhanced certainty of

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<sup>15</sup>Order No.637-B at 61,170.

<sup>16</sup>Order No. 637-B at 61,170, citing, Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636-A, 57 FR 36128 (Aug. 12, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991-June 1996] ¶ 30,950, at 30,585 (Aug. 3, 1992), Order No. 636-B, 61 FERC ¶ 61,272, at 62,013 (1992). In Northwest, the Commission recognized that there is no undue discrimination in giving priority to shippers using their primary path over those using capacity between secondary points. Northwest Pipeline Corp., 67 FERC ¶ 61,095, at 61,274 (1994).

the tradeable right created by the imposition of the within-the-path allocation methodology for secondary point capacity.<sup>17</sup>

21. All three parties requesting rehearing point out the FGT's existing allocation methodology is the result of a settlement. FMGA states that in FGT's Order No. 637 proceeding the parties agreed upon an allocation methodology on FGT's system.<sup>18</sup> It states that this methodology was based upon a postage stamp rate design for market area deliveries and upon all shippers having equal access to all delivery points on an alternate basis, with secondary point priority determined on a pro rata basis. Florida Cities point out that the rate design was agreed to because the absence of a within-the-path allocation methodology was specifically assumed. FMGA argues that the pro rata methodology is fundamental to the allocation of capacity rights and the value of capacity on the FGT system and that the imposition of the within-the-path methodology would mean that a downstream shipper would benefit because of geography and not because of a sound allocation methodology. FGT argues that the Commission is bound by the terms of the settlement and that changing one aspect of the settlement denies the parties to the settlement of the benefit of their bargain. FGT and Florida Cities argue that the Commission has recognized that there is an extremely high barrier to altering a settlement during its term and that the Commission should follow its policy to honor settlements in the instant case.<sup>19</sup> FGT also argues that any change to a new allocation method should be accomplished in conjunction with other issues in FGT's next NGA general Section 4 rate case rather than in isolation.

22. FGT also argues that the current allocation methodology has unanimous customer support that the Commission did not take into account in making its May 16, 2002 determination to require FGT to implement a new within-the-path allocation methodology. FGT argues that in previous Order No. 637 cases the Commission gave effect to the agreement of all the parties in the proceeding such as in Reliant Energy Gas Transmission Company, (Reliant) where the Commission considered the agreement of all

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<sup>17</sup>Order No. 637-A at 31,597, fn. 129.

<sup>18</sup>FMGA Request for Rehearing at 4, citing, Florida Gas Transmission Co., 63 FERC ¶ 61,160 (1993), order on reh'g, 70 FERC ¶ 61,017 (1995).

<sup>19</sup>FGT Request for Rehearing at 8, citing, El Paso Natural Gas Co., 99 FERC ¶ 61,244 (2002).

the parties in permitting Reliant to credit revenue penalties only to firm shippers and not to all shippers as "Commission policy generally requires."<sup>20</sup>

23. First, the Commission is not bound by the settlement in regard to the Commission's authority under Section 5 of the NGA and the Commission will exercise such authority where, as here, and in Order No. 637-A, it has found that the settlement practices are no longer just and reasonable. Second, one of the Commission's primary objectives under Order No. 637 is to foster a competitive and efficient interstate pipeline grid. To strengthen competition in the transportation marketplace and increase allocative efficiency the Commission has determined that capacity must be allocated to the shipper which places the highest value on the capacity. In order to increase the efficiency of capacity allocation, the Commission determined that shippers must have tradeable rights to the capacity.<sup>21</sup> In Order No. 637-A, the Commission determined that each pipeline must allocate capacity on a within-the-path basis in order to ensure that the capacity rights would be more easily traded than rights determined on a pro rata basis, thus furthering the Commission goal of increasing competition. Therefore, because the pro rata allocation methodology currently utilized by FGT frustrates the Commission's attempt to enhance competition on the nationwide pipeline grid, the Commission as discussed in Order No. 637-A, requires that FGT replace that methodology with the within-the-path methodology.

