104 FERC ¶ 61,159
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

SCG Pipeline, Inc. Docket No. CP02-57-004

ORDER ON PRO FORMA TARIFF

(Issued July 29, 2003)

1. On November 19, 2002, SCG Pipeline, Inc. (SCG) filed, in Docket No. CP02-57-004, a pro forma FERC Gas Tariff, Original Volume No. 1 to comply with ordering paragraph G of the "Preliminary Determination of Non-Environmental Issues" order issued on June 26, 2002[1] and ordering paragraph D of the "Order Issuing Certificates, Approving Abandonment and Denying Rehearing," issued on September 20, 2002.[2] The June 26 and September 20 Orders required SCG to file rates and pro forma tariff sheets, the Order No. 637[3] requirements, the North American Energy Standards Board (NAESB) standards,[4] and the negotiated rate authority in effect at the time of the filing.

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[1]SCG Pipeline Inc., 99 FERC ¶ 61,345 (2002) (June 26 Order).

[2]SCG Pipeline Inc., 100 FERC ¶ 61,284 (2002) (September 20 Order).

[3]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).

[4]Standards For Business Practices of Interstate Natural Gas Pipelines, Order No. 587, 61 Fed. Reg. 39053 (July 26, 1996), FERC Stats. & Regs., Regulations Preambles [July 1996-December 2000] ¶ 31,038 (July 17, 1996); Order No. 587-B, 62 Fed. Reg. 5521 (February 6, 1997), FERC Stats. & Regs., Regulations Preambles [July 1996-
(continued...)

2. The June 26 Order preliminarily approved SCG's proposal to construct and operate natural gas pipeline facilities in Georgia and South Carolina and its request for blanket transportation and construction certificates. The June 26 Order also preliminarily approved Southern Natural Gas Company's (Southern) abandonment by sale to SCG and SCG's acquisition of an undivided ownership interest in Southern's existing Twin 30s pipeline (Twin 30s).[5] The approvals were conditioned on Southern's and SCG's amending their applications to provide that, rather than purchasing an undivided interest in pipeline capacity on Southern's Twin 30s as originally proposed, SCG would purchase an undivided interest in the assets of the Twin 30s, including pipeline capacity. The September 20 Order issued the requested certificate and abandonment authority, subject to conditions.

3. For the reasons set forth below, the Commission directs SCG to file its actual tariff in accordance with the discussion contained herein, at least 30 days but not more than 60

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[4](...continued)
December 2000] ¶ 31,046 (January 30, 1997); Order No. 587-C, 62 Fed. Reg. 10684 (March 10, 1997), FERC Stats. & Regs., Regulations Preambles [July 1996-December 2000] ¶ 31,050 (March 4, 1997); Order No. 587-G, 63 Fed. Reg. 20072 (April 23, 1998), FERC Stats. & Regs., Regulations Preambles [July 1996-December 2000] ¶ 31,062 (April 16, 1998); Order No. 587-H, 63 Fed. Reg. 39509 (July 23, 1998), FERC Stats. & Regs., Regulations Preambles [July 1996-December 2000] ¶ 31,063 (July 15, 1998); Order No. 587-I, 63 Fed. Reg. 53565 (October 6, 1998), FERC Stats. & Regs., Regulations Preambles [July 1996-December 2000] ¶ 31,067 (September 29, 1998); Order No. 587-K, 64 Fed. Reg. 17276 (April 9, 1999), FERC Stats. & Regs., Regulations Preambles [July 1996-December 2000] ¶ 31,072 (April 2, 1999); Order No. 587-M, 65 Fed. Reg. 77285 (December 11, 2000); FERC Stats. & Regs., Regulations Preambles [July 1996-December 2000] ¶ 31,114 (November 30, 2000); Order No. 587-N, 67 Fed. Reg. 11906 (March 18, 2002), III FERC Stats. & Regs. ¶ 31,125 (March 11, 2002); Order No. 587-O, 67 Fed. Reg. 30788 (May 8, 2002), III FERC Stats. & Regs., Regulations Preambles ¶ 31,129 (May 1, 2002); Order No. 587-R, 68 Fed. Reg. 13813 (March 21, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,141 (March 21, 2003).

[5]The Twin 30s are comprised of Southern's two 13.25-mile, 30-inch diameter parallel pipelines, which extend from the tailgate of Southern LNG's facility on Elba Island through Jasper County, South Carolina to Southern's Wrens-Savannah line in Port Wentworth, Chatham County, Georgia. The Twin 30s are the sole means by which regasified LNG is transported from the LNG facility. The Twin 30s were certificated in Docket No. CP71-276 (47 FPC ¶ 1624 (1972)).

days, prior to the commencement of service. SCG is further directed to include the explanations discussed herein with its actual tariff filing.

I. BACKGROUND

4. On December 26, 2001, SCG filed an application in Docket No. CP02-57-000, pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the construction and operation of approximately 18.14 miles of natural gas pipeline (with a capacity of 190,000 Mcf/d) and appurtenant facilities in Georgia and South Carolina and the acquisition of 190,000 Mcf/d of capacity in Southern's Twin 30s. The Twin 30s will transport regasified LNG from the Elba Island LNG facility to SCG's proposed 18.14 mile pipeline. SCG, a newly-formed South Carolina corporation, is a wholly owned subsidiary of SCANA Corporation. SCG entered into a binding agreement with SCANA Energy Marketing, Inc. (SEMI), also a subsidiary of SCANA, for the entire 190,000 Mcf/d of capacity on the proposed facilities. SEMI will use a portion of its capacity to provide gas supply to a new electric generating facility under development by South Carolina Electric and Gas Company (SCE&G), also a subsidiary of SCANA. SCE&G proposes to begin service from the generating facilities in the summer of 2004. SEMI will use the remainder of its capacity to serve other firm and interruptible markets through South Carolina Pipeline Corporation's (also a subsidiary of SCANA) planned 82-mile pipeline that will connect to the terminus of SCG's proposed 18.14 mile pipeline. SCG proposes a November 1, 2003 in-service date for the subject facilities.

5. The June 26 Order made a preliminary determination on the non-environmental issues and preliminarily approved SCG's proposal to construct the 18.14 miles of 20-inch diameter pipeline and appurtenant facilities; a meter and regulation station in Chatham County; and a meter and regulation station for two delivery points in Jasper County. The order also preliminarily approved SCG's request for blanket transportation authority pursuant to Part 284, Subpart G of the Commission's regulations and a blanket construction certificate pursuant to Part 157, Subpart F of the Commission's regulations. The June 26 Order preliminarily approved Southern's abandonment and SCG's acquisition of an undivided ownership interest in the assets of the Twin 30s facilities conditioned on their filing amended applications to modify their original proposals to be in the form of a sale of facilities, including capacity, rather than capacity alone.

6. On July 11, 2002, Southern and SCG filed applications to amend their proposal as directed in the June 26 Order. In their amended proposals, SCG proposed to buy and Southern proposed to abandon by sale an undivided ownership interest in the facilities

and associated rights-of-way and permits of the Twin 30s, equivalent to a capacity of 190,000 Mcf/d. They proposed no other modifications to their proposals.

