

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 24, 2006

In Reply Refer To:
Egan Hub Storage, LLC
Docket No. RP06-444-000

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

Attention: David A. McCallum
Director, Rates and Tariffs

Reference: Revisions to Right of First Refusal and Open Season Tariff Provisions

1. On July 25, 2006, Egan Hub Storage, LLC (Egan Hub) filed revised tariff sheets (see Appendix) to revise the right of first refusal (ROFR) and open season provisions of Egan Hub's tariff. The tariff sheets are accepted effective August 25, 2006, as requested.
2. Notice of Egan Hub's filing was issued on July 28, 2006, with interventions and protests due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2006). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R § 385.214 (2006), 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 East Ohio Gas Company d/b/a Dominion East Ohio (East Ohio) filed comments on the proposal. Egan Hub filed an answer in support of East Ohio's comments. The comments are discussed below.
3. Egan Hub proposes to revise Rate Schedules FSS (Firm Storage Service) and SSS (Secondary Firm Storage) to eliminate the regulatory ROFR from its tariff and, instead, provide for the negotiation of contractual ROFRs on a not unduly discriminatory basis for any service that has a primary term beginning after August 25, 2006. As justification for

its proposal, Egan Hub argues that in Order No. 637,¹ the Commission revised section 284.221(d)(2) of its regulations to provide that regulatory ROFRs would only apply to those service agreements with a term of twelve months or longer, and for which the rate was the maximum tariff rate. Egan Hub was granted authority to charge, and charges, market-based rates. Thus, there is no maximum tariff rate, and the regulatory ROFR does not apply in Egan Hub's case. Egan Hub states that shippers that have service agreements under Rate Schedules FSS or SSS with terms commencing prior to August 25, 2006 will be entitled to a one-time exercise of the existing ROFR at the end of the contract term, which can be on or after August 25, 2006. Egan Hub further states that any service agreements for which the ROFR process is currently under way will be permitted to continue that process.

4. Egan Hub also proposes to revise the ROFR procedures in the General Terms and Conditions (GT&C) of its tariff. The revised procedure will apply to both contracts with grandfathered regulatory ROFR rights and contracts with negotiated ROFRs. First, Egan Hub proposes to revise its open season time-line to correct discrepancies between Rate Schedules FSS and SSS, and their respective *pro forma* service agreements. Currently Egan Hub is required by Rate Schedules FSS and SSS to hold an open season for capacity on which service will terminate no less than twelve months before service terminates, but the *pro forma* service agreements for those rate schedules only require that shippers provide notice to Egan Hub that they intend to terminate service no later than 90 days before service is to terminate. Egan Hub proposes to revise its rate schedules to specify that it will hold an open season not less than three months prior to the termination or expiration of a service agreement, and that bids must be received by Egan Hub no later than thirty days after the commencement of the open season.

5. Egan Hub proposes to revise its Rate Schedules FSS and SSS to provide that where no bids are received or where Egan Hub rejects all bids received during an open season, Egan Hub can post the capacity as available and can negotiate with the current capacity holder or other potential customers for the capacity. The current capacity holder's agreement will expire if the current holder declines to match the highest rate contained in an acceptable bid during the open season, or if Egan Hub and the current holder do not reach agreement on the terms of continued service.

¹ *Regulation of Short-Term Natural Gas Transportation Servs. and Regulation of Interstate Natural Gas Transportation Servs.*, Order No. 637, 65 Fed. Reg. 10,156 (2000), 90 FERC ¶ 61,109, III FERC Stats & Regs. ¶ 31,091; *order on reh'g*, Order No. 637-A, 65 Fed. Reg. 35,706 (2000), 91 FERC ¶ 61,169, III FERC Stats. & Regs. ¶ 31,099; *order on reh'g* Order No. 637-B, 65 Fed. Reg. 47,284 (2000), 92 FERC ¶ 61,062.

6. Finally, Egan Hub proposes to modify section 3.12 of the General Terms and Conditions (GT&C) of its tariff to provide that Egan Hub and the current capacity holder may agree to an extension of service prior to receipt of a bid submitted pursuant to the ROFR provisions rather than prior to posting of the availability capacity, as is the current practice. Egan Hub states that this revision will give existing capacity holders greater flexibility in evaluating and requesting extensions of service.

7. East Ohio states that it supports Egan Hub's efforts to make its ROFR and open season provisions more compatible with a market based rate environment but it did discuss the proposal with Egan Hub, seeking clarification as to how certain ROFR provisions would be applied so as to be consistent with the Commission's regulatory ROFR policies. East Ohio states that while Egan Hub's regulatory ROFR revisions apply to Rate Schedules FSS and SSS, East Ohio's firm storage agreement does not have either designation. East Ohio asserts that Egan Hub representatives assured them that the East Ohio service agreement would be treated as an FSS service agreement.

8. East Ohio states that the Egan Hub representative stated that the proposed ROFR provisions would apply regardless of whether Egan Hub or the shipper gives notice of contract termination, and a shipper may exercise its ROFR rights on all or a part of its capacity. East Ohio states that it questioned Egan Hub on whether its proposal to commence the ROFR not less than three months prior to the date of contract termination is consistent with the Commission's policy that the process start six months to a year prior to contract termination. Egan Hub's response to East Ohio was that, while most of its contracts contain a provision requiring three months notice of contract termination, the older vintage East Ohio contract contains a six month provision, and that Egan Hub will commence the ROFR process for East Ohio's contract up to six months prior to the contract termination date. According to East Ohio, Egan Hub stated that this is consistent with its proposed tariff language.

