

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

January 5, 2006

In Reply Refer To:  
Texas Gas Transmission, LLC  
Docket No. RP06-143-000

Texas Gas Transmission, LLC  
3800 Frederica Street  
P.O. Box 20008  
Owensboro, Kentucky 42304-0008

Attention: Kathy D. Fort  
Manager, Certificates and Tariffs

Reference: Second Revised Sheet No. 226 to  
FERC Gas Tariff, Second Revised Volume No. 1

Dear Ms. Fort:

1. On December 9, 2005, Texas Gas Transmission, LLC (Texas Gas) filed the above referenced tariff sheet to revise certain tariff language regarding Operational Flow Orders (OFOs). Texas Gas requests that the tariff sheet become effective January 1, 2006 in order to allow it to respond to the recent rise in natural gas prices and to offer immediate protection for the integrity of its pipeline system during the winter heating season. For good cause shown, waiver of the notice period is granted, and the referenced tariff sheet is accepted effective January 1, 2006, as requested.

2. Public notice of Texas Gas' filing was issued on December 15, 2005, with interventions and protests due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2005). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2005), 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 the proceeding or place additional burdens on existing parties. The Western Tennessee Municipal Group, the Jackson Energy Authority, City of Jackson, Tennessee, and the Kentucky Cities (collectively, Cities) filed a protest to the filing, the details of which are discussed below.

3. Section 15.1(a)(ii) of the General Terms and Conditions (GT&C) of Texas Gas' tariff currently states that all quantities tendered to Texas Gas and/or taken by a customer on a daily basis in violation of an OFO shall constitute unauthorized receipts or deliveries, for which a charge of \$25 per MMBtu shall be assessed.

4. Texas Gas asserts that, in light of the recent rise in natural gas prices, it is concerned that the existing charge of \$25 per MMBtu may not offer sufficient deterrence to behavior that could compromise the operational integrity of the Texas Gas pipeline system. Therefore, Texas Gas proposes to modify and increase this charge as a precautionary measure to ensure that the operational integrity of the system is not compromised. Specifically, Texas Gas proposes to revise section 15.1(a)(ii) of its GT&C to provide for an OFO penalty of the greater of (1) \$50 per MMBtu, or (2) three times the Highest Average Weekly Price during a particular month for spot gas supplies "Delivered to Pipeline" at Gulf Coast, Onshore Louisiana and at North Louisiana, as contained in the table "Gas Price Report" of the publication *Natural Gas Week*. Texas Gas states that the weeks to be used in determining each month's Highest Average Weekly Price shall include all weeks that *Natural Gas Week* is issued within that calendar month, plus the first week of the next calendar month.

5. Texas Gas asserts that the proposed *Natural Gas Week* index price complies with the Commission's *Order Regarding Future Monitoring of Voluntary Price Formation, Use of Price Indices in Jurisdictional Tariffs, and Closing Certain Tariff Dockets* issued on November 19, 2004.<sup>1</sup> That order, among other things, addressed the uses of price indices in natural gas tariffs, and determined that: (1) weekly indices that have been developed according to the standards of Policy Statement<sup>2</sup> may be used in jurisdictional tariffs and (2) the weekly index of a particular location must meet one of three criteria, one of which was that the average daily volume traded at the index location was at least 25,000 MMBtus of gas per day. Texas Gas states that the data set forth in Appendix B to the instant filing provides the requisite data showing that the selected index points meet the minimum liquidity standard for the average daily volumes traded of at least 25,000 MMBtu/d on average for all weeks over a 90-day review period.

6. Cities protest that Texas Gas' proposal is unjust, unreasonable and not narrowly tailored to address the potential harm. Cities argue that pipelines must narrowly design their penalties to deter only conduct that is harmful to the system,<sup>3</sup> and that a pipeline's penalty structure and level should closely relate to the harm the conduct could cause to

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<sup>1</sup> 109 FERC ¶ 61,184 (2004).

<sup>2</sup> *Policy Statement on Natural Gas and Electric Price Indices*, 104 FERC ¶ 61,121 at P 33 (2003).

<sup>3</sup> Cities cite *Algonquin Gas Transmission Co.*, 98 FERC ¶ 61,211 at 61,785 (2002).

the system.<sup>4</sup> Cities acknowledge that Texas Gas' premise for its proposal is valid, but contends that a fixed minimum of \$50 per MMBtu is not responsive to the underlying concern.

7. Cities assert that the use of an index-based penalty without the \$50 minimum is the correct solution. Cities state that such a penalty would provide more than adequate incentive for shippers to remain in balance, but that the \$50 minimum may have harsh consequences. Cities point out that if gas prices were to drop to \$5 per MMBtu or less, shippers would be subject to an OFO penalty equal to ten times more than the price. Moreover, Cities argue, the indexed portion of the penalty would only apply if gas prices reached \$16.67 per MMBtu.

8. Cities state that Texas Gas has provided no explanation why it needs a penalty of \$50 if gas prices are less than \$16.67, while an index-based penalty is sufficient if prices equal or exceed this amount. Cities assert that the only changed circumstance is higher gas prices, and that if the concern underlying the proposal is based on gas prices, it is counterintuitive to impose a higher multiple when gas prices are lower. Cities argue that a \$50 minimum penalty would compel shippers that could not avoid an OFO despite good efforts to pay a premium, and that that additional premium has not been shown to be necessary to prevent the impairment of reliable service. Cities contend that unless the Commission is able to articulate a rational connection between the facts found and the choice made, it cannot approve such a regime.<sup>5</sup>

9. Cities continue that they are aware the Commission recently approved a similar penalty structure for Transcontinental Gas Pipe Line Corporation (Transco).<sup>6</sup> However, Cities maintain that in the order approving the Transco penalty, the Commission provided no explanation as to why the index alone would not have been sufficient, but rather merely stated that because the penalties applied to critical periods, the pipeline had met its burden showing the tariff revisions to be just and reasonable. Cities characterize the Commission's reasoning as circular, and assert it is not a rational basis upon which to approve penalties. Cities also state the Commission's action in *Transco* is especially puzzling in light of the fact that the Commission recently accepted OFO penalties based

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<sup>4</sup> Cities cite *Transcontinental Pipe Line Corp.*, 98 FERC ¶ 61,366 at 62,576 (2002).