24. In reaching its competitive objectives the Commission, as it did in Reliant, may permit a pipeline to retain certain features of settlements which do not completely comply with all the competitive concerns of Order No. 637. However, these features, such as the crediting of revenue penalties to one type of shipper, must not interfere with the Commission's objectives of creating a national pipeline grid through which shippers may easily access transportation services provided on a generic basis and increasing competition. In Reliant, in permitting the pipeline to retain its crediting mechanism, the Commission made the specific finding that such action would "not have any significant adverse effect on competition" and, therefore, the Commission permitted the pipeline to utilize the methodology it had reached in its settlement.<sup>22</sup> The Commission cannot make such a finding in the instant proceeding. The fact that FGT has reached a settlement

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<sup>20</sup>FGT Request for Rehearing at 6, citing, Reliant Energy Gas Transmission Co. 98 FERC ¶ 61,362 at 62,552 (2002).

<sup>21</sup>Order No. 637-A at 31,597.

<sup>22</sup>98 FERC at 62,552.

agreement with its shippers does not compel the Commission to permit a feature with the effect on competition as important as the manner in which capacity is allocated on a pipeline's system to be substantially different on FGT's system than on the rest of the pipeline grid.

25. Florida Cities requests that if the Commission does not grant FGT an exemption from the within-the-path allocation methodology, the Commission should defer the implementation of the within-the-path allocation methodology to take effect prospectively after FGT's next NGA general Section 4 rate case so that the cost of the transportation on FGT's system can be designed to closely reflect the value of such transportation.<sup>23</sup> FGT argues that changing to a new allocation methodology should not be considered in isolation, but in context of all other issues in FGT's next general NGA Section 4 rate case which must be filed by October 1, 2003.

26. As stated above, the Commission does not find the parties competitive arguments or those related to the origin of the pro rata methodology to compel it to grant an exception to the imposition of the within-the-path allocation methodology on FGT's system. Therefore, the Commission affirms its previous findings. However, because the settlement was predicated on a balance between rate and priority considerations and because a new general Section 4 rate case will be filed by FGT on or before October 1, 2003, the Commission will, as a matter of equity, permit the implementation of the within the path allocation methodology on this system to take effect in conjunction with FGT's next general NGA Section 4 rate case.<sup>24</sup> Therefore, FGT is directed to file revised tariff sheets reflecting a within the path priority methodology, in this docket, by October 1, 2003.

## **B. Segmentation**

### **1. Commission Requirement**

27. FGT requests clarification or in the alternative rehearing of several aspects of the Commission's May 16, 2002 order. In addressing the issue of segmentation the Commission found that FGT's tariff generally complied with the Order No. 637 segmentation requirements, however the Commission required one modification.

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<sup>23</sup>Florida Cities Request for Rehearing at 11.

<sup>24</sup>In FGT's last approved rate settlement, (Phase IV Settlement) FGT agreed to file a general NGA Section 4 rate case no later than October 1, 2003. 88 FERC ¶ 61,142 at 61,470 (1999).

28. The Commission found that FGT's proposed tariff provided that shippers may only segment capacity within their primary path. The Commission stated:

In Order No. 637-A, the Commission stated that a shipper has the right to segment outside of their capacity path. A shipper may move to any point within the zone for which it has paid even if that point is outside of the contractual path because a shipper has the right to utilize all points within the zone for which it has paid. Therefore, Florida Gas is directed to modify its proposed tariff sheets consistent with this discussion. 99 FERC at 61,730.

## **2. Request for Clarification**

29. FGT states that it agrees that shippers have the right to nominate receipts and/or deliveries of gas at points outside of their capacity path on an alternate basis and to request to change their primary receipt and delivery points to points which are outside their original path subject to availability of firm capacity and overlapping segment limitations. However, FGT requests clarification that shippers have no primary firm capacity outside their capacity path which they can release. FGT states that a shipper cannot release capacity to which it has no rights and which may not even exist.

## **3. Commission Ruling on Request for Clarification**

30. FGT requests that the Commission clarify that shippers have no primary firm capacity outside their primary path which they can release. The Commission agrees that a shipper cannot release primary firm capacity outside its capacity path because it holds no such capacity. However, this is not to say that a releasing shipper may not release capacity outside its capacity path on a secondary basis. In CenterPoint Energy-Mississippi River Transmission Corporation, Docket Nos. RP00-410-002, et al., (MRT), issued contemporaneously with the instant order, the Commission explained that a shipper may release a segment which is entirely outside its primary path, so long as the segment is within the zone for which it is paying.<sup>25</sup>

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<sup>25</sup>The Commission's discussion in MRT contains a full discussion of a shipper's rights to release capacity under various scenarios.

