UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Maxim Power Corporation, Maxim Power (USA), Inc., Maxim Power (USA) Holding Company Inc., Pawtucket Power Holding Co., LLC, Pittsfield Generating Company, LP, and Kyle Mitton	Docket No. IN15-4-000

STAFF REPLY TO ANSWERS BY MAXIM ENTITIES AND KYLE MITTON

I. INTRODUCTION

The central facts of this case are few, simple, and beyond reasonable dispute, and they show that Respondents have violated both the Anti-Manipulation Rule and Section 35.41(b).

As the Staff Report lays out in detail, the record shows that during a heat wave in July 2010, ISO-New England began repeatedly dispatching Maxim's Pittsfield unit for reliability based on Maxim's offers at high oil prices. Although it had offered Pittsfield to the ISO on oil, Maxim was able to acquire much cheaper natural gas to fulfill all or nearly all of these reliability dispatches, and often acquired substantial amounts of gas even before submitting a Day Ahead offer.

Between operating days July 6 and July 16, the Pittsfield plant received Day Ahead reliability dispatches on oil offers on nine out of eleven days, but burned only gas and no oil on all of those days. During this period, Maxim's oil offers averaged about $175/MWh, while its gas offers averaged about $75/MWh. As of July 16, this roughly $100/MWh price difference translated to a cumulative windfall of nearly $1 million based on those nine days of dispatches.

In mid-July, the ISO's Internal Market Monitor (IMM) contacted Maxim about its high-priced offers. Whether or not Maxim had a "duty to disclose" (Maxim Answer at 8) before that point, it now – because it was acting on behalf of an entity with Market Based Rate Authority – had a duty under Section 35.41(b) to provide "accurate and factual information and not submit false or misleading information, or omit material information" in its communications with the IMM.

Had Maxim complied with this duty, by responding candidly to the IMM's inquiries and not omitting material information, this proceeding would never have arisen. But Maxim took a different approach: it made a series of carefully-managed statements about pipeline restrictions and the theoretical possibility of losses from offering gas and burning oil, and said nothing about what was actually happening at Pittsfield, namely an ever-growing windfall from offering oil and burning gas.

Maxim's communications with the IMM on this topic began on July 16, when Kyle Mitton sent the first in what became an exchange of six emails with the IMM about Pittsfield through July 21. In addition, as call notes newly produced by Maxim show, Mitton's boss, Eagle Kwok, talked by phone with the IMM about Pittsfield on July 22. Maxim's statements in all of these communications reflect the same pattern: Maxim asserted that it had been offering oil because of pipeline restrictions, because of what it claimed was a concern about losing money from offering on gas and actually burning oil. But Maxim was silent about what had in fact happened at Pittsfield, which was the exact opposite of what Mitton and Kwok were describing: offering on oil and burning gas, with the prospect of a very large windfall if the IMM did not discover the facts and mitigate Pittsfield's make-whole payments (Net Commitment Period Compensation, or NCPC) to gas prices.

These are the facts that matter, and Maxim and Mitton have no meaningful rebuttal. The Commission should determine that Maxim and Mitton violated the Anti-Manipulation Rule and that a Maxim subsidiary violated Section 35.41(b), and impose the penalties recommended in the Staff Report.

II. MAXIM'S DEFENSE IS BASED ON A FUNDAMENTAL MISCHARACTERIZATION OF WHAT THE CASE IS ABOUT

Maxim's and Mitton's Answers are premised on a fundamentally inaccurate characterization of staff's allegations against them. Specifically, Maxim's defense is based on the incorrect assertion that staff alleges that Maxim made improper communications to the IMM about *offers that were still pending and fuel burns that had not yet occurred*. As we show here, that is not correct.

Maxim tells the Commission, for example, that Mitton's four emails to the IMM in July 2010,[1] as well as Kwok's conversation with the IMM on July 22, "focused on *what fuel Maxim would be offering a day ahead (i.e., on a given day for the next day)* and the [pipeline] restrictions that allowed Maxim to offer on fuel oil."[2] Similarly, Maxim says that it is "fatuous" for staff "[t]o now claim that Maxim's conduct was manipulative because it allegedly failed to provide *sufficiently predictive information* so as not possibly to leave the IMM with the wrong impression as to what fuel Maxim *might end up burning*. . . ."[3] And Mitton claims that staff asks the Commission to impose liability based on "statement[s] that Pittsfield *would be offered on oil* due to [pipeline] restrictions."[4]

Maxim and Mitton are mistaken about what staff alleges. As a result, their Answers seek to "rebut" allegations that Enforcement has not made.

Although statements about future events can undoubtedly be deceptive, that is not what *this* case is about. Rather, this case is about Maxim's communications to the IMM concerning what Maxim had actually done *in the past*. For those communications, the relevant Maxim staff (Mitton and Kwok) already had full, personal knowledge of Maxim's fuel use and purchases; there was no uncertainty that could excuse their inaccuracies and omissions.

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1 The four emails are reprinted in the Staff Report at 25-31, and are also included in Appendix C hereto (Relevant Emails).

2 Maxim Answer at 17 (emphasis added).

3 Maxim Answer at 9-10 (emphasis added).

4 Mitton Answer at 18 (emphasis added).

Mitton's first email to the IMM on July 16, for example, was not about how Maxim *would be* offering in Pittsfield in the future, but about how Maxim "*ha[d] been* offering the unit" in the recent past:[5]

From: Kyle Mitton [kmitton@maximpowercorp.com]
Sent: Friday, July 16, 2010 12:03 PM
To: jangeli@iso-ne.com
Subject: Asset 326 - Altresco/Pittsfield

Hi John,

I was out of the office yesterday but got your message regarding the offer price for Asset 326. Similarly to our other units we have been offering the unit in conservatively on fuel oil due to the daily gas restrictions on Tennessee Gas Pipeline. I can provide you the restriction notices for your records if you like – please let me know.

Thanks,

Kyle Mitton
Energy Marketing Analyst
Maxim Power Corp.
p. 403.750.9310
c. 403.554.3060
f. 403.263.9125
e. kmitton@maximpowercorp.com
web www.maximpowercorp.com

Similarly, Mitton's July 19 email discussed what had already happened: he said there had been "[pipeline] restrictions every day of the month so far in July" and told the IMM that Maxim "*ha[s] been offering* in on fuel oil."[6]

[5] July 16 Mitton Email, MPCPROD00074407 (emphasis added) (within Appendix C hereto).

[6] July 19 Mitton Email, MPCPROD00074409 (emphasis added) (within Appendix C hereto).

From:	Kyle Mitton [kmitton@maximpowercorp.com]
Sent:	Monday, July 19, 2010 4:48 PM
To:	Angeli, John
Cc:	Eagle Kwok
Subject:	RE: Asset 326 - Altresco/Pittsfield
Attachments:	TGP Restriction Notice Summary (July 1-20, 2010).pdf

Hi John,

Here is a pdf with all the restrictions that TGP has posted on their Critical Notice Board month to date for July 2010. As you can see from this file there have been restrictions every day of the month so far in July. The main reason for this is that TGP is performing maintenance on some key compressor stations which are causing "bottlenecks" and reducing the amount of gas that can flow. During normal heat this wouldn't be an issue however with the prolonged heat wave in the Northeast restrictions have been a serious issue. Penalties issued by the Local Distribution Company for burning gas that is not ours are extremely severe, so to protect ourselves we have been offering in on fuel oil to control our risk exposure.

In the past Pittsfield/Altresco has sent a notice to let Market Monitoring know when the unit was offering on fuel oil due to gas pipeline restrictions. Is this a practice you wish us to continue on a go-forward basis?

Please don't hesitate to call me if you wish to discuss.

Regards,
Kyle

The same is true of Kwok's July 22 call with the IMM, by which point Maxim had been offering on oil prices for 17 consecutive days.[7] Maxim itself admits elsewhere in its Answer (at 17) that in this call, Kwok was discussing the *past*, not the future: "[a]mong the topics discussed was Maxim's *recent offerings* of Pittsfield on oil."[8]

As demonstrated in the Staff Report, and explained further below, the record demonstrates that Maxim and Mitton violated Commission rules in connection with their numerous statements (and omissions) to the IMM about conduct and events about which Mitton and Kwok had full knowledge.

III. OFFERING ONE FUEL AND BURNING ANOTHER: POTENTIAL LOSSES AND POTENTIAL WINDFALLS

In their Answers, Maxim and Mitton talk only about the potential downsides they faced in ISO-New England's Day Ahead market in July and August 2010, mentioning "risks" 80 times and potential "losses" 40 times. Although the evidence shows that Maxim consistently sought to pursue profits, as one would expect from a for-profit firm,[9]

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7 July 22 Kwok Notes (Appendix D hereto); Master Spreadsheet, discussed in Staff Report at 9.

8 July 22 Kwok Notes (Appendix D hereto) (emphasis added). Similarly, Mitton's July 20 and July 21 emails, which discussed Maxim's Day Ahead offers for the next operating day, omitted any mention of material facts about the (very recent) past, namely that earlier on those days, Mitton himself had made large gas purchases for the next operating day. *See* Staff Report at 46; Maxim Answer at 30.

9 Mitton and his colleagues were clearly aware of Maxim's profits on a day-to-day basis. *See, e.g.*, Maxim Answer, Exh. 12, Mitton Email to Kwok (June 24, 2010) ("This is shaping up

Maxim and Mitton's Answers never mention the sizeable potential *upside* of the ISO-NE Day Ahead market during July and August 2010. In particular, they do not discuss the $3 million windfall profit they could achieve by being paid for reliability dispatches at oil prices while actually burning much less expensive gas.

Maxim instead focuses on "risk minimization," and argues that it was lawful to offer on oil prices to avoid the risk of losses if it offered on gas and had to burn oil. ***Even if Maxim had in fact been pursuing that risk minimization goal, it would not matter if it were***: as the Staff Report noted, Maxim could offer on oil to eliminate this downside risk, even if it later burned gas, ***provided it dealt honestly with the IMM about what it had done***.[10]

While the Commission need not resolve the matter to hold Maxim and Mitton liable, the record shows (as discussed below) they did not follow the practice that Maxim describes in its Answer, namely offering on oil in response to pipeline restrictions. What the record *does* show is that after receiving reliability awards on oil prices and then burning gas, Maxim pursued a strategy of "windfall protection."

A. Losses and Windfalls: The Mirror Image

In ISO-NE, fuel oil is almost always considerably more expensive than natural gas on a per-MWh basis. For example, as discussed in the Staff Report (at 11), Maxim's average offer prices for operating dates July 6 through August 19, 2010 were $176.13 for oil and $75.85 for gas. For simplicity, in this section we assume a roughly $100/MWh price difference between oil and gas.

There are two ways a dual-fuel plant can offer one fuel and burn another. The theoretical possibility that Maxim and Mitton discussed at length in their Answers is offering on the cheaper fuel but burning the more expensive one. But the converse possibility is what was *actually* occurring, again and again, during this period: offering on the more expensive fuel but burning the cheaper one.

In these two scenarios, if a unit is called on for reliability and paid at its offer price, the economic results are mirror images of one another:

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to be our best day ever in NE"); Maxim Answer, Exh. 10, Maxim Email to Taikowski (June 23, 2010) ("Every MW counts, especially when it's $200+ pricing!").

[10] Staff Report at 13 ("As of the summer of 2010, if Maxim chose to offer Pittsfield based on oil prices because it had serious concerns that it would not be able to obtain gas, but then actually burned gas when it received reliability commitments from the ISO, it could have been forthright in responding to inquiries from the IMM about the plant's offers.").

Day Ahead award	**Offer gas, burn oil**	**Offer oil, burn gas**
8 hours @ 146 MWs	**$116,800 loss**	**$116,800 profit**
16 hours @ 146 MWs	**$233,600 loss**	**$233,600 profit**
24 hours @ 146 MWs	**$350,400 loss**	**$350,400 profit**

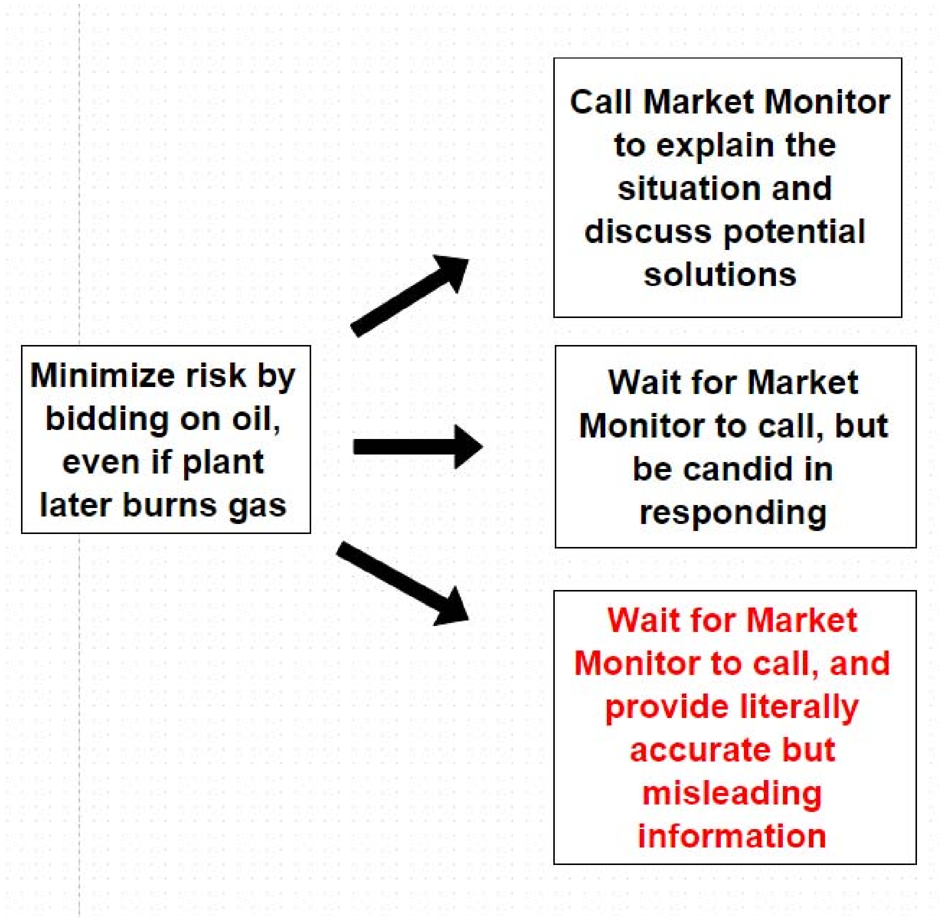
While the middle column was a theoretical possibility, the right-hand column reflects the reality of what was actually happening at Pittsfield in July and August 2010. Starting on operating day July 6, 2010, for example, Maxim received Day Ahead reliability awards for Pittsfield on oil offers for each of the nine weekdays through July 16, 2010.[11] And for each of these nine reliability dispatches on oil prices, Maxim burned only gas and no oil. By that point, it was plain that, if Maxim could avoid Pittsfield's being mitigated to gas prices, Maxim would enjoy large financial windfalls every day the unit was dispatched on oil but actually burned gas.[12]

B. Maxim's Three Options When It Learned It Was Getting Reliability Dispatches on Oil While Actually Burning Gas

When Maxim began receiving Day Ahead reliability dispatches on oil prices in July 2010 while actually burning gas, it had three options, each of them equally consistent with its professed "risk minimization" objective:

[11] Master Spreadsheet. Maxim and Mitton do not dispute that Mitton knew that Day Ahead awards at offer prices above LMPs were for reliability. *See* Staff Report at 23 & n.59; *see also* Mitton Test. Vol. II at 314 (in July 2010, "we started to realize that they were getting reliability dispatches"); *id.* at 315 ("we realized when we started to get picked up when we had offered in on oil, so we knew we were getting picked up uneconomically, and that was our clue that, well, these are not normal dispatches").

[12] Maxim was ultimately mitigated in 2010 under Section III.A.5 of the ISO-NE tariff ("Reliability Commitment Mitigation"), failing (by large margins) the low load cost test based on its oil offers compared against its true gas reference price.



With the first approach, Maxim could have immediately called the IMM to explain that it wanted to avoid potential losses by offering gas and burning oil, but was not seeking windfall gains from the opposite situation (offering oil and burning gas). Calling on its own initiative would have made sense, given that Mitton claims in his Answer (at 16) that after the Reliability Must Run (RMR) Agreement ended on May 31, 2010, Maxim "simply implemented various policies it had followed while operating under" that Agreement.[13] Those policies included (as the RMR Agreement required) "advis[ing] the ISO Market Monitoring Group as soon as practicable *in advance of* submitting . . . bids" on oil prices if gas was cheaper.[14]

Had Maxim called the IMM to candidly discuss both sides of the issue – potential losses and potential windfalls – that call would likely have demonstrated that Maxim lacked scienter for purposes of market manipulation. Nor would Maxim have likely violated Section 35.41(b), because Maxim's communications would have been accurate

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13 As discussed in Section V(B) below, Mitton in fact notified the IMM about oil offers under the RMR.

14 RMR Agreement, Article 3.1.4 (emphasis added). The Agreement is in a subfolder entitled "2005 RMR Agreement" in the folder "Material Cited in Staff Report" in the investigative materials filed by staff on February 4, 2015.

and would not have omitted material facts. In the 2010 *NYISO Order* on which Maxim relies,[15] for example, the Commission found that despite engaging in questionable bidding conduct, a generator had not committed market manipulation given that it "had a series of discussions with NYISO staff" about its bids in which it fully explained its plans to the ISO.[16]

But Maxim did not take this first, candid, approach.

With the second approach, when contacted by the IMM in mid-July, Maxim could have *then* had a candid discussion about the mirror-image issues: avoiding losses from offering-gas/burning-oil while not seeking windfalls from offering-oil/burning-gas.

But Maxim similarly did not take this second, candid, approach.

Instead, Maxim adopted the third approach: waiting for the IMM to call, and then providing careful, narrow responses that implied false information and omitted material facts. *That* is what this case is about.

IV. THE RECORD DOES NOT SUPPORT MAXIM'S CLAIM THAT ITS OIL OFFERS WERE BASED ON "RISK MINIMIZATION" IN RESPONSE TO PIPELINE RESTRICTION NOTICES

Because the basis of this case is Maxim's effort to mislead the IMM about the fact that it had burned gas after getting reliability awards, the Commission need not resolve *why* Maxim had offered on oil. But the record contains no relevant support for Maxim's claim to have followed a practice of offering on oil to minimize risks when the Tennessee Gas Pipeline (Pipeline) posted restrictions. Instead, the record, including emails quoted by Maxim in its Answer, shows that Respondents did not follow that practice.

A. Maxim's Claims to Have Offered on Oil Because of Pipeline Restrictions

In their responses to the IMM's inquiries about their oil offers in the summer of 2010,[17] and in their submissions to staff and to the Commission, Maxim and Mitton have uniformly asserted that their oil offers starting after the RMR Agreement expired on May 31, 2010 were because of pipeline restriction notices.

In their April 2014 Response to staff's Preliminary Findings, for example, Maxim and Mitton said they told the IMM that "offering on fuel oil pricing was a measure Maxim *took in response to daily gas restrictions* in order to control risk exposure."[18] In

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[15] Maxim Answer at 22-23 (citing *New York Independent System Operator, Inc.*, 131 FERC ¶ 61,169 (2010) ("2010 NYISO Order")).

[16] 2010 NYISO Order, 131 FERC ¶ 61,169, P 36 (2010); *see id*. P 84.

[17] *See* Appendix C (Relevant Emails).

[18] April 2014 Maxim Submission at 67 (emphasis added).

that same Response, Maxim and Mitton stated that "Maxim conservatively *priced supply offers on fuel oil when TGP posted gas restrictions*."[19] Similarly, in his December 2014 Response to staff's 1b.19 letter, Mitton stated that because of the risk of not being able to acquire gas, "during the months immediately after coming off the RMR, Maxim adopted *a practice of offering Pittsfield on oil whenever the TGP pipeline posted restrictions*."[20]

In its March 2015 Answer, Maxim again states that starting in June 2010, "[b]ecause of the uncertainty of obtaining enough gas *due to the [pipeline] restrictions*, and the *risk of huge financial losses* if Pittsfield had to burn fuel oil after offering on gas, Maxim began submitting offers into the [Day Ahead Market] based on fuel oil."

In short, Maxim has repeatedly told staff and the Commission that after the RMR Agreement ended on May 31, 2010, it followed a practice of offering on oil based on pipeline restrictions, and that its oil offers were made for that reason.

B. What the Record Shows About Why Maxim Offered on Oil

The record contains no relevant contemporaneous evidence that Maxim had a policy of offering on oil because of pipeline restrictions during this period. To the contrary, the record evidence shows that it did not.

First, Maxim's discussion of its "risk minimization strategy" in its Answer (at 13-19) does not cite a single internal Maxim document from this period (July 6-August 19, 2010) about pipeline restrictions. Instead, Maxim cites only communications with the IMM and later testimony in this investigation. Had Maxim in fact been monitoring pipeline restrictions and offering on oil whenever the Pipeline posted a restriction, one would expect to see internal company documents showing that.

Second, the record shows that during the period covered by Maxim's statements above (*i.e.*, starting on June 1, 2010), Maxim repeatedly did what it now tells the Commission (at 13) it would never do because of the risk of "huge financial losses": offer on gas in the face of pipeline restrictions. Even though the Pipeline posted relevant restrictions for June 2, 3, 20, 21, 22, and 23, July 5, and August 9, for example, Maxim submitted Day Ahead offers on gas for those dates – that is, doing what they now claim they would never do.[21]

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[19] April 2014 Maxim Submission at 66 (emphasis added).

[20] December 2014 Mitton Submission at 4 (emphasis added).

[21] Compare Appendix E hereto (showing relevant pipeline restrictions on June 2, 3, 20, 21, 22, and 23, July 5, and Aug. 9, 2010) with Master Spreadsheet (showing that Maxim offered gas on each of these days).

The source for determining what restrictions Maxim viewed as relevant to Pittsfield is as follows: on September 22, 2010, Mitton submitted a spreadsheet to the IMM (Mpcprod00074456_Confidential.xls) that included a tab (Restrictions Summary) listing the specific pipeline locations (by number) that Maxim viewed as relevant to Pittsfield. The

Third, the record shows that for operating day August 7, Maxim offered on oil prices when there were no relevant pipeline restrictions.[22]

Fourth, emails quoted by Maxim in its Answer demonstrate that in late June and early July 2010 – a period covered by Maxim's statements (quoted on the preceding page) about following a practice of offering oil because of pipeline restrictions – its oil offers were not based on pipeline restrictions but instead were designed to price Pittsfield out of the Day Ahead Market.

Specifically, Maxim and Mitton now state (Maxim Answer at 15-16, Mitton Answer at 7 & n. 18) that the purpose of Maxim's oil offers in late June and early July 2010 was ***to withhold its capacity from the Day Ahead Market***. That is, as the emails quoted by Maxim show, its goal during this period was to save its energy for the Real Time Market because it believed high Real Time prices would make that strategy more profitable. Here are a few examples:

- On June 23, Mitton told the Pittsfield plant manager, Rich Taikowski, that he had offered on oil in the Day Ahead Market, and that "*the purpose of this was to try and avoid a DAM Award and leave all of our MW's for the RT Market*."[23]
- On June 24, Mitton told Kwok he was going to "offer on oil *again to take us out of the DAM*." Mitton had done the same thing for that operating day (June 24), and told Kwok that it had "worked well for us today as RT prices are now at $150/MWh and have been rising steadily all morning."[24]
- On June 24, Kwok instructed Mitton: "*Please make sure we are keeping the plants out of the DAM and taking RT prices in these volatile periods*."[25]

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restrictions that Mitton there identified as relevant to Pittsfield are for locations 223, 245, 307, 321, 355. *See* Excerpt from Spreadsheet "Mpcprod00074456_Confidential.Xls" Sent By Kyle Mitton to IMM on Sept. 22, 2010 (within Appendix A hereto) (hereafter "Relevant Restrictions").

[22] *See* Master Spreadsheet (showing that Maxim offered on oil for August 7); DR28 Response (same); Appendix G hereto (showing no relevant pipeline restrictions for August 7).

[23] Mitton Email to Taikowski (June 23, 2010) (Exh. 10 to Maxim Answer) (emphasis added).

[24] Mitton Email to Kwok et al (June 24, 2010) (Exh. 11 to Maxim Answer) (emphasis added).

[25] Kwok Email to Mitton (June 24, 2010) (Exh. 12 to Maxim Answer) (emphasis added). Maxim Answer at 13 (emphasis added). What Maxim actually did on these days, as the emails quoted above show, was to offer on oil to price themselves out of the market. In its Answer (at 15), Maxim inaccurately argues that pricing Pittsfield out of the market was merely the *byproduct* of offering on oil because of price restrictions. That is not correct: as the emails

As was true throughout the summer, Maxim did not contact the IMM to alert them to these oil offers. Maxim's failure to do so is striking, because Mitton says in his Answer (at 16) that "[d]uring summer 2010, just after Pittsfield came off the RMR Agreement, [the Pipeline] was issuing restriction notices and Maxim *simply implemented various policies it had followed while operating under the RMR Agreement*." One of those "policies" was – as the RMR Agreement expressly required – to notify the IMM in advance if it planned to offer on oil.[26] But Maxim did not on its own contact the IMM at all about any of its summer 2010 oil offers.

The emails also show that Maxim made inaccurate statements about its practices in offering on oil or gas in the Real Time Market. In Maxim's Answer (at 14), it says that its determination not to offer on gas in the face of pipeline restrictions applied not only to the Day Ahead Market but also to the Real Time Market (also called the "re-offer period") as well:

> And, for additional dispatches directed after the close of the day ahead market, Maxim would need to secure gas outside the normal gas day procurement period. Accordingly, because Maxim had exposure for the entirety of the operating day, **Maxim maintained its oil-based supply offers throughout the re-offer period when TGP posted restrictions** even if, by that time, Maxim had procured sufficient gas to meet a day ahead award. (Emphasis added).

But as an email cited by Maxim in its Answer shows, Maxim's actual behavior was not consistent with this description of its practices.

The Tennessee Gas Pipeline has provided staff (and staff has provided both to Maxim and the Commission) with a spreadsheet that contains a complete set of pipeline restriction notices for June through August 2010.[27] The spreadsheet shows that at 4:31 p.m. on June 23, 2010, the Pipeline posted a restriction notice for the next day (June 24, 2010) for locations 223 and 307, both of which Maxim considers relevant to Pittsfield:[28]

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show, the *purpose* was to avoid getting a Day Ahead award, so that Maxim could sell all of its Pittsfield's energy in the Real Time Market.

[26] RMR Agreement, Article 3.1.4.

[27] In December 2014, Tennessee Gas Pipeline provided staff with a spreadsheet entitled "Critical Notices from June 2010_August 2010" (Critical Notices Spreadsheet). The spreadsheet is in a folder entitled "Tenn. Gas Pipeline and Angeli emails" in the investigative materials filed on February 4, 2015.

[28] Relevant Restrictions (*see* note 21 above).