7. The September 20 Order issued a certificate of public convenience and necessity to SCG authorizing it to construct and acquire, own, operate and maintain natural gas facilities, subject to the conditions contained in both the September 20 and June 26 Orders. The September 20 Order also granted permission and approval to Southern to abandon by sale to SCG an undivided interest in the assets of the Twin 30s facilities.

II. NOTICE, COMMENTS and ANSWER

8. Public notice of the instant filing was issued on January 16, 2003. Sequent Energy Management LP (Sequent) filed comments on January 29, 2003. SCG filed an answer to Sequent's comments on February 11, 2003.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[6] prohibits answers unless otherwise permitted by the decisional authority. We find good cause exists to allow SCG's answer, as it aids us in the decision-making process.

III. ISSUES

A. Order No. 637 Issues

1. Scheduling Equality

10. Section 284.12(b)(1)(ii) of the Commission regulations requires pipelines to "permit shippers acquiring released capacity to submit a nomination at the earliest available nomination opportunity after the acquisition of capacity. If the pipeline requires the replacement shipper to enter into a contract, the contract must be issued within one hour after the pipeline has been notified of the release, but the requirement for contracting must not inhibit the ability of the replacement shipper to submit a nomination at the earliest available nomination opportunity."[7] In Order No. 637, the Commission explained that this rule will enable shippers to acquire capacity at any of the nomination or intra-day nomination times, and nominate gas coincident with their acquisition of capacity. NAESB standard 1.3.2 establishes four nomination opportunities; one timely nomination opportunity and three intra-day nomination opportunities.

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[6] 18 C.F.R. Section 385.213(a)(2) (2003).

[7] 18 C.F.R. Section 284.12(c)(1)(ii) (2003).

11. The Commission adopted Version 1.5 of the NAESB standards in Order No. 587-O.[8] Version 1.5 of Standard 5.3.2 establishes a revised capacity release timeline, which the Commission found satisfies the scheduling equality provisions of Section 284.12(b)(1)(ii) as adopted by Order No. 637. Under this standard, biddable releases would be posted by 3:00 p.m. (rather than at 5:00 p.m. as under the existing timeline), contracts would be issued within one hour of posting, and shippers would be able to nominate at the 5:00 p.m. Intra-day 2 nomination cycle or any following nomination cycle. Pipelines must be notified of non-biddable, prearranged deals one hour prior to the nomination deadline for each of the four NAESB nomination cycles. The Commission further found that pipelines can propose shorter prior notice requirements for prearranged non-biddable deals. To provide shippers with the utmost flexibility in scheduling, the Commission encouraged pipelines to reduce or eliminate the prior notice provision for prearranged, non-biddable deals as permitted by their scheduling system.

12. Upon review of Section 11 of SCG's pro forma GT&C, the Commission finds that SCG has adopted Standard 5.3.2 of Version 1.5 of the NAESB Standards. We therefore find that SCG's pro forma tariff complies with Section 284.12(b)(1)(ii) of the Commission's regulations. However, consistent with the discussion under the NAESB Standards section herein, whenever SCG files its actual tariff sheets, it will have to file Standard 5.3.2 of the NAESB standards version in effect at the time of its filing (currently Version 1.6).

2. Segmentation

13. Order No. 637 requires pipelines to permit a shipper to make use of the firm capacity that it has contracted by segmenting that capacity into separate parts for its own use or for the purpose of releasing that capacity to replacement shippers to the extent such segmentation is operationally feasible.[9]

a. SCG's Proposal

14. In Section 4.5 of Rate Schedule FT, SCG proposes that a shipper shall have the right to segment its capacity by using separate segments or by releasing capacity within its capacity path. In Section 5.6 of the pro forma GT&C, SCG explains that a shipper "may

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[8] Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587-O, 67 Fed. Reg. 30,788 (June 7, 2002), III FERC Stats. & Regs. Regulations Preambles ¶ 31,129 (May 1, 2002).

[9] 18 C.F.R. Section 284.7(d) (2003).

segment its capacity by nominating receipts or deliveries of gas on a primary point basis" within the shipper's path. Additionally, SCG will allow a shipper to segment its capacity by nominating receipt or deliveries of gas at any available point on a secondary firm basis. SCG states that a shipper will be allowed to segment its capacity to the extent that the maximum quantity of gas that may be nominated shall not exceed the shipper's maximum daily quantity (MDQ). Section 5.6 will also allow a shipper to segment its capacity by simultaneously transporting its full contract demand in a forwardhaul and its full contract demand in a backhaul to the same point, provided that the backhaul is operationally feasible. Additionally, Section 11 of the pro forma GT&C governs capacity release and provides that shippers may release all or part of their capacity.

b. Commission Ruling

15. The Commission finds that Section 4.5 of Rate Schedule FT and Section 5.6 of the pro forma GT&C are inconsistent. Section 4.5 does not appear to permit shippers to segment capacity outside of its path, while Section 5.6 correctly allows for such segmentation. In Order No. 637-A, the Commission held that shippers must be given the right to segment outside their capacity path. This follows from the fact that a shipper may move to any point within the zone for which it has paid even if that point is outside the contractual path, because the shipper has the right to utilize all points within the zone.[10] Accordingly, SCG must revise Section 4.5 to provide that shippers may segment capacity outside their contractual path.

16. In Section 5.6, SCG provides that a "[s]hipper may segment its capacity by nominating receipts or deliveries of gas on a primary point basis within Shipper's Capacity Path . . . ." As the Commission understands this provision, any segmented transaction that occurs using secondary points within the capacity path would be given the same scheduling priority as firm service utilizing primary points. Moreover, as a result of this provision, a firm shipper scheduling a non-segmented transaction at a secondary point within its primary path would receive a lower scheduling priority than within-the-path segmented transactions since the segmented transaction would be scheduled as a firm primary transaction, whereas the non-segmented transaction would be scheduled as a firm secondary transaction. SCG is therefore directed to explain the reasoning for this provision, or to revise this provision to give segmented and non-segmented within-the-path secondary transactions the same scheduling priority.

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[10] CenterPoint Energy-Mississippi River Transmission Corp., 102 FERC ¶ 61,216 at P 14-17 (2003).

3. Flexible Point Rights

17. In Order No. 637, the Commission found that permitting flexibility in the selection of primary points in segmented releases can be important to creating effective competition between pipeline services and released capacity. The Commission required pipelines to justify restrictions on shippers' ability to use additional primary points in segmentation transactions and any deviation from the Texas Eastern/El Paso policy.[11] Under this policy, the releasing and replacement shippers are both able to choose primary points consistent with their mainline contract demand.

a. SCG's Proposal

18. Under Section 4.1 of Rate Schedule FT, SCG proposes to allow a shipper to add or delete primary points by requesting a modification to Exhibit A of its Service Agreement. However, SCG states that it will not accept a change for a primary receipt point if such a request would impair system integrity, if the capacity is not available at the requested primary point, or if the resulting aggregate firm capacity would exceed the shipper's MDQ.