<sup>5</sup> Cities cite *Pacific Gas & Elec. Co. v. FERC*, 373 F.3d 1315, 1319 (D.C. Cir. 2004) (citing *Motor Vehicles Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 43 (1983)).

<sup>6</sup> *Transcontinental Pipe Line Corp.*, 113 FERC ¶ 61,224 (2005) (*Transco*).

on indices alone without any minimum for many other pipelines.<sup>7</sup> Cities note that in several of these cases, the Commission reiterated that a pipeline's OFO penalty level should sufficiently deter conduct that would threaten system integrity. Cities contend it is unclear why an indexed-based penalty without a minimum is sufficient for those pipelines, but not for Transco.

10. Finally, Cities argue that even if there are special circumstances that would require a \$50-minimum penalty, no case has been made that any special circumstances apply to Texas Gas. Cities note that during the recent hurricane disasters, Texas Gas' operations fared well, and supplies were not affected nearly to the same degree as some other pipelines. Cities recount that Texas Gas did not declare an OFO after these disasters, and further, that, to the best of their knowledge, Texas Gas has never declared an OFO. Therefore, Cities conclude, there are no special circumstances that would warrant increasing the OFO penalty to a \$50 minimum.

11. The Commission finds that Texas Gas' proposed change in the level of the OFO penalty is reasonable. Section 15.1(a)(i) of the GT&C of Texas Gas' tariff currently provides for the issuance of OFOs only in order to alleviate conditions which threaten the integrity of Texas Gas' system. The Commission has consistently approved high penalties to deter conduct that might threaten pipeline operations,<sup>8</sup> and as Cities note, the Commission has recently approved a penalty structure that includes a \$50 minimum penalty for violating an OFO.<sup>9</sup> Given the current increased gas prices and the potential for prices to continue rising, Texas Gas could reasonably conclude that its current fixed penalty may no longer act as an effective deterrent to actions that might threaten pipeline operations.

12. Cities support the index-based component of Texas Gas' proposal, but object to the \$50 minimum, pointing out that the Commission has accepted OFO penalties proposed by other pipelines that are based solely on multiples of a price index without any minimum. Under the statutory scheme set forth in the Natural Gas Act, the pipeline has the initiative through a section 4 filing to propose rates, terms, and conditions for the service it provides.<sup>10</sup> If the pipeline shows that its proposal is just and reasonable, the Commission must accept it, regardless of whether other rates, terms, or conditions might also be just and reasonable.<sup>11</sup> Therefore, the fact the Commission has accepted as just

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<sup>7</sup> *Citing, Viking Gas Co.*, 112 FERC ¶ 61,098 (2005); *Midwestern Gas Transmission Co.*, 112 FERC ¶ 61,345 (2005); *Guardian Pipeline, LLC*, 113 FERC ¶ 61,086 (2005); *Texas Eastern Transmission, LP*, 113 FERC ¶ 61,145 (2005); *Columbia Gulf Transmission Co.*, 113 FERC ¶ 61,024 (2005).

<sup>8</sup> *Paiute Pipeline Co.*, 111 FERC ¶ 61,107, at P 8 (2005).

<sup>9</sup> *Transcontinental Pipe Line Corp.*, 113 FERC ¶ 61,224 (2005).

<sup>10</sup> *See United Pipeline Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956).

<sup>11</sup> *See Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1578 (D.C. Cir. 1993).

and reasonable OFO penalties that do not include a fixed minimum does not show that Texas Gas' proposed \$50 minimum is not just and reasonable. Determining the level of penalty that is necessary to deter conduct threatening pipeline operations is a matter requiring exercise of judgment.<sup>12</sup> Although an index-based penalty without a \$50 minimum may be a just and reasonable penalty structure, the Commission finds that Texas Gas' proposal with a \$50 minimum is also a just and reasonable penalty for violating an OFO and thus threatening pipeline operations. The Commission has also approved \$50 OFO penalties several times in the past.<sup>13</sup> Further, penalty revenues are credited to shippers who abide by Texas Gas' tariff, and do not generate any profit for Texas Gas.

13. Finally, the Commission finds that Texas Gas has adequately supported its proposed use of the index "Delivered to Pipeline" at Gulf Coast, Onshore Louisiana and at North Louisiana, as contained in the table "Gas Price Report" of the publication *Natural Gas Week*, as reasonable and consistent with Commission's policy. The Commission therefore accepts Texas Gas' revised tariff sheet effective January 1, 2006.

By direction of the Commission.

Magalie R. Salas,  
Secretary.

cc: All Parties  
Public File

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<sup>12</sup> See *Tennessee Gas Pipeline Co.*, 80 FERC ¶ 61,070 at 61,223-224 (1994) (Opinion No. 406-A), *aff'd sub nom.*, *Consolidated Edison Co. v. FERC*, 165 F.3d 992, 1000-4 (D.C. Cir. 1999).

<sup>13</sup> See, e.g., *Maritimes & Northeast Pipeline, L.L.C.*, 100 FERC ¶ 61,030 at P 82 (2002) and *SGC Pipeline, Inc.*, 104 FERC ¶ 61,159 at P 53 (2003).