132137	6/23/10 16:31	TGP	BLTN	3	Curtailment
TO:	ALL TENNESSEE CUSTOMERS				
RE:	RESTRICTIONS FOR 6/24/10				
Effective Timely Cycle, 9:00 AM CCT, for the gas day of					
June 24, 2010, Tennessee restricted the following:					
SUMMARY:					
Restrictions					
============					
MLV 223 - through 100% IT					
Station 307 - through 100% IT					
Leidy Delivery Meters - through approx 61% SOP					
Rivervale Delivery Meter - through approx 58% SOP					
No Increases					
============					
MLV 223 (P00257)					
Station 307 (P00019)					
Leidy Delivery Meters (005030/005031)					
Rivervale Delivery Meter (020101)					

Nevertheless, at 6:13 p.m. that day, Mitton told the Pittsfield plant manager that he was changing his offer for Pittsfield for operating day June 24 from oil pricing (in the Day Ahead Market) to gas pricing (in the Real Time Market):[29]

From: Kyle Mitton <kmitton@maximpowercorp.com>
Sent: Wednesday, June 23, 2010 6:13 PM
To: Rich Taikowski
Subject: RE: 6/23 Pittsfield Operating Cost: $52.55/MWh

Yes – the purpose of this was to try and avoid a DAM Award and leave all our MW's for the RT Market.

I have changed the offer back to Gas now that the DAM Awards are done. This means we should get picked up in the RT Market tonight for tomorrow.

Hopefully we'll see some $200+ pricing tomorrow and be able to get it on all our MW's!

Looks like the guys are doing a good job of pushing out as much as they can – every MW counts, especially when it's $200+ pricing!

In other words, on June 23, 2010, Maxim did what it tells the Commission (on page 14 of its Reply) it would never do: offer Pittsfield on gas in the Real Time Market in the face of pipeline restrictions.

29 Mitton Email to Taikowski (June 23, 2010) (Exh. 10 to Maxim Answer) (emphasis added).

Maxim's response to Data Request 28 shows that it likewise offered on gas in the Real Time Market despite pipeline restrictions on at least June 2, 3, 20, 21, and 22.[30]

Both the emails quoted above and other record evidence therefore show that Maxim and Mitton have made inaccurate statements to the IMM, staff, and the Commission about its practices in offering on oil and gas during the summer of 2010. There is therefore little reason to credit Maxim's statements that it offered on oil based on pipeline restrictions during the period of greatest interest here, namely operating days July 6 to August 19. And in any event, whatever Maxim's *ex ante* reasons for offering on oil, Maxim's efforts to mislead the IMM to *protect* its accumulating windfall gains violated the Anti-Manipulation Rule and Section 35.41(b).

V. MAXIM'S WINDFALL PROTECTION SCHEME

We here review Maxim's and Mitton's deceptive conduct designed to protect the windfall gains that began to accumulate on operating date July 6, 2010 as Maxim received Day Ahead reliability awards on oil offers but actually burned gas.

A. June 6-16: Oil Offers, Reliability Awards, Gas Burns

Starting on operating day July 6, Maxim and Mitton began confronting a new reality: during a prolonged heat wave, Pittsfield was getting many Day Ahead reliability awards.[31]

At the end of the second week, on July 16, this is what Maxim and Mitton knew had happened over the previous two weeks:[32]

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30 Amended Maxim Response to DR28, attached to Nov. 6, 2013 Email from Diana Jeschke to OE (in subfolder entitled "Maxim Response to DR28" in folder "Material Cited in Staff Report" filed as part of the investigative materials filed by staff on February 4, 2015). The spreadsheet does not indicate what fuel Maxim offered in the re-offer period on July 5 and August 9, on which (as discussed above) Maxim offered on gas in the Day Ahead Market despite pipeline restrictions.

31 Having repeatedly told the Commission it was "surprised" when it got reliability dispatches, *see* Staff Report at 17-18, Maxim now backs away from those statements, apparently now conceding that any supposed "surprise" was brief. Maxim Answer at 23 n.60 ("Contrary to OE Staff's contention, Maxim never claimed to be surprised at every single dispatch during summer 2010.").

32 Mitton realized these were reliability dispatches because Maxim's offer prices were almost always above LMPs. *See* note 11 above.

July 2010						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
4	5	6 RELIABILITY DISPATCH ON OIL	7 RELIABILITY DISPATCH ON OIL	8 RELIABILITY DISPATCH ON OIL	9 RELIABILITY DISPATCH ON OIL	10
11	12 RELIABILITY DISPATCH ON OIL	13 RELIABILITY DISPATCH ON OIL	14 RELIABILITY DISPATCH ON OIL	15 RELIABILITY DISPATCH ON OIL	16 RELIABILITY DISPATCH ON OIL	

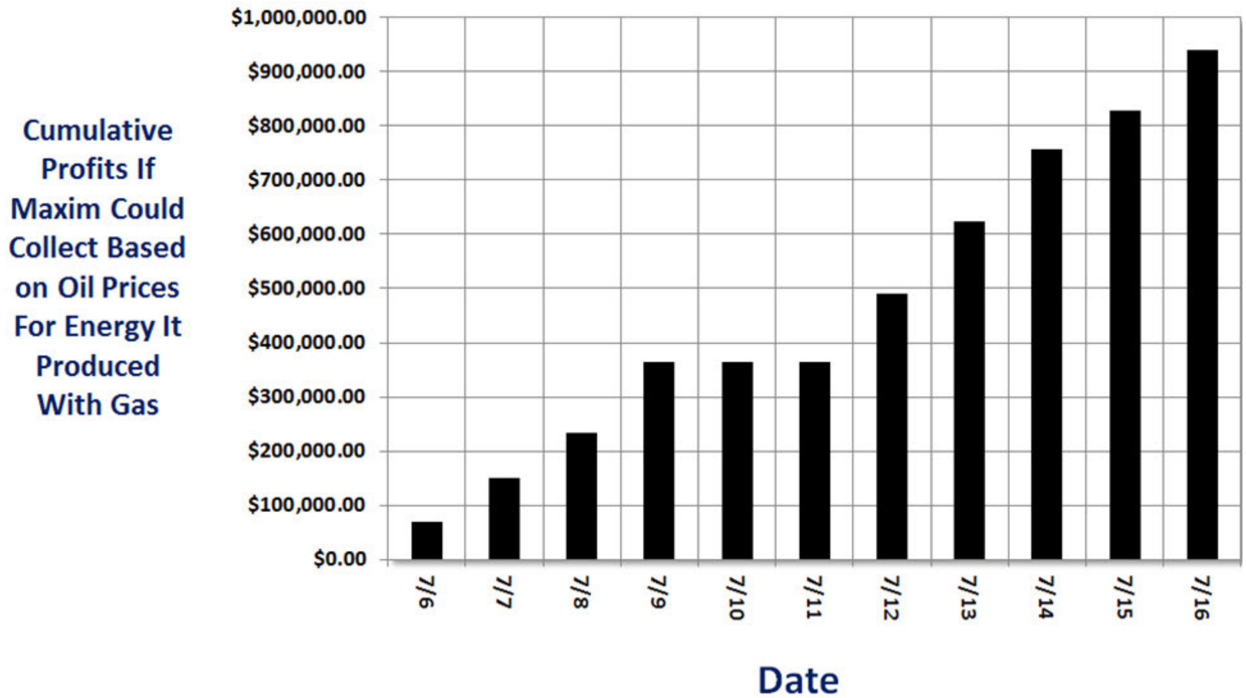
Getting Day Ahead awards of any type (whether economic or reliability) prevented Maxim from holding its energy back for the Real Time market. But Day Ahead reliability awards offered a different and very lucrative prospect: an offer-oil/burn-gas windfall, provided that the IMM did not mitigate Maxim to gas prices. (As Mitton testified, if the IMM "*didn't know you had burned gas they wouldn't mitigate you.*"[33])

This new windfall possibility arose because, across the nine operating days for which Maxim had gotten reliability dispatches on oil-priced offers as of July 16, the Pittsfield plant ***had burned 100% gas and 0% oil***.[34] Because gas was far cheaper than oil (by roughly $100/MWh), that meant that, if Maxim could collect NCPC from the ISO based on oil prices, it would enjoy large profits.

How profitable would that outcome be for Maxim? The chart below shows where things stood as of July 16:

33 Mitton Test. Vol. II Tr. 288 (emphasis added), quoted in Staff Report at 11.

34 *See* Master Spreadsheet, discussed in Staff Report at 9.



As this chart shows, by July 16, *Maxim was in a position to reap nearly a million dollars in windfall profits* from being paid NCPC based on oil prices while burning gas during the nine weekdays up to that date.[35]

To put that amount in perspective, here is Maxim Power Corporation's (the Canadian parent company's) income statement for the third quarter of 2010 (of which July 2010 was the first month). The income statement is not just for the Pittsfield plant, and not just for Maxim's US operations, but for Maxim's businesses in Canada and France as well.[36]

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[35] The amounts shown here are taken from the IMM's later mitigation calculations, shown in column AE of the Master Spreadsheet. (The cumulative figure as of July 16 was about $940,000.) While Maxim did not have these precise numbers at the time, they obviously knew there was a large price difference between oil and gas (averaging about $100/MWh during this period), in this case in their favor. *See* Staff Report at 11.

[36] *Quarterly Report of Maxim Power Corp. Third Quarter ended September 30, 2010 and 2009*, at 2 http://www.maximpowercorp.com/_html/investor_centre/documents/Q32010FinancialStatements_000.pdf. Maxim has five power plants in the U.S. alone and two in Canada, as well as operations in France. *See* Maxim web site, http://www.maximpowercorp.com/_html/operations/index.html.

MAXIM POWER CORP.

Consolidated Statements of Operations and Retained Earnings

Three and nine months ended September 30, 2010 and 2009
(In Thousands of Dollars)
(Unaudited)

	Three months ended September 30, 2010	2009
Revenue:		
Electricity sales	$ 31,123	$ 27,628
Expenses:		
Plant operations (note 11)	23,760	19,767
General and administration	1,213	1,288
Depreciation and amortization	3,563	3,720
	28,536	24,775
Income before the following items	2,587	2,853

In other words, in the third quarter of 2010, Maxim's worldwide operations generated \$2.6 million (averaging about \$860,000 per month) in net income after operating and certain other expenses. The profits that Maxim stood to enjoy from two weeks of reliability dispatches *for a single plant* (Pittsfield) were greater than Maxim's average monthly net income from its *entire worldwide operations*. From Maxim's perspective, this was a very large windfall. And if Pittsfield continued to get reliability dispatches on oil prices while actually burning gas, the windfall would continue to grow.

On July 15, 2010, Mitton got a voicemail from an IMM employee asking about Maxim's offers for Pittsfield.[37] Mitton's response to the IMM the next day (July 16) – with narrow answers that conveyed false implicit messages and omitted material information – set the template for all of Maxim's communications with the IMM about Pittsfield that month. In essence, Maxim and Mitton (a) made carefully-tailored statements that (b) implied that Maxim had been burning gas and (c) contrary to its obligations under Section 35.41(b), omitted material facts, including that Maxim had been burning gas, not oil.

In his testimony, after initially claiming that collecting NCPC payments at oil prices while burning gas was not possible, Mitton acknowledged that if the IMM "*didn't know you had burned gas they wouldn't mitigate you*."[38] As of July 16, 2010, that meant that if the IMM "didn't know" that Maxim had burned gas to satisfy Pittsfield's nine recent reliability awards, "they wouldn't mitigate you" about those days, and Maxim

[37] Mitton's July 16 email begins "I was out of the office yesterday but got your message . . . ." (within Appendix C hereto).

[38] Mitton Test. Vol. II Tr. 288 (emphasis added), quoted in Staff Report at 11.

could keep the nearly million-dollar windfall that had accumulated over just the previous two weeks.

Another important and undisputed fact is this: during the 10 operating days ending on July 16, Maxim had *every day* purchased gas by 12:30 p.m. the day before the operating day, hours before knowing whether it would get a Day Ahead award. For five of those days (operating dates (July 7, 13, 14, 15, and 16), Maxim's records are detailed enough to show that it purchased gas before the noon deadline for submitting Day Ahead offers.[39] But as pointed out in the Staff Report (at 47), and as Maxim does not dispute, on all of the other days during that ten-day period (operating dates July 8, 9, 10, 11, and 12), Maxim bought gas no later than 12:30 p.m., and hours before ISO-NE announced Day Ahead awards later that afternoon.[40] And on every day it got a reliability award during this period, Maxim was able (whether in advance or later) to purchase all of the gas it needed to satisfy those awards.[41]

That is, despite alleged difficulties from "pipeline restrictions," as of July 16, 2010 Maxim was getting the gas it needed to fulfill reliability dispatches, always buying substantial quantities of gas before Day Ahead awards were announced, and often buying gas before submitting Day Ahead offers.[42] The fact that publicly-announced "pipeline restrictions" had, in fact, had zero impact on Maxim's ability to acquire gas was obviously material to Maxim's contention that the IMM should retroactively bless its oil offers based on those restrictions.[43]

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[39] Maxim Response to DR 47c.

[40] The same pattern continued through July 22, when Kwok spoke with the IMM: for every operating day from July 7 to July 22, Maxim bought gas before 12:30 p.m., and long before ISO-NE announced Day Ahead awards. DR47c Response; Staff Report at 46-47. All told, Maxim bought gas before 12:30 p.m. on 19 of the 22 days when Pittsfield got Day Ahead reliability awards during this period (or 86% of those days). *See* Appendix F hereto ("Early Gas Purchases (Before 12:30 p.m.) for Operating Days When Pittsfield Got Day Ahead Reliability Awards").

[41] Maxim always had the option of burning oil. *See* Mitton Test. Vol. I at 73 ("We have fuel oil storage on site, and that's our . . . firm fuel source").

[42] *See* note 40 above; Staff Report at 46-47.

[43] Mitton claims (at 14-15) he was being honest when he claimed in testimony not to recall whether he had ever bought gas before submitting a Day Ahead offer. But what Mitton did in the summer of 2010 was memorable: he bought gas before submitting Day ahead offers not once but ten times, *see* DR47c spreadsheet, and has never done so since, because Maxim does not want to have to sell gas (potentially at a loss) if not given an award. (*See* Staff Report at 19; *compare* Maxim Answer at 32-33 (incorrectly claiming this view is new)). In addition, documents cited by Maxim in its Answer show that the company's advance gas purchases that summer were part of a carefully thought-out plan. *See* Devasahayam Email to Kwok and Mitton (July 1, 2010) (Exh. 13 to Maxim Answer) ("Pre-buy gas for Sunday . . . Pre-buy gas for Monday, and buy gas [on Monday] for Tuesday . . . Buy gas for Wednesday [on Tuesday]").

B. July 6-16: Although Maxim Now Says It Simply Continued Doing What It Had Done Under the RMR Agreement, Maxim Does Not Notify the IMM That It is Offering on Oil Prices or Explain Why It Is Doing So

As discussed above, Mitton states that "[d]uring summer 2010, just after Pittsfield came off the RMR Agreement, [the Pipeline] was issuing restriction notices and Maxim *simply implemented various policies it had followed while operating under the RMR Agreement*."[44] The RMR Agreement required Maxim to alert the IMM about oil offers *before* Maxim submitted them.[45] Maxim had done just that: in his July 19, 2010, email to the IMM, Mitton said that "[i]n the past Pittsfield/Alfresco has sent a notice to let [the IMM] know when the unit was offering on fuel oil due to gas pipeline restrictions."[46]

But for operating dates July 6 through 16, Maxim and Mitton did not "implement [the] polic[y] it had followed" about notifying the IMM that it was offering on oil. Rather, from July 5 (when Maxim put in its first oil offer that month, for operating day July 6) until July 16 (a day after the IMM called), Maxim and Mitton said nothing to the IMM about offering on oil or about any justification for doing so.

In their Answers, and in their previous submission, Maxim and Mitton offer no explanation for why, if they were "implementing [the] policies [Maxim] had followed while operating under the RMR Agreement," they failed to follow their policy (as the RMR had required) of alerting the IMM before putting in oil offers. Failing to follow this policy, however, minimized the number of communications Maxim would have with the IMM, any one of which might have led to a disclosure that (a) Maxim was actually burning gas, not oil, and that (b) despite whatever pipeline restrictions might have been posted, Maxim was able to acquire gas every day – through June 16th, for every MWh of its Day Ahead awards – and often did so in advance.

Maxim's silence about its oil offers for the first ten days it submitted them in July, contrary to what it says was its policy during that period, is thus additional evidence that it was intentionally seeking to protect a windfall.

C. July 16-22: Once Contacted By the IMM, Maxim Gives Carefully-Tailored Responses That Imply False Claims and Omit Material Information

Between July 16 and July 21, 2010, Mitton wrote four emails to the IMM about Pittsfield (all reprinted in the Staff Report and in Appendix C to this Reply). In addition, handwritten notes newly produced by Maxim from Mitton's then-boss, Eagle Kwok,

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44 Mitton Answer at 16 (emphasis added).

45 RMR Agreement, Article 3.1.4.

46 Within Appendix C hereto (Relevant Emails).

indicate that Kwok spoke by phone with IMM personnel on July 22, 2010.[47] All of these communications follow the same script:

- focusing on "pipeline restrictions" and theoretical losses from offer-gas/burn-oil
- silence about the fact that what was *actually* happening was the opposite: offering oil, but burning gas to satisfy all (or virtually all) of Pittsfield's reliability awards on oil offers
- silence about the fact that Maxim was often buying substantial quantities of gas before submitting Day Ahead offers on oil
- silence about the fact that Maxim had every day bought substantial quantities of gas hours before Day Ahead awards were announced; and
- silence about the fact that it stood to receive an ever-growing windfall by being paid for a costly fuel it did not burn.

On July 16, 2010, for example, Mitton told the IMM that Maxim was offering on oil because of "daily gas restrictions" on the Pipeline. The next Monday, July 19, Mitton elaborated in a longer email, telling the IMM that the Pipeline's "Critical Notice Board" showed "restrictions every day of the month so far in July" because of "bottlenecks" that were "reducing the amount of gas that can flow." Because of the "prolonged heat wave" that month, Mitton stressed, these pipeline problems were a "serious issue."[48]

Although claiming that Pipeline "bottlenecks" were creating "serious" problems, Mitton made no mention of the elephant in the room: that while Maxim had gotten many reliability awards on high oil prices, it had actually burned only gas, and stood to extract a huge windfall from purchasers of wholesale energy in ISO-NE if it could collect NCPC at the price of a costly fuel it had not actually burned. Nor did Mitton mention any of the other important facts above.

When Kwok spoke by phone with IMM personnel on July 22, he echoed the statements made by Mitton in his four emails. As Mitton had done, Kwok said (according to his own notes) that Maxim was offering on oil based on pipeline restrictions, adding a dire warning that Maxim could not withstand "[one] or more dispatches by ISO-NE on gas cost [when] we have to burn fuel oil" and that Maxim might risk "bankruptcy" if that happened. Kwok later quantified the risks: over 24 hours, if Maxim offered on gas prices but burned only oil, it could lose "in excess of $335,000."[49]

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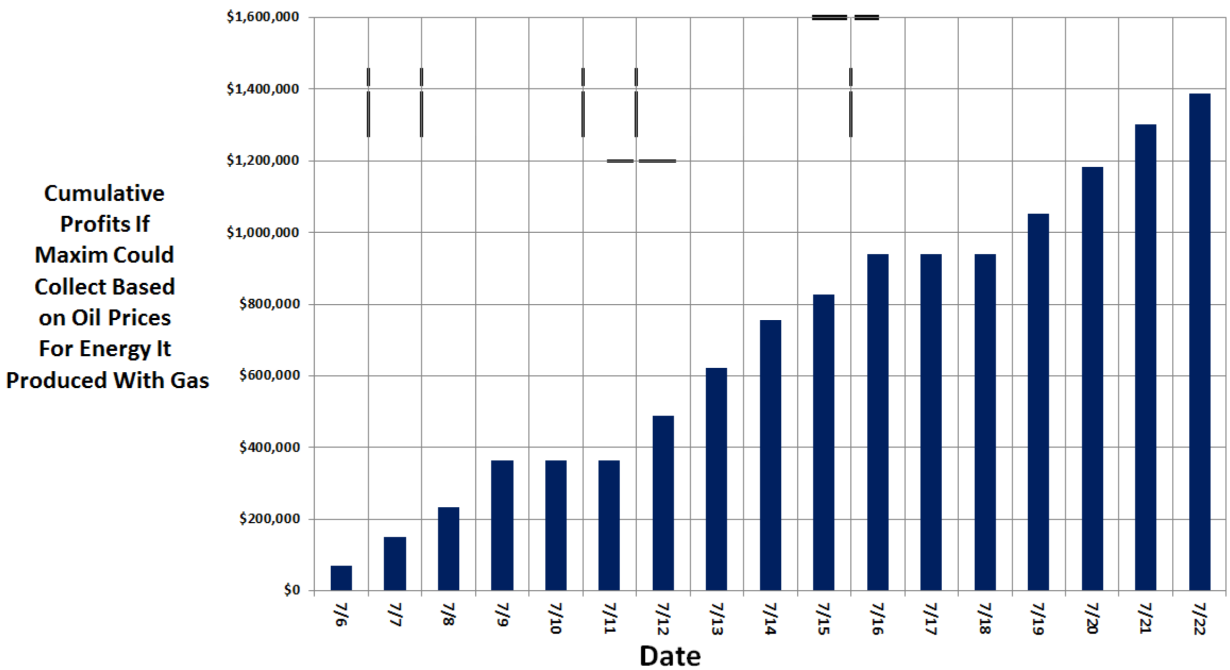
[47] Appendix D (July 22 Kwok notes).

[48] Within Appendix C (Relevant Emails). *See also* Staff Report at 25, 28.

[49] Email from E. Kwok to R. Dominguez, et al. (Aug. 23, 2010) (MPCPROD00074438 to MPCPROD00074440) (stating that "[o]ver a 24-hour period, the financial risks of burning fuel

Kwok's notes show that he told the IMM on July 22 that Maxim's offers on oil were designed to "ensure [that it] recover[ed] its fuel costs."[50] But having raised the topic of "recovering fuel costs," Kwok did not mention that Maxim stood not just to fully "recover [its] fuel costs" (almost entirely for gas), but to collect payments *far above its fuel costs,* which, by the time of Kwok's call with the MMU on July 22, had grown to nearly $1.4 million.

To put that $1.4 million figure in perspective, this windfall (as of July 22) was *more than four times as large* as the potential loss that Kwok told the MMU he viewed as catastrophic ($335,000), and more than 1.6 times the (roughly $860,000) average monthly net income of *the entire Maxim corporate family* that quarter. The chart below shows how Maxim's expected windfall from being paid for fuel it did not burn had grown by the date of Kwok's call with the IMM:[51]



Across four emails and one phone call over seven days (from July 16 to 22), Maxim (through Mitton and Kwok) stuck to the same narrow statements in every communication, implicitly communicating that Maxim was burning gas and omitting important information that could jeopardize Maxim's windfall. In every communication, Mitton or Kwok emphasized pipeline restrictions as forcing Maxim to submit oil offers, while never

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oil and being compensated on natural gas pricing on electricity can be in excess of $335,000.") (within Appendix C hereto).

50 Appendix D (July 22 Kwok Notes).

51 Master Spreadsheet, Column AE (IMM calculations).

mentioning any facts that would tip off the IMM about what fuel Maxim was actually burning (gas) and when it was getting that fuel.

D. July 20: Devasahayam Tells Kwok and Mitton How a Generator Could Avoid Being Mitigated to its Actual Fuel Costs

After talking with Mitton on July 20 (by which time Mitton had exchanged several emails with the IMM about Pittsfield, oil, and gas), Maxim staffer Chris Devasahayam wrote his own email to Kwok and Mitton summarizing his understanding of how the mitigation process worked under the ISO-NE Market Rules.[52] This email is both consistent with what Mitton had done up until then and helps explain what Mitton and Kwok did thereafter, including what Mitton told Dominguez on August 18, 2010.

From: Chris Devasahayam [cdevasahayam@maximpowercorp.com]
Sent: Tuesday, July 20, 2010 7:07 PM
To: Eagle Kwok
Cc: Kyle Mitton
Subject: Market Rules

Hi Eagle,

I have read through the Market Rules talked with Kyle, and wanted to provide some points from the Market Rules:

The Market Monitor (MM) has the power to mitigate offers that have a material effect on NCPC. It has to go through 3 stages of investigation:

1) Before imposing any mitigation, the MM has to investigate reasons for the offer. It they are not convinced…
2) They conduct a test to see if there is a material impact on NCPC.
   a. For transmission constrained areas the energy offer price can't be $25/MWh or 50%, whichever is lower, above the Reference price.
   b. The Reference Price Level for any unit that has been flagged as VAR (dispatched uneconomically more than 50% of the time in the past 90 days) is calculated as follows:
      i. The price which must be negotiated BEFORE the incident (hopefully done during the RMR process) and INTENDED to reflect the Units marginal costs.
3) If the test fails, they find the participant guilty and mitigate offers:
   a. The mitigation of the offer can be back to LMP or to a deemed competitive unit offer. They try not to mitigate below a units costs.
   b. The matter is referred to the Commission. It is not clear whether there is further legal action other than mitigation after this point.

If we can provide the MM with the rationalization behind our pricing, it won't get to the 2nd or 3rd stages:

1) Can't get gas during specific time periods of the day when there are gas restrictions.
2) Have been dispatched when have bid in on gas during the restricted time periods, and have been forced to burn oil at a significant loss.
3) System only provides for 1 offer all day, therefore can't put in 2 offers.
4) Have burnt oil recently
5) Have been consistently offering in on oil during restrictions. See e-mail correspondence during RMR period.

In short, in his July 20 email, Devasahayam laid out a scenario in which a generator (Maxim) successfully provides the IMM with "reasons for the [unit's] offer" (*i.e.*, on oil prices), ***and the IMM then does nothing further and does not mitigate the unit even if it has burned a cheaper fuel.*** That is, Devasahayam's email is about protecting NCPC payments at rates far above Maxim's costs. And consistent with

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52 Devasahayam July 20 Email (within Appendix C hereto).

Maxim's decision not to educate its employees about the Commission's Anti-Manipulation Rule,[53] Devasahayam suggested that the worst that can happen, if the IMM eventually realized what Maxim has done, would be that Maxim would lose its windfall.[54]

In his July 20 email, Devasahayam described a three-step process for mitigating generators' offer prices, but focused on stopping the process at the first step**.** *First*, he said that "[b]efore imposing any mitigation, the [IMM] has to investigate reasons for the offer." He then explained that "i[f] they are not convinced" about the reasons for the offer, the [I]MM will move to the second stage. *Second*, and crucially, Devasahayam wrote: "lf we can provide the [I]MM with the rationalization behind our pricing, it won't get to the 2nd or 3rd stages."[55] On the subject of gas availability, Devasahayam said that Maxim could justify oil price based on *actual* – not theoretical – supply problems: that Maxim *"[c]an't get gas during specific time periods of the day* when there are gas restrictions."[56]

But Mitton did not take away from Devasahayam' email that Maxim would need to show that it was *actually* having problems acquiring gas. Instead, in its Answer, Maxim admits (at 39 n.105) that what Mitton took away from the Devasahayam email is this: "Mr. Mitton took comfort from [Devasahayam's] research that ***mitigation could be avoided***" if Maxim said the right form of words "to the IMM concerning the fuel offers."[57]

Even before he got Devasahayam's email, Mitton's own emails to the IMM (on July 16, July 19, and earlier that day (July 20) had focused narrowly on a "reason for the offers" (pipeline issues / potential losses from offer-gas/burn-oil) while disclosing nothing about what was *actually happening* (windfalls from offer-oil/burn-gas). Mitton's email the next day (July 21) followed the same blueprint, as did Kwok in his July 22 call with IMM personnel.

