

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 21, 2004

In Reply Refer To:
Egan Hub Storage, LLC
Docket No. RP04-475-000

Egan Hub Storage, LLC
P.O. Box 1642
Houston, TX 77251-1642

Attention: David A. McCallum
Director, Rates and Tariffs

Reference: Revised Tariff Sheets

Dear Mr. McCallum:

1. On August 20, 2004, Egan Hub Storage, LLC (Egan Hub) filed the revised tariff sheets listed in the Appendix proposing to streamline and improve its customer interface and information disclosure procedures to facilitate compliance with Commission policies, including, but not limited to, the additional posting requirements for Transmission Providers as required by Order No. 2004, *et seq.*¹ The proposed tariff sheets are accepted, subject to conditions, effective September 22, 2004, as requested.

2. Public notice of the filing was issued on August 30, 2004. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2004)). Pursuant to Rule 214, 18 C.F.R. § 385.214, all timely motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

¹ *Standards of Conduct for Transmission Providers*, Order No. 2004, 68 Fed. Reg. 69,134 (Dec. 11, 2003), FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, 107 FERC ¶ 61,032 (2003), *order on reh'g*, Order No. 2004-B, 108 FERC ¶ 61,118 (2004).

3. Along with certain other pipelines operated by Duke Energy Gas Transmission (Duke Energy), Egan Hub proposes to incorporate substantive provisions from the currently-effective Form of Service Agreement for the LINK System into section 32 (Electronic Communications) of the General Terms and Conditions (GT&C) of its tariff.² Egan Hub asserts that this change is necessary in order for such provisions to be applicable to those parties with a Valid Service Agreement³ who will no longer be required to execute a Form of Service Agreement for the LINK System (LINK System Agreement). Additionally, Egan Hub proposes to modify section 32 of its GT&C to facilitate implementation of standardized procedures related to the LINK System for all of the Duke-operated companies. The proposed changes relate to the procedures for obtaining access to the LINK System and are designed to: (1) streamline and improve those procedures by reducing the number of entities that will be required to execute a LINK System Agreement; (2) simplify Egan Hub's record-keeping process by reducing the number of documents exchanged between Egan Hub and any new entity requesting access to the LINK System; (3) improve LINK System security by enabling a LINK System Subscriber to control the assignment and maintenance of USERIDs and passwords for its authorized users; and (4) enhance Egan Hub's ability to monitor agency relationships involving its customers and third parties performing certain functions in the LINK System on behalf of such customers. Egan Hub also claims that the proposed changes represent an enhancement to Egan Hub's internal control structure and procedures consistent with the requirements of the Sarbanes-Oxley Act of 2002, 18 U.S.C. 1514A.

4. Although Egan Hub's filing was not protested, certain tariff provisions that were simultaneously proposed by Duke Energy's other pipelines (and that are identical to Egan Hub's proposed tariff provisions) were protested.⁴ Specifically, some parties argued that the proposed tariff language unfairly changes the liability exposure of the pipeline and its

² According to Duke Energy, the LINK System is a computer system that provides its pipelines' customers with real-time pipeline and storage information. Duke Energy states that this online customer interface allows its users to access a wide range of information, including customer activities, informational postings, and pipeline capacities.

³ Egan Hub states that as defined in Section 32.1(a) of its GT&C, a Valid Service Agreement includes a currently effective service agreement pursuant to any of Egan Hub's rate schedules and/or a capacity release umbrella agreement.

⁴ Identical tariff filings were made by Duke Energy in Docket No. RP04-468-000 (*Algonquin Gas Transmission, LLC*); Docket No. RP04-471-000 (*East Tennessee Natural Gas, LLC*); Docket No. RP04-476-000 (*Maritimes & Northeast Pipeline, L.L.C.*); and Docket No. RP04-482-000 (*Texas Eastern Transmission, LP*).

LINK System Subscribers by increasing the customer's liability while reducing the pipeline's liability. Protestors stated that contrary to existing tariff provisions, the proposed tariff language would place all *force majeure* risks on the pipeline's customers.

5. Parties argued that proposed liability and indemnification provisions (similar to Egan Hub's Sections 32.4(c) and 32.7(b)) unreasonably assign liability to users of the LINK System even in situations where the unauthorized use would arise from the pipeline's acts. Protestors contend that, based on Commission precedent,⁵ the Commission should order the Duke Energy pipelines to modify their tariffs to provide that LINK users are not responsible or required to indemnify the pipeline for any unauthorized usage that results from the pipeline's actions or its negligence or willful misconduct. Further, based on Commission precedent,⁶ protestors also argue that the Commission should require the pipelines to revise their indemnification provisions to exempt LINK System users from liability for consequential, incidental, punitive or special damages, unless the liability arises from the user's gross negligence or misconduct.

6. The protestors also argued that the Duke Energy pipelines do not explain when "use" of the LINK System is within the pipeline's control. One protestor states that this is an important concept (the concept appears in Egan Hub's proposed GT&C section 32.7(b)) and asks, if a LINK System Subscriber attempts to revoke the authority of one of its users and the pipeline subsequently acts under the purported authority of that user, would the pipeline agree that such "use" of the system is within its control?

7. Because the concerns raised in Duke Energy's contemporaneous companion filings apply equally to Egan Hub's filing, we direct Egan Hub to file revised tariff sheets to address these concerns. The Commission envisions that these revisions will be similar

⁵ Citing *Natural Gas Pipeline Co. of America*, 39 FERC ¶ 61,153 at 61,599 (1987) (Pipeline not permitted to seek indemnification for acts that are contrary to its tariff); *See also, Transcontinental Gas Pipe Line Corp.*, 65 FERC ¶ 61,354 at 62,876 (1993); *Transcontinental Gas Pipe Line Corp.*, 96 FERC ¶ 61,352 at 62,324 (2001) (Pipeline not permitted to require indemnification for damages resulting from its own negligence or willful misconduct).

⁶ Citing *Guardian Pipeline, LLC*, 101 FERC ¶ 61,107 at P 18 (2002); *ANR Pipeline Co.*, 100 FERC ¶ 61,132 at P 13 (2002).

to the revisions that its sister pipelines proposed in answers responding to the protestors' concerns.⁷ Accordingly, we accept the proposed tariff sheets, subject to Egan Hub filing tariff revisions, as discussed above, within 15 days of the date of this order.

By direction of the Commission.

Magalie R. Salas
Secretary

cc: All Parties
Public File

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⁷ On September 13, 2004 answers were filed by Algonquin Gas Transmission, LLC in Docket No. RP04-468-000; Maritimes & Northeast Pipeline, L.L.C. in Docket No. RP04-476-000; and Texas Eastern Transmission, LP in Docket No. RP04-482-000.

APPENDIX

Egan Hub Storage, LLC
FERC Gas Tariff, First Revised Volume No. 1

Accepted Subject to Conditions
Effective September 22, 2004:

First Revised Sheet No. 160
First Revised Sheet No. 161
First Revised Sheet No. 162
Original Sheet No. 162A
Original Sheet No. 162B
Original Sheet No. 162C
Original Sheet No. 162D
First Revised Sheet No. 250
First Revised Sheet No. 251
First Revised Sheet No. 252
First Revised Sheet No. 253