19. Additionally, Section 2.3(d) of the pro forma GT&C states, in pertinent part, that SCG "shall be entitled to reasonably reserve point capacity associated with unsold segment capacity. Therefore, [SCG] shall not be obligated to add a new Primary Receipt Point or Primary Delivery Point or change an existing Primary Receipt Point or Primary Delivery Point if such point is associated with unsold segment capacity." Moreover, SCG proposes that a shipper may add or change primary points only if it has capacity path rights on an adjacent segment of capacity.

b. Comments

20. Sequent argues that proposed Section 2.3(d) may unreasonably allow SCG to withhold capacity associated with unsold segment capacity such that SCG could refuse a request for a new receipt or delivery point even though capacity was available. Sequent contends that this provision could give SCG too much discretion to withhold capacity, and therefore requests that the Commission should reject this provision, or at a minimum, require SCG to explain what this provision means and to justify under what circumstances it would be reasonable to withhold segmented capacity.

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[11] Order No. 637, FERC Stats. & Regs. Regulations Preambles (July 1996-December 2000) ¶ 31,091, at 31,304.

c. SCG's Answer

21. SCG states that Order No. 637 only requires pipelines to permit shippers to segment firm capacity for which it has contracted. SCG states that Sequent's objection is directed towards language that addresses unsubscribed capacity, not capacity under contract. SCG explains that it will not withhold segmented capacity (or any other capacity) that is under contract, and therefore believes that it is in compliance with Order No. 637.

d. Commission Ruling

22. The purpose of the Commission's policy that replacement shippers should have the opportunity to obtain their own primary points is to enhance competition in the sale of capacity between the pipeline and shippers through segmentation and capacity release. As the Commission explained in Order No. 637-A,[12] if replacement shippers were limited to the use of segmented points on a secondary basis, the pipeline would still retain the right to sell that point capacity on a primary basis. The ability to sell points on a primary basis would provide the pipeline with a competitive advantage over segmented capacity release transactions.[13]

23. Upon review of the proposed tariff provisions, it is not clear that SCG would allow a replacement shipper to be treated as having its own separate contract demand and be eligible to receive primary points up to its contract demand (while the releasing shipper would simultaneously have primary points up to its contract demand). Under the Texas Eastern/El Paso policy, the Commission requires that releasing and replacement shippers will be treated as separate shippers with separate contract demands and that the releasing and replacement shippers are both able to choose primary points consistent with their mainline contract demand. SCG is therefore directed to clarify that the releasing and replacement shipper will each be permitted to reserve primary points at least up to its contract demand.

24. Further, in Section 2.3(d) of the pro forma GT&C, SCG improperly restricts primary point changes to only points in adjacent capacity segments (that are also within the contractual path). This provision effectively imposes a within-the-path limitation on

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[12]Order No. 637-A, FERC Stats. & Regs. Regulations Preambles (July 1996-December 2000) ¶ 31,099, at 31,584.

[13]Great Lakes Transmission Limited Partnership, 101 FERC ¶ 61,206 at P 9 (2002).

shippers, preventing them from segmenting outside of the contractual path. The Commission has held that shippers, including replacement shippers in segmented transactions, must be permitted, subject to availability of capacity, to add, or change, primary points to points outside the transportation paths stated in their firm contracts, but within the zone for which they are paying.[14] Therefore, SCG must remove the within-the-path limitation in Section 2.3(d).

25. Additionally, Section 2.3(d) also violates Commission policy since it permits SCG to deny a shipper's request for primary points that are associated with the pipeline's unsold segment capacity. In Order No. 637-A, the Commission recognized that pipelines have an interest in marketing their capacity and that shipper hoarding of primary points could interfere with such marketing.[15] For that reason, the Commission has permitted pipelines to limit the primary point capacity each shipper can reserve to its mainline contract demand, with the releasing and replacement shippers being treated as separate shippers with their own contract demand for this purpose.[16] However, the Commission finds that SCG's proposal to withhold currently unsubscribed primary point capacity is inappropriate.[17] Order No. 637-A's recognition of the pipeline's need to prevent shipper hoarding of primary point capacity was made in the context of seeking to encourage pipelines to relax the limitation on shippers' primary point capacity to mainline contract demand. It was not an invitation to pipelines to impose even stricter limits, such as SCG seeks here. SCG is therefore directed to remove Section 2.3(d) from its GT&C.

4. Mainline Priority at Secondary Points

26. 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.[18]

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[14] ANR Pipeline Co., 103 FERC ¶ 61,022 at P 43 (2003).

[15] Order No. 637-A at 31,593.

[16] <u>See</u> supra note 14 at P 10.

[17] <u>See</u> supra note 15 at P 45.

[18] Order No. 637-A at p. 31,596-98.

27. Under Section 6.7 of its proposed GT&C, SCG states that it will 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. The Commission therefore finds that SCG's tariff language is consistent with the requirement of Order No. 637 regarding the within-the-path capacity allocation.

5. Discounts

28. In Order No. 637-A, the Commission stated that the policy permitting pipelines to limit discounts to particular points needs to be reexamined in the compliance filings, as part of the examination of restrictions on capacity release and segmentation.[19]

29. In CIG/Granite State,[20] the Commission adopted a new policy that permits a shipper to retain a discount when it moves to segmented points or secondary points through a streamlined request process in which the pipeline processes requests for discounts within two hours. The Commission reasoned that its discount and segmentation policies can best be balanced by adoption of a policy under which a shipper with a discounted rate that seeks to use an alternate receipt or delivery point (whether through segmentation, capacity release, or its own exercise of flexible receipt and delivery point rights) can continue to receive a discounted rate if the pipeline has granted a discount to a similarly situated transaction at the alternate point.[21] As the Commission explained in CIG, "this policy is an application of the general requirement that pipelines must not engage in undue discrimination,"[22] by ensuring that a shipper with a discounted contract can continue to receive a discount at points where it is similarly situated to other shippers receiving a discount. This policy allows a shipper to better compete with the primary capacity offered by the pipeline and with other shippers holding contracts for capacity at these points.

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[19]Order No. 637-A at p. 31,595.

[20]Colorado Interstate Gas Company, 95 FERC ¶ 61,321 (2001); Granite State Gas Transmission, Inc., 96 FERC ¶ 61,273 (2001) reh'g denied, 98 FERC ¶ 61, 019 (2002).

[21]See Paiute Pipeline Company, 96 FERC ¶ 61,167, at 61,750 (2001) (explaining that the CIG discount policy applies to the use of secondary points whether through capacity release transactions, segmentation, or the use of flexible receipt or delivery points).

[22]95 FERC ¶ 61,321, at 62,121.

30. Under this policy, 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 gas to another point at which the pipeline has granted discounts for its firm or interruptible transportation services.[23] The pipeline can rebut this presumption by demonstrating that the segmented or secondary point transaction is not similarly situated to the transactions receiving the discount at the secondary point. The Commission placed the burden on the pipeline to justify a denial of a discount, because the Commission was concerned that pipelines may not have the same incentive to offer discounts to segmented transactions or to secondary points that compete directly with their sale of primary capacity.

31. In order to comport with the Commission's requirement to ensure nomination equality,[24] the Commission further has required pipelines to process requests for discounts within two hours of the time the request is submitted.[25] This processing requirement ensures that shippers requesting the continuation of discounts can submit nominations at each of the four standard nomination opportunities provided by the pipeline.[26]

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[23]The shipper seeking to move its point will pay the higher of its contractual rate or the discount rate being offered at the alternate point. See CIG, 95 FERC ¶ 61,321, at 62,121 n. 38.