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[53] *See* Staff Report at 57 n.150 (quoting testimony of Maxim CEO John Bobenic).

[54] Devasahayam says that if the matter is referred to the Commission, "[i]t is not clear whether there is further legal action other than mitigation after this point." Devasahayam July 20 Email (within Appendix C hereto).

[55] Within Appendix C (Relevant Emails).

[56] Devasahayam July 20 Email (within Appendix C hereto) (emphasis added).

[57] Maxim Answer at 39 n.105 (emphasis added).

E. July 23-August 18: After Promising to Do So, Maxim Fails to Notify the IMM About Its Oil Offers on 21 Days

On the morning of July 20, 2010, the IMM asked Mitton to notify the IMM when it had a "fuel issue" so that the IMM could "model" on the right fuel:[58]

From: Angeli, John [mailto:jangeli@iso-ne.com]
Sent: Tuesday, July 20, 2010 11:47 AM
To: Kyle Mitton
Subject: RE: Asset 326 - Altresco/Pittsfield

Kyle, when you have a fuel issue please let us so we can model the unit on the correct fuel.

John Angeli

Importantly, this email shows that Mitton knew that the IMM was acting in reliance on his emails in implementing its modeling for the Pittsfield plant.

That afternoon, Mitton agreed to comply with the IMM's request that Maxim notify the IMM about fuel issues:[59]

From: Kyle Mitton [kmitton@maximpowercorp.com]
Sent: Tuesday, July 20, 2010 1:22 PM
To: Angeli, John
Cc: Eagle Kwok
Subject: RE: Asset 326 - Altresco/Pittsfield

Thanks John – will do.

As a heads up we are in on fuel oil again for tomorrow.

Regards,

Kyle

Mitton himself, having made that pledge on Tuesday, July 20, failed to honor it (or to make sure someone else did) on Friday, July 23, when Maxim offered Pittsfield on oil but said nothing to the IMM about it.[60] Nor did Mitton honor that commitment when he

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[58] Although Angeli omitted the word "know" after "please let us," Mitton understood what he meant, Mitton Test. Vol. II Tr. 273. As shown below, he responded "will do."

[59] July 20 Mitton Email to IMM, MPCPROD00074416 (within Appendix C) (emphasis added).

[60] Mitton was still in the office on July 23. Maxim Answer at 34.

returned from vacation and offered Pittsfield on oil prices for operating days August 10, 11, 12, 13, 16, 17, and 18.[61] Finally, neither Mitton nor anyone else at Maxim ensured that his colleagues would keep that commitment in Mitton's absence from July 24 through August 7, during which, despite Mitton's promise, Maxim said nothing at all to the IMM about its Pittsfield offers, even though it offered on oil on 12 days when Mitton was away.[62]

The chart below tells the story between July 23 and August 19, 2010 (with dates when Mitton was in the office shown in yellow in Column A):

A	B	C	D
Date	Gas or Oil Pricing?	Notify IMM that offering oil?	Give IMM justification for offering oil?
23-Jul-14	Oil	NO	NO
24-Jul-14	Oil	NO	NO
25-Jul-14	Oil	NO	NO
26-Jul-14	Oil	NO	NO
27-Jul-14	Oil	NO	NO
28-Jul-14	Oil	NO	NO
29-Jul-14	Oil	NO	NO
30-Jul-14	Oil	NO	NO
31-Jul-14	Oil	NO	NO
1-Aug-14	Gas	n/a	n/a
2-Aug-14	Gas	n/a	n/a
3-Aug-14	Gas	n/a	n/a
4-Aug-14	Oil	NO	NO
5-Aug-14	Oil	NO	NO
6-Aug-14	Oil	NO	NO
7-Aug-14	Oil	NO	NO
8-Aug-14	Oil	NO	NO
9-Aug-14	Gas	n/a	n/a
10-Aug-14	Gas	n/a	n/a
11-Aug-14	Oil	NO	NO
12-Aug-14	Oil	NO	NO
13-Aug-14	Oil	NO	NO
14-Aug-14	Oil	NO	NO
15-Aug-14	Gas	n/a	n/a
16-Aug-14	Gas	n/a	n/a
17-Aug-14	Oil	NO	NO
18-Aug-14	Oil	NO	NO
19-Aug-14	Oil	NO	NO

[61] *See* Master Spreadsheet, discussed in Staff Report at 9.

[62] *See* Master Spreadsheet, discussed in Staff Report at 9.

Maxim's breach on 21 days during this period of Mitton's express commitment on Maxim's behalf to alert the IMM about "fuel issues" is further evidence that Respondents sought to manage their communications with the IMM (or lack thereof) to protect their multimillion dollar windfall.

F. August 18: In a Call with Dominguez, Mitton Says He Expected The IMM Would Do No Further Review and That Maxim Would Not Be Mitigated

On August 18, 2010, Mitton spoke by phone with IMM official Richard Dominguez. Dominguez' notes, which Maxim does not dispute, say this:

> Discussed the IMM process for confirming fuel burns of dual fuel units. [Mitton] **was under the impression (wrongly) that the mere notification of 'potent[i]al' gas procurement [problems] and the offer of oil was sufficient and that no further review would be done by IMM**. I corrected his understanding and informed him that the IMM never indicated that the offer of oil and burning of gas was an acceptable behavior. We would evaluate based on the circumstance but was in no way a pass for mitigation.[63]

This email shows what Mitton expected and hoped would happen: that after he and Kwok made their narrow, carefully-tailored statements to the IMM about pipeline restrictions (never mentioning that they actually burned gas and often bought gas early), the IMM would not look into what fuel Maxim had burned and Maxim would be able to keep its (by then) nearly $3 million windfall.

G. August 23: Kwok Protests Mitigation, Does Not Claim that Maxim Had Told the IMM It Had Burned Gas, and Implies That Maxim Did Not Purchase Gas in Advance

Finally, on August 23, Kwok sent an email to the IMM protesting mitigation of the Pittsfield plant to gas prices for this period – effectively arguing that Maxim should be able to keep its $3 million windfall.[64] Kwok's objections are consistent both with what Maxim said – and what it did not say – in its carefully-worded communications with the IMM over the previous weeks.[65]

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[63] IMM Call Log (Altresco Share Point Call Log_6_2010 to 6_2011) (attachment to Dec. 4, 2013 email from R. Dominguez to A. Fate) (Exh. 14 to Maxim Answer) (emphasis added).

[64] Kwok August 23 Email (within Appendix C, Relevant Emails).

[65] Maxim contends (at 48) that it should not be held liable because, at this point, it provided information about Pittsfield's gas burns. But responding accurately to a specific, pointed question on August 23 does not excuse its many misleading communications and material omissions up to that point.

In his email, evidently concerned that Maxim would appear to have acted in bad faith,[66] Kwok asked the IMM to "reaffirm that Pittsfield has acted reasonabl[y]" by offering on oil because (he claimed) of pipeline restrictions. But although the point (if true) would have been extremely important to Maxim's good faith, Kwok did not claim Maxim had ever told the IMM (whether orally or in writing) that Pittsfield had actually burned gas. Instead, Kwok claimed in his August 23 email only that Maxim had been "forthwith [*i.e.*, upfront] with IMMU under the circumstances by which we have made our decision *to offer* Pittsfield's energy either using natural gas or fuel oil pricing."[67]

Kwok did not disclose that during this period, Maxim was not only able to buy gas to cover nearly all of its Day Ahead reliability awards, but that it often did so the previous day. Across the period from July 6 to August 19, Maxim had bought gas before 12:30 p.m. – that is, hours before getting Day Ahead awards – on 19 of the 22 days it got Day Ahead reliability awards, rather than waiting until after Day Ahead awards were announced to acquire any fuel.[68] And on at least 10 of those days it bought gas before submitting a Day Ahead offer.[69]

In light of this, the following statement by Kwok in his August 23 email was both misleading and omitted material facts:

> Where the issue is whether the lower-cost fuel *will be available during the operating day,* Pittsfield believes that the [IMM] should consider the reasonableness of (or justification for) using an alternative fuel price in light of: (i) *the information that was available to the offerer at the time the offerer was required to submit its offer (whether the lower cost fuel actually was available in real time* should be irrelevant). (Emphasis added.)

What Kwok is effectively saying here is: "we had to decide what fuel to offer with no idea whether we would actually be able to acquire gas the next day." But in fact, on many days Maxim *did* know that it would be able to acquire gas, because it *had already done so* – acquiring as much as 14.2 hours of gas for July 6, for example[70] – by the time it was "required to submit its offer" at noon. While Maxim made the business decision – taking into account the company's desire not to have to sell unused gas – not to buy 24

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[66] Devasahayam's July 20 email (within Appendix C) said that mitigation meant that the IMM had found the generator "guilty."

[67] Kwok August 23 Email (within Appendix C) (emphasis added). *See* Maxim Answer at 5 ("It is true that there are no *written* communications prior to Mr. Dominquez's August request in which Maxim mentioned . . . what fuel it had burned.").

[68] *See* note 40 above.

[69] *See* Staff Report at 46.

[70] Maxim Answer at 30.

hours of gas in advance,[71] the fact that it bought substantial quantities of gas in advance was obviously relevant to its assertions about the theoretical impact of pipeline restrictions.

When Kwok described the risks of offering on gas, he told the IMM in his August 23, 2010 email that "[o]ver a 24-hour period, the financial risks of burning fuel oil and being compensated on natural gas pricing on electricity can be in excess of $335,000." He did not mention that on the many occasions Maxim bought gas in advance (*e.g.*, for 14.2 hours on July 6 or 10.9 hours on July 20), its exposure to even the theoretical possibility of gas unavailability was much shorter than 24 hours.

Kwok's email was thus both misleading and omitted material facts.

H. <u>Maxim's Decisions to Burn Gas Rather Than Oil Show That Its Goal Was to Keep an Offer-Oil/Burn-Gas Windfall and Not Merely (If At All) to Minimize a Potential Loss</u>

In addition to its words, Maxim's actions show that, contrary to what it now tells the Commission, it was hoping and expecting to keep, not to give back, its ever-growing offer-oil/burn-gas windfall.

Under the IMM's mitigation procedures at the time (and now), if a unit's offers are below 110% of the reference price of the relevant fuel, it will not be mitigated. But if the unit's offer exceeds 110% of the reference price of that fuel, the unit will be mitigated not to 110% of reference prices but to 100%.[72] As Mitton knew, if the unit has bought the relevant fuel at the reference price, it would make no money from NCPC on its sale of energy to ISO-NE.[73] This, obviously, would be an unappealing outcome for a for-profit firm.

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[71] Mitton testified that deciding whether to buy some gas in advance, and to "top off" later, if necessary, was a "business decision." Mitton Test. Vol. II Tr. 321. As he explained, buying gas in advance is a way to "hedge your bets, because you don't know for sure if you are going to need it, so you might buy some of it, and then if you get picked up then you only have to top out to whatever you need to be. Then if you don't get picked up you have to turn around and sell it." *Id.*

Maxim made these business decisions based on the ISO's seven-day load forecasts (*see* Staff Report at 15) as well as on analysis of historic data. *See* Devasahayam Email to Kwok et al (July 1, 2010) (Exh. 13 to Maxim Answer) ("Below is the 7-day forecast for ISO-NE coupled with my 2007-2010 historical analysis of probabilities of a Day Ahead versus Real Time Dispatch"); *id.* (in light of that analysis, recommending that Maxim "pre-buy" gas on several days with high expected loads).

[72] That is, Maxim would be paid NCPC only up to the level of gas reference prices. ISO-NE Tariff, Appendix A, Section III.A.5.5.6.3. Like any other generator, Maxim would be paid at LMP if those prices were higher.

[73] *See* Mitton Test. I Tr. 102 ("Q And so if you are called upon for reliability purposes, if you have bid a price based on oil, you're going to be able to get a larger NCPC payment than if

When Maxim got Day Ahead awards for reliability on oil offers (which was obvious because Maxim's oil offers were above LMPs), it found that out at 4 p.m. the day before the operating day. Since it stored oil on site,[74] Maxim therefore could decide at that point to burn oil the next day.

If Maxim did that – offered oil, got a reliability award, and burned oil – it would not be mitigated unless its oil offer prices were more than 110% of the reference price of oil. This would give Maxim the possibility of significant profits (roughly $17.50/MWh, with oil bids during this period at around $175) if it bought oil at the reference price. By contrast, if it offered on oil prices and was later mitigated to 100% of the gas prices, it would make no money from NCPC.

As a profit-seeking firm, therefore, if (as Maxim and Mitton now claim) they expected to be mitigated to gas prices if Pittsfield offered oil and burned gas, Maxim should not have chosen to burn gas after getting Day Ahead reliability awards. Doing so would have been economically irrational: it would guarantee that Maxim would make no money from NCPC payments, because the oil offers would have been far more than 110% of the gas reference levels. Instead of locking in that no-margin outcome, Maxim would rationally have burned the fuel it offered – oil – and hoped to enjoy at least some profit, even if not the $100/MWh windfall it would obtain by burning gas without mitigation.[75]

It is fair to infer from Maxim's decision each day during this period to burn 100% gas (or as close to that as possible) that, contrary to what it now claims, it did not expect to be mitigated to gas prices. Maxim's decision to burn gas also provides additional proof (in addition to the record evidence discussed in the next section) that the claimed July 2010 Mitton-Angeli call in July 2010 did not occur: if it had, Maxim would have immediately switched to burning oil.

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you – pardon me. If you burned oil, you're going to be able to get a larger NCPC payment than if you had burned gas if oil prices are higher than gas prices? A Correct; yeah."); Mitton Test. II Tr. 285-86 (discussing mitigation to gas reference prices) ("Q So if the LMP is the same or lower than your reference price, then you are not making any money; correct? A Compared to your reference, yes, that's correct. . . . Q So if you are getting paid only your reference levels there is no profit in there? A Correct, yes. Q As compared to if you are subject to mitigation only on oil prices, and have bid in oil prices, then you can enjoy a large profit; correct? A Large is a relative term, but you would earn whatever margin you built into your offer if you are not mitigated."); *id.* at 286 (based on oil offer of $220, "if you offered on oil and you received NCPC, which means that you didn't make enough in the energy market to compensate you up to your cost, you would be compensated up to your offer price and that would earn you a $22 margin.").

[74] *See* note 41 above.

[75] *See* Mitton Test. Vol. II at 286 (discussing $22 margin on $220 oil offer).

I. The Record Evidence Shows that the Claimed Mitton-Angeli Call in July 2010 Did Not Occur

Maxim and Mitton claim that one of the most important "facts" in the case is Mitton's evolving recollection,[76] starting 40 months after the event in question, that he supposedly had a call with IMM official Angeli in July 2010 in which (a) he told Angeli that Maxim had been burning gas, and (b) Angeli told him that Maxim would likely be mitigated.

In the Staff Report, we show that for eight different reasons, this call did not take place in July 2010.[77] For example, the record demonstrates that Mitton's claims about the supposed call are inconsistent with Maxim's responses to DR 28, first produced by Maxim a week before Mitton testified on November 13, 2013.

Maxim tries (at 19 n.48) to explain this away,[78] but it fails. *First*, Mitton testified in November 2013 that he was "consulted in the preparation of Maxim's response to data

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[76] A week before his November 2013 testimony, Maxim provided an amended response to Data Request 28 (DR 28) (asking when Maxim told the IMM it burned gas), after consulting with Mitton about the response. *See* Email from Diana Jeschke to OE (Nov. 6, 2013) (attaching amended response to DR 28) (in subfolder "Maxim Response to DR 28" in folder "Material Cited in Staff Report" in investigative materials filed on Feb. 4, 2015); Mitton Test. II Tr. 298-99. As discussed in text below, the response (reprinted in text below) states that Maxim did not notify the IMM about gas burns until August 23, 2010.

A week later, on November 13, 2013, Mitton contradicted Maxim's DR 28 response and now said he told the IMM by phone in July that Maxim had burned gas. When Mitton first mentioned this alleged call, in November 2013, he testified (after being asked about his July 16 email) that it "*could have been* around the same time," and that he "[did]n't recall for certain, *but I feel like it may have been around this time period*." Mitton Test. Vol. II. At 267-68 (emphasis added). Shortly afterwards, Mitton testified that the call "absolutely" occurred in July 2010, *id.*, though a few minutes later he said that while he was "very confident" the call was in July, he "[couldn't] say for certain" it was. *Id.* at 280. Since then, Mitton's memory has become much more detailed: Mitton now says that the call occurred "on or around" *one specific date*, July 20, 2010 (*see* Answer at 7, 10-11) and even claims (incorrectly) that he testified to that effect in November 2013, *id.* at 7.

[77] The Commission need not find that Mitton is intentionally providing false testimony: because his first recollection about the alleged call was 40 months after the events at issue, he may simply be remembering other phone calls, such as his August 18, 2010 call with Dominguez or calls with Angeli in later months. The many inconsistencies in his statements about the call (*see* note 76 above) may simply reflect confusion.

[78] Maxim claims that DR28 asked only whether Maxim told the IMM about gas burns before being asked. But while Column K does ask for that additional information, the key columns (I, J, and L) are not so limited.

request No. 28" and that he had "[no] reason to doubt the accuracy of the information that was put into" the spreadsheet."[79]

Second, the relevant rows and columns from DR 28 (reprinted below) show that Maxim (in consultation with Mitton) *did* say that it first informed the IMM that it had burned gas on August 23, 2010:

A	B	D	I	J	K	L
Date	Fuel bid in Day Ahead market	Fuel burned	If B = oil, C= oil and D= gas, did Maxim notify ISO-NE or the IMM that it burned gas?	If I = Yes, please state the date when Maxim so notified ISO-NE or the IMM	If I = Yes, did Maxim notify ISO-NE or the IMM that it burned gas before the iMM asked Maxim which fuel it had burned? (Yes/No)	If I = yes, please (a) identify any written communications by Bates number and (b) describe any oral communications
7/6/2010	OIL	Gas	Yes	**8/23/2010**	No	Bates Nos. MPCPROD00074443 to MPCPROD00074446, MPCPROD00074438 to MPCPROD00074440 and MPCPROD00074452 to MPCPROD00074456.
7/7/2010	OIL	Gas	Yes	**8/23/2010**	No	Bates Nos. MPCPROD00074443 to MPCPROD00074446, MPCPROD00074438 to MPCPROD00074440 and MPCPROD00074452 to MPCPROD00074456.
7/8/2010	OIL	Gas	Yes	**8/23/2010**	No	Bates Nos. MPCPROD00074443 to MPCPROD00074446, MPCPROD00074438 to MPCPROD00074440 and MPCPROD00074452 to MPCPROD00074456.
7/9/2010	OIL	Gas	Yes	**8/23/2010**	No	Bates Nos. MPCPROD00074443 to MPCPROD00074446, MPCPROD00074438 to MPCPROD00074440 and MPCPROD00074452 to MPCPROD00074456.
7/10/2010	OIL	Gas	Yes	**8/23/2010**	No	Bates Nos. MPCPROD00074443 to MPCPROD00074446, MPCPROD00074438 to MPCPROD00074440 and MPCPROD00074452 to MPCPROD00074456.
7/13/2010	OIL	Gas	Yes	**8/23/2010**	No	Bates Nos. MPCPROD00074443 to MPCPROD00074446, MPCPROD00074438 to MPCPROD00074440 and MPCPROD00074452 to MPCPROD00074456.
7/14/2010	OIL	Gas	Yes	**8/23/2010**	No	Bates Nos. MPCPROD00074443 to MPCPROD00074446, MPCPROD00074438 to MPCPROD00074440 and MPCPROD00074452 to MPCPROD00074456.
7/15/2010	OIL	Gas	Yes	**8/23/2010**	No	Bates Nos. MPCPROD00074443 to MPCPROD00074446, MPCPROD00074438 to MPCPROD00074440 and MPCPROD00074452 to MPCPROD00074456.
7/16/2010	OIL	Gas	Yes	**8/23/2010**	No	Bates Nos. MPCPROD00074443 to MPCPROD00074446, MPCPROD00074438 to MPCPROD00074440 and MPCPROD00074452 to MPCPROD00074456.
7/20/2010	OIL	Gas	Yes	**8/23/2010**	No	Bates Nos. MPCPROD00074443 to MPCPROD00074446, MPCPROD00074438 to MPCPROD00074440 and MPCPROD00074452 to MPCPROD00074456.
7/21/2010	OIL	Gas	Yes	**8/23/2010**	No	Bates Nos. MPCPROD00074443 to MPCPROD00074446, MPCPROD00074438 to MPCPROD00074440 and MPCPROD00074452 to MPCPROD00074456.
7/22/2010	OIL	Gas	Yes	**8/23/2010**	No	Bates Nos. MPCPROD00074443 to MPCPROD00074446, MPCPROD00074438 to MPCPROD00074440 and MPCPROD00074452 to MPCPROD00074456.

What Maxim told staff in these responses is simple: Maxim did notify the IMM that Pittsfield had burned gas (Column I); it did so on August 23, 2010 (Column J); it did not tell the IMM until after it was asked (Column K); and Maxim notified the IMM only in writing, not orally, that it had burned gas (Column L, mentioning only written and no oral communications, when the Request asked about both written and oral communications).

The best Maxim can do to try to explain this away (Answer at 19 n.48) is to argue that Mitton was "not primarily involved" in preparing this data response. But if that were true, it would mean that Maxim and its counsel had failed to get information from the single most knowledgeable person on its staff – Mitton, who took the lead in both submitting offers and buying gas during this period – about what Maxim knew was a

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[79] Mitton Test. II Tr. 298-299. Mitton was here testifying about Maxim's November 6, 2013 response to DR 28, available in staff's Feb. 4, 2015 filing in the subfolder "Maxim Response to DR 28" in the folder "Material Cited in Staff Report."

critically important topic. There is an easier explanation: Maxim's sworn responses to DR 28 were and are accurate.

Maxim ineffectively challenges the eight points set forth in the Staff Report,[80] but principally focuses on Mr. Angeli's declaration. But Maxim's Answer misses the key point: ***Angeli and Mitton both say that a call with the content that Mitton claims would have been very important in the context of Maxim's discussions with the IMM***.[81] Between July 16 and July 22, the record includes ten relevant contemporaneous documents:

- Mitton's July 16 email to the IMM
- the IMM's July 16 email to Mitton
- Mitton's July 19 email to the IMM
- the IMM's July 20 email to Maxim
- Mitton's July 20 email to the IMM
- Devasahayam's July 20 email to Kwok and Mitton
- Mitton's July 21 email to the IMM
- Kwok's July 22 call notes
- Dominguez' notes of his August 18 call with Mitton
- Kwok's August 23 email to Dominguez

None of these ten documents say anything about a call between Mitton and Angeli. **None of these ten documents** say that Maxim had told the IMM that it had been burning gas after receiving reliability awards on oil. **None of these ten documents** say that the IMM had told Maxim that in light of its gas burns, the IMM would likely mitigate Maxim to gas prices.

Maxim and Mitton do not and cannot overcome the common-sense point that a conversation as important as the alleged July Mitton-Angeli call would have been reflected in many if not all of these documents.[82] Moreover, many of the statements in these documents would make no sense if the alleged July 2010 Mitton-Angeli phone call

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[80] The Staff Report fully covers these points at pp. 40-44.

[81] Mitton Test. Vol. II Tr. 280 ("I see no reason why I wouldn't tell my boss about [a call] *that significant*") (emphasis added); Angeli Declaration.

[82] *See* Mitton Test. II Tr. 297 (discussing Kwok August 23 email) ("Q Is there any reason that Maxim would not have wanted to remind the Market Monitor's Office that there had been a previous phone call in which the Market Monitor had already learned that the unit was bidding oil and burning gas and indicated that that was fine? A I see no reason.").

had actually happened. If Mitton had expected (per the alleged July call) that Maxim would be mitigated, for example, he would not have told Dominguez the opposite when they spoke on August 18.

Maxim's own *actions* confirm that the call did not occur: if the IMM had told Mitton that Pittsfield would be mitigated, Maxim would (as discussed in the preceding section) have immediately switched to burning oil, not gas, to avoid a guaranteed zero-profit-on-NCPC outcome. But in fact, Maxim continued to offer oil and burn gas through mid-August 2010, showing that, contrary to what Mitton now claims, it was hoping and expecting not to be mitigated to gas prices.

VI. MAXIM VIOLATED SECTION 35.41(b) THROUGH MITTON'S AND KWOK'S COMMUNICATIONS WITH THE IMM

Maxim's subsidiary (and Respondent) Pittsfield Generating Co., L.P. (Pittsfield Generating) has been granted Market Based Rate authority by the Commission, and is therefore required to comply with 18 C.F.R. § 35.41(b). As we show here, Pittsfield Generating violated Section 35.41(b) by "submit[ting] false or misleading information," and by "omit[ting] material information" readily within Maxim's knowledge, in "communication[s] with . . . [a] Commission-approved market monitor[]."[83]

A. Maxim Submitted False and Misleading Information to the IMM

Maxim violated Section 35.41(b) through many misleading affirmative statements to the IMM:

- Maxim repeatedly told the IMM (in Mitton's emails and Kwok's July 22 phone call) about pipeline restrictions – such as describing "bottlenecks" that were creating "serious" issues – implicitly (and falsely) communicating that these pipeline restrictions had actually prevented *Maxim itself* from acquiring gas.[84]
- Maxim told the IMM on July 22 that Maxim had offered on oil to "recover its fuel costs,"[85] falsely implying that the fuel whose costs Maxim needed to "recover" was oil, when Maxim had in fact burned almost exclusively gas.

[83] *See Kourouma v. FERC*, 723 F.3d 274, 278 (D.C. Cir. 2013) (finding violation of Section 35.41(b)).

[84] As discussed above, Devasahayam's July 20 email (within Appendix C) said that Maxim could justify oil offers not because of pipeline restrictions alone but because Maxim "*[c]an't get gas during specific time periods of the day* when there are pipeline restrictions" (emphasis added).

[85] July 22 Kwok Notes (Appendix D).

- Maxim told the IMM on August 23 that "whether [gas] actually was available in real time should be irrelevant" to what fuel Maxim offered in the Day Ahead Market,[86] falsely implying that Maxim had not already acquired fuel when it submitted its Day Ahead offers, when in fact Maxim often did so.

- Maxim told the IMM on August 23 about the "financial risks" of burning oil over a 24-hour period,[87] falsely implying that burning oil for 24 hours was a realistic possibility, when Maxim often bought many hours of gas before submitting Day Ahead awards, and decided how much gas to "pre-buy" based on "business decisions" informed by ISO-NE forecasts and historic data.[88]

Unable to dispute that they made these statements, Maxim and Mitton claim that they should be exonerated because the statements were, they claim, *literally* true. They are mistaken.