9. East Ohio states that the proposed ROFR provisions do not contain a time period after close of bidding by which Egan Hub will notify the current capacity holder of the best bid to be matched. Egan Hub stated that it would notify ROFR shippers of the best bid to be matched within three days of the close of bidding on the ROFR capacity. East Ohio stated that it questioned Egan Hub about the provision relating to procedures to be followed when Egan Hub receives no bids or rejects all bids for ROFR capacity. East Ohio noted that the last sentence of that section specifies that continued service will not be provided at a price lower than the highest rate contained in an acceptable bid submitted by a qualified prospective customer, and stated that, in the event of a bid for only part of the capacity, the proposed language would seem to set a price floor for the remainder of the current shipper's capacity on which the bidder did not even bid. East Ohio stated that Egan Hub clarified that in this sentence "acceptable bid" means a bid

made by a qualified bidder that is rejected because it is non-economic, and that the price floor established by that rejected bid applies only to that portion of the current shipper's capacity for which the bid was made.

10. Egan Hub filed an answer to East Ohio's comments stating that Egan Hub largely agrees with and supports the comments filed by East Ohio. The Commission accepts Egan Hub's revised ROFR provisions. As Egan Hub argued, regulatory ROFR provisions apply only to contracts longer than twelve months at the maximum tariff rate. This is meant to protect shippers from the exercise of monopoly or market power by the pipeline. In Order No. 637, the Commission determined that where a shipper has alternatives and can negotiate a rate that is below the just and reasonable rate, it should not need the protection of a regulatory ROFR. Egan Hub charges market based rates for its service. Therefore, the regulatory ROFR does not apply in this case. Egan Hub's clarifications of how it intends to apply its tariff provisions, as represented by East Ohio, are not inconsistent with the Commission's ROFR regulations and policies. However, Egan Hub is directed to revise its tariff to clarify its ROFR provisions consistent with East Ohio's comments and Egan Hub's answer within 30 days of the date of this order.

11. Egan Hub proposes several revisions to its open season procedures. Egan Hub proposes a new section to provide that it will sell new storage capacity resulting from an expansion either through an open season or on a first-come, first service basis, at Egan Hub's sole option. Egan Hub proposes to modify section 3.8(a) of its GT&C to specify that an open season will be held under ROFR procedures, or may be held, at Egan Hub's sole discretion under the provision regarding sale of new expansion capacity. Egan Hub proposes to list the additional information it will include in each open season posting: (1) when the open season begins and ends; (2) the type of service being offered; (3) how and where an interested party may submit requests for service; (4) the criteria that will be used to evaluate bids; and (5) any additional details of the open season.

12. Egan Hub is also modifying section 3.8(b) of its GT&C to clarify that an open season for new storage capacity resulting from expansion will be held for a minimum of five business days, and that an open season under the ROFR provisions will be held for a minimum of thirty days. Egan Hub will accept bids for the specified service during the specified duration of the open season. Egan Hub proposes to modify section 3.8(c) of its GT&C to replace the current formula used to calculate the present value of bids with a provision which specifies that open season bids will be evaluated according to the bid evaluation criteria specified in the notice of open season. Egan Hub also proposes to modify that section to provide that it may reject a bid under certain circumstances specified in Commission precedent, such as when the bid does not contain all required information, and to specify that Egan Hub will notify any potential shipper whose bid is rejected by email. Egan Hub also proposes to specify that open season capacity will be allocated among the acceptable bids in accordance with the bid evaluation procedures specified in the notice of open season.

13. Egan Hub proposes to modify section 3.8(f) to provide that a customer that is allocated capacity pursuant to an open season must execute a service agreement for the applicable service. Finally, Egan Hub proposes to modify section 3.8 to provide that firm capacity that becomes available outside of an open season, for which Egan Hub determines that an open season will not be held, and for which a current capacity holder has not exercised its ROFR, will be posted on Egan Hub's Website. That capacity will be allocated on a first-come, first serve basis to the first customer offering to pay a rate that Egan Hub finds acceptable. The modification also provides that Egan Hub may negotiate with customers for prearranged service for a future period or for an interim period.

14. The Commission accepts Egan Hub's proposed modifications to its open season procedures. The revisions are designed to reflect Egan Hub's market based environment and to respond to specific market realities. The modifications are consistent with current Commission policies and regulations.

By direction of the Commission.

Magalie R. Salas,
Secretary.

Appendix

Tariff Sheets Accepted Effective August 25, 2006

FERC Gas Tariff, First Revised Volume No. 1

Egan Hub Storage, LLC: First Revised Volume No. 1

First Revised Sheet No. 23

Second Revised Sheet No. 24

First Revised Sheet No. 34

Second Revised Sheet No. 35

First Revised Sheet No. 109A

First Revised Sheet No. 109B

Second Revised Sheet No. 110

First Revised Sheet No. 111

Second Revised Sheet No. 202

Second Revised Sheet No. 211