[24]18 C.F.R Section 284.12 (b)(1)(ii) (2003).

[25]The Commission has further provided that "if a pipeline and its shippers can reach agreement on a standard processing period for discount requests that retains the nomination equality requirement of the Commission's regulations, such an agreement also could be an acceptable method of implementing the discount policy." Granite State Gas Transmission Inc, 98 FERC ¶ 61,019.

[26]Pipelines, of course, can choose shorter periods for processing. Moreover, the Commission has recognized that pipelines may not have staff to process discount requests overnight. Therefore, pipelines must act on overnight requests to retain discounts received after 4:00 p.m. by no later than 8:30 a.m. CCT the next business day, and need not process requests on weekends. See National Fuel Gas Supply Corporation, 98 FERC ¶ 61,123 (2002). Pipelines providing for additional nomination opportunities after the 6:00 p.m. Evening Nomination cycle need not process corresponding discount requests for nominations coming after the 6:00 p.m. standard nomination time period until 8:30 a.m. the next business day.

a. SCG's Proposal

32. SCG proposes to incorporate the CIG/Granite State policy and the rebuttable presumption into Section 28 of its GT&C. SCG also proposes to process requests for discounts within two hours after the request was submitted. However, SCG states that it has made a slight modification to Section 28.3 to clarify that if SCG "ceases to offer a discount in a similarly situated transaction at the alternate point, then Shipper shall revert to the maximum rate."

b. Comments

33. Sequent argues that Section 28.3 could permit SCG to unreasonably withdraw a discounted rate provided to a particular shipper based on the circumstances of another shipper. Sequent contends that if one shipper loses its discount, then SCG could automatically revoke the discount for another similarly situated shipper. Sequent is opposed to this outcome and believes that SCG should be required to explain why it should be able to revoke a particular shipper's discount on the basis that another similarly situated shipper has had its discount revoked.

c. SCG's Answer

34. SCG states that the language that Sequent objects to is allowable under the Commission's CIG/Granite State policy. SCG states that the rebuttable presumption is applicable to alternate points at which a discount is being offered, and if the discount ceases to be offered to one shipper, then it ceases to be offered to all similarly situated shippers at such alternate point.

d. Commission Ruling

35. The Commission finds that SCG's tariff language with respect to discounting is generally consistent with our policy in CIG/Granite State. The Commission shares Sequent's concern regarding SCG's proposal that if it ceases to offer a discount in a similarly situated transaction at the alternate point, then the shipper shall revert to the maximum rate.[27] This is because SCG's proposal appears to apply a hard and fast rule after a discount has been granted. Contract term may be one of the factors a pipeline considers in determining whether the transaction at the alternative point is similarly situated with a discount transaction granted by the pipeline at that point. However, the

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[27] See Williams Gas Pipelines Central, Inc., 100 FERC ¶ 61,034 at P 56 (2002).

pipeline must decide at the time a shipper requests to retain its discount whether the segmented or secondary point transaction is similarly situated with the transaction already receiving the discount at the secondary point. In making its determination, the pipeline must weigh all relevant factors rather than applying a hard and fast rule. Just because one transaction is for a somewhat different period than another transaction does not necessarily mean that it is not similarly situated. For example, if a discount was given at a point for a non-peak period and now a shipper wants to switch to that point in a peak period, the two transactions may not be similarly situated. But two transactions in off-peak periods might be similarly situated even if one is somewhat longer than the other. SCG must therefore remove the non-conforming modification that it proposed to make to Section 28.3.

6. Imbalance Services, Penalties and OFOs

a. Imbalance Services

36. Order No. 637 requires pipelines with imbalance penalty provisions in their tariffs to provide, to the extent operationally practicable, imbalance management services, such as park and loan service. Pipelines are prohibited from giving undue preference to their own balancing services over such services that are provided by a third party.[28]

i. SCG's Proposal

37. Under Section 12 of SCG's tariff, SCG allows for the netting and trading of imbalances by its shippers and states that there will be no fee for netting and trading because it only has one rate zone. Additionally, Section 12.6 allows third parties to offer imbalance management services to its shippers. However, SCG states that it is unable to offer park and loan services because there is no storage on its 31-mile system. Further, SCG states that limited line pack flexibility prevents it from offering additional imbalance management services.[29]

ii. Commission Ruling

38. Section 284.12(b)(2)(iii) of the Commission’s regulations provides that a pipeline must provide, to the extent operationally practicable, parking and lending service or other services that facilitate the ability of the shippers to manage transportation imbalances.

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[28] 18 C.F.R. Section 284.12(b)(2)(iii) (2003).

[29] Transmittal letter at 5.

Since SCG is a small and simply configured pipeline, we find that it has no real operational flexibility to support a parking and lending service. Moreover, since SCG is providing netting and trading for its shippers to resolve imbalances, and is allowing third parties to provide imbalance management services, we therefore find that SCG's proposal complies with this regulation and Order No. 637.

b. Penalties

39. Order No. 637 requires that a pipeline's penalties adhere to three principles.[30] First, a pipeline may include transportation penalties in its tariff only to the extent necessary to prevent the impairment of reliable service. Second, a pipeline must credit to shippers all revenues from all penalties net of costs. Third, a pipeline must provide to shippers, on a timely basis, as much information as possible about the imbalance and overrun status of each shipper and the imbalance of the pipeline's system as a whole.

i. SCG's Proposal

40. SCG proposes to assess penalties on its shippers for: 1) takes in excess of scheduled quantities; 2) monthly imbalances; 3) daily imbalances; 4) unauthorized daily overruns; 5) unauthorized daily underdeliveries; and 6) the failure to comply with an OFO. With the exception of the scheduling penalty and the monthly imbalance penalty, SCG states that these other penalties would only be assessed upon the issuance of an OFO. Additionally, under Section 25, SCG proposes to credit all penalty revenue, net of costs, to all non-offending shippers.

41. In Section 7.9, SCG proposes a scheduling penalty that will be applied to takes in excess of 102 percent of the shipper's scheduled quantities. The scheduling penalty shall be the IT rate multiplied by each Dth delivered at the shipper's delivery point in excess of 102 percent of the scheduled quantities. SCG submits that it is reasonable to expect shippers not to exceed their scheduled quantities by more than 2 percent.

42. In Section 12.7, SCG proposes a tiered cashout mechanism to resolve monthly imbalances. The cashout is based on an index price and imbalances of 2 percent or less are cashed-out at 100 percent of the index price. Imbalances above 2 percent are cashed-out at either more or less than 100 percent of the index price, depending on whether the shipper must buy gas from the pipeline or sell it to the pipeline.

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[30] 18 C.F.R. Section 284.12(b)(2)(v) (2003).

43. SCG also proposes multiple penalties that would apply only during critical periods when an OFO is in effect. In Section 12.10, SCG proposes that if an OFO is in effect and a shipper's daily imbalance is greater than a 2 percent variance between the actual receipt and deliveries, the shipper would then be penalized $50.00 for every Dth above the 2 percent variance. SCG states that in the event that a shipper incurs this penalty, it will not also be subject to the $50.00 OFO penalty.