In the first place, as demonstrated in Section IV above, Maxim did not in fact follow a policy of offering on oil based on pipeline restrictions. But even if they had – that is, even if Maxim's statements about pipeline restrictions were literally true – Maxim would still be liable because of the false implications of what they said.

The law has long recognized the reality, with which everyone is familiar,[89] that people communicate information not only through the explicit content of their statements but also through what they imply. For example, violations of the SEC's Rule 10b-5 can occur through conduct, rather than verbal communication;[90] and when they are based on verbal communications, there is no requirement of a "a specific [false] oral or written statement."[91] Rather, a violation of Rule 10b-5 can be based on false implications of

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86 Kwok August 23 Email (within Appendix C).

87 *Id.*

88 *See* note 71 above (quoting Mitton testimony about business decisions concerning whether and how much gas to buy in advance); Devasahayam Email to Kwok et al (July 1, 2010) (Exh. 13 to Maxim Answer) ("Below is the 7-day forecast for ISO-NE coupled with my 2007-10 historical analysis of the probabilities of a Day Ahead versus Real Time Dispatch . . . Pre-buy gas for Sunday . . . Pre-buy gas for Monday, and buy gas [on Monday] for Tuesday . . . Buy gas for Wednesday [on Tuesday]").

89 Communicating by implication, and without spelling out every point, is so commonplace that we do not give it a second thought. When the check comes at a restaurant, a person who says "so sorry, I forgot my wallet" implicitly says that they don't have any money on them at all, not merely the literal fact that they are not carrying a wallet.

90 *Stoneridge Inv. Partners, LLC v. Scientific–Atlanta*, 552 U.S. 148, 158 (2008).

91 *Id.*

literally true statements.[92] Here, in the context in which they were made, the statements listed above by Maxim to the IMM are textbook examples of communications that were deceptive even if (contrary to fact) they had been literally true.

B. Maxim's Pittsfield Generating Unit Violated Section 35.41(b) Through Material Omissions

Even if Mitton's and Kwok's affirmative statements on behalf of Maxim had not been deceptive (and they were), the statements omitted material facts. To describe "serious" consequences from pipeline "bottlenecks," while failing to mention that the restrictions were having minimal if any impact on Maxim's ability to purchase gas, was a material omission. To fail to mention that Maxim had actually been able to acquire all or nearly all the gas it needed every day was a material omission. To fail to mention that, for almost every day when Maxim got Day Ahead reliability awards, it had bought gas hours before Day Ahead awards were announced, and often before submitting Day Ahead offers, was still another material omission. And to complain about the risk of losses leading to bankruptcy from burning oil while offering gas, while failing to disclose that Maxim stood to collect a much larger windfall from the opposite situation, was a material omission.

C. Section 35.41(b) Does Not Require Proof of Scienter

Maxim's deceptive statements (and material omissions) to the IMM violated Section 35.41(b), even if one were to accept Maxim's contention that it was not seeking to protect a million-dollar-plus windfall and did not intend to mislead the IMM to do so. As the D.C. Circuit has held, "intent to deceive is not an element" of Section 35.41(b): "[t]he Rule's plain text lacks any reference to intent and forgives false or misleading submissions only if they are made inadvertently despite the filer's due diligence to avoid such errors."[93] Here, there is no defense based on "inadvertent[] [errors] despite . . . due diligence":

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[92] *E.g.*, *VanCook v. SEC*, 653 F.3d 130, 140-41 (2d Cir. 2011) ("VanCook made an implied representation that the orders had been received before 4:00 p.m., because such late trading 'incorporates an implicit misrepresentation' by 'falsely mak[ing] it appear that the orders were received by the intermediary before [4:00 p.m.] when in fact they were received after that time.'"); *cf. In re Prudential Secs. Inc. P'ships Litig.*, 930 F. Supp. 68, 72 (S.D.N.Y.1996) (discussing "someone who warns his hiking companion to walk slowly because there might be a ditch ahead when he knows with near certainty that the Grand Canyon lies one foot away").

Liability for false implied statements is commonplace in many areas of law. *E.g. Kraft, Inc. v. FTC*, 970 F.2d 311, 314 (7th Cir. 1992) (liability for implied false claims); *Porter & Dietsch, Inc. v. FTC*, 605 F.2d 294, 303 (7th Cir. 1979) (same); *see FTC v. Figgie Int'l, Inc.*, 994 F.2d 595, 604 (9th Cir. 1993) ("[Respondent] frequently argues that some of the representations that the Commission found false or misleading were implied, not express. This is a distinction without a difference. [Respondent] can point to nothing in statute or case law which protects from liability those who merely imply their deceptive claims; there is no such loophole.").

[93] *Kourouma v. FERC*, 723 F.3d 274, 278 (D.C. Cir. 2013).

Mitton and Kwok did not need to do any due diligence to learn the relevant facts, which were part of their personal knowledge from their day-to-day work.

D. Section 35.41(b) Looks to Whether The Content of a Communication Was False or Misleading, Not to Its Actual Impact on the Audience

The record shows that Maxim and Mitton's misleading communications in fact misled the IMM. For example, the emails exchanged by Mitton and the IMM on July 20 show that the IMM was using Mitton's "oil" emails to model the Pittsfield unit.[94]

But as the text of Section 35.41(b) makes clear, whether an entity with Market Based Rate Authority has violated that provision does not depend on whether false or misleading information actually deceives its audience (whether an ISO, a Market Monitor, Commission staff, or the Commission itself). In *Kourouma*, for example, the Commission determined that an individual had violated Section 35.41(b) for submitting an application in which he falsely claimed that his infant daughter was an official of the entity for which he sought Market Based Rate authority. That was a violation without regard to whether and when the Commission figured out it was false.

Section 35.41(b)'s focus on the communication, and not on the effect on the audience, makes policy sense, since the Commission's goal is to ensure that entities with Market-Based Rate authority can be relied on to provide truthful and complete information in their communications with ISOs, Market Monitors, Commission staff, and the Commission itself.[95]

E. Maxim's "No Duty to Disclose" Argument Fails

Maxim argues at length that it had no duty to disclose to the IMM that it had been burning gas when given reliability dispatches on oil offers. But Maxim's argument misses the point.

The Commission need not resolve whether Maxim had a duty, in the abstract, to notify the IMM that it was burning gas after offering oil. For example, the Commission

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94 *See* Appendix C. These emails corroborate Angeli's recollection of what he understood Mitton to be saying.

95 Maxim (a) argues that the IMM had procedures for checking after the fact on what fuel a unit burned, and (b) claims it expected this to happen. As to (a), while the IMM did have the ability to check after the fact, nothing required it to check every time, particularly if it credited a generator's representations (explicit or implicit) that it was burning oil. Indeed, Mitton knew (per his July 20 emails) that the IMM was relying on his "oil" assurances in deciding what fuel to input into the IMM's models. As to (b) (what Maxim expected), the record (including the July 20 Devasahayam email, the August 18 Mitton-Dominguez call, and Maxim's decisions to burn gas rather than oil) shows that Maxim hoped and expected that Pittsfield would not be mitigated to gas prices, and resisted mitigation even after the IMM discovered what Maxim had been doing.

need not decide whether it was lawful for Maxim to stay silent from July 6 to July 15 as it received many Day Ahead reliability offers on oil but actually burned only gas.

The issue here is whether **once they were communicating with the IMM about the matter,** starting on July 16, 2010, Maxim and Mitton provided accurate and non-misleading responses and avoided material omissions. As documented in detail above, they did not. Instead, Maxim and Mitton responded by making misleading statements and omitting material information. As a result, Maxim violated Section 35.41(b).

VII. MAXIM AND MITTON VIOLATED THE ANTI-MANIPULATION RULE

Unlike Section 35.41(b), the Commission's Anti-Manipulation Rule requires scienter. Both Maxim and Mitton had scienter: it is fair to conclude from the record evidence that they intended to deceive the IMM, both through their affirmative statements, and in the case of Maxim through material omissions.[96] Although recklessness is sufficient to prove scienter, here the record shows that Maxim and Mitton engaged in an intentional effort to lead the IMM to believe, incorrectly, that the Pittsfield plant was burning the fuel it offered, as a way to protect a lucrative windfall.[97]

For the same reasons discussed in the preceding section, Maxim's "no duty to disclose" argument does not help them. This case is not about whether Maxim had a duty in the abstract to tell the IMM it was burning gas, but about the fact that Maxim chose to give misleading responses and to omit material information once they began communicating with the IMM about their oil offers starting on July 16, 2010. And contrary to Mitton's claim (at 23-25), attempting to deceive a Market Monitor to protect a windfall is not a "legitimate business purpose."[98]

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96 As discussed in the Staff Report (at 53), and as Maxim does not dispute, for an entity with Market Based Rate authority, Section 35.41(b) provides the "duty to speak" that makes material omissions actionable under the Anti-Manipulation Rule.

97 Maxim quotes (at 8) a statement by a Commission staff member in oral testimony in 2009 that Rule 1c prohibits "fraud" and "intentional[] manipulation" but not "taking advantage of a market rule or a market loophole." For many reasons, this out-of-context quote did not reverse the Commission's longstanding condemnation of gaming, nor alter the Commission's authoritative determination in Order No. 670 that "[f]raud is a question of fact that is to be determined by all the circumstances of a case." Order No. 670, FERC Stats. & Regs. ¶ 31,202, at P 50 (2006). In any event, *this* case is about "fraud" and "intentional manipulation," making the quoted statement irrelevant here.

98 *See, e.g.*, *Barclays Bank, PLC et al.*, 144 FERC ¶ 61,041, at P 60 (2013) ("manipulation is not a legitimate business purpose"); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Services*, 129 FERC ¶ 61,147, at P 21 (2009) ("Engaging in manipulation, for example, in order to maximize profits, is not legitimate business behavior."), quoting *Investigation of Anomalous Bidding Behavior and Practices in Western Markets*, 103 FERC ¶ 61,347, at P 13 n.15 (2003).

Whether Maxim's scheme to mislead the IMM was successful – either at the time implemented, or in the succeeding months – does not matter: as discussed in the Staff Report, attempts to manipulate, as well as attempts that are initially successful but later mitigated, are actionable under the Commission's Rule.[99]

VIII. MAXIM'S AND MITTON'S REMAINING CONTENTIONS ARE WITHOUT MERIT

A. The Commission Has the Authority to Impose Penalties on Individuals

As set forth in the Staff Report, the Commission has already analyzed this issue and correctly concluded that the Federal Power Act gives the Commission the power to penalize individuals. Mitton offers no reason to alter that determination.[100]

B. The Proposed Penalties Are Appropriate

Maxim argues that because the IMM later mitigated its windfall profits, it should not be penalized. But if the worst that can happen when a market participant breaks the rules is that their unjust profits are taken back from them, the rules will not deter unlawful conduct like the scheme that Maxim and Mitton engaged in here.[101] And Maxim's argument that they should receive a minimal penalty because the IMM required them to give back their unjust profits is based on a misreading of the Penalty Guidelines.

The proposed penalty for Maxim is well within the penalty range indicated by the Commission's Penalty Guidelines, which treat gains that a respondent sought to achieve (or achieved and later had to give back) as within the "intended loss," which is treated the same as an "actual loss."[102] Maxim incorrectly says (at 53-54) that if a market participant

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[99] *See* Staff Report at 51 (citing authorities).

[100] While Maxim previously complained at length about its wholly-owned affiliates (controlled by Mitton and other parent company employees) being named as Respondents, it mentions this point only in a single footnote in its Answer (at 1 n.1). In any event, the Staff Report shows there is no problem with imposing liability on all of the named members of the Maxim corporate family.

[101] *See* Devasahayam July 20 Email (within Appendix C) (suggesting that the worst outcome for Maxim would merely be loss of profit from being paid for oil while burning gas).

[102] Penalty Guidelines, § 2B1.1, Application Note 2(A), Enforcement of Statutes, Orders, Rules, and Regulations, 132 FERC ¶ 61,216 at 112 (2010):

> 2. Loss Under Subsection (b)(1).—This application note applies to the determination of loss under subsection (b)(1):
>
> (A) General Rule.—Subject to the exclusions in subdivision (D), loss is the greater of actual loss or intended loss.
>
> > (i) Actual Loss.—'Actual loss' means the reasonably foreseeable pecuniary harm that resulted from the violation.

is (like Maxim) forced to return unjust profits, under the Penalty Guidelines there is no "intended loss." But that makes no sense: it would mean that a market participant could be fully penalized for a attempt that was foiled at the outset, but not for one that succeeded but then was reversed by the ISO.

When the Penalty Guidelines discuss money "returned . . . by the entity. . . before the violation was detected,"[103] they are referring to circumstances when a market participant realizes it has received funds improperly and returns them voluntarily. Here, Maxim did not "return" its windfall; the IMM took it away from Maxim, over Maxim's protests (*e.g.*, in Kwok's August 22 email). Maxim and Mitton get no credit for good behavior under these circumstances.

Mitton argues that he should not be penalized because he had no reason to believe that if the scheme was successful, he would be rewarded. But there is no dispute that Maxim paid bonuses, not just salaries, and no dispute that Mitton's salary was periodically reset. Nor can there be any reasonable dispute that Mitton might hope to be rewarded if he could bring in $3 million in profit – more than the quarterly net income of Maxim's worldwide operations – from one power plant over a period of a month and a half.

C. <u>Maxim and Mitton Had Fair Notice of What the Law Requires</u>

Maxim's and Mitton's "fair notice" defense under the Due Process clause fails for several reasons. *First*, Due Process requires only that "'laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited.'" *Valicenti Advisory Serv., Inc. v. SEC*, 198 F.3d 62, 66 (2d Cir. 1999) (quoting *Upton v. SEC*, 75 F.3d 92, 98 (2d Cir. 1996)). That standard is easily satisfied here: every market participant should know it is wrong to try to mislead a market watchdog to keep a multimillion dollar windfall.

Second, when Mitton communicated with the IMM, he was doing so on behalf of an entity (Pittsfield Generating Co.) with Market Based Rate authority, and was therefore required to provide the IMM with accurate information and to refrain from providing misleading information or omitting material facts. While Maxim elected not to give its employees any training about Commission rules,[104] what those rules required was a matter of public record throughout this period.

Third, Maxim cannot reasonably claim it would be difficult to "divine" (Answer at 9) that the IMM would want to know that Pittsfield was burning a fuel that was

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> (ii) Intended Loss.—'Intended loss' (I) means the pecuniary harm that was intended to result from the violation; and (II) includes intended pecuniary harm that would have been impossible or unlikely to occur.

[103] *Id.*, Application Note 2(E)(i).

[104] *See* Staff Report at 57 n.150 (quoting testimony of Maxim CEO John Bobenic).

$100/MWh cheaper than the fuel it offered and expected to be paid on. The IMM's job is, among other things, to protect ratepayers from overpaying NCPC to units needed for reliability.[105] The fact that a generator stood to receive a multimillion dollar windfall (paid by load) through high-priced NCPC payments for a fuel it did not burn was obviously material. And there is no doubt that Mitton knew the importance of his "oil" emails: the IMM specifically told him they were relying on those emails in deciding what fuel to input into the IMM's models.[106]

D. The *Dartmouth Power* Case is Nothing Like This Case

Maxim argues that its conduct is similar to that of the respondent in *Dartmouth Power Associates*.[107] It is not. In *Dartmouth*, a generator on one occasion failed to report an outage. There was no finding that the failure to report was intended to deceive the ISO, and this one-time event "was not part of a larger pattern or practice of failure to declare outages to ISO-NE."[108] In addition, the generator had effectively already paid a penalty by being docked its entire monthly capacity payment (nearly $232,000), an amount far beyond the small fraction of the monthly payment attributable to this brief outage. The Commission stated that but for this (effective) penalty, it would likely have penalized the generator.[109]

E. Following Company Policy is Not a Defense If the Policy is to Engage in Deception and Withhold Material Information

Mitton claims that he was merely following company policy and should not be held responsible for what he did. But Mitton took the lead in initiating, and in implementing most of, the improper communications at the center of this case.[110] Even if someone told him to do so, misleading a Market Monitor to protect an undeserved windfall is wrong, and Mitton, who had worked for Maxim for several years by this point, can fairly be held accountable for engaging in this wrongful behavior.

Nor is Mitton's absence from the office in late June and early August a defense. *First*, none of the relevant communications occurred during that period. *Second*, Mitton led all but one Maxim's communications with the IMM, and his emails to the IMM between July 16 and July 20 set the template for Maxim's misleading communications

---

[105] ISO-NE Tariff, Market Rule 1, *Appendix A, Market Monitoring, Reporting And Market Power Mitigation*, Section III.A.5.5.6 (Reliability Commitment Mitigation).

[106] *See* Section V(E) above.

[107] *Dartmouth Power Assoc., LP.*, 134 FERC ¶ 61,085 (2001).

[108] *Id.* at P 14.

[109] *Id.* at P 21.

[110] In addition, Mitton was "the person who decided what bids to submit to the ISO each day," sometimes after discussions with Kwok. Mitton Test. Vol. II. Tr. 240.

about its oil offers and gas burns. *Third*, Mitton personally failed to follow his own prior practice under the RMR (even though he now tells the Commission he *was* following those practices) by failing to give the IMM advance notice of oil offers, even after specifically assuring the IMM on June 20 that he would do so. Mitton's failure to follow this practice, and to keep his commitment to the IMM, continued when he returned from vacation in early August. All of these facts, and the record as a whole, make it appropriate to impose a penalty on Mitton, of a size tailored to his circumstances, as proposed in the Staff Report.

IX. CONCLUSION

For the reasons discussed in the Staff Report and in this Reply, the Commission should determine that Maxim and Mitton violated the Commission's Anti-Manipulation Rule, find that Maxim's Pittsfield Generating unit violated 18 C.F.R. § 35.41(b), and impose a penalty of $3 million on Maxim and of $50,000 on Mitton.

Respectfully submitted,

/s/

Larry Parkinson
Director, Division of Investigations
David Applebaum
Deputy Director, Division of Investigations
Geo. F. Hobday, Jr., Branch Chief
Thomas P. Olson, Attorney-Advisor
Aaron A. Fate, Attorney-Advisor
Office of Enforcement
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Dated: March 20, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have today arranged to serve a copy of this Reply and the accompanying Appendices A-G on counsel for Maxim.

/s/

____

Thomas P. Olson
Division of Investigations
Office of Enforcement
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426
(202) 502-6278
Thomas.olson@ferc.gov

Dated: March 20, 2015

APPENDIX A

Information about Tennessee Gas Pipeline
Restrictions Relevant to Pittsfield Plant
on June 26-27, 2010 and July 1-4, 2010

[no restrictions at locations 223, 245, 307, 321, or 355]

Excerpt from Spreadsheet
"Mpcprod00074456_Confidential.Xls"
Sent By Kyle Mitton to IMM on Sept. 22, 2010

[identifying Pipeline locations
223, 245, 307, 321, and 355
as applicable to Pittsfield]

July 2010 - TGP Restriction Summary
Created by: Kyle Mitton

	Offer Fuel	Actual Restrictions
1-Jul-10	GAS	n/a
2-Jul-10	GAS	n/a
3-Jul-10	GAS	n/a
4-Jul-10	GAS	n/a
5-Jul-10	GAS	No Increases: 245
6-Jul-10	OIL	No Increases: 245, 321
7-Jul-10	OIL	No Increases: 245, 321
8-Jul-10	OIL	No Increases: 245, 321, 355
9-Jul-10	OIL	No Increases: 245, 321, 355
10-Jul-10	OIL	No Increases: 245, 321, 355
11-Jul-10	OIL	No Increases: 245, 355
12-Jul-10	OIL	No Increases: 245, 321, 355
13-Jul-10	OIL	No Increases: 245, 321, 355
14-Jul-10	OIL	No Increases: 245, 321, 355
15-Jul-10	OIL	No Increases: 245, 321
16-Jul-10	OIL	No Increases: 245, 321, 355
17-Jul-10	OIL	No Increases: 245, 321, 355
18-Jul-10	OIL	No Increases: 355
19-Jul-10	OIL	No Increases: 223/245/307/321/355
20-Jul-10	OIL	No Increases: 223/245/307/321/355
21-Jul-10	OIL	No Increases: 245, 321, 355
22-Jul-10	OIL	No Increases: 245, 321, 355
23-Jul-10	OIL	No Increases: 245, 321, 355
24-Jul-10	OIL	No Increases: 355
25-Jul-10	OIL	No Increases: 355
26-Jul-10	OIL	No Increases: 245, 321, 355
27-Jul-10	OIL	No Increases: 245, 321, 355
28-Jul-10	OIL	No Increases: 245, 321, 355
29-Jul-10	OIL	No Increases: 245, 321, 355
30-Jul-10	OIL	n/a
31-Jul-10	GAS	n/a

* Restrictions applicable to Pittsfield from July 5th to July 29th.

Pipeline Restrictions Posted by Tennessee Gas Pipeline

for June 26 and 27, 2010

[no restrictions at locations 223, 245, 307, 321, or 355]

Source: “Critical Notices from June 2010_August 2010” Spreadsheet provided by TGP on Dec. 12, 2014, available in “Tennessee Gas Pipeline and Angeli emails / Kinder Morgan” folder in Investigative Materials filed by staff on Feb. 4, 2015

notice_identifier	create_date_time	org_id	notice_ctgy_code	notice_type	notice_type_desc	beg_post_date_time	end_post_date_time
132209	6/27/10 8:38	TGP	BLTN	4	Operational Flo	6/27/10 8:40	9/26/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: OFO BALANCING ALERT-CONTRACT/METER SPECIFIC LIFTED

Tennessee Gas Pipeline is lifting the Contract/Meter Specific Balancing Alert OFO for meter #020931, LMSMA Contract 37852, effective immediately.

Please contact your Scheduler if you have any questions.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

132208	6/26/10 21:25	TGP	BLTN	60	Other (Misc)	6/26/10 21:27	9/25/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: ESTIMATED AVAILABLE CAPACITY 6/27/10

ESTIMATED AVAILABLE CAPACITY - KEY POINTS
==

In an effort to assist customers with decisions related to
capacity utilization on our system, TGP will provide an estimate

of how much capacity is available at key points on our system.
The numbers provided are estimates and subject to change due to changes in nominations, confirmations, force balancing, and the operational integrity of the system.

ID #	Point Name	Est. Capacity
P00053	STA 17	1,126,000 dth
P00080	Carthage Lateral	71,000 dth
P00292	MLV 48	997,000 dth
P00042	MLV 834	59,000 dth
P00108	MLV 529	719,000 dth
P00006	STA 200	818,000 dth
P00293	STA 209	266,000 dth
P00074	STA 219	129,000 dth
P00257/P00019	MLV 223/STA 307	63,000 dth
P00297	Niagara Spur Backhaul	12,000 dth
P00011	STA 245	157,000 dth
P00021	MLV 314	759,000 dth
P00024	STA 319	334,000 dth
P00025	STA 321	185,000 dth
P00095	MLV 336	59,000 dth
P00100	MLV 355	188,000 dth
021008	Can East Leidy	15,000 dth

If you have any questions, please contact your Scheduler.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

132205	6/26/10 18:45	TGP	BLTN	3	Curtailment	6/26/10 21:15	9/25/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: RESTRICTIONS LIFTED EFFECTIVE 6/27/2010 ID1

Effective Intraday Cycle 1 for the gas day of June 27, 2010, due to reduced nominations, Tennessee will accept nomination increases at the following locations:

Leidy Delivery Meters (005030/005031)-Est. Avail Cap 15,000 Dths
Rivervale Delivery Meter (020101)-Est. Avail Cap 32,000 Dths
Concord Lateral (Pipeline Point P00189)-Est. Avail Cap 125,000 Dths

If you have any questions, please contact your Scheduler.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

132202	6/26/10 15:52	TGP	BLTN	3	Curtailment	6/26/10 16:05	9/25/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: RESTRICTIONS FOR 6/27/10

Effective Timely Cycle, 9:00 AM CCT, for the gas day of June 27, 2010, Tennessee restricted the following:

SUMMARY:
Restrictions
============
Leidy Delivery Meters - through approx 49% SOP
Rivervale Delivery Meter - through approx 16% SOP

The Concord Lateral - through approx 45% SOP

No Increases
============
Leidy Delivery Meters (005030/005031)
Rivervale Delivery Meter (020101)
The Concord Lateral (Pipeline Point P00189)

DETAILS:

** Leidy Delivery Meters (005030/005031)
Tennessee restricted through approximately 49% of Supply to Market Secondary Out of the Path nominations, (Park Withdrawal/Loans, IT-X, IT, AOT, Payback from Tennessee, EDS/ERS, SOP) pathed for delivery to the Leidy Delivery Meters.

** Rivervale Delivery Meter (020101)
Tennessee restricted through approximately 16% of Supply to Market Secondary Out of the Path nominations, (Park Withdrawal/Loans, IT-X, IT, AOT, Payback from Tennessee, EDS/ERS, SOP) pathed for delivery to the Rivervale Delivery Meter.

** The Concord Lateral (Pipeline Point P00189)
Due to scheduled maintenance, Tennessee restricted through approximately 45% of Supply to Market Secondary Out of the Path nominations, (Park Withdrawal/Loan, IT-X, IT, AOT, Payback from Tennessee, EDS/ERS, SOP) pathed to meters located on the Concord Lateral.

For the remainder of the June 27, 2010 gas day:

** Leidy Delivery Meters (005030/005031)
Tennessee will not accept any Supply to Market increases delivered to the Leidy Delivery Meters. Tennessee will allow shippers to adjust nominations under the same Duns number delivered to these meters provided that the net volume change for such adjustments does not exceed previously scheduled volumes delivered to the Leidy Delivery Meters.

** Rivervale Delivery Meter (020101)
Tennessee will not accept any Supply to Market increases delivered to the Rivervale Delivery Meter. Tennessee will allow shippers to adjust nominations under the same Duns number delivered to this meter provided that the net volume change for such adjustments does not exceed previously scheduled volumes delivered to the Rivervale Delivery Meter.

** The Concord Lateral (Pipeline Point P00189)
Tennessee will not accept any Supply to Market increases pathed to meters located on the Concord Lateral. Tennessee will allow shippers to adjust nominations under the same Duns number pathed to these meters provided that the net volume change for such adjustments does not exceed previously scheduled volumes pathed to meters located on the Concord Lateral.

ESTIMATED AVAILABLE CAPACITY - KEY POINTS
==
In an effort to assist customers with decisions related to capacity utilization on our system, TGP will provide an estimate of how much capacity is available at key points on our system. The numbers provided are estimates and subject to change due to changes in nominations, confirmations, force balancing, and the operational integrity of the system.