### **III. June 17, 2002 Compliance Filing on Other Issues**

#### **A. Scheduling Equality**

##### **1. Commission Requirement**

31. The Commission's May 16, 2002 order directed FGT to revise its filing to comply with NAESB Standard 5.3.2 (Version 1.5).

##### **2. FGT's Proposal/Commission Ruling**

32. FGT included tariff sheets<sup>26</sup> in the instant filing to comply with the Commission's May 16, 2002 order. However, on October 4, 2002, FGT filed revised tariff sheets in Docket No. RP02-413-001 as part of its Order No. 587-O proceeding. Those sheets implement NAESB Standard 5.3.2 (Version 1.5). By order issued November 18, 2002, in Docket No. RP02-413-001 the Commission accepted those tariff sheets.<sup>27</sup> Therefore, the sheets filed in the instant proceeding are rendered moot. Accordingly the Commission rejects these tariff sheets.

#### **B. Segmentation**

##### **1. Commission Requirement**

33. The Commission accepted FGT's segmentation proposal with one exception. The Commission found FGT's proposal to limit segmentation to points within the primary path to be unacceptable, and directed FGT to revise its tariff to permit segmenting outside of a shipper's capacity path.

##### **2. FGT's June 17, 2002, Compliance Filing**

34. FGT has filed a revised Section 18.1 to its GT&C to comply with the Commission's directive. FGT's proposal permits segmentation by a shipper for its own use or for releasing capacity to replacement shippers. Shippers must specify the segment as between any two points within the shipper's primary capacity path, however, shippers

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<sup>26</sup>Fifth Revised Sheet No. 165A, Sixth Revised Sheet No. 166, and First Revised Sheet No. 166A to FERC Gas Tariff, Third Revised Volume No. 1.

<sup>27</sup>Unpublished Letter order issued November 18, 2002.

may, subject to available capacity, nominate to alternate receipt and delivery points either within or outside of the shipper's primary path. In addition, a shipper may, subject to available capacity, request a change to its primary points, either within or outside of the primary capacity path.

### **3. Commission Ruling**

35. The Commission finds that FGT has not complied with the Commission's May 16, 2002 order because its tariff proposal continues to provide that segmentation must specify points within the primary path. FGT is directed to modify its tariff consistent with the May 16 order and with the Commission's clarification discussed above.

#### **C. Flexible Point Rights**

##### **1. Commission Requirement**

36. In the May 16, 2002 order, the Commission found that, while FGT's tariff permits replacement shippers to obtain new primary points, it restricts the new points to those within the acquired segment. The Commission required FGT to revise its tariff to permit replacement shippers to elect primary points outside the path in the same zone, subject to capacity availability.

##### **2. FGT's Proposal**

37. FGT revised Section 18.1 of the GT&C of its tariff to permit a shipper to request to change its primary points to points within or outside of the shipper's original primary path, provided that FGT does not have to accept requests that result in total subscribed capacity resulting from the segmentation on any overlapping segment in excess of the original shipper's firm entitlement on the segment.

##### **3. Commission Ruling**

38. FGT has satisfactorily complied with the Commission's May 16, 2002 order.

## **D. Discount Provisions**

### **1. Commission Requirement**

39. In the May 16 order, the Commission reiterated its policy regarding discounts in CIG/Granite State.<sup>28</sup> The Commission stated that there is a rebuttable presumption that a shipper holding a discount at a point will retain a discounted rate if it chooses to segment, release capacity, or use its flexible receipt and delivery point rights to move to another point at which the pipeline has granted discounts for transportation services. This presumption can be rebutted by a showing that the segmented or secondary point transaction is not similarly situated to the transactions receiving the discount at the secondary point. The Commission directed FGT to revise its tariff to implement this policy, and to provide that requests for discounts be processed within two hours of the time the request is submitted.

### **2. FGT's Proposal**

40. FGT has proposed a new Section 15j to its GT&C which provides that a shipper with a discount rate limited to service at a specific receipt and delivery point may request that it be permitted to retain the discount when seeking to use an alternate point as part of its segmentation, capacity release or use of its flexible receipt and delivery point rights. The discount rate will be retained by the shipper unless FGT demonstrates that it has not granted a discount to a similarly situated shipper at that point. The shipper requesting to retain its discount will pay the higher of its discounted rate or the discount rate applicable to the similarly situated shipper at that point.

41. This new section provides that FGT will process requests to retain discounts within two hours when the requests are made at least two hours before the 6:00 p.m. Evening Nomination. If the request is made two hours or less before the 6:00 p.m. Evening Nomination, FGT will process the request by 8:30 a.m. the next morning.