44. In Sections 7.6 and 7.7, SCG proposes to assess an overrun penalty against shippers that incur unauthorized overruns in excess of either 1.5 percent of its MDQ or 2 percent of the sum of the maximum daily delivery obligations (MDDO) at its delivery points. Section 7.7 provides that if a shipper incurs an overrun, the shipper can be assessed a penalty of $5.00 per Dth for quantities in excess of 2 percent up to 5 percent; $15.00 per Dth for overrun quantities from 5 percent to 8 percent; and a penalty of $50 per Dth for overrun quantities over 8 percent. SCG proposes a similar penalty structure for unauthorized daily underdeliveries in Section 7.8. SCG states that such penalties provide an incentive for shippers to schedule as accurately as possible in order avoid harming the system's integrity. SCG also states that these overrun penalties are reasonable since shippers would receive Action Alerts through which they may take corrective action in order to avoid the issuance of an OFO.

45. In Section 9.3, SCG proposes that if a shipper fails to comply with an OFO, a penalty of $50.00 per Dth can be assessed on all quantities received or delivered in violation of that OFO. SCG believes that this penalty is necessary because its system is smaller than many interstate pipeline systems and because SCG does not have any storage or the flexibility to allow shippers to swing on the system.

ii. Comments

46. Sequent states that it appears that some of these penalties may overlap such that the same transaction may be subject to multiple penalties. Sequent therefore requests that SCG should be directed to clarify the interrelation of these penalties and ensure that multiple penalties are not assessed for the same offense.

47. Sequent also contends that the level of the proposed penalties is particularly onerous, especially since SCG's proposed tolerances are extremely small. Sequent argues that SCG has not shown that it has adequate metering equipment and the monitoring capability to enable shippers to address problems and avoid penalties. As such, Sequent believes that SCQ should be required to demonstrate that it has the monitoring equipment available, in place, and able to monitor the system and report to shippers with adequate

frequency to ensure that shippers have the opportunity to address imbalance issues before they are assessed a penalty.

48. Finally, Sequent believes that the $50 penalty for violating an OFO is entirely too high, and that a penalty level should have a relationship to the harm the conduct would likely cause to the system. Sequent therefore suggests that SCG should reduce the OFO penalty to no more than $25 per Dth.

iii. SCG's Answer

49. SCG states that has not proposed duplicative penalties for the same offense, and that each penalty has a specific purpose in order to maintain the system integrity and reliability. Moreover, SCG defends each of its proposed penalties, finding them to be reasonable in light of the limitations of SCG's system and the ability of its shippers to avoid the imposition of penalties. SCG also states that under Section 25, all of the penalty charges, net of costs, will be credited to all non-offending shippers, including interruptible shippers.

50. With respect to its proposed tolerance levels, SCG argues that while its tolerance levels are low, smaller interstate pipelines with no storage capabilities need lower levels compared to the larger pipelines. Additionally, in response to Sequent's concern that SCG may not have adequate metering equipment and the monitoring capability to enable shippers to address problems and avoid penalties, SCG confirms that it does. SCG states that it will have state of the art metering and monitoring equipment in place and will be able to monitor the system, as well as promptly report to shippers the status of their balances or imbalances. SCG also explains that shippers will have timely access to their daily imbalance information in order to take corrective action to avoid penalties. Finally, SCG states that if there is a problem with the metering and monitoring equipment which inhibits its ability to manage its system, then any penalties during such period shall be waived.

iv. Commission Ruling

51. In Order No. 637-A, the Commission shifted its policy away from one that fosters the use of penalties to a service-oriented policy that gives shippers other options to obtain flexibility and relies on penalties when necessary to protect system integrity.[31]

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[31] 91 FERC ¶ 61,169 at 31,598.

52. Upon review of its penalty provisions, the Commission finds that SCG's proposed penalties generally appear to be just and reasonable. SCG's proposed scheduling penalty is consistent with Commission policy, since a scheduling penalty equal to the IT rate is appropriate to provide an incentive for shippers to schedule accurately.[32] SCG's monthly imbalance cashout penalty is also permissible since SCG will have the ability to report imbalance conditions in a timely manner, thereby providing shippers with an opportunity to address imbalance issues before being penalized. Moreover, shippers on SCG's pipeline will be permitted to net and trade any imbalances to avoid monthly penalties.

53. SCG's proposed stand-alone $50 penalty for OFO violations is accepted. While this penalty may be substantial, it nevertheless complies with Order No. 637 since the penalty will only apply when the system is under operational stress. While Sequent contends that the $50 per Dth penalty is excessive, we nevertheless find that this penalty is just and reasonable since this penalty may serve as an effective deterrent to actions that would adversely affect the operation of the system.[33]

54. SCG's proposed overrun, underdelivery, and daily imbalance penalties would only be assessed against shippers during critical periods when an OFO has been issued. The Commission has permitted pipelines to retain relatively substantial unauthorized overrun penalties if the pipeline agrees to waive the penalty when the overrun does not cause operational problems.[34] Because these penalties are limited to periods when the system is under stress, they are acceptable to the extent they do not cause the same conduct to be penalized twice.

55. However, notwithstanding SCG's response that it will not assess duplicative penalties, the Commission shares Sequent's concern that a shipper could be liable for multiple penalties (i.e., any daily imbalance, overrun, or underdelivery penalty assessed during a critical period, together with an OFO penalty). Commission policy prohibits multiple penalties for the same volumes.[35] Accordingly, SCG is directed to explain how any of its proposed critical period penalties could be incurred without also incurring an OFO penalty. If there are no circumstances in which one of the proposed non-OFO

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[32] Panhandle Eastern Pipe Line Co., 97 FERC ¶ 61,046 at p. 61,271 (2001).

[33] Maritimes & Northeast Pipeline, L.L.C., 100 FERC ¶ 61,030 at P 82 (2002).

[34] Questar Pipeline Co., 98 FERC ¶ 61,159 (2002).

[35] Crossroads Pipeline Co., 71 FERC ¶ 61,076 at 61,265 (1995) and East Tennessee Natural Gas Co., 98 FERC ¶ 61,060 at 61,157 (2002).

critical period penalties could be incurred without also incurring the OFO penalty, then SCG must remove that penalty. If a non-OFO critical period penalty could be incurred without the OFO penalty also being incurred, then SCG must revise its tariff to provide that such penalty will only be assessed when an OFO penalty is not assessed.

c. OFOs

56. Order No. 637 requires a pipeline to take all reasonable actions to minimize the issuance and adverse impacts of OFOs or other measures taken to respond to adverse operational events on its system. Pipelines are required to revise their tariffs to adopt objective standards and procedures for the use of OFOs.[36] Specifically, the Commission required each pipeline's tariff to: (1) state clear, individualized standards, based on objective operational conditions, for when OFOs begin and end; (2) require the pipeline to post information about the status of operational variables that determine when an OFO will begin and end; (3) state the steps and order of operational remedies that will be followed before an OFO is issued; (4) set forth standards for different levels or degrees of severity of OFOs to correspond to different degrees of system emergencies the pipeline may confront; and (5) establish reporting requirements that provide information after OFOs are issued on the factors that caused the OFO to be issued and then lifted.[37]

i. SCG's Proposal

57. Section 9 of SCG's pro forma tariff contains SCG's proposed OFO provisions. SCG states that it will only issue an OFO when operationally necessary and will, to the extent possible, identify the shipper whose actions require the issuance of the OFO. SCG also proposes three operating levels (Normal, Alert, and Critical) for its system, and will provide notice to its shippers of any change in the operating condition via its website. The Alert Mode notice will be given at least 24 hours prior to the beginning of the Gas Day to which such notice applies and the Critical Mode notice will be give at least two hours in advance of its issuance, unless exigent circumstances require an immediate response. Additionally, SCG states that it will publish a report on its website as soon as available, providing information about the reason for issuing the OFO along with other relevant information such as when the OFO will begin and when it is expected to end.