ID #	Point Name	Est. Capacity
P00053	STA 17	1,126,000 dth
P00080	Carthage Lateral	66,000 dth
P00292	MLV 48	1,058,000 dth
P00042	MLV 834	86,000 dth
P00108	MLV 529	720,000 dth
P00006	STA 200	789,000 dth
P00293	STA 209	238,000 dth
P00074	STA 219	102,000 dth
P00257/P00019	MLV 223/STA 307	35,000 dth
P00297	Niagara Spur Backhaul	5,000 dth
P00011	STA 245	128,000 dth
P00021	MLV 314	770,000 dth
P00024	STA 319	348,000 dth
P00025	STA 321	145,000 dth
P00095	MLV 336	70,000 dth
P00100	MLV 355	176,000 dth
021008	Can East Leidy	0 dth

ON-GOING LIMITATIONS

None

OPERATIONAL FLOW ORDERS (OFO)

OFO Balancing Alert - Contract/Meter Specific

METERS OUT OF SERVICE DUE TO SCHEDULED MAINTENANCE

MLV 17-2 to MLV 20-2A: Install Pig launcher and receiver; replace valves & elbows; hydrostatic testing

011788 Katy Transport

HURRICANE EMERGENT OUTAGES
=========================
Bluewater Southwest Leg
523A - 100 (La. Coastal Bay Marchand Line)
Meter 01-0436
524C - 600 (South Timbalier - 66 Line)
Meter 01-1892
527A - 1300 Line
Meter 01-1698 (South Pass 49A)
527A - 1800 Line
Meter 01-2175 (South Pass 52)

If you have any questions, please contact your Scheduler.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

132200	6/26/10 14:37	TGP	BLTN	4	Operational Flc	6/26/10 14:38	9/25/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: OFO BALANCING ALERT - CONTRACT/ METER SPECIFIC REVISED

In order to maintain linepack, Tennessee is issuing a BALANCING ALERT OFO, for the Gas Day of June 26, 2010 effective 08:30 PM CCT, for meter #020931 on LMSMA Contract 37852. This action is pursuant to Article VIII, Section 5 of the General Terms and Conditions of Tennessee's FERC Gas Tariff.

Meter #020931 on LMSMA Contract 37852 is required to maintain an

actual daily flow rate not exceeding 2% or 500 dths, whichever
is greater, of scheduled quantities. Customer will be assessed
a rate of $15.00 plus the applicable Regional Daily Spot Price
per dekatherm for undertakes which exceed this tolerance.

THIS OFO BALANCING ALERT WILL REMAIN IN EFFECT UNTIL FURTHER
NOTICE. TENNESSEE WILL INFORM CUSTOMERS BY EBB WHEN THIS OFO
BALANCING ALERT WILL BE LIFTED.

Please contact your Scheduler if you have any questions.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

132199	6/26/10 14:08	TGP	BLTN	4	Operational Flc	6/26/10 14:15	9/25/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: OFO BALANCING ALERT - CONTRACT/ METER SPECIFIC

In order to maintain linepack, Tennessee is issuing a BALANCING
ALERT OFO, for the Gas Day of June 26, 2010 effective 08:30 PM
CCT,
for meter #020931 on LMSMA Contract 37852. This action is
pursuant to Article VIII, Section 5 of the General Terms and
Conditions of Tennessee's FERC Gas Tariff.

Meter #020931 on LMSMA Contract 37852 is required to maintain an
actual daily flow rate not exceeding 2% or 500 dths, whichever
is greater, of scheduled quantities. Customer will be assessed
a rate of $15.00 plus the applicable Regional Daily Spot Price
per dekatherm for undertakes which exceed this tolerance.

THIS OFO BALANCING ALERT WILL REMAIN IN EFFECT UNTIL FURTHER NOTICE. TENNESSEE WILL INFORM CUSTOMERS BY EBB WHEN THIS OFO BALANCING ALERT WILL BE LIFTED.

Please contact your Scheduler if you have any questions.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

132198	6/26/10 13:18	TGP	BLTN	3	Curtailment	6/26/10 13:20	9/25/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: ANT RESTRICTIONS FOR 06/27/10 - REVISED

Effective Timely Cycle, 9:00 AM CCT, for the gas day of June 27, 2010, Tennessee anticipates the following restrictions:

SUMMARY:

Restrictions
============
Leidy Delivery Meters - through approx 49% SOP
Rivervale Delivery Meter - through approx 39% SOP
The Concord Lateral - through approx 45% SOP

No Increases
============
Leidy Delivery Meters (005030/005031)
Rivervale Delivery Meter (020101)

The Concord Lateral (Pipeline Point P00189)

If you have any questions, please contact your Scheduler.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

132197	6/26/10 12:53	TGP	BLTN	3	Curtailment	6/26/10 13:00	9/25/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: ANTICIPATED RESTRICTIONS FOR 06/27/10

Effective Timely Cycle, 9:00 AM CCT, for the gas day of
June 27, 2010, Tennessee anticipates the following
restrictions:

SUMMARY:

Restrictions
============
Leidy Delivery Meters - through approx 49% SOP
Rivervale Delivery Meter - through approx 39% SOP

No Increases
============
Leidy Delivery Meters (005030/005031)
Rivervale Delivery Meter (020101)

If you have any questions, please contact your Scheduler.

Layne Sanders

Manager, Transportation Services
Gas Scheduling

132192	6/25/10 21:54	TGP	BLTN	60	Other (Misc)	6/25/10 22:00	9/24/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: ESTIMATED AVAILABLE CAPACITY 6/26/10

ESTIMATED AVAILABLE CAPACITY - KEY POINTS
==

In an effort to assist customers with decisions related to capacity utilization on our system, TGP will provide an estimate of how much capacity is available at key points on our system. The numbers provided are estimates and subject to change due to changes in nominations, confirmations, force balancing, and the operational integrity of the system.

ID #	Point Name	Est. Capacity
P00053	STA 17	1,153,000 dth
P00080	Carthage Lateral	71,000 dth
P00292	MLV 48	1,020,000 dth
P00042	MLV 834	2,000 dth
P00108	MLV 529	719,000 dth
P00006	STA 200	836,000 dth
P00293	STA 209	280,000 dth
P00074	STA 219	141,000 dth
P00257/P00019	MLV 223/STA 307	74,000 dth
P00297	Niagara Spur Backhaul	22,000 dth
P00011	STA 245	158,000 dth
P00021	MLV 314	774,000 dth

P00024	STA 319	352,000 dth
P00025	STA 321	185,000 dth
P00095	MLV 336	59,000 dth
P00100	MLV 355	188,000 dth
021008	Can East Leidy	15,000 dth

If you have any questions, please contact your Scheduler.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

132190	6/25/10 20:33	TGP	BLTN	3	Curtailment	6/25/10 21:15	9/24/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: RESTRICTIONS LIFTED EFFECTIVE 6/26/2010 ID1

Effective Intraday Cycle 1 for the gas day of June 26, 2010, due to reduced nominations, Tennessee will accept nomination increases at the following locations:

Leidy Delivery Meters (005030/005031)-Est. Avail Cap 15,000 Dths
Rivervale Delivery Meter (020101)-Est. Avail Cap 27,000 Dths

If you have any questions, please contact your Scheduler.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

132188	6/25/10 20:00	TGP	BLTN	3	Curtailment	6/25/10 20:15	9/24/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: NO INCREASES EFFECTIVE 06/25/10 22:00

Effective Intraday Cycle 22:00, for the gas day of June 25, 2010, Tennessee will not accept any Supply to Market nomination increases pathed for delivery to the following locations:

Leidy Delivery Meters (005030/005031)

For the remainder of the June 25, 2010 gas day:

** Leidy Delivery Meters (005030/005031)
Tennessee will not accept any Supply to Market increases delivered to the Leidy Delivery Meters. Tennessee will allow shippers to adjust nominations under the same Duns number delivered to these meters provided that the net volume change for such adjustments does not exceed previously scheduled volumes delivered to the Leidy Delivery Meters.

If you have any questions, please contact your Scheduler.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

132180	6/25/10 15:51	TGP	BLTN	3	Curtailment	6/25/10 16:00	9/24/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: RESTRICTIONS FOR 6/26/10

Effective Timely Cycle, 9:00 AM CCT, for the gas day of

June 26, 2010, Tennessee restricted the following:

SUMMARY:
Restrictions
============
Leidy Delivery Meters - through approx 49% SOP
Rivervale Delivery Meter - through approx 24% SOP

No Increases
============
Leidy Delivery Meters (005030/005031)
Rivervale Delivery Meter (020101)

DETAILS:

** Leidy Delivery Meters (005030/005031)
Tennessee restricted through approximately 49% of Supply to Market Secondary Out of the Path nominations, (Park Withdrawal/Loans, IT-X, IT, AOT, Payback from Tennessee, EDS/ERS, SOP) pathed for delivery to the Leidy Delivery Meters.

** Rivervale Delivery Meter (020101)
Tennessee restricted through approximately 24% of Supply to Market Secondary Out of the Path nominations, (Park Withdrawal/Loans, IT-X, IT, AOT, Payback from Tennessee, EDS/ERS, SOP) pathed for delivery to the Rivervale Delivery Meter.

For the remainder of the June 26, 2010 gas day:

** Leidy Delivery Meters (005030/005031)
Tennessee will not accept any Supply to Market increases

delivered to the Leidy Delivery Meters. Tennessee will allow shippers to adjust nominations under the same Duns number delivered to these meters provided that the net volume change for such adjustments does not exceed previously scheduled volumes delivered to the Leidy Delivery Meters.

** Rivervale Delivery Meter (020101)
Tennessee will not accept any Supply to Market increases delivered to the Rivervale Delivery Meter. Tennessee will allow shippers to adjust nominations under the same Duns number delivered to this meter provided that the net volume change for such adjustments does not exceed previously scheduled volumes delivered to the Rivervale Delivery Meter.

ESTIMATED AVAILABLE CAPACITY - KEY POINTS

==

In an effort to assist customers with decisions related to capacity utilization on our system, TGP will provide an estimate of how much capacity is available at key points on our system. The numbers provided are estimates and subject to change due to changes in nominations, confirmations, force balancing, and the operational integrity of the system.

ID #	Point Name	Est. Capacity
P00053	STA 17	1,173,000 dth
P00080	Carthage Lateral	60,000 dth
P00292	MLV 48	1,005,000 dth
P00042	MLV 834	3,000 dth
P00108	MLV 529	719,000 dth
P00006	STA 200	790,000 dth
P00293	STA 209	237,000 dth
P00074	STA 219	867,000 dth

P00257/P00019	MLV 223/STA 307	30,000 dth
P00297	Niagara Spur Backhaul	4,000 dth
P00011	STA 245	125,000 dth
P00021	MLV 314	768,000 dth
P00024	STA 319	346,000 dth
P00025	STA 321	128,000 dth
P00095	MLV 336	67,000 dth
P00100	MLV 355	180,000 dth
021008	Can East Leidy	0 dth

ON-GOING LIMITATIONS
====================
None

OPERATIONAL FLOW ORDERS (OFO)
============================
None

METERS OUT OF SERVICE DUE TO SCHEDULED MAINTENANCE
==
MLV 17-2 to MLV 20-2A: Install Pig launcher and receiver;
replace valves & elbows; hydrostatic testing
011788 Katy Transport

HURRICANE EMERGENT OUTAGES
=========================
Bluewater Southwest Leg
523A - 100 (La. Coastal Bay Marchand Line)
Meter 01-0436
524C - 600 (South Timbalier - 66 Line)
Meter 01-1892
527A - 1300 Line
Meter 01-1698 (South Pass 49A)

527A - 1800 Line
Meter 01-2175 (South Pass 52)

If you have any questions, please contact your Scheduler.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

132179	6/25/10 13:17	TGP	BLTN	3	Curtailment	6/25/10 13:20	9/24/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: ANTICIPATED RESTRICTIONS FOR 06/26/10

Effective Timely Cycle, 9:00 AM CCT, for the gas day of June 26, 2010, Tennessee anticipates the following restrictions:

SUMMARY:

Restrictions
============
Leidy Delivery Meters - through approx 49% SOP
Rivervale Delivery Meter - through approx 25% SOP

No Increases
============
Leidy Delivery Meters (005030/005031)
Rivervale Delivery Meter (020101)

If you have any questions, please contact your Scheduler.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

APPENDIX B

PDF of pipeline restrictions attached to Kyle Mitton's July 19, 2010 email to John Angeli

[MPCPROD00074410-MPCPROD00074411]

[note: print is small in original; easier to read by using magnification feature in Adobe Reader]

20150323-5058 FERC PDF (Unofficial) 3/20/2015 6:03:05 PM

Notice Type	Posted Date/Time	Notice Effective Date/Time	Notice End Date/Time	Notice Identifier	Subject	Required Response	Response Date/Time	Notice Status	Prior Notice Identifier	Critical Notice Indicator	TSP	Name
Curtailment	7/19/2010 2:05:00 PM	7/20/2010 9:00:00 AM	7/21/2010 9:00:00 AM	132593	ANTICIPATED RESTRICTIONS FOR 07/20/10	5		Initiate		Y	001939164	TGP
Curtailment	7/19/2010 1:15:00 PM	7/19/2010 9:00:00 PM	7/20/2010 9:00:00 AM	132591	NO INCREASES STA 245 07/18/10 - ID2	5		Initiate		Y	001939164	TGP
Curtailment	7/19/2010 7:55:00 AM	7/19/2010 5:00:00 PM	7/20/2010 9:00:00 AM	132584	RESTRICTIONS LIFTED 7/19/10 ID1	5		Initiate		Y	001939164	TGP
Curtailment	7/18/2010 9:35:00 PM	7/19/2010 5:00:00 PM	7/20/2010 9:00:00 AM	132582	RESTRICTIONS LIFTED 7/19/10 ID1	5		Initiate		Y	001939164	TGP
Curtailment	7/18/2010 8:15:00 PM	7/18/2010 10:00:00 PM	7/19/2010 9:00:00 AM	132579	LEIDY REST LIFTED 7/18/2010 22:00	5		Initiate		Y	001939164	TGP
Curtailment	7/18/2010 6:30:00 PM	7/18/2010 10:00:00 PM	7/19/2010 9:00:00 AM	132577	NO INCREASES STA 245 07/18/10 - 22:00	5		Initiate		Y	001939164	TGP
Curtailment	7/18/2010 4:45:00 PM	7/19/2010 9:00:00 AM	7/20/2010 9:00:00 AM	132574	RESTRICTIONS FOR 07/19/2010	5		Initiate		Y	001939164	TGP
Curtailment	7/18/2010 1:55:00 PM	7/19/2010 9:00:00 AM	7/20/2010 9:00:00 AM	132573	ANTICIPATED RESTRICTIONS FOR 07/19/10	5		Initiate		Y	001939164	TGP
Curtailment	7/17/2010 9:15:00 PM	7/18/2010 5:00:00 PM	7/19/2010 9:00:00 AM	132566	RESTRICTION LIFTED 7/18/10 ID1	5		Initiate		Y	001939164	TGP
Curtailment	7/17/2010 8:15:00 PM	7/17/2010 10:00:00 PM	7/18/2010 9:00:00 AM	132565	LEIDY REST LIFTED 7/17/2010 22:00	5		Initiate		Y	001939164	TGP
Curtailment	7/17/2010 4:20:00 PM	7/18/2010 9:00:00 AM	7/19/2010 9:00:00 AM	132560	RESTRICTIONS FOR 07/18/2010	5		Initiate		Y	001939164	TGP
Curtailment	7/17/2010 1:40:00 PM	7/18/2010 9:00:00 AM	7/19/2010 9:00:00 AM	132559	ANTICIPATED RESTRICTIONS FOR 07/18/10	5		Initiate		Y	001939164	TGP
Curtailment	7/16/2010 9:15:00 PM	7/17/2010 5:00:00 PM	7/18/2010 9:00:00 AM	132552	RESTRICTIONS LIFTED 7/17/10 ID1	5		Initiate		Y	001939164	TGP
Curtailment	7/16/2010 8:18:00 PM	7/16/2010 10:00:00 PM	7/17/2010 9:00:00 AM	132551	STA 245 RESTRICTION LIFTED 7/16/10 22:00	5		Initiate		Y	001939164	TGP
Curtailment	7/16/2010 4:15:00 PM	7/17/2010 9:00:00 AM	7/18/2010 9:00:00 AM	132547	RESTRICTIONS FOR 07/17/2010	5		Initiate		Y	001939164	TGP
Curtailment	7/16/2010 1:58:00 PM	7/17/2010 9:00:00 AM	7/18/2010 9:00:00 AM	132541	ANTICIPATED RESTRICTIONS FOR 07/17/10	5		Initiate		Y	001939164	TGP
Curtailment	7/16/2010 1:15:00 PM	7/16/2010 9:00:00 AM	7/17/2010 9:00:00 AM	132539	STA 245 RESTRICTION FOR 07/16/10 ID1	5		Initiate		Y	001939164	TGP
Curtailment	7/16/2010 8:25:00 AM	7/16/2010 5:00:00 PM	7/17/2010 9:00:00 AM	132535	RESTRICTION LIFTED 7/16/10 ID1	5		Initiate		Y	001939164	TGP
Curtailment	7/15/2010 9:32:00 PM	7/16/2010 5:00:00 PM	7/17/2010 9:00:00 AM	132533	RIVERVALE RESTRICT LIFTED 7/8/10 ID1	5		Initiate		Y	001939164	TGP
Curtailment	7/15/2010 8:33:00 PM	7/15/2010 10:00:00 PM	7/16/2010 9:00:00 AM	132531	RESTRICTIONS LIFTED 7/15/10 22:00	5		Initiate		Y	001939164	TGP
Curtailment	7/15/2010 4:36:00 PM	7/16/2010 9:00:00 AM	7/17/2010 9:00:00 AM	132527	RESTRICTIONS FOR 07/16/2010	5		Initiate		Y	001939164	TGP
Curtailment	7/15/2010 2:16:00 PM	7/16/2010 9:00:00 AM	7/17/2010 9:00:00 AM	132524	ANTICIPATED RESTRICTIONS FOR 07/16/10	5		Initiate		Y	001939164	TGP
Curtailment	7/15/2010 1:35:00 PM	7/15/2010 5:00:00 PM	7/16/2010 9:00:00 AM	132522	RESTRICTION/NO INCREASES EFF 7/15/10 ID1	5		Initiate		Y	001939164	TGP
Curtailment	7/15/2010 7:26:00 AM	7/15/2010 5:00:00 PM	7/16/2010 9:00:00 AM	132518	RESTRICTION LIFTED 7/15/10 ID1	5		Initiate		Y	001939164	TGP
Curtailment	7/14/2010 9:15:00 PM	7/15/2010 5:00:00 PM	7/16/2010 9:00:00 AM	132515	RESTRICTION LIFTED 7/15/10 ID1	5		Initiate		Y	001939164	TGP
Curtailment	7/14/2010 4:15:00 PM	7/15/2010 9:00:00 AM	7/16/2010 9:00:00 AM	132511	RESTRICTIONS FOR 07/15/2010	5		Initiate		Y	001939164	TGP
Curtailment	7/14/2010 1:55:00 PM	7/15/2010 9:00:00 AM	7/16/2010 9:00:00 AM	132509	ANTICIPATED RESTRICTIONS FOR 07/15/10	5		Initiate		Y	001939164	TGP
Curtailment	7/14/2010 1:15:00 PM	7/13/2010 9:00:00 PM	7/14/2010 9:00:00 AM	132507	RESTRICTION LIFTED 7/14/10 ID2	5		Initiate		Y	001939164	TGP
Curtailment	7/13/2010 9:35:00 PM	7/14/2010 5:00:00 PM	7/15/2010 9:00:00 AM	132501	RESTRICTIONS LIFTED 7/14/10 ID1	5		Initiate		Y	001939164	TGP
Curtailment	7/13/2010 5:00:00 PM	7/14/2010 9:00:00 AM	7/15/2010 9:00:00 AM	132496	RESTRICTIONS FOR 07/14/2010-REV	5		Initiate		Y	001939164	TGP
Curtailment	7/13/2010 4:50:00 PM	7/14/2010 9:00:00 AM	7/15/2010 9:00:00 AM	132495	RESTRICTIONS FOR 07/14/2010	5		Initiate		Y	001939164	TGP
Curtailment	7/13/2010 2:10:00 PM	7/14/2010 9:00:00 AM	7/15/2010 9:00:00 AM	132493	ANTICIPATED RESTRICTIONS FOR 07/14/10	5		Initiate		Y	001939164	TGP
Curtailment	7/13/2010 1:15:00 PM	7/13/2010 9:00:00 PM	7/14/2010 9:00:00 AM	132491	RESTRICTION LIFTED 7/13/10 ID2	5		Initiate		Y	001939164	TGP
Curtailment	7/12/2010 9:16:00 PM	7/13/2010 5:00:00 PM	7/14/2010 9:00:00 AM	132482	RESTRICTION LIFTED 7/13/10 ID1	5		Initiate		Y	001939164	TGP
Curtailment	7/12/2010 4:36:00 PM	7/13/2010 9:00:00 AM	7/14/2010 9:00:00 AM	132479	RESTRICTIONS FOR 07/13/2010	5		Initiate		Y	001939164	TGP
Curtailment	7/12/2010 2:05:00 PM	7/13/2010 9:00:00 AM	7/14/2010 9:00:00 AM	132474	ANTICIPATED RESTRICTIONS FOR 07/13/10	5		Initiate		Y	001939164	TGP
Curtailment	7/12/2010 1:15:00 PM	7/12/2010 9:00:00 PM	7/13/2010 9:00:00 AM	132472	STA 245 RESTRICTION FOR 07/12/10 ID1	5		Initiate		Y	001939164	TGP
Curtailment	7/11/2010 9:15:00 PM	7/12/2010 5:00:00 PM	7/13/2010 9:00:00 AM	132466	RESTRICTIONS LIFTED 7/12/10 ID1	5		Initiate		Y	001939164	TGP
Curtailment	7/11/2010 4:10:00 PM	7/12/2010 9:00:00 AM	7/13/2010 9:00:00 AM	132462	RESTRICTIONS FOR 07/12/2010	5		Initiate		Y	001939164	TGP
Curtailment	7/11/2010 1:20:00 PM	7/12/2010 9:00:00 AM	7/13/2010 9:00:00 AM	132460	ANTICIPATED RESTRICTIONS FOR 07/12/10	5		Initiate		Y	001939164	TGP
Curtailment	7/10/2010 9:15:00 PM	7/11/2010 10:00:00 PM	7/12/2010 9:00:00 AM	132452	RESTRICTION LIFTED 7/11/10 ID1	5		Initiate		Y	001939164	TGP
Curtailment	7/10/2010 3:59:00 PM	7/11/2010 9:00:00 AM	7/12/2010 9:00:00 AM	132449	RESTRICTIONS FOR 07/11/2010	5		Initiate		Y	001939164	TGP
Curtailment	7/10/2010 3:21:00 PM	7/10/2010 9:00:00 PM	7/11/2010 9:00:00 AM	132448	RESTRICTION LIFTED 7/10/10 ID2	5		Initiate		Y	001939164	TGP
Curtailment	7/10/2010 1:10:00 PM	7/10/2010 9:00:00 PM	7/11/2010 9:00:00 AM	132442	RESTRICTION LIFTED 7/10/10 ID2	5		Initiate		Y	001939164	TGP
Curtailment	7/10/2010 1:00:00 PM	7/11/2010 9:00:00 AM	7/12/2010 9:00:00 AM	132446	ANTICIPATED RESTRICTIONS FOR 07/11/10	5		Initiate		Y	001939164	TGP
Curtailment	7/9/2010 9:15:00 PM	7/10/2010 10:00:00 PM	7/11/2010 9:00:00 AM	132437	RESTRICTIONS LIFTED 7/10/10 ID1	5		Initiate		Y	001939164	TGP
Curtailment	7/9/2010 8:20:00 PM	7/9/2010 10:00:00 PM	7/10/2010 9:00:00 AM	132435	RESTRICTIONS LIFTED 7/09/10 22:00	5		Initiate		Y	001939164	TGP
Curtailment	7/9/2010 4:30:00 PM	7/10/2010 9:00:00 AM	7/11/2010 9:00:00 AM	132429	RESTRICTIONS FOR 07/10/2010 REVISED	5		Initiate		Y	001939164	TGP
Curtailment	7/9/2010 4:20:00 PM	7/10/2010 9:00:00 AM	7/11/2010 9:00:00 AM	132428	RESTRICTIONS FOR 07/10/2010	5		Initiate		Y	001939164	TGP
Curtailment	7/9/2010 2:40:00 PM	7/10/2010 9:00:00 AM	7/11/2010 9:00:00 AM	132422	ANTICIPATED RESTRICTIONS FOR 07/10/10	5		Initiate		Y	001939164	TGP
Curtailment	7/9/2010 1:10:00 PM	7/9/2010 5:00:00 PM	7/10/2010 9:00:00 AM	132420	LEIDY RESTRICTION FOR 07/09/10 ID1	5		Initiate		Y	001939164	TGP