### **3. Commission Ruling**

42. FGT has satisfactorily complied with the Commission's May 16, 2002 directives regarding this issue.

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<sup>28</sup>Colorado Interstate Gas Co., 95 FERC ¶ 61,321 (2001); Granite State Gas Transmission, Inc., 96 FERC ¶ 61,273 (2001) order on reh'g, 98 FERC ¶ 61,019 (2002).

## **E. Operational Flow Orders (OFOs)**

### **1. Commission Requirement**

43. In its May 16, 2002 order, the Commission found that FGT's OFO provisions, with one exception, complied with Order No. 637. The Commission found that FGT's tariff does not provide for reporting information after an OFO is issued concerning the factors that caused the OFO to be issued and then lifted. The Commission directed FGT to revise its tariff to provide for the reporting of that information.

### **2. FGT's Proposal**

44. FGT has proposed to revise Section 17.C.3(a) of the GT&C of its tariff to provide that FGT will provide information to affected shippers concerning the factors that caused the OFO to be issued and then lifted.

### **3. Commission Ruling**

45. FGT has satisfactorily complied with the Commission's May 16 order.

## **IV. FGT's Compliance Filing to the Order on Remand**

### **1. Commission Requirement**

46. In Interstate Natural Gas Association of America v. FERC, 285 F.3d 18 (D.C. Cir. 2002)(INGAA), the United States Court of Appeals for the District of Columbia Circuit remanded aspects of Order No. 637 to the Commission. On October 31, 2002 the Commission responded to the Court's remand and, in ordering paragraph B directed that, pipelines that the Commission has found must permit segmentation on their systems, file revised tariff sheets to expressly permit segmented transactions consisting of forwardhauls up to contract demand and backhauls up to contract demand to the same point at the same time.<sup>29</sup>

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<sup>29</sup>Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services, Docket No. RM98-10-011, 101 FERC ¶ 61,127 (2002).

## **2. FGT's Compliance Filing to the Order on Remand**

47. On December 2, 2002 FGT filed a revised tariff sheet in Docket RP03-165-000 to comply with the Commission's October 31, 2002 order.<sup>30</sup> Specifically, FGT proposes to add the following tariff language in Sections 18.1A and 18.1B of its GT&C:

Such shippers may schedule quantities consisting of forwardhauls up to Shipper's MDTQ and backhauls up to Shipper's MDTQ to the same point at the same time.

48. Public Notice of FGT's 2002 compliance filing was issued with comments and interventions due as provided by the Commission's regulations. No adverse comments or protests were filed.

## **3. Commission Ruling on the Compliance Filing to the Remand Order**

49. The Commission finds that FGT's tariff revision allowing forwardhauls and backhauls to the same point complies with the Commission's October 31, 2002.

### The Commission orders:

(A) The tariff sheets so designated in the Appendix are accepted to be effective March 1, 2003 as discussed in the body of this order.

(B) The tariff sheets so designated in the Appendix are rejected, as discussed in the body of this order. FGT is directed to refile revised tariff sheets, within 15 days of this order, as discussed in the body of this order to comply with the Commission's directives.

(C) FGT is directed to file, in the captioned docket, the language contained on Fifth Revised Sheet No. 119 and Fifth Revised Sheet No. 120A consistent with the discussion in the instant order on or before October 1, 2003.

(D) As discussed in the body of this order, the requests for rehearing of the Commission's May 16, 2002 order are denied.

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<sup>30</sup>Fourth Revised Sheet No. 175

Docket No. RP00-387-001, et al.

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(E) As discussed in the body of this order the requests for clarification are granted in part and denied in part.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

Docket No. RP00-387-001, et al.

APPENDIX

Florida Gas Transmission Company

Tariff Sheets Accepted Effective March 1, 2003

FERC Gas Tariff, Third Revised Volume No. 1

Original Sheet No. 135B

Fourth Revised Sheet No. 162

Fifth Revised Sheet No. 167

Fourth Revised Sheet No. 175

Tariff Sheets Rejected

FERC Gas Tariff, Third Revised Volume No. 1

Fifth Revised Sheet No. 119

Fifth Revised Sheet No. 120A

Fifth Revised Sheet No. 165A

Sixth Revised Sheet No. 166

First Revised Sheet No. 166A

Third Revised Sheet No. 175