[36] 18 C.F.R. Section 284.12(b)(2)(iv) (2003).

[37] Order No. 637, FERC Stats. & Regs., Regulations Preambles (July 1996-December 2000) ¶ 31,091, at 31,312-13.

ii. Commission Ruling

58. Upon review of Section 9 of SCG's proposed tariff, we find that these provisions comply with the OFO requirements of Order No. 637 and Section 284.12(b)(2)(iv) of the Commission's regulations.

B. ESB Standards

59. The June 26 Order required SCG to incorporate the NAESB standards, as revised by the Commission up to that time, in its pro forma tariff either by reference or verbatim. Further, SCG was directed to file a chart that identifies the location of the NAESB standards in the tariff and those incorporated into the tariff verbatim.

1. SCG's Proposal

60. SCG included Version 1.5 of the NAESB standards into its pro forma tariff. SCG also included a chart in Appendix C to the instant filing which identifies the location of the NAESB standards in its tariff and those incorporated by reference in Section 38 of the GT&C.

2. Commission Ruling

61. Some of the NAESB standards identified on the chart, such as 3.1, 2.3.26, 2.3.29, 2.3.30 and 3.3.18, among others, are not in SCG's pro forma tariff. Other standards, such as 1.3.5, 2.3.9 and 2.3.14 are not verbatim. Therefore, SCG did not comply with the June 26 Order with respect to the NAESB standards. When SCG files its actual tariff sheets, it must file the NAESB standards and the partial day recall standards as revised by the Commission at the time of the filing. Version 1.6 [38] is the currently effective version.

62. In Version 1.6, the NAESB revised Standard 4.3.4 but the Commission has not adopted this standard so it should not be included in SCG's tariff. SCG may either incorporate a NAESB standard by reference in its tariff or include the text of the standard in its tariff. However, the timelines in Standards 1.3.2 and 5.3.2 must be included in the

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[38] On March 12, 2003, in Docket No. RM96-1-024, the Commission issued Order No. 587-R (102 FERC ¶ 61,273) which amends the Commission's regulations to incorporate by reference the Version 1.6 standards of the North American Energy Standards Board's Wholesale Gas Quadrant (WGQ) and the standards governing partial day recalls adopted by the WGQ in Recommendations R02002 and R02002-2.

tariff and may not be incorporated by reference. To incorporate a standard by reference SCG should refer to such standard by its number and either Version 1.6, for the Version 1.6 standards, or Recommendation R02002 or Recommendation R02002-2, for the partial day recall standards (see ¶ 50 of Order No. 587-R). SCG should not incorporate a NAESB standard by reference and also include the text of the same standard in its tariff.[39]

C. Operational Balancing Agreement

63. The June 26 Order stated that the Purchase and Sale Agreement is not clear as to the type of transportation service contemplated between Southern and SCG, particularly on the Twin 30s which will be jointly owned, but operated by Southern. The June 26 Order pointed out that, although Southern stated that it will execute an Operational Balancing Agreement (OBA) with SCG to govern operations on the Twin 30s facilities, the Purchase and Sale Agreement details the terms and conditions of construction, installation, operation, and maintenance of the facilities and provides that all deliveries at the tap are governed by the terms and conditions of Southern's FERC Gas Tariff and its operational procedures.[40] The June 26 Order held that these provisions of the Purchase and Sale Agreement were inconsistent with SCG's and Southern's explanation.

64. The June 26 Order further held that the Purchase and Sale Agreement is not clear as to the type of transportation service contemplated between Southern and SCG and, because of the discrepancies, directed SCG to file the executed OBA agreement with the Commission when SCG submitted its compliance filing to the June 26 Order. The June 26 Order further directed that Southern must demonstrate that the OBA agreement with SCG contains similar provisions to other OBAs executed by parties on its system and placed SCG and Southern on notice that to the extent there are transportation charges for volumes transported on the capacity of each respective pipeline, there must be an executed transportation contract for the transportation service which must be subject to each pipeline's respective FERC Gas Tariff.

Commission Ruling

65. SCG filed the OBA agreement with Southern as Appendix I to the instant filing. The OBA refers to "SCGP" but does not identify SCGP. The OBA should be revised to identify SCGP.

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[39] Texas Eastern Transmission Corp., 77 FERC ¶ 61,175 at 61,646 (1996).

[40] See Purchase and Sale Agreement, Exhibit B, Section VIII.

66. According to Section 1.3 of the OBA, SCG will be allocated its scheduled volumes into the Twin 30s and Southern will be allocated the difference between the actual volumes delivered by Southern LNG Inc. (SLNG) into the Twin 30s and the SCG scheduled volumes. Section 1.3 also provides that, if SCG schedules nominations on the Twin 30s that are within the SCGP capacity on any day, but Southern allocates gas from the Twin 30s to the Interconnection Point in excess of the SCGP capacity, then Southern will charge SCG the then effective Southern IT rate for every Mcf of gas in excess of 104 percent of the SCGP capacity. The Commission finds these provisions confusing. If SCG has been allocated its scheduled volumes at the entry point into the Twin 30s (according to the OBA), then why would it be allocated more than the scheduled volumes at the exit point of the Twin 30s into SCG's pipeline? SCG should explain this provision when it files its actual tariff sheets.

67. Section 4.2 of the OBA states that the gas received at the interconnection points should meet the quality specifications set forth in Section 3 of the General Terms and Conditions (GT&C) of Southern's tariff. Since the Twin 30s are jointly owned, Section 4.2 of the OBA should be revised to state that the gas should also meet the quality specifications of SCG's tariff. SCG should file a copy of the revised OBA when it files its actual tariff.

68. On November 20, 2002, Southern filed in Docket No. CP02-56-000, an explanation purporting to show that its OBA with SCG is similar to OBAs executed by other parties on its system. The Commission finds that Southern has complied with the June 26 Order's directives.

D. Rates

69. The Commission rejected SCG's proposal to base its IT rate on a 75 percent load factor and required SCG to file a recalculated IT rate based on the 100 percent load factor equivalent of its firm rate when it filed to comply with the June 26 Order. The Commission stated that the Usage Charge associated with tolerances for firm service on Original Sheet No. 7 appeared to be a scheduling penalty rather than a rate for transportation. Therefore, the June 26 Order directed SCG to remove the Usage Charge associated with Tolerances for FT service from Sheet No. 7 and to remove references to tolerances for the IT rates. The Commission stated that SCG may file revised tariff sheets to include a scheduling penalty.