Curtailment	7/8/2010 9:15:00 PM	7/9/2010 5:00:00 PM	7/10/2010 9:00:00 AM	132412	RESTRICTIONS LIFTED 7/09/10 ID1	5	Initiate	Y	001939164	TGP
Curtailment	7/8/2010 4:10:00 PM	7/9/2010 9:00:00 AM	7/10/2010 9:00:00 AM	132408	RESTRICTIONS FOR 07/09/2010	5	Initiate	Y	001939164	TGP
Curtailment	7/8/2010 1:55:00 PM	7/9/2010 9:00:00 AM	7/10/2010 9:00:00 AM	132406	ANTICIPATED RESTRICTIONS FOR 07/09/10	5	Initiate	Y	001939164	TGP
Curtailment	7/7/2010 9:10:00 PM	7/8/2010 5:00:00 PM	7/9/2010 9:00:00 AM	132394	RIVERVALE RESTRICT LIFTED 7/8/10 ID1	5	Initiate	Y	001939164	TGP
Curtailment	7/7/2010 4:10:00 PM	7/8/2010 9:00:00 AM	7/9/2010 9:00:00 AM	132389	RESTRICTIONS FOR 07/08/2010	5	Initiate	Y	001939164	TGP
Curtailment	7/7/2010 1:22:00 PM	7/8/2010 9:00:00 AM	7/9/2010 9:00:00 AM	132387	ANTICIPATED RESTRICTIONS FOR 07/08/10	5	Initiate	Y	001939164	TGP
Curtailment	7/7/2010 1:10:00 PM	7/7/2010 5:00:00 PM	7/8/2010 9:00:00 AM	132384	CARTHAGE RESTRICTION LIFTED 7/7/10 ID2	5	Initiate	Y	001939164	TGP
Curtailment	7/7/2010 1:09:00 PM	7/7/2010 5:00:00 PM	7/8/2010 9:00:00 AM	132385	LEIDY RESTRICTION FOR 07/07/10 ID1	5	Initiate	Y	001939164	TGP
Curtailment	7/6/2010 9:15:00 PM	7/7/2010 5:00:00 PM	7/8/2010 9:00:00 AM	132378	RESTRICTIONS LIFTED 7/07/10 ID1	5	Initiate	Y	001939164	TGP
Curtailment	7/6/2010 5:05:00 PM	7/7/2010 9:00:00 AM	7/8/2010 9:00:00 AM	132374	RESTRICTIONS FOR 07/07/2010 REVISED	5	Initiate	Y	001939164	TGP
Curtailment	7/6/2010 4:35:00 PM	7/6/2010 9:00:00 PM	7/7/2010 9:00:00 AM	132373	NO INCREASES MLV 355 7/6/10 - ID2	5	Initiate	Y	001939164	TGP
Curtailment	7/6/2010 4:20:00 PM	7/7/2010 9:00:00 AM	7/8/2010 9:00:00 AM	132372	RESTRICTIONS FOR 07/07/2010	5	Initiate	Y	001939164	TGP
Curtailment	7/6/2010 4:00:00 PM	7/7/2010 5:00:00 PM	7/8/2010 9:00:00 AM	132366	RESTRICTION/NO INCREASES EFF 7/06/10 ID1	5	Initiate	Y	001939164	TGP
Curtailment	7/6/2010 2:05:00 PM	7/7/2010 9:00:00 AM	7/8/2010 9:00:00 AM	132369	ANTICIPATED RESTRICTIONS FOR 07/07/10	5	Initiate	Y	001939164	TGP
Curtailment	7/5/2010 9:30:00 PM	7/6/2010 5:00:00 PM	7/7/2010 9:00:00 AM	132361	RESTRICTIONS LIFTED 7/06/10 ID1	5	Initiate	Y	001939164	TGP
Curtailment	7/5/2010 4:15:00 PM	7/6/2010 9:00:00 AM	7/7/2010 9:00:00 AM	132356	RESTRICTIONS FOR 07/06/2010	5	Initiate	Y	001939164	TGP
Curtailment	7/5/2010 1:45:00 PM	7/6/2010 9:00:00 AM	7/7/2010 9:00:00 AM	132354	ANTICIPATED RESTRICTIONS FOR 07/06/10	5	Initiate	Y	001939164	TGP
Curtailment	7/4/2010 9:20:00 PM	7/5/2010 5:00:00 PM	7/6/2010 9:00:00 AM	132348	RESTRICTIONS LIFTED EFF. 7/05/10 ID1	5	Initiate	Y	001939164	TGP
Curtailment	7/4/2010 4:05:00 PM	7/5/2010 9:00:00 AM	7/6/2010 9:00:00 AM	132343	RESTRICTIONS FOR 07/05/2010	5	Initiate	Y	001939164	TGP
Curtailment	7/4/2010 1:50:00 PM	7/5/2010 9:00:00 AM	7/6/2010 9:00:00 AM	132341	ANTICIPATED RESTRICTIONS FOR 07/05/10	5	Initiate	Y	001939164	TGP
Curtailment	7/3/2010 9:26:00 PM	7/4/2010 9:00:00 PM	7/6/2010 9:00:00 AM	132335	CARTHAGE RESTRICTION LIFTED 7/4/10 ID1	5	Initiate	Y	001939164	TGP
Curtailment	7/3/2010 3:55:00 PM	7/4/2010 9:00:00 AM	7/5/2010 9:00:00 AM	132330	RESTRICTIONS FOR 07/04/2010	5	Initiate	Y	001939164	TGP
Curtailment	7/3/2010 1:30:00 PM	7/4/2010 9:00:00 AM	7/5/2010 9:00:00 AM	132328	ANTICIPATED RESTRICTIONS FOR 07/04/10	5	Initiate	Y	001939164	TGP
Curtailment	7/2/2010 4:08:00 PM	7/3/2010 9:00:00 AM	7/4/2010 9:00:00 AM	132316	RESTRICTIONS FOR 07/03/2010	5	Initiate	Y	001939164	TGP
Curtailment	7/2/2010 1:30:00 PM	7/3/2010 9:00:00 AM	7/4/2010 9:00:00 AM	132309	ANTICIPATED RESTRICTIONS FOR 07/03/10	5	Initiate	Y	001939164	TGP
Curtailment	7/1/2010 9:15:00 PM	7/2/2010 5:00:00 PM	7/3/2010 9:00:00 AM	132301	RESTRICTION LIFTED 7/02/2010 ID1	5	Initiate	Y	001939164	TGP
Curtailment	7/1/2010 3:55:00 PM	7/2/2010 9:00:00 AM	7/3/2010 9:00:00 AM	132295	RESTRICTIONS FOR 07/02/2010	5	Initiate	Y	001939164	TGP
Curtailment	7/1/2010 1:30:00 PM	7/2/2010 9:00:00 AM	7/3/2010 9:00:00 AM	132292	ANTICIPATED RESTRICTIONS FOR 07/02/10	5	Initiate	Y	001939164	TGP
Curtailment	6/30/2010 9:15:00 PM	7/1/2010 5:00:00 PM	7/2/2010 9:00:00 AM	132283	RESTRICTION LIFTED 7/01/2010 ID1	5	Initiate	Y	001939164	TGP
Curtailment	6/30/2010 4:00:00 PM	7/1/2010 9:00:00 AM	7/2/2010 9:00:00 AM	132278	RESTRICTIONS FOR 06/30/2010	5	Initiate	Y	001939164	TGP
Curtailment	6/30/2010 1:35:00 PM	7/1/2010 9:00:00 AM	7/2/2010 9:00:00 AM	132276	ANTICIPATED RESTRICTIONS FOR 07/01/10	5	Initiate	Y	001939164	TGP
Curtailment	6/29/2010 9:15:00 PM	6/30/2010 5:00:00 PM	7/1/2010 9:00:00 AM	132268	RIVERVALE RESTRICT LIFTED 6/30/10 ID1	5	Initiate	Y	001939164	TGP
Curtailment	6/29/2010 4:00:00 PM	6/30/2010 9:00:00 AM	7/1/2010 9:00:00 AM	132259	RESTRICTIONS FOR 06/30/10	5	Initiate	Y	001939164	TGP
Curtailment	6/29/2010 2:15:00 PM	6/30/2010 9:00:00 AM	7/1/2010 9:00:00 AM	132258	ANTICIPATED RESTRICTIONS FOR 06/30/10	5	Initiate	Y	001939164	TGP
Curtailment	6/29/2010 1:30:00 PM	6/29/2010 9:00:00 PM	6/30/2010 9:00:00 AM	132256	NO INCREASES NIAGARA SPUR BH EFF ID2	5	Initiate	Y	001939164	TGP
Curtailment	6/29/2010 9:06:00 AM	6/29/2010 5:00:00 PM	6/30/2010 9:00:00 AM	132248	RESTRICTIONS LIFTED EFF. 6/29/10 ID1	5	Initiate	Y	001939164	TGP
Curtailment	6/29/2010 8:00:00 AM	6/29/2010 5:00:00 PM	6/29/2010 9:00:00 AM	132246	STA 245 RESTRICTION LIFTED 6/29/10 ID1	5	Initiate	Y	001939164	TGP
Curtailment	6/28/2010 9:15:00 PM	6/29/2010 5:00:00 PM	6/30/2010 9:00:00 AM	132242	NO INCREASES CARTHAGE 6/29/10 ID1	5	Initiate	Y	001939164	TGP
Curtailment	6/28/2010 9:15:00 PM	6/29/2010 5:00:00 PM	6/30/2010 9:00:00 AM	132243	RESTRICTIONS LIFTED EFF. 6/29/10 ID1	5	Initiate	Y	001939164	TGP
Curtailment	6/28/2010 5:05:00 PM	6/29/2010 9:00:00 AM	6/30/2010 9:00:00 AM	132238	RESTRICTIONS FOR 06/29/10	5	Initiate	Y	001939164	TGP
Curtailment	6/28/2010 1:55:00 PM	6/29/2010 9:00:00 AM	6/30/2010 9:00:00 AM	132236	ANTICIPATED RESTRICTIONS FOR 06/29/10	5	Initiate	Y	001939164	TGP
Curtailment	6/27/2010 9:15:00 PM	6/28/2010 5:00:00 PM	6/29/2010 9:00:00 AM	132219	RESTRICTIONS LIFTED 6/28/10 ID1	5	Initiate	Y	001939164	TGP
Curtailment	6/27/2010 4:05:00 PM	6/28/2010 9:00:00 AM	6/29/2010 9:00:00 AM	132216	RESTRICTIONS FOR 06/28/10	5	Initiate	Y	001939164	TGP
Curtailment	6/27/2010 1:35:00 PM	6/28/2010 9:00:00 AM	6/29/2010 9:00:00 AM	132214	ANTICIPATED RESTRICTIONS FOR 06/28/10	5	Initiate	Y	001939164	TGP
Curtailment	6/26/2010 9:15:00 PM	6/27/2010 5:00:00 PM	6/28/2010 9:00:00 AM	132205	RESTRICTIONS LIFTED 6/27/10 ID1	5	Initiate	Y	001939164	TGP
Curtailment	6/26/2010 4:05:00 PM	6/27/2010 9:00:00 AM	6/28/2010 9:00:00 AM	132202	RESTRICTIONS FOR 06/27/10	5	Initiate	Y	001939164	TGP
Curtailment	6/26/2010 1:20:00 PM	6/27/2010 9:00:00 AM	6/28/2010 9:00:00 AM	132196	ANT RESTRICTIONS FOR 06/27/10 - REVISED	5	Initiate	Y	001939164	TGP
Curtailment	6/26/2010 1:00:00 PM	6/27/2010 9:00:00 AM	6/28/2010 9:00:00 AM	132197	ANTICIPATED RESTRICTIONS FOR 06/27/10	5	Initiate	Y	001939164	TGP
Curtailment	6/25/2010 9:15:00 PM	6/26/2010 5:00:00 PM	6/27/2010 9:00:00 AM	132190	RESTRICTIONS LIFTED 6/26/10 ID1	5	Initiate	Y	001939164	TGP

APPENDIX C

Relevant Maxim Emails with IMM

July-August

From: Kyle Mitton [kmitton@maximpowercorp.com]
Sent: Friday, July 16, 2010 12:03 PM
To: jangeli@iso-ne.com
Subject: Asset 326 - Altresco/Pittsfield

Hi John,

I was out of the office yesterday but got your message regarding the offer price for Asset 326. Similarly to our other units we have been offering the unit in conservatively on fuel oil due to the daily gas restrictions on Tennessee Gas Pipeline. I can provide you the restriction notices for your records if you like – please let me know.

Thanks,

Kyle Mitton
Energy Marketing Analyst
Maxim Power Corp.
p. 403.750.9310
c. 403.554.3060
f. 403.263.9125
e. kmitton@maximpowercorp.com
web www.maximpowercorp.com

From: Kyle Mitton [kmitton@maximpowercorp.com]
Sent: Monday, July 19, 2010 4:48 PM
To: Angeli, John
Cc: Eagle Kwok
Subject: RE: Asset 326 - Altresco/Pittsfield
Attachments: TGP Restriction Notice Summary (July 1-20, 2010).pdf

Hi John,

Here is a pdf with all the restrictions that TGP has posted on their Critical Notice Board month to date for July 2010. As you can see from this file there have been restrictions every day of the month so far in July. The main reason for this is that TGP is performing maintenance on some key compressor stations which are causing "bottlenecks" and reducing the amount of gas that can flow. During normal heat this wouldn't be an issue however with the prolonged heat wave in the Northeast restrictions have been a serious issue. Penalties issued by the Local Distribution Company for burning gas that is not ours are extremely severe, so to protect ourselves we have been offering in on fuel oil to control our risk exposure.

In the past Pittsfield/Altresco has sent a notice to let Market Monitoring know when the unit was offering on fuel oil due to gas pipeline restrictions. Is this a practice you wish us to continue on a go-forward basis?

Please don't hesitate to call me if you wish to discuss.

Regards,
Kyle

From: Angeli, John [mailto:jangeli@iso-ne.com]
Sent: Friday, July 16, 2010 11:24 AM
To: Kyle Mitton
Subject: RE: Asset 326 - Altresco/Pittsfield

Kyle the backup would be helpful.

From: Kyle Mitton [mailto:kmitton@maximpowercorp.com]
Sent: Friday, July 16, 2010 1:03 PM
To: Angeli, John
Subject: Asset 326 - Altresco/Pittsfield

Hi John,

I was out of the office yesterday but got your message regarding the offer price for Asset 326. Similarly to our other units we have been offering the unit in conservatively on fuel oil due to the daily gas restrictions on Tennessee Gas Pipeline. I can provide you the restriction notices for your records if you like – please let me know.

Thanks,

Kyle Mitton
Energy Marketing Analyst
Maxim Power Corp.
p. 403.750.9310
c. 403.554.3060
f. 403.263.9125
e. kmitton@maximpowercorp.com
web www.maximpowercorp.com

From: Kyle Mitton [kmitton@maximpowercorp.com]
Sent: Tuesday, July 20, 2010 1:22 PM
To: Angeli, John
Cc: Eagle Kwok
Subject: RE: Asset 326 - Altresco/Pittsfield

Thanks John – will do.

As a heads up we are in on fuel oil again for tomorrow.

Regards,

Kyle

From: Angeli, John [mailto:jangeli@iso-ne.com]
Sent: Tuesday, July 20, 2010 11:47 AM
To: Kyle Mitton
Subject: RE: Asset 326 - Altresco/Pittsfield

Kyle, when you have a fuel issue please let us so we can model the unit on the correct fuel.

John Angeli

From: Kyle Mitton [mailto:kmitton@maximpowercorp.com]
Sent: Monday, July 19, 2010 5:48 PM
To: Angeli, John
Cc: Kwok, Eagle
Subject: RE: Asset 326 - Altresco/Pittsfield

Hi John,

Here is a pdf with all the restrictions that TGP has posted on their Critical Notice Board month to date for July 2010. As you can see from this file there have been restrictions every day of the month so far in July. The main reason for this is that TGP is performing maintenance on some key compressor stations which are causing "bottlenecks" and reducing the amount of gas that can flow. During normal heat this wouldn't be an issue however with the prolonged heat wave in the Northeast restrictions have been a serious issue. Penalties issued by the Local Distribution Company for burning gas that is not ours are extremely severe, so to protect ourselves we have been offering in on fuel oil to control our risk exposure.

In the past Pittsfleld/Altresco has sent a notice to let Market Monitoring know when the unit was offering on fuel oil due to gas pipeline restrictions. Is this a practice you wish us to continue on a go-forward basis?

Please don't hesitate to call me if you wish to discuss.

Regards,
Kyle

From: Angeli, John [mailto:jangeli@iso-ne.com]
Sent: Friday, July 16, 2010 11:24 AM
To: Kyle Mitton
Subject: RE: Asset 326 - Altresco/Pittsfield

Kyle the backup would be helpful.

From: Chris Devasahayam [cdevasahayam@maximpowercorp.com]
Sent: Tuesday, July 20, 2010 7:07 PM
To: Eagle Kwok
Cc: Kyle Mitton
Subject: Market Rules

Hi Eagle,

I have read through the Market Rules talked with Kyle, and wanted to provide some points from the Market Rules:

The Market Monitor (MM) has the power to mitigate offers that have a material effect on NCPC. It has to go through 3 stages of investigation:

1) Before imposing any mitigation, the MM has to investigate reasons for the offer. It they are not convinced…
2) They conduct a test to see if there is a material impact on NCPC.
    a. For transmission constrained areas the energy offer price can't be $25/MWh or 50%, whichever is lower, above the Reference price.
    b. The Reference Price Level for any unit that has been flagged as VAR (dispatched uneconomically more than 50% of the time in the past 90 days) is calculated as follows:
        i. The price which must be negotiated BEFORE the incident (hopefully done during the RMR process) and INTENDED to reflect the Units marginal costs.
3) If the test fails, they find the participant guilty and mitigate offers:
    a. The mitigation of the offer can be back to LMP or to a deemed competitive unit offer. They try not to mitigate below a units costs.
    b. The matter is referred to the Commission. It is not clear whether there is further legal action other than mitigation after this point.

If we can provide the MM with the rationalization behind our pricing, it won't get to the 2nd or 3rd stages:
1) Can't get gas during specific time periods of the day when there are gas restrictions.
2) Have been dispatched when have bid in on gas during the restricted time periods, and have been forced to burn oil at a significant loss.
3) System only provides for 1 offer all day, therefore can't put in 2 offers.
4) Have burnt oil recently
5) Have been consistently offering in on oil during restrictions. See e-mail correspondence during RMR period.

Lastly the ISO can identify any unit as a reliability unit during the year in conjunction with market monitoring, so this may be another avenue to pursue.

Regards,
Chris Devasahayam
Manager of Energy Marketing and Portfolio Management
Maxim Power Corp.
1210, 715 - 5 Avenue S.W.
Calgary, Alberta
T2P 2X6
Ph: 403-750-9321
Cell: 403-861-9969
Fax: 403-263-9125

email: cdevasahayam@maximpowercorp.com

From: Kyle Mitton [kmitton@maximpowercorp.com]
Sent: Wednesday, July 21, 2010 4:02 PM
To: Angeli, John
Cc: Eagle Kwok
Subject: Asset 326 on Oil Pricing for 7/22

Hi John,

Altresco is on fuel oil pricing again for 7/22 due to gas restrictions again.

Notice Type	Posted Date/Time	Notice Effective Date/Time	Notice End Date/Time	Notice Identifier	Subject	Required Response	Response Date/Time	Notice Status	Prior Notice Identifier	Critical Notice Indicator	TSP	Name
Curtailment	7/21/2010 1:50:00 PM	7/22/2010 9:00:00 AM	7/23/2010 9:00:00 AM	132631	ANTICIPATED RESTRICTIONS FOR 07/22/10	5		Initiate		Y	001939164	TGP

Regards,

Kyle Mitton
Energy Marketing Analyst
Maxim Power Corp.
p. 403.750.9310
c. 403.554.3060
f. 403.263.9125
e. kmitton@maximpowercorp.com
web www.maximpowercorp.com

From: Eagle Kwok [ekwok@maximpowercorp.com]
Sent: Monday, August 23, 2010 4:10 PM
To: Dominguez, Richard
Cc: Angeli, John; Bagge, Robert; Kyle Mitton; Kyle Van Koughnett; Heather Wilton; Jamie Urquhart; John Hanlon; Don Scholl; johnsong@dicksteinshapiro.com
Subject: RE: Altresco - July 2010 Fuel Burn

Importance: High

Rick,

Attached below is Pittsfield's fuel burn profile for the days that you have requested. Despite the disparity in natural gas and fuel oil consumption, you must appreciate that we have been forthwith with IMMU under the circumstances by which we have made our decision to offer Pittsfield's energy either using natural gas or fuel oil pricing. You have informed us that you are likely to seek mitigation measures at Pittsfield. However, we would like IMMU to provide us with additional information so that we can understand better the criterion by which mitigation measures are potentially implemented. In addition, we would like IMMU to clarify and reaffirm that Pittsfield has acted reasonable in its desire to mitigate substantial fuel pricing disparities during times of natural gas pipeline restrictions that can directly impact Pittsfield's ability to procure natural gas.

1. Pittsfield would like to know, in the case of a dual-fuel unit, what reference price the IMMU uses when determining whether an offer threshold is exceeded.

2. Pittsfield would like to know what criterion the IMMU applies to determine the reasonableness/justification for using an alternative fuel price as the basis for an energy offer.

3. Where the issue is whether the lower-cost fuel will be available during the operating day, Pittsfield believes that the IMMU should consider the reasonableness of (or justification for) using an alternative fuel price in light of:

(i) the information that was available to the offerer at the time the offerer was required to submit its offer (whether the lower cost fuel actually was available in real time should be irrelevant).

(ii) the risk faced by the offerer at the time it had to decide upon which fuel to base its offer, which is a combination of the likelihood of the lower cost fuel not being available (e.g., being curtailed or restricted due to gas pipeline issues) and the significant financial consequences to the offerer if the offer were based on the lower cost fuel and the lower cost fuel proved not to be available (both of which increase in proportion to the number of hours that the offerer's unit is selected to run). Over a 24-hour period, the financial risks of burning fuel oil and being compensated on natural gas pricing on electricity can be in excess of $335,000. This would require Pittsfield in excess of 90 run hours at maximum capacity in order to recover the loss from operating on fuel oil. This facility in the last 5 years has operated under a 10% capacity factor which does not allow a reasonable opportunity to recover significant losses of this nature. Another way to compare this risk is that it represents more than 55% of our current monthly forward capacity payment on one mismatched fuel pricing incident.

(iii) the reliability value of the energy being supplied -- i.e., both the consequences to load if the offerer's capacity was not supplied that day (due to lack of fuel that day), and the consequences to load if the offerer's capacity became unavailable due to the shutdown of the unit.

(iv) Pittsfield has utilized the same consistent criteria to offer the unit's output on fuel oil pricing based on natural gas pipeline restriction notices in July/August 2010 as compared to during the Cost-of-Service Agreement period which was previously accepted and approved by IMMU.

4. Pittsfield actions were taken in good faith for legitimate risk management business reasons. As we have discussed, there appears to be no recourse for Market Participants to seek NCPC payments when the opposite occurs. i.e. Pittsfield receives electricity revenues based on natural gas pricing but has to burn fuel oil. Does this market design flaw (from a balance of risk perspective for the participant) warrant IMMU's recommendation to the Commission for a potential tariff improvement?

Date	Gas (MMBtu)	Oil (Gal)
6-Jul-10	19908	0
7-Jul-10	18423	0
8-Jul-10	18007	0
9-Jul-10	15018	0
10-Jul-10	6704	0
12-Jul-10	17569	0
13-Jul-10	14361	0
14-Jul-10	15282	0
15-Jul-10	12513	0
16-Jul-10	14674	0
17-Jul-10	4857	11690
18-Jul-10	7948	0
19-Jul-10	16272	0
20-Jul-10	14178	0
21-Jul-10	12796	0
22-Jul-10	7281	0
24-Jul-10	8047	9135

We look forward to continuing our discussions and resolution on this matter tomorrow at 3:00pm EST.

Thank you for your attention on this matter.

Regards,

Eagle Kwok
Director, Energy Marketing
Ph: (403) 750 9322
Fax: (403) 263 9125
Mob: (403) 650 2183

email: ekwok@maximpowercorp.com

Maxim Power Corp.
Suite 1210, 715 – 5th Avenue SW
Calgary, Alberta, Canada
T2P 2X6

From: Dominguez, Richard [mailto:rdominguez@iso-ne.com]
Sent: Monday, August 16, 2010 2:42 PM
To: Eagle Kwok; Kyle Mitton
Cc: Angeli, John; Bagge, Robert
Subject: Altresco - July 2010 Fuel Burn
Importance: High

Eagle, Kyle:

In our standard review process, Altresco (Asset #326) has violated our conduct threshold screen for NCPC. As part of our process with dual fuel capable units, we are requesting you to confirm and document the fuel burn for each of the following days:

	Fuel Burn	
Date	**Natural Gas**	**No2**
Tuesday, July 06, 2010		
Wednesday, July 07, 2010		
Thursday, July 08, 2010		
Friday, July 09, 2010		
Saturday, July 10, 2010		
Monday, July 12, 2010		
Tuesday, July 13, 2010		
Wednesday, July 14, 2010		
Thursday, July 15, 2010		
Friday, July 16, 2010		
Saturday, July 17, 2010		
Sunday, July 18, 2010		
Monday, July 19, 2010		
Tuesday, July 20, 2010		
Wednesday, July 21, 2010		
Thursday, July 22, 2010		
Saturday, July 24, 2010		

Please provide within 5 business day (not later than August 23, 2010).

Regards: Rick

Richard J. Dominguez, CBM
Supervisor, Market Compliance | Market Monitoring

ISO New England One Sullivan Road, Holyoke, MA 01040-2841
T 413 540 4552 **F** 413 535 4084 **C** 413-218-6672
E mailto:rdominguez@iso-ne.com

APPENDIX D

Kwok Notes of
July 22, 2010 Call with IMM

[Exhibit 2 to Maxim Answer]

July 22nd, 2010 John, Bob, Rick
Market Monitoring

- Bid in oil as it is a risk management strategy to ensure we recover our fuel costs.

- There are restrictions until Aug 8th at TGPs
245 gas compressor stations. And security of gas supply is not certain.

- FCM prices are too low for us. At this year's clearing price we will barely break even. Cash flow neutral. Our company cannot sustain 1 or more dispatches by ISO-NE on gas cost and we have to burn fuel oil.

- We don't want to be in bankruptcy protection like Boston Generating 2600MW @ 7.25 Heat rate. We only have 140MW @ an even higher heat rate.

- Based on historical dispatches, Pittsfield of less than 10% capacity for during the RMR contract. We just don't run enough to pay fuel oil.

- Provided gas restrictions in Aug 2009.

- Real Time dispatches.

- Peak Energy Rents deductions.

- We've noticed real time prices are extremely high and volatile. We don't have funds to repay that through FCM payments.

July 22, 2010 Market Monitoring
Heat rate 8.5 - 8.7 HR.
241 MW summer capacity.

1 unit HR?
9.5 - 9.8?

Offers - Inputs

Look at Schedule 1 Detail.

(1) ECO. MIN. @ 40MW is an issue with Market Monitoring

Offer prices on NCPC.

(2) Send MMU offer model.

July 27th, 2010 Market Monitoring Conference call.

Physical characteristics of the plant.

Pseudo combined cycling.

Send an e-mail back to Market Monitoring acknowledging the revised Eco. Minimum.

Check with Dickstein on letter back to MMU.

1. Current A_0, A_1 + A_2 data is incorrect.
2. The input / output Curve is not accurate for a 1X1, 2X1, + 3X1 configuration. One input / output curve does not fit the various configuration.
3. Input / Output curve should be based on run data based on

APPENDIX E

Information about Tennessee Gas Pipeline Restrictions Relevant to Pittsfield Plant on June 2, 3, 20, 21, 22, and 23, July 5, and August 9, 2010

[showing restrictions at one or more of locations 223, 245, 307, 321, or 355]

Source: "Critical Notices from June 2010_August 2010" Spreadsheet provided by TGP on Dec. 12, 2014, available in "Tennessee Gas Pipeline and Angeli emails / Kinder Morgan" folder in Investigative Materials filed by staff on Feb. 4, 2015

notice_identifier	create_date_time	org_id	notice_ctgy_code	notice_type	notice_type_desc	beg_post_date_time	end_post_date_time
132957	8/8/10 16:03	TGP	BLTN	3	Curtailment	8/8/10 16:05	11/7/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: RESTRICTIONS FOR 8/09/2010

Effective Timely Cycle, 9:00 AM CCT, for the gas day of August 9, 2010, Tennessee restricted the following:

SUMMARY:

Restrictions
============
Leidy Delivery Meters - through approx 8% of SOP
STA 245 - through 100% of IT

No increases
============
Leidy Delivery Meters (005030/005031)
STA 245 (Pipeline Point P00011)
STA 321 (Pipeline Point P00025)
MLV 355 S/M (Pipeline Point P00162) - gas flowing
from the 300 to the 200 line

DETAILS:

** Leidy Delivery Meters (005030/005031)
Due to nominations in excess of capacity, Tennessee restricted through approximately 8% of Secondary Out of the Path nominations, (Park Withdrawal/Loans, IT-X, IT, AOT, Payback from Tennessee, EDS/ERS, SOP) pathed for delivery to the Leidy Delivery Meters.

** STA 245 (Pipeline Point P00011)
Due to nominations in excess of capacity, Tennessee restricted through 100% of Supply to Market Interruptible Service nominations, (Park Withdrawal/Loans, IT-X, IT, AOT, Payback from Tennessee,EDS/ERS) pathed through STA 245.