1. SCG's Proposal

70. Original Sheet No. 7 in the instant filing contains a $.0992/Dt IT rate, which is based upon a 100 percent load factor. SCG removed all references to tolerances from Original Sheet No. 7. SCG included a scheduling penalty in its pro forma tariff.

2. Comments

71. Sequent asserts that the June 26 Order directed SCG to remove the usage charge associated with tolerances applicable to firm and interruptible service. Sequent argues that SCG has removed the usage charge from the FT rates, but has not done so for the IT rates and should be required to do so.

3. SCG's Answer

72. SCG argues that the only charge for IT service is the usage charge and removing it would result in free IT service. SCG further argues that the June 26 Order directed it to remove the usage charge associated with tolerances from the FT and IT rates, which it has done.

4. Commission Ruling

73. The Commission finds that SCG redesigned its IT rate on a 100 percent load factor basis as directed.

74. The June 26 Order directed SCG to "remove the Usage Charge associated with Tolerances for FT service from the Sheet No. 7 and make conforming changes to its tariff (references to tolerances should be removed for the IT rates)." Original Sheet No. 7 tendered with the instant filing does not contain any reference to tolerances for either the FT or IT Rate Schedules and therefore complies with the June 26 Order. SCG is correct in stating that the only charge for IT service on Sheet No. 7 is the usage charge and removal of the IT usage charge would result in free IT service.

E. Reservation Charge Credit

75. The reservation charge credit in Section 10.9 of the GT&C, included with the pro forma tariff contained in the certificate application, provided that the reservation rate would be reduced by an amount equal to the 100 percent load factor reservation rate, adjusted for discounting, times the quantity of gas not delivered up to the lesser of the total quantity of gas requested and not delivered, or the MDTQ. The provision would

apply in all instances, both force majeure and non-force majeure, when the pipeline did not deliver at least 85 percent of the gas requested by the shipper.[41]

76. The June 26 Order found that Section 19.1 of the GT&C conflicted with Section 10.9 of the GT&C, explaining that Section 10.9 stated there would be a reduction in a reservation charge in most instances, including force majeure, and Section 19.1 stated that the billed charges would not be adjusted for failure to deliver due to force majeure or for other causes.

77. The June 26 Order directed SCG to revise its tariff to comply with the Commission's finding in Tennessee Gas Pipeline Company's (Tennessee) Opinion No. 406,[42] which provides for partial reservation charge credits in instances of force majeure, as well as full reservation charge credits for non-force majeure interruptions in firm service.

78. The June 26 Order also directed SCG to clarify what "(c) and (d)" refer to in Section 10.9(b)(vi) of the GT&C. Section 10.9(b)(vi) of the GT&C referred to a non-existent "(c)" and "(d)".

1. SCG's Proposal

79. SCG revised Section 19.1 in the instant filing, which pertains to billing, to state that the charges billed will be adjusted as set forth in Sections 10.9(a) and (b) of the GT&C.

80. SCG filed two sets of tariff sheets containing a revised Section 10.9 in response to the June 26 Order's directive with respect to this issue, a set included in the pro forma tariff and an alternate tariff sheet submitted as Appendix G.

81. Revised Section 10.9(a) in the pro forma tariff (force-majeure situations and interruptions beyond the pipeline's control) provides for the reservation rate to be

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[41] The provision did not require SCG to provide credits whenever the failure to deliver was the result of certain factors, such as having OFO's in effect, the conduct of the upstream or downstream operator or of the shipper, and routine operational maintenance and repair.

[42] 76 FERC ¶ 61,022 at 61,085-61,089 (1996), Opinion 406-A, order on reh'g, 80 FERC ¶ 61,070 (1997); See also, 71 FERC ¶ 61,399 at 62,580 (1995), order denying reh'g, 73 FERC ¶ 61,083 (1996).

decreased by an amount equal to the reservation rate on a 100 percent load factor basis, as adjusted for discounting, multiplied by the quantity of gas not delivered up to the lesser of the total quantity of gas scheduled and not delivered, or the MDTQ. While this provision gives the shipper full credits in force majeure situations, for the portion of SCG's reservation charge related to scheduled gas not delivered, SCG describes this provision as providing "partial" credits. That is because it does not provide credits for that portion of the reservation charge related to scheduled gas that was delivered.

82. Section 10.9(b) in the pro forma tariff (interruptions within the pipeline's control) provides that the reservation charge will be decreased by an amount equal to the reservation rate on a 100 percent load factor basis multiplied by the entire quantity of gas scheduled up to the MDTQ, even if SCG delivered a portion of the scheduled gas. SCG describes this provision as providing "full" credits, since the shipper would receive credits for its entire scheduled service, including both scheduled gas not delivered and scheduled gas that was delivered. Section 10.9(b) does not have any provision for adjusting for discounted rates.

83. The alternate tariff sheet contained in Appendix G modifies Section 10.9 of the GT&C to provide, for both force-majeure and non force-majeure situations, that the reservation rate of an affected shipper will be decreased by an amount equal to the reservation rate on a 100 percent load factor basis, adjusted for discounting, multiplied by the quantity of gas not delivered up to the lesser of the total quantity of gas scheduled and not delivered, or the MDTQ. Thus, the alternate proposal would give shippers in non-force majeure situations, as well as force-majeure situations, the same credits (which SCG describes as "partial" credits) and which the pro forma proposal limits to force majeure situations.

84. Both Section 10.9(a) in the pro forma tariff and Section 10.9 on the alternate tariff sheet in Appendix G were modified to provide that the pipeline shall not be responsible for crediting the reservation charge if the shipper acted in a negligent manner or with willful misconduct to cause an interruption in pipeline's ability to receive or deliver gas. Furthermore, both sets of tariff sheets contain a provision which states that the shipper's reservation charge will be credited in the event the pipeline fails to deliver 98 percent of the gas scheduled, up to the MDTQ.

85. SCG seeks clarification of the Commission's instructions to revise Section 10.9 of its GT&C and urges the Commission to approve the alternate language in Appendix G giving what it describes as partial credits in all situations. SCG argues that Tennessee does not credit 100 percent of the reservation charge during non-force majeure events, including for that portion of the reservation charge related to gas actually delivered. SCG

states that Tennessee's demand charge is only reduced by the daily demand rate per Dth for the difference between the gas delivered and the gas scheduled. SCG also states that Tennessee does not receive the commodity charge for the gas which is not delivered, but does receive partial demand and commodity charges for the gas it does deliver. SCG also argues that, in Maritimes,[43] which was issued after Tennessee's Opinion 409-A, the Commission approved almost identical language to that which SCG originally proposed in its certificate application. SCG maintains that proportional reservation charge credits should be given to firm shippers for the scheduled quantity not delivered if there is any type of interruption in service. SCG asserts that if it is required to give a full reservation charge credit for non-force majeure interruptions in firm service, then it would collect no payment for gas it delivers because it does not have a usage charge.

86. SCG deleted Section 10.9(b)(vi) of the GT&C from its pro forma tariff in response to the directive to clarify what the references to (c) and (d) in Section 10.9(b)(vi) refer to.

2. Comments

87. Sequent urges the Commission to reject the alternative reservation charge credit proposal in Appendix G, asserting that SCG recognizes that the proposed alternative reservation charge credit is not in compliance with the Commission's directive and argues that shippers are better protected under the reservation charge credit provisions included in the pro forma tariff.

88. Sequent asserts that, in response to the June 26 Order's directive to clarify references to Sections (c) and (d) in Section 10.9(b)(vi), SCG modified the prior Section 10.9(a) to eliminate SCG's obligation to credit the reservation charge in the event that a shipper acts negligently or willfully to cause an interruption of the pipeline's ability to deliver gas. Sequent argues that this goes beyond compliance with the June 26 Order's directive, does not clarify the references to (c) and (d), and should therefore be rejected.

3. SCG's Answer

89. SCG replies to Sequent's objection by stating that it is reasonable to deny credits to shippers that do not act responsibly. SCG states that its proposed language is modeled after Maritimes and states that the more equitable solution to customers bearing appropriate risks is to give a proportional reservation charge credit to firm shippers for the scheduled quantity not delivered due to any type of interruption in service.

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[43] Maritimes & Northeast Pipeline, 89 FERC ¶ 61,123 (1999) (Maritimes).

4. Commission Ruling

90. SCG apparently misunderstood our reference to full reservation charge credits in the June 26 Order. The Commission does not require pipelines to provide free service, which would be the result under proposed pro forma tariff Section 10.9(b), wherein SCG is required to credit all of the reservation charges it receives, even for gas delivered, during non-force majeure situations resulting in a service interruption. In Tennessee [44] we required reservation charge credits only for the interrupted service (gas not delivered) during non-force majeure situations. We did not require any credits for service that was performed during force majeure service interruptions. We required Tennessee to provide partial credits (for the gas not delivered). Partial credits meant credits of only part of the reservation charge related to the scheduled gas not delivered. In Tennessee's case, the partial credits were equal to Tennessee's return on equity an associated income taxes for the underdelivered amount. This resulted in a sharing by Tennessee and its customers of the risk during force majeure interruptions of service, since neither the shipper nor the pipeline is at fault for the interruption.

91. Section 10.9 in SCG's pro forma tariff goes beyond what we required in Tennessee, and is rejected. In force majeure situations, Section 10.9 requires full credits for the gas not delivered when only partial credits for undelivered gas are required by Tennessee. In non-force majeure situations, it requires full credits for all scheduled gas, including delivered gas, when credits are only required for scheduled gas not delivered.

92. The provisions of Section 10.9 in SCG's Appendix G alternate tariff sheet concerning non-force majeure interruption of service are consistent with Commission policy and are accepted. SCG may revise its proposed provisions concerning reservation charge credits in force majeure situations to give only partial credits for scheduled gas not delivered, consistent with Tennessee. The reservation charge credits may include an adjustment for discounted rates and are only required if SCG does not deliver 98 percent of the scheduled volumes for both force majeure and non-force majeure service interruptions.

93. Sequent argues that SCG modified the prior Section 10.9(a) to eliminate SCG's obligation to credit the reservation charge in the event that a shipper acts negligently or willfully to cause an interruption of the pipeline's ability to deliver gas and asserts that this goes beyond compliance with the June 26 Order's directive. Sequent urges the Commission to reject that part of Section 10.9(a). The Commission finds that a shipper

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[44] Opinion 406, 76 FERC ¶ 61,022 at 61,086 (1996).

who acts negligently or willfully to cause an interruption of the pipeline's ability to deliver gas should not benefit from reservation charge credits for that interruption. However, SCG should modify Section 10.9 to clarify that non-offending shippers should receive reservation charge credits in accordance with Section 10.9 if their deliveries are interrupted as a result of another shipper's willful or negligent misconduct. Since neither the pipeline nor the non-offending shippers are at fault for the interruption, the non-offending shippers should receive the same credits, as they would during force majeure service interruptions.

94. SCG complied with the June 26 Order's pertaining to the conflict between Sections 19.1 and 10.9 of the GT&C by revising Section 19.1, which pertains to billing, to state that the charges billed will be adjusted as set forth in Sections 10.9(a) and (b) of the GT&C.

95. SCG complied with the June 26 Order's directive to clarify what "(c) and (d)" refer to in Section 10.9(b)(vi) of the GT&C by deleting Section 10.9(b)(vi).

96. SCG is directed to modify the reservation charge credit proposal contained in its pro forma tariff in accordance with this discussion when it files its actual tariff sheets.

F. Standards of Conduct with Marketing Affiliates

1. Comments

97. Sequent argues that there is no provision in SCG's pro forma tariff to ensure that SCG complies with the Commission's Standards of Conduct. Sequent urges the Commission to require SCG to file and post the information required by Sections 161.3(l)(1) and (2) (which requires pipelines to post certain information on their Internet websites) prior to the commencement of operations. Sequent suggests that SCG be required to file the information required by Section 161.3(i) of the Commission's regulations[45] prior to the commencement of service.

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[45] Section 161.3(i) requires a pipeline to file with the Commission procedures that will enable shippers and the Commission to determine how the pipeline is complying with the Standards of Conduct.

2. SCG's Answer

98. In its answer to Sequent's comments, SCG states that, consistent with other new pipelines, it intends to file its Standards of Conduct at least 30 days prior to the commencement of service. SCG further states that, since it plans on a November 1, 2003 in-service date, it will file its Standards of Conduct prior to October 1, 2003. SCG maintains that, since it is a new pipeline, it does not yet have an Internet website and asserts that its website will be operational as of its in-service date. SCG states that it will file its Standards of Conduct with the Commission at least 30 days prior to commencing service and post its Standards of Conduct on its website upon the commencement of operations. Accordingly, SCG urges the Commission to reject Sequent's argument.

3. Commission Ruling

99. The Commission accepts SCG's explanation that it will file and post its Standards of Conduct on its website upon the commencement of service. SCG must comply with all of the requirements of Section 161.3 of the Commission's regulations, including all of the filing and Internet website posting requirements, prior to the commencement of service.

G. Forms of Service Agreements

100. SCG was directed to revise the IT Form of Service Agreement to include, similar to Exhibits A and B of the Form of Service Agreement for Rate Schedule FT, the following information: contract quantity and the applicable receipt and delivery points. SCG revised Exhibit A to the Form of Service Agreement for Rate Schedule IT to include the receipt points and revised Exhibit B to Rate Schedule IT to include the delivery points, as directed. Exhibit C contains the rate. However, SCG did not revise those exhibits to include the contract quantity, as directed. SCG is directed to include the contract quantity on these exhibits when it files its actual tariff sheets.

H. Remaining June 26 Order Directives

101. The June 26 Order required SCG to include a number of other tariff modifications in its pro forma tariff and to provide certain explanations. The Commission has reviewed these other modifications and explanations and finds that they comply with the June 26 Order.

<u>The Commission orders</u>:

(A) SCG is directed to file its actual tariff in accordance with the discussion contained herein, at least 30 days but not more than 60 days, prior to the commencement of service.

(B) SCG is directed to include the explanations discussed herein with its actual tariff filing.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.