For the remainder of the August 9, 2010 gas day:

** Leidy Delivery Meters (005030/005031)

Tennessee will not accept any nomination increases delivered to the Leidy Delivery Meters. Tennessee will allow shippers to adjust nominations under the same Duns number delivered to these meters provided that the net volume change for such adjustments does not exceed previously scheduled volumes delivered to the Leidy Delivery Meters.

** STA 245 (Pipeline Point P00011)
Tennessee will not accept any Supply to Market increases pathed through STA 245. Tennessee will allow shippers to adjust nominations under the same Duns number pathed through STA 245 provided that the net volume change for such adjustments does not exceed previously scheduled volumes pathed through STA 245.

** STA 321 (Pipeline Point P00025)
Tennessee will not accept any Supply to Market increases pathed through STA 321. Tennessee will allow shippers to adjust nominations under the same Duns number pathed through STA 321 provided that the net volume change for such adjustments does not exceed previously scheduled volumes pathed through STA 321.

** MLV 355 S/M (Pipeline Point P00162) - gas flowing from the 300 to the 200 line
Tennessee will not accept any Supply to Market increases pathed through MLV 355. Tennessee will allow shippers to adjust nominations under the same Duns number pathed through MLV 355 provided that the net volume change for such adjustments does not exceed previously scheduled volumes path through MLV 355.

ESTIMATED AVAILABLE CAPACITY - KEY POINTS
==
In an effort to assist customers with decisions related to capacity utilization on our system, TGP will provide an estimate of how much capacity is available at key points on our system. The numbers provided are estimates and subject to change due to changes in nominations, confirmations, force balancing, and the operational integrity of the system.

ID #	Point Name	Est. Capacity
P00053	STA 17	1,076,000 dth
P00080	Carthage Lateral	50,000 dth
P00292	MLV 48	1,044,000 dth
P00042	MLV 834	234,000 dth

P00108	MLV 529	632,000 dth
P00006	STA 200	1,160,000 dth
P00293	STA 209	597,000 dth
P00074	STA 219	431,000 dth
P00257/P00019	MLV 223/STA 307	291,000 dth
P00297	Niagara Spur Backhaul	45,000 dth
P00011	STA 245	0 dth
P00021	MLV 314	948,000 dth
P00024	STA 319	505,000 dth
P00025	STA 321	0 dth
P00095	MLV 336	96,000 dth
P00162	MLV 355 S/M	0 dth
021008	Leidy Delivery Meters	0 dth

ON-GOING LIMITATIONS
====================
None

OPERATIONAL FLOW ORDERS (OFO)
=============================
None

METERS OUT OF SERVICE DUE TO SCHEDULED MAINTENANCE
==
MLV 17-1 to MLV 20-1: Install Pig launcher and receiver;
Replace valves; hydrostatic testing
011112 Katy Dehydration Exchange

MLV 17-2 to MLV 20-2A: Install Pig launcher and receiver;
replace valves & elbows; hydrostatic testing
011788 Katy Transport

Line 527A-2400: Line Abandonment
011423 West Delta Block 109

MLV 270C-102 to MLV 270C-104 (Beverly Salem Lateral): Internal
pipe inspections/ILI Cable tool 12" section only
020658 Peabody Sales
020118 Beverly Salem Massachusetts

HURRICANE EMERGENT OUTAGES
==========================
Bluewater Southwest Leg
523A - 100 (La. Coastal Bay Marchand Line)
    Meter 01-0436
524C - 600 (South Timbalier - 66 Line)
    Meter 01-1892

527A - 1300 Line
Meter 01-1698 (South Pass 49A)
527A - 1800 Line
Meter 01-2175 (South Pass 52)

If you have any questions, please contact your Scheduler.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

132955	8/8/10 14:04	TGP	BLTN	3	Curtailment	8/8/10 14:10	11/7/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: ANTICIPATED RESTRICTIONS FOR 08/09/10

Effective Timely Cycle, 9:00 AM CCT, for the gas day of August 9, 2010, Tennessee anticipates the following restrictions:

SUMMARY:

Restrictions
============
Leidy Delivery Meters - through approx 7% of SOP
STA 245 - through 100% of IT

No Increases
============
Leidy Delivery Meters (005030/005031)
STA 245 (Pipeline Point P00011)
STA 321 (Pipeline Point P00025)
MLV 355 S/M (Pipeline Point P00162) - gas flowing
from the 300 to the 200 line

If you have any questions, please contact your Scheduler.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

132343	7/4/10 16:02	TGP	BLTN	3	Curtailment	7/4/10 16:05	10/3/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: RESTRICTIONS FOR 7/5/2010

Effective Timely Cycle, 9:00 AM CCT, for the gas day of July 5, 2010, Tennessee restricted the following:

SUMMARY:

Restrictions
============
Carthage Line Lateral - through approx 8% SOP
STA 245 (P00011) - through 100% IT

No increases
============
Carthage Line Lateral (Pipeline Point P00080)
STA 245 (P00011)

DETAILS:

** Carthage Line Lateral (Pipeline Point P00080)
Tennessee restricted through approximately 8% of Market to Supply Secondary Out of the Path nominations, (Park Withdraw/Loans, IT-X, IT, AOT, Payback from Tennessee, EDS/ERS, SOP) pathed from meters located on the Carthage Line Lateral.

** STA 245 (Pipeline Point P00011)
Due to scheduled maintenance, Tennessee restricted through 100% of Supply to Market Interruptible Service nominations, (Park Withdrawal/Loans, IT-X, IT, AOT, Payback from Tennessee, EDS/ERS) pathed through Station 245.

For the remainder of the July 5, 2010 gas day:

** Carthage Line Lateral (Pipeline Point P00080)
Tennessee will not accept any Market to Supply increases pathed from meters located on the Carthage Line Lateral. Tennessee will allow shippers to adjust nominations under the same Duns number pathed through this point provided that the net volume change for such adjustments does not exceed previously scheduled volumes pathed from meters located on the Carthage Line Lateral.

** STA 245 (Pipeline Point P00011)
Due to scheduled maintenance, Tennessee will not accept any Supply to Market increases pathed through STA 245. Tennessee will allow shippers to adjust nominations under the same Duns

number pathed through STA 245 provided that the net volume change for such adjustments does not exceed previously scheduled volumes path through STA 245.

ESTIMATED AVAILABLE CAPACITY - KEY POINTS
==
In an effort to assist customers with decisions related to capacity utilization on our system, TGP will provide an estimate of how much capacity is available at key points on our system. The numbers provided are estimates and subject to change due to changes in nominations, confirmations, force balancing, and the operational integrity of the system.

ID #	Point Name	Est. Capacity
P00053	STA 17	1,123,000 dth
P00080	Carthage Lateral	0 dth
P00292	MLV 48	1,005,000 dth
P00042	MLV 834	409,000 dth
P00108	MLV 529	758,000 dth
P00006	STA 200	1,007,000 dth
P00293	STA 209	454,000 dth
P00074	STA 219	311,000 dth
P00257/P00019	MLV 223/STA 307	202,000 dth
P00297	Niagara Spur Backhaul	82,000 dth
P00011	STA 245	115,000 dth
P00021	MLV 314	843,000 dth
P00024	STA 319	401,000 dth
P00025	STA 321	118,000 dth
P00095	MLV 336	22,000 dth
P00100	MLV 355	214,000 dth
021008	Can East Leidy	2,000 dth

ON-GOING LIMITATIONS
====================
None

OPERATIONAL FLOW ORDERS (OFO)
============================
None

METERS OUT OF SERVICE DUE TO SCHEDULED MAINTENANCE
==
MLV 17-2 to MLV 20-2A: Install Pig launcher and receiver; replace valves & elbows; hydrostatic testing
011788 Katy Transport

MLV 200-1 to MLV 201-1: Install Pig launcher, replace valves
and pipe
020079 Greenup Kentucky

HURRICANE EMERGENT OUTAGES
=========================
Bluewater Southwest Leg
523A - 100 (La. Coastal Bay Marchand Line)
Meter 01-0436
524C - 600 (South Timbalier - 66 Line)
Meter 01-1892
527A - 1300 Line
Meter 01-1698 (South Pass 49A)
527A - 1800 Line
Meter 01-2175 (South Pass 52)

If you have any questions, please contact your Scheduler.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

132341	7/4/10 13:45	TGP	BLTN	3	Curtailment	7/4/10 13:50	10/3/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: ANTICIPATED RESTRICTIONS FOR 07/05/10

Effective Timely Cycle, 9:00 AM CCT, for the gas day of
July 5, 2010, Tennessee anticipates the following restrictions:

SUMMARY:

Restrictions
============
Carthage Line Terminus - through approx 8% SOP
STA 245 (P00011) - through 100% IT

No increases
============
Carthage Line Terminus (Pipeline Point P00080)
STA 245 (P00011)

If you have any questions, please contact your Scheduler.

Layne Sanders

Manager, Transportation Services
Gas Scheduling

132135	6/23/10 16:08	TGP	BLTN	3	Curtailment	6/23/10 16:15	9/22/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: NO INCREASES STA 245 06/23/10 ID2

Effective Intraday Cycle ID2, for the gas day of June 23,
2010, Tennessee will not accept any Supply to Market nomination
increases pathed through STA 0245 (Pipeline Point P00011).

For the remainder of the June 23, 2010 gas day:

** STA 245 (Pipeline Point P00011)
Tennessee will not accept any Supply to Market increases pathed
through STA 245. Tennessee will allow shippers to adjust
nominations under the same Duns number pathed through STA 245
provided that the net volume change for such adjustments does
not exceed previously scheduled volumes path through STA 245.

Customers located downstream of STA 245 are encouraged to seek
supply downstream of STA 245 such as Iroquois Wright (012181),
Dracut (012538), and Distragas (012513) to ensure physical flows
match scheduled volumes for today.

If you have any questions, please contact your Volume Analyst.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

132133	6/23/10 14:13	TGP	BLTN	3	Curtailment	6/23/10 14:20	9/22/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: NO INCREASES EFFECTIVE 06/23/10 21:00

Effective Intraday Cycle 21:00, for the gas day of June 23,
2010, Tennessee will not accept any Supply to Market nomination
increases pathed through the following points:

MLV 223 (Pipeline Point P00257)
STA 307 (Pipeline Point P00019)

For the remainder of the June 23, 2010 gas day:

** MLV 223 (Pipeline Point P00257)
Tennessee will not accept any Supply to Market increases pathed through MLV 223. Tennessee will allow shippers to adjust nominations under the same Duns number pathed through MLV 223 provided that the net volume change for such adjustments does not exceed previously scheduled volumes pathed through MLV 223.

** STA 307 (Pipeline Point P00019)
Tennessee will not accept any Supply to Market increases pathed through Station 307. Tennessee will allow shippers to adjust nominations under the same Duns number pathed through Station 307 provided that the net volume change for such adjustments does not exceed previously scheduled volumes pathed through Station 307.

If you have any questions, please contact your Volume Analyst.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

132102	6/21/10 21:23	TGP	BLTN	3	Curtailment	6/21/10 21:25	9/20/10 2:00
132097	6/21/10 17:08	TGP	BLTN	3	Curtailment	6/21/10 17:26	9/23/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: RESTRICTIONS FOR 6/22/10

Effective Timely Cycle, 9:00 AM CCT, for the gas day of June 22, 2010, Tennessee restricted the following:

SUMMARY:
Restrictions
============
Station 409A-101 Donna Lateral - through approx 8% of IT
Carthage Line lateral- through approx 3% SOP
Leidy Delivery Meters - through approx 59% SOP

Due to scheduled Maintenance:
MLV 223 - through 100% IT

Station 307 - through 100% IT

No increases
============
Station 409A-101 Donna Lateral (P00265)- no interruptible increases
Carthage (P00080)
Leidy Delivery Meters (005030/005031)

Due to scheduled maintenance:
MLV 223 (P00257)
Station 307 (P00019)

DETAILS:

** STA 409A-101 TO S Donna Lateral (Pipeline Point P00265)
Tennessee restricted through approximately 8% of Market to Supply Interruptible Service nominations, Park Withdrawal/Loans, IT-X, IT, AOT, Payback from Tennessee, EDS/ERS) pathed through Station 409A-101 Donna Lateral.

** Carthage Line Lateral (Pipeline Point P00080)
Tennessee restricted through approximately 3% of Supply to Market Secondary Out of the Path nominations, (Park/Loan Payback, IT-X, IT, AOT, Payback to Tennessee, EDS/ERS, SOP) pathed from meters located on the Carthage Line Lateral.

** Leidy Delivery Meters (005030/005031)
Tennessee restricted through approximately 59% of Supply to Market Secondary Out of the Path nominations, (Park Withdrawal/Loans, IT-X, IT, AOT, Payback from Tennessee, EDS/ERS, SOP) pathed for delivery to the Leidy Delivery Meters.

** MLV 223 (Pipeline Point P00257)
Due to scheduled maintenance, Tennessee restricted through 100% of Supply to Market Interruptible Service nominations, (IT-X, IT, AOT, Payback from Tennessee, EDS/ERS, SOP) pathed through MLV 223.

** STA 307 (Pipeline Point P00019)
Due to scheduled maintenance, Tennessee restricted through approximately 20% of Supply to Market Interruptible Service nominations, (IT-X, IT, AOT, Payback from Tennessee, EDS/ERS,

SOP) pathed through Station 307.

For the remainder of the June 22, 2010 gas day:

** STA 409A-101 (Donna Lateral) (Pipeline Point P00265)
Tennessee will not accept any Market to Supply Interruptible Service Nomination increases pathed through Station 409A-101 Donna Lateral. Tennessee will allow shippers to adjust nominations under the same Duns number pathed through Station 409A-101 Donna Lateral provided that the net volume change for such adjustments does not exceed previously scheduled volumes pathed from meters located on Station 409A-101 TO S Donna Lateral.

** Carthage Line Lateral (Pipeline Point P00080)
Tennessee will not accept any Supply to Market increases pathed from meters located on the Carthage Line Lateral. Tennessee will allow shippers to adjust nominations under the same Duns number pathed from these meters provided that the net volume change for such adjustments does not exceed previously scheduled volumes pathed from meters located on the Carthage Line Lateral.

** Leidy Delivery Meters (005030/005031)
Tennessee will not accept any Supply to Market increases delivered to the Leidy Delivery Meters. Tennessee will allow shippers to adjust nominations under the same Duns number delivered to these meters provided that the net volume change for such adjustments does not exceed previously scheduled volumes delivered to the Leidy Delivery Meters.

** MLV 223 (Pipeline Point P00257)
Due to scheduled maintenance, Tennessee will not accept any Supply to Market increases pathed through MLV 223. Tennessee will allow shippers to adjust nominations under the same Duns number pathed through MLV 223 provided that the net volume change for such adjustments does not exceed previously scheduled volumes pathed through MLV 223.

** STA 307 (Pipeline Point P00019)
Due to scheduled maintenance, Tennessee will not accept any Supply to Market increases pathed through STA 307. Tennessee will allow shippers to adjust nominations under the same Duns number pathed through STA 307 provided that the net volume change for such adjustments does not exceed previously scheduled volumes pathed through STA 307

ESTIMATED AVAILABLE CAPACITY - KEY POINTS
==

In an effort to assist customers with decisions related to capacity utilization on our system, TGP will provide an estimate of how much capacity is available at key points on our system. The numbers provided are estimates and subject to change due to changes in nominations, confirmations, force balancing, and the operational integrity of the system.

ID #	Point Name	Est. Capacity
P00053	STA 17	1,119,000 dth
P00080	Carthage Lateral	0 dth
P00292	MLV 48	934,000 dth
P00042	MLV 834	39,000 dth
P00108	MLV 529	690,000 dth
P00006	STA 200	844,000 dth
P00293	STA 209	375,000 dth
P00074	STA 219	221,000 dth
P00257/P00019	MLV 223/STA 307	0 dth
P00297	Niagara Spur Backhaul	53,000 dth
P00011	STA 245	175,000 dth
P00021	MLV 314	796,000 dth
P00024	STA 319	397,000 dth
P00025	STA 321	157,000 dth
P00095	MLV 336	52,000 dth
P00100	MLV 355	173,000 dth
021008	Can East Leidy	0 dth

ON-GOING LIMITATIONS
====================
None

OPERATIONAL FLOW ORDERS (OFO)
============================
None

METERS OUT OF SERVICE DUE TO SCHEDULED MAINTENANCE
==
MLV 17-2 to MLV 20-2A: Install Pig launcher and receiver; replace valves & elbows; hydrostatic testing
011788 Katy Transport

HURRICANE EMERGENT OUTAGES

=========================
Bluewater Southwest Leg
523A - 100 (La. Coastal Bay Marchand Line)
    Meter 01-0436
524C - 600 (South Timbalier - 66 Line)
    Meter 01-1892
527A - 1300 Line
    Meter 01-1698 (South Pass 49A)
527A - 1800 Line
    Meter 01-2175 (South Pass 52)

If you have any questions, please contact your Scheduler.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

132095	6/21/10 14:02	TGP	BLTN	3	Curtailment	6/21/10 14:05	9/20/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: ANTICIPATED RESTRICTIONS FOR 6/22/10

Effective Timely Cycle, 9:00 AM CCT, for the gas day of June 22, 2010, Tennessee anticipates the following restrictions:

SUMMARY:

Restrictions
============
Station 409A-101 Donna Lateral - through approx 7% of IT
Carthage Line lateral- through approx 3% SOP
Leidy Delivery Meters - through approx 61% SOP

Due to scheduled Maintenance:
MLV 223 - through 100% IT
Station 307 - through 100% IT

No increases
============
Station 409A-101 Donna Lateral (P00265)- no interruptible increases
Carthage (P00080)
Leidy Delivery Meters (005030/005031)

Due to scheduled maintenance:
MLV 223 (P00257)
Station 307 (P00019)

If you have any questions, please contact your Scheduler.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

132082	6/20/10 17:07	TGP	BLTN	3	Curtailment	6/20/10 17:15	9/19/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: RESTRICTIONS FOR 6/21/10-REVISED

Effective Timely Cycle, 9:00 AM CCT, for the gas day of
June 21, 2010, Tennessee restricted the following:

SUMMARY:

Restrictions
============
Leidy Delivery Meters - through approx 55% SOP
MLV 223 - through 23% SOP
Station 307 - through 20% SOP

No increases
============
Leidy Delivery Meters (005030/005031)
MLV 223 (P00257)
Station 307 (P00019)

DETAILS:

** Leidy Delivery Meters (005030/005031)
Tennessee restricted through approximately 55% of Supply to Market Secondary Out of the Path nominations, (Park Withdrawal/Loans, IT-X, IT, AOT, Payback from Tennessee, EDS/ERS, SOP) pathed for delivery to the Leidy Delivery Meters.

** MLV 223 (Pipeline Point P00257)
Due to scheduled maintenance, Tennessee restricted through approximately 23% of Supply to Market Secondary Out of the Path nominations, (Park Withdrawal/Loan, IT-X, IT, AOT, Payback from Tennessee, EDS/ERS, SOP) pathed through MLV 223.

** STA 307 (Pipeline Point P00019)
Due to scheduled maintenance, Tennessee restricted through approximately 20% of Supply to Market Secondary Out of the Path nominations, (Park Withdrawal/Loan, IT-X, IT, AOT, Payback from Tennessee, EDS/ERS, SOP) pathed through Station 307.

For the remainder of the June 21, 2010 gas day:

** Leidy Delivery Meters (005030/005031)
Tennessee will not accept any Supply to Market increases delivered to the Leidy Delivery Meters. Tennessee will allow shippers to adjust nominations under the same Duns number delivered to these meters provided that the net volume change for such adjustments does not exceed previously scheduled volumes delivered to the Leidy Delivery Meters.

** MLV 223 (Pipeline Point P00257)
Due to scheduled maintenance, Tennessee will not accept any Supply to Market increases pathed through MLV 223. Tennessee will allow shippers to adjust nominations under the same Duns number pathed through MLV 223 provided that the net volume change for such adjustments does not exceed previously scheduled volumes pathed through MLV 223.

** STA 307 (Pipeline Point P00019)
Due to scheduled maintenance, Tennessee will not accept any Supply to Market increases pathed through STA 307. Tennessee will allow shippers to adjust nominations under the same Duns number pathed through STA 307 provided that the net volume change for such adjustments does not exceed previously scheduled volumes pathed through STA 307

ESTIMATED AVAILABLE CAPACITY - KEY POINTS
==

In an effort to assist customers with decisions related to capacity utilization on our system, TGP will provide an estimate of how much capacity is available at key points on our system.

The numbers provided are estimates and subject to change due to changes in nominations, confirmations, force balancing, and the operational integrity of the system.

ID #	Point Name	Est. Capacity
P00053	STA 17	1,066,000 dth
P00080	Carthage Lateral	9,000 dth
P00292	MLV 48	848,000 dth
P00042	MLV 834	39,000 dth
P00108	MLV 529	675,000 dth
P00006	STA 200	857,000 dth
P00293	STA 209	398,000 dth
P00074	STA 219	261,000 dth
P00257/P00019	MLV 223/STA 307	0 dth
P00297	Niagara Spur Backhaul	30,000 dth
P00011	STA 245	189,000 dth
P00021	MLV 314	805,000 dth
P00024	STA 319	391,000 dth
P00025	STA 321	176,000 dth
P00095	MLV 336	71,000 dth
P00100	MLV 355	181,000 dth
021008	Can East Leidy	0 dth

ON-GOING LIMITATIONS
====================
None

OPERATIONAL FLOW ORDERS (OFO)
=============================
None

METERS OUT OF SERVICE DUE TO SCHEDULED MAINTENANCE
==
MLV 17-2 to MLV 20-2A: Install Pig launcher and receiver; replace valves & elbows; hydrostatic testing
011788 Katy Transport

HURRICANE EMERGENT OUTAGES
=========================
Bluewater Southwest Leg
523A - 100 (La. Coastal Bay Marchand Line)
Meter 01-0436
524C - 600 (South Timbalier - 66 Line)
Meter 01-1892
527A - 1300 Line

Meter 01-1698 (South Pass 49A)
527A - 1800 Line
Meter 01-2175 (South Pass 52)

If you have any questions, please contact your Scheduler.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

132081	6/20/10 16:45	TGP	BLTN	3	Curtailment	6/20/10 16:47	9/19/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: RESTRICTIONS FOR 6/20/10

Effective Timely Cycle, 9:00 AM CCT, for the gas day of
June 21, 2010, Tennessee restricted the following:

SUMMARY:

Restrictions
============
Leidy Delivery Meters - through approx 55% SOP
MLV 223 - through 23% SOP
Station 307 - through 20% SOP

No increases
============
Leidy Delivery Meters (005030/005031)
MLV 223 (P00257)
Station 307 (P00019)

DETAILS:

** Leidy Delivery Meters (005030/005031)
Tennessee restricted through approximately 55% of Supply to Market Secondary Out of the Path nominations, (Park Withdrawal/Loans, IT-X, IT, AOT, Payback from Tennessee, EDS/ERS, SOP) pathed for delivery to the Leidy Delivery Meters.

** MLV 223 (Pipeline Point P00257)
Tennessee restricted through approximately 23% of Supply to Market Secondary Out of the Path nominations, (Park

Withdrawal/Loan, IT-X, IT, AOT, Payback from Tennessee, EDS/ERS, SOP) pathed through MLV 223.

** STA 307 (Pipeline Point P00019)
Tennessee restricted through approximately 20% of Supply to Market Secondary Out of the Path nominations, (Park Withdrawal/Loan, IT-X, IT, AOT, Payback from Tennessee, EDS/ERS, SOP) pathed through Station 307.

For the remainder of the June 21, 2010 gas day:

** Leidy Delivery Meters (005030/005031)
Tennessee will not accept any Supply to Market increases delivered to the Leidy Delivery Meters. Tennessee will allow shippers to adjust nominations under the same Duns number delivered to these meters provided that the net volume change for such adjustments does not exceed previously scheduled volumes delivered to the Leidy Delivery Meters.

** MLV 223 (Pipeline Point P00257)
Tennessee will not accept any Supply to Market increases pathed through MLV 223. Tennessee will allow shippers to adjust nominations under the same Duns number pathed through MLV 223 provided that the net volume change for such adjustments does not exceed previously scheduled volumes pathed through MLV 223.

** STA 307 (Pipeline Point P00019)
Tennessee will not accept any Supply to Market increases pathed through STA 307. Tennessee will allow shippers to adjust nominations under the same Duns number pathed through STA 307 provided that the net volume change for such adjustments does not exceed previously scheduled volumes pathed through STA 307

ESTIMATED AVAILABLE CAPACITY - KEY POINTS
==

In an effort to assist customers with decisions related to capacity utilization on our system, TGP will provide an estimate of how much capacity is available at key points on our system. The numbers provided are estimates and subject to change due to changes in nominations, confirmations, force balancing, and the operational integrity of the system.

ID #　　Point Name　　Est. Capacity
===

P00053	STA 17	1,066,000 dth
P00080	Carthage Lateral	9,000 dth
P00292	MLV 48	848,000 dth
P00042	MLV 834	39,000 dth
P00108	MLV 529	675,000 dth
P00006	STA 200	857,000 dth
P00293	STA 209	398,000 dth
P00074	STA 219	261,000 dth
P00257/P00019	MLV 223/STA 307	0 dth
P00297	Niagara Spur Backhaul	30,000 dth
P00011	STA 245	189,000 dth
P00021	MLV 314	805,000 dth
P00024	STA 319	391,000 dth
P00025	STA 321	176,000 dth
P00095	MLV 336	71,000 dth
P00100	MLV 355	181,000 dth
021008	Can East Leidy	0 dth

ON-GOING LIMITATIONS
====================
None

OPERATIONAL FLOW ORDERS (OFO)
=============================
None

METERS OUT OF SERVICE DUE TO SCHEDULED MAINTENANCE
==
MLV 17-2 to MLV 20-2A: Install Pig launcher and receiver;
replace valves & elbows; hydrostatic testing
011788 Katy Transport

HURRICANE EMERGENT OUTAGES
==========================
Bluewater Southwest Leg
523A - 100 (La. Coastal Bay Marchand Line)
Meter 01-0436
524C - 600 (South Timbalier - 66 Line)
Meter 01-1892
527A - 1300 Line
Meter 01-1698 (South Pass 49A)
527A - 1800 Line
Meter 01-2175 (South Pass 52)

If you have any questions, please contact your Scheduler.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

132079 6/20/10 13:59 TGP BLTN 3 Curtailment 6/20/10 14:00 9/19/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: ANTICIPATED RESTRICTIONS FOR 6/21/10

Effective Timely Cycle, 9:00 AM CCT, for the gas day of June 21, 2010, Tennessee anticipates the following restrictions:

SUMMARY:

Restrictions
============
Leidy Delivery Meters - through approx 58% SOP
MLV 223 - through 24% SOP
Station 307 - through 24% SOP

No increases
============
Leidy Delivery Meters (005030/005031)
MLV 223 (P00257)
Station 307 (P00019)

If you have any questions, please contact your Scheduler.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

132065 6/19/10 15:10 TGP BLTN 3 Curtailment 6/19/10 15:15 9/18/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: ANTICIPATED RESTRICTIONS DUE TO SCHEDULED MAINTENANCE

Tennessee has scheduled maintenance at Station 313 June 21 through 24, 2010. Therefore, beginning Timely Cycle, 9:00 AM CCT, for the gas day of Monday June 21, 2010, Tennessee anticipates restricting through approximately 30% of Supply to Market Secondary Out of the Path Service Nominations pathed through the following points:

MLV 223 (Pipeline Point P00257)
Station 307 (Pipeline Point P00019)

If you have any questions, please contact your Scheduler.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

131815	6/3/10 15:47	TGP	BLTN	3	Curtailment	6/3/10 15:48	9/2/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: RESTRICTIONS FOR 6/03/10

Effective Timely Cycle, 9:00 AM CCT, for the gas day of
June 4, 2010, Tennessee restricted the following:

SUMMARY:

Restrictions
============
Leidy Delivery Meters - through approx 46% SOP
Station 307 - through 100% IT

No increases
============
Leidy Delivery Meters (005030/005031)
MLV 223 (Pipeline Point P00257)
Station 307 (Pipeline Point P00019)

DETAILS:

** Leidy Delivery Meters (005030/005031)
Tennessee restricted through approximately 46% of Supply to Market Secondary Out of the Path nominations, (Park Withdrawal/Loans, IT-X, IT, AOT, Payback from Tennessee, EDS/ERS, SOP) pathed for delivery to the Leidy Delivery Meters.

** STA 307 (Pipeline Point P00019)
Tennessee restricted through 100% of Supply to Market Secondary Interruptable Service nominations, (Park Withdrawal/Loan, IT-X, IT, AOT, Payback from Tennessee, EDS/ERS) pathed through Station

307

For the remainder of the June 4, 2010 gas day:

** Leidy Delivery Meters (005030/005031)
Tennessee will not accept any Supply to Market increases delivered to the Leidy Delivery Meters. Tennessee will allow shippers to adjust nominations under the same Duns number delivered to these meters provided that the net volume change for actsuch adjustments does not exceed previously scheduled volumes delivered to the Leidy Delivery Meters.

** MLV 223 (Pipeline Point P00257)
Tennessee will not accept any Supply to Market increases pathed through MLV 223. Tennessee will allow shippers to adjust nominations under the same Duns number pathed through MLV 223 provided that the net volume change for such adjustments does not exceed previously scheduled volumes pathed through MLV 223.

** STA 307 (Pipeline Point P00019)
Tennessee will not accept any Supply to Market increases pathed through STA 307. Tennessee will allow shippers to adjust nominations under the same Duns number pathed through STA 307 provided that the net volume change for such adjustments does not exceed previously scheduled volumes pathed through STA 307.

ESTIMATED AVAILABLE CAPACITY - KEY POINTS
==

In an effort to assist customers with decisions related to capacity utilization on our system, TGP will provide an estimate of how much capacity is available at key points on our system. The numbers provided are estimates and subject to change due to changes in nominations, confirmations, force balancing, and the operational integrity of the system.

ID #	Point Name	Est. Capacity
P00053	STA 17	1,127,000 dth
P00080	Carthage Lateral	74,000 dth
P00292	MLV 48	1,022,000 dth
P00042	MLV 834	60,000 dth
P00108	MLV 529	637,000 dth
P00006	STA 200	735,000 dth
P00293	STA 209	175,000 dth
P00074	STA 219	22,000 dth

P00257/P00019	MLV 223/STA 307	0 dth
P00297	Niagara Spur Backhaul	5,000 dth
P00011	STA 245	150,000 dth
P00021	MLV 314	702,000 dth
P00024	STA 319	306,000 dth
P00025	STA 321	176,000 dth
P00095	MLV 336	61,000 dth
P00100	MLV 355	191,000 dth
021008	Can East Leidy	0 dth

ON-GOING LIMITATIONS
====================
None

OPERATIONAL FLOW ORDERS (OFO)
=============================
None

METERS OUT OF SERVICE DUE TO SCHEDULED MAINTENANCE
==
MLV 1-1 to MLV 4-1: Hydrostatic testing
01-2425 Riverside Deyhd
01-1596 North Odem Dehydration
01-2232 Lovett 1 Gas Unit
01-2693 Morgan
01-2664 Whatley

MLV 17-3 to MLV 20-3: Install pig launchers and receivers; hydrostatic testing
01-1491 Randon Dehydration
01-2545 Sprain #1

MLV 217A-103 to MLV 217A-104 (Pittsburg Spur): Install pig receiver
02-0078 Pittsburgh Terminal PA (equitable)
02-0385 Pittsburgh Terminal (Phillips)
02-0199 Pittsburgh Terminal Pennsylvania (CNG)
02-0306 Pittsburgh Terminal PA (Columbia)

Line 526A-200 (MLV 526A-202 to MLV 526A-203): MS River Levee West relocation
01-0428 Main Pass Blk 35 Dehyd Halter Island
02-0936 Main Pass 35 Buy Back

HURRICANE EMERGENT OUTAGES
==========================
Bluewater Southwest Leg

523A - 100 (La. Coastal Bay Marchand Line)
Meter 01-0436
524C - 600 (South Timbalier - 66 Line)
Meter 01-1892
527A - 1300 Line
Meter 01-1698 (South Pass 49A)
527A - 1800 Line
Meter 01-2175 (South Pass 52)

If you have any questions, please contact your Scheduler.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

131801	6/2/10 19:10	TGP	BLTN	3	Curtailment	6/2/10 20:10	9/1/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: NO INCREASES EFFECTIVE 06/02/10 22:00

Effective Intraday Cycle 22:00, for the gas day of June 2, 2010, Tennessee will not accept any Supply to Market nomination increases pathed through the following points:

MLV 223 (Pipeline Point P00257)
STA 307 (Pipeline Point P00019)

For the remainder of the June 2, 2010 gas day:

** MLV 223 (Pipeline Point P00257)
Tennessee will not accept any Supply to Market increases pathed through MLV 223. Tennessee will allow shippers to adjust nominations under the same Duns number pathed through MLV 223 provided that the net volume change for such adjustments does not exceed previously scheduled volumes pathed through MLV 223.

** STA 307 (Pipeline Point P00019)
Tennessee will not accept any Supply to Market increases pathed through Station 307. Tennessee will allow shippers to adjust nominations under the same Duns number pathed through Station 307 provided that the net volume change for such adjustments does not exceed previously scheduled volumes pathed through Station 307.

If you have any questions, please contact your Volume Analyst.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

131798	6/2/10 16:00	TGP	BLTN	3	Curtailment	6/2/10 16:05	9/1/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: RESTRICTIONS FOR 6/03/10

Effective Timely Cycle, 9:00 AM CCT, for the gas day of
June 3, 2010, Tennessee restricted the following:

SUMMARY:

Restrictions
============
Leidy Delivery Meters - through approx 47% SOP
MLV 223 - through 100% IT
Station 307 - through 100% IT

No increases
============
Leidy Delivery Meters (005030/005031)
MLV 223 (P00257)
Niagara Spur Backhaul Point (Pipeline Point P00297)
Station 307 (P00019)

DETAILS:

** Leidy Delivery Meters (005030/005031)
Tennessee restricted through approximately 47% of Supply to Market Secondary Out of the Path nominations, (Park Withdrawal/Loans, IT-X, IT, AOT, Payback from Tennessee, EDS/ERS, SOP) pathed for delivery to the Leidy Delivery Meters.

** MLV 223 (Pipeline Point P00257)
Tennessee restricted through 100% of Supply to Market Interruptible Service nominations, (Park Withdrawal/Loan, IT-X, IT, AOT, Payback from Tennessee, EDS/ERS) pathed through MLV 223

** STA 307 (Pipeline Point P00019)
Tennessee restricted through 100% of Supply to Market Secondary Interruptivble Service nominations, (Park Withdrawal/Loan, IT-X, IT, AOT, Payback from Tennessee, EDS/ERS) pathed through Station

307

For the remainder of the June 3, 2010 gas day:

** Leidy Delivery Meters (005030/005031)
Tennessee will not accept any Supply to Market increases delivered to the Leidy Delivery Meters. Tennessee will allow shippers to adjust nominations under the same Duns number delivered to these meters provided that the net volume change for actsuch adjustments does not exceed previously scheduled volumes delivered to the Leidy Delivery Meters.

** MLV 223 (Pipeline Point P00257)
Tennessee will not accept any Supply to Market increases pathed through MLV 223. Tennessee will allow shippers to adjust nominations under the same Duns number pathed through MLV 223 provided that the net volume change for such adjustments does not exceed previously scheduled volumes pathed through MLV 223.

** Niagara Spur Backhaul Point (Pipeline Point P00297)
Tennessee will not accept any Market to Supply increases pathed through the Niagara Spur Backhaul Point. Tennessee will allow shippers to adjust nominations under the same Duns number pathed through this point provided that the net volume change for such adjustments does not exceed previously scheduled volumes pathed through the Niagara Spur Backhaul Point.

** STA 307 (Pipeline Point P00019)
Tennessee will not accept any Supply to Market increases pathed through STA 307. Tennessee will allow shippers to adjust nominations under the same Duns number pathed through STA 307 provided that the net volume change for such adjustments does not exceed previously scheduled volumes pathed through STA 307.

ESTIMATED AVAILABLE CAPACITY - KEY POINTS
==

In an effort to assist customers with decisions related to capacity utilization on our system, TGP will provide an estimate of how much capacity is available at key points on our system. The numbers provided are estimates and subject to change due to changes in nominations, confirmations, force balancing, and the operational integrity of the system.

ID #	Point Name	Est. Capacity
P00053	STA 17	1,103,000 dth

P00080	Carthage Lateral	71,000 dth
P00292	MLV 48	1,070,000 dth
P00042	MLV 834	35,000 dth
P00108	MLV 529	677,000 dth
P00006	STA 200	726,000 dth
P00293	STA 209	185,000 dth
P00074	STA 219	36,000 dth
P00257/P00019	MLV 223/STA 307	0 dth
P00297	Niagara Spur Backhaul	0 dth
P00011	STA 245	161,000 dth
P00021	MLV 314	612,000 dth
P00024	STA 319	319,000 dth
P00025	STA 321	183,000 dth
P00095	MLV 336	49,000 dth
P00100	MLV 355	202,000 dth
021008	Can East Leidy	0 dth

ON-GOING LIMITATIONS
====================
None

OPERATIONAL FLOW ORDERS (OFO)
=============================
None

METERS OUT OF SERVICE DUE TO SCHEDULED MAINTENANCE
===
MLV 1-1 to MLV 4-1: Hydrostatic testing
01-2425 Riverside Deyhd
01-1596 North Odem Dehydration
01-2232 Lovett 1 Gas Unit
01-2693 Morgan
01-2664 Whatley

MLV 17-3 to MLV 20-3: Install pig launchers and receivers; hydrostatic testing
01-1491 Randon Dehydration
01-2545 Sprain #1

MLV 217A-103 to MLV 217A-104 (Pittsburg Spur): Install pig receiver
02-0078 Pittsburgh Terminal PA (equitable)
02-0385 Pittsburgh Terminal (Phillips)
02-0199 Pittsburgh Terminal Pennsylvania (CNG)
02-0306 Pittsburgh Terminal PA (Columbia)

Line 526A-200 (MLV 526A-202 to MLV 526A-203): MS River Levee

West relocation
01-0428 Main Pass Blk 35 Dehyd Halter Island
02-0936 Main Pass 35 Buy Back

HURRICANE EMERGENT OUTAGES
=========================
Bluewater Southwest Leg
523A - 100 (La. Coastal Bay Marchand Line)
Meter 01-0436
524C - 600 (South Timbalier - 66 Line)
Meter 01-1892
527A - 1300 Line
Meter 01-1698 (South Pass 49A)
527A - 1800 Line
Meter 01-2175 (South Pass 52)

If you have any questions, please contact your Scheduler.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

131796	6/2/10 13:44	TGP	BLTN	3	Curtailment	6/2/10 13:45	9/1/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: ANTICIPATED RESTRICTIONS FOR 6/03/10

Effective Timely Cycle, 9:00 AM CCT, for the gas day of
June 3, 2010, Tennessee anticipates the following
restrictions:

SUMMARY:

Restrictions
============
Leidy Delivery Meters - through approx 42% SOP
MLV 223 - through 100% IT
Station 307 - through 100% IT

No increases
============
Leidy Delivery Meters (005030/005031)
MLV 223 (P00257)
Niagara Spur Backhaul Point (Pipeline Point P00297)
Station 307 (P00019)

If you have any questions, please contact your Scheduler.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

APPENDIX F

Early Gas Purchases (Before 12:30 p.m.) for Operating Days When Pittsfield Got Day Ahead Reliability Awards

Source: Master Spreadsheet; DR47c Response

Date of Gas Purchase	Time of Gas Purchase	Volume of Gas Purchased (MMBtu)	Operating Date for which Gas Purchased	Maxim Employee Who Made Gas Purchase
7/2/2010	Between 8:30 AM and 12:30 PM	5003	7/6/2010	Chris Devasahayam
7/2/2010	Between 8:30 AM and 12:30 PM	5002	7/6/2010	Chris Devasahayam
7/2/2010	Between 8:30 AM and 12:30 PM	5000	7/6/2010	Chris Devasahayam
7/2/2010	Between 8:30 AM and 12:30 PM	5000	7/6/2010	Chris Devasahayam
7/6/2010	Between 8:30 AM and 12:30 PM	2000	7/7/2010	Kyle Mitton
7/6/2010	Between 8:30 AM and 12:30 PM	1000	7/7/2010	Kyle Mitton
7/6/2010	Between 8:30 AM and 12:30 PM	7000	7/7/2010	Kyle Mitton
7/6/2010	Between 8:30 AM and 12:30 PM	5000	7/7/2010	Kyle Mitton
7/6/2010	Between 8:30 AM and 12:30 PM	5000	7/7/2010	Kyle Mitton
7/7/2010	Between 8:30 AM and 12:30 PM	2500	7/8/2010	Kyle Mitton
7/7/2010	Between 8:30 AM and 12:30 PM	5000	7/8/2010	Kyle Mitton
7/7/2010	Between 8:30 AM and 12:30 PM	3400	7/8/2010	Kyle Mitton
7/7/2010	Between 8:30 AM and 12:30 PM	3000	7/8/2010	Kyle Mitton
7/8/2010	Between 8:30 AM and 12:30 PM	2000	7/9/2010	Chris Devasahayam
7/8/2010	Between 8:30 AM and 12:30 PM	3000	7/9/2010	Chris Devasahayam
7/8/2010	Between 8:30 AM and 12:30 PM	1200	7/9/2010	Chris Devasahayam
7/8/2010	Between 8:30 AM and 12:30 PM	3800	7/9/2010	Chris Devasahayam
7/8/2010	Between 8:30 AM and 12:30 PM	5000	7/12/2010	Chris Devasahayam
7/8/2010	Between 8:30 AM and 12:30 PM	1191	7/12/2010	Chris Devasahayam
7/8/2010	Between 8:30 AM and 12:30 PM	809	7/12/2010	Chris Devasahayam
7/8/2010	Between 8:30 AM and 12:30 PM	2416	7/12/2010	Chris Devasahayam
7/8/2010	Between 8:30 AM and 12:30 PM	2500	7/12/2010	Chris Devasahayam
7/12/2010	Between 8:30 AM and 12:30 PM	3597	7/13/2010	Kyle Mitton
7/12/2010	Between 8:30 AM and 12:30 PM	1403	7/13/2010	Kyle Mitton
7/12/2010	Between 8:30 AM and 12:30 PM	5433	7/13/2010	Kyle Mitton
7/12/2010	Between 8:30 AM and 12:30 PM	1000	7/13/2010	Kyle Mitton

7/13/2010	Between 8:30 AM and 12:30 PM	982	7/14/2010	Kyle Mitton
7/13/2010	Between 8:30 AM and 12:30 PM	3018	7/14/2010	Kyle Mitton
7/13/2010	Between 8:30 AM and 12:30 PM	5000	7/14/2010	Kyle Mitton
7/13/2010	Between 8:30 AM and 12:30 PM	4000	7/14/2010	Kyle Mitton
7/14/2010	Between 8:30 AM and 12:30 PM	4200	7/15/2010	Kyle Mitton
7/14/2010	Between 8:30 AM and 12:30 PM	800	7/15/2010	Kyle Mitton
7/14/2010	Between 8:30 AM and 12:30 PM	2500	7/15/2010	Kyle Mitton
7/15/2010	Between 8:30 AM and 12:30 PM	3000	7/16/2010	Kyle Mitton
7/15/2010	Between 8:30 AM and 12:30 PM	3500	7/16/2010	Kyle Mitton
7/15/2010	Between 8:30 AM and 12:30 PM	6500	7/16/2010	Kyle Mitton
7/15/2010	Between 8:30 AM and 12:30 PM	500	7/16/2010	Kyle Mitton
7/15/2010	Between 8:30 AM and 12:30 PM	1500	7/16/2010	Kyle Mitton
7/16/2010	Between 8:30 AM and 12:30 PM	2803	7/19/2010	Chris Devasahayam
7/16/2010	Between 8:30 AM and 12:30 PM	2197	7/19/2010	Chris Devasahayam
7/19/2010	Between 8:30 AM and 12:30 PM	2400	7/20/2010	Kyle Mitton
7/19/2010	Between 8:30 AM and 12:30 PM	500	7/20/2010	Kyle Mitton
7/19/2010	Between 8:30 AM and 12:30 PM	2000	7/20/2010	Kyle Mitton
7/19/2010	Between 8:30 AM and 12:30 PM	5000	7/20/2010	Kyle Mitton
7/19/2010	Between 8:30 AM and 12:30 PM	2700	7/20/2010	Kyle Mitton
7/19/2010	Between 8:30 AM and 12:30 PM	1900	7/20/2010	Kyle Mitton
7/20/2010	Between 8:30 AM and 12:30 PM	5000	7/21/2010	Kyle Mitton
7/20/2010	Between 8:30 AM and 12:30 PM	4800	7/21/2010	Kyle Mitton
7/20/2010	Between 8:30 AM and 12:30 PM	200	7/21/2010	Kyle Mitton
7/20/2010	Between 8:30 AM and 12:30 PM	4000	7/21/2010	Kyle Mitton
7/20/2010	Between 8:30 AM and 12:30 PM	2000	7/21/2010	Kyle Mitton
7/21/2010	Between 8:30 AM and 12:30 PM	3000	7/22/2010	Kyle Mitton
7/21/2010	Between 8:30 AM and 12:30 PM	7000	7/22/2010	Kyle Mitton
7/21/2010	Between 8:30 AM and 12:30 PM	1200	7/22/2010	Kyle Mitton
7/28/2010	Between 8:30 AM and 12:30 PM	10000	7/29/2010	Chris Devasahayam

8/3/2010	Between 8:30 AM and 12:30 PM	9368	8/4/2010	Chris Devasahayam
8/3/2010	Between 8:30 AM and 12:30 PM	632	8/4/2010	Chris Devasahayam
8/4/2010	Between 8:30 AM and 12:30 PM	1400	8/5/2010	Chris Devasahayam
8/4/2010	Between 8:30 AM and 12:30 PM	12500	8/5/2010	Chris Devasahayam
8/4/2010	Between 8:30 AM and 12:30 PM	1100	8/5/2010	Chris Devasahayam
8/9/2010	Between 8:30 AM and 12:30 PM	8000	8/10/2010	Chris Devasahayam
8/9/2010	Between 8:30 AM and 12:30 PM	2000	8/10/2010	Chris Devasahayam
8/10/2010	Between 8:30 AM and 12:30 PM	5000	8/11/2010	Kyle Mitton
8/10/2010	Between 8:30 AM and 12:30 PM	8000	8/11/2010	Kyle Mitton
8/16/2010	Between 8:30 AM and 12:30 PM	5830	8/17/2010	Kyle Mitton
8/16/2010	Between 8:30 AM and 12:30 PM	170	8/17/2010	Kyle Mitton

APPENDIX G

Information about Tennessee Gas Pipeline Restrictions Relevant to Pittsfield Plant on August 7, 2010

[showing no restrictions at locations 223, 245, 307, 321, or 355]

Source: "Critical Notices from June 2010_August 2010" Spreadsheet provided by TGP on Dec. 12, 2014, available in "Tennessee Gas Pipeline and Angeli emails / Kinder Morgan" folder in Investigative Materials filed by staff on Feb. 4, 2015

notice_identifier	create_date_time	org_id	notice_ctgy_code	notice_type	notice_type_desc	beg_post_date_time	end_post_date_time
132934	8/6/10 18:43	TGP	BLTN	3	Curtailment	8/6/10 21:15	11/5/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: RESTRICTION LIFTED EFFECTIVE 08/07/10 ID1

Effective Intraday Cycle 1, for the gas day of August 7, 2010
Tennessee will accept nomination increases at the following
point:

Leidy Delivery Meters (005030/005031) - Est Avail Cap 27,000

** Customers are reminded that previously restricted nominations
must be retriggered for any subsequent intraday cycle once a
restriction has been lifted in order for increased volumes to
be scheduled.

If you have any questions, please contact your Scheduler.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

132936	8/6/10 20:51	TGP	BLTN	60	Other (Misc)	8/6/10 21:15	11/5/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: ESTIMATED AVAILABLE CAPACITY 8/7/10

ESTIMATED AVAILABLE CAPACITY - KEY POINTS
==

In an effort to assist customers with decisions related to capacity utilization on our system, TGP will provide an estimate of how much capacity is available at key points on our system. The numbers provided are estimates and subject to change due to changes in nominations, confirmations, force balancing, and the operational integrity of the system.

ID #	Point Name	Est. Capacity
P00053	STA 17	1,077,000 dth
P00080	Carthage Lateral	75,000 dth
P00292	MLV 48	1,050,000 dth
P00042	MLV 834	271,000 dth
P00108	MLV 529	652,000 dth
P00006	STA 200	1,227,000 dth
P00293	STA 209	665,000 dth
P00074	STA 219	492,000 dth
P00257/P00019	MLV 223/STA 307	399,000 dth
P00297	Niagara Spur Backhaul	46,000 dth
P00011	STA 245	181,000 dth
P00021	MLV 314	943,000 dth
P00024	STA 319	479,000 dth
P00025	STA 321	123,000 dth
P00095	MLV 336	75,000 dth
P00162	MLV 355 S/M	10,0000 dth
005030/005031	Leidy Delivery Meters	27,000 dth

If you have any questions, please contact your Scheduler.

Layne Sanders

Manager, Transportation Services
Gas Scheduling

132930	8/6/10 15:34	TGP	BLTN	3	Curtailment	8/6/10 15:40	11/5/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: RESTRICTIONS FOR 8/07/2010

Effective Timely Cycle, 9:00 AM CCT, for the gas day of
August 7, 2010, Tennessee restricted the following:

SUMMARY:

Restrictions
============
Leidy Delivery Meters - through approx 8% of SOP

No increases
============
Leidy Delivery Meters (005030/005031)

DETAILS:

** Leidy Delivery Meters (005030/005031)
Due to nominations in excess of capacity, Tennessee restricted
through approximately 8% of Supply to Market Secondary Out of
the Path nominations, (Park Withdrawal/Loans, IT-X, IT, AOT,
Payback from Tennessee, EDS/ERS, SOP) pathed for delivery
to the Leidy Delivery Meters.

For the remainder of the August 7, 2010 gas day:

** Leidy Delivery Meters (005030/005031)
Due to nominations in excess of capacity, Tennessee will not accept any Supply to Market increases delivered to the Leidy Delivery Meters. Tennessee will allow shippers to adjust nominations under the same Duns number delivered to these meters provided that the net volume change for such adjustments does not exceed previously scheduled volumes delivered to the Leidy Delivery Meters.

ESTIMATED AVAILABLE CAPACITY - KEY POINTS
===
In an effort to assist customers with decisions related to capacity utilization on our system, TGP will provide an estimate of how much capacity is available at key points on our system. The numbers provided are estimates and subject to change due to changes in nominations, confirmations, force balancing, and the operational integrity of the system.

ID #	Point Name	Est. Capacity
P00053	STA 17	1,077,000 dth
P00080	Carthage Lateral	50,000 dth
P00292	MLV 48	1,050,000 dth
P00042	MLV 834	276,000 dth
P00108	MLV 529	654,000 dth
P00006	STA 200	1,188,000 dth
P00293	STA 209	632,000 dth
P00074	STA 219	459,000 dth
P00257/P00019	MLV 223/STA 307	326,000 dth
P00297	Niagara Spur Backhaul	46,000 dth
P00011	STA 245	42,000 dth
P00021	MLV 314	1,025,000 dth
P00024	STA 319	564,000 dth

P00025	STA 321	28,000 dth
P00095	MLV 336	98,000 dth
P00162	MLV 355 S/M	10,000 dth
005030/005031	Leidy Delivery Meters	0 dth

ON-GOING LIMITATIONS
====================
None

OPERATIONAL FLOW ORDERS (OFO)
============================
None

METERS OUT OF SERVICE DUE TO SCHEDULED MAINTENANCE
==
MLV 17-1 to MLV 20-1: Install Pig launcher and receiver;
Replace valves; hydrostatic testing
011112 Katy Dehydration Exchange

HURRICANE EMERGENT OUTAGES
=========================
Bluewater Southwest Leg
523A - 100 (La. Coastal Bay Marchand Line)
    Meter 01-0436
524C - 600 (South Timbalier - 66 Line)
    Meter 01-1892
527A - 1300 Line
    Meter 01-1698 (South Pass 49A)
527A - 1800 Line
    Meter 01-2175 (South Pass 52)

If you have any questions, please contact your Scheduler.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

132923	8/6/10 12:58	TGP	BLTN	3	Curtailment	8/6/10 13:00	11/5/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: ANTICIPATED RESTRICTIONS FOR 08/07/10

Effective Timely Cycle, 9:00 AM CCT, for the gas day of
August 7, 2010, Tennessee anticipates the following
restrictions:

SUMMARY:

Restrictions
============
Leidy Delivery Meters - through approx 8% of SOP

No increases
============
Leidy Delivery Meters (005030/005031)

If you have any questions, please contact your Scheduler.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

132921	8/6/10 10:43	TGP	BLTN	60	Other (Misc)	8/6/10 10:45	11/5/10 2:00

TO: ALL TENNESSEE CUSTOMERS

RE: EMERGENT REPAIR EVENT AT STATION 703A - UPDATE #2

Work is progressing at Sta. 703A (Mansfield, La). Tennessee expects the station will be returned to service no later than the afternoon of Saturday, August 7, 2010.

The aforementioned emergent event could result in volume restrictions on the Carthage Line Lateral, and based upon scheduled volumes and pipeline conditions, restrictions may become necessary through a pro-rata portion of Secondary Out of the Path nominations (Park, Loan Payback, IT-X, IT, AOT, Payback to Tennessee, EDS/ERS, SOP) pathed from the Carthage Line Lateral.

Tennessee will continue to update customers as additional information becomes available. If you have any questions, please contact your Scheduler.

Layne Sanders
Manager, Transportation Services
Gas Scheduling

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