

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

August 29, 2006

In Reply Refer To:  
East Tennessee Natural Gas, LLC  
Docket No. PA05-63-001

East Tennessee Natural Gas, LLC  
P.O. Box 1642  
Houston, TX 77251-1642

Attention: Richard J. Kruse, Vice President  
Rates, Regulatory Affairs and Chief Compliance Officer

Reference: Non-Conforming Service Agreements

Dear Mr. Kruse:

1. On March 29, 2006, East Tennessee Natural Gas, LLC (East Tennessee) filed 16 non-conforming service agreements and a tariff sheet identifying two of those 16 contracts as non-conforming agreements.<sup>1</sup> East Tennessee stated that it did not include the other 14 non-conforming contracts on the tariff sheet listing non-conforming agreements, because it was working with its customers to re-execute, terminate, or to otherwise correct those contracts so that they would not be non-conforming. East Tennessee stated that it would file a revised tariff sheet within 120 days identifying any of those 14 contracts which still had non-conforming provisions. Finally, East Tennessee filed a list of 9 additional contracts containing deviations from the form of service agreement which it considered immaterial (The contracts were missing certain language in Article 6.1 of the form of service agreement regarding the applicable rate under the contract.) East Tennessee requested the Commission approve the revised tariff sheet containing the addition of the two non-conforming service agreements to be effective May 1, 2006.

2. On July 18, 2006, East Tennessee submitted a letter advising the Commission that it has successfully completed its efforts to correct both the 14 contracts with material deviations and the 9 contracts with immaterial deviations which it stated in its March 29

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<sup>1</sup> Fifth Revised Sheet No. 394 to FERC Gas Tariff, Third Revised Volume No. 1.

filing it would either revise, re-execute or terminate. East Tennessee states that as a result of these changes no further revisions to the filed tariff sheet is necessary.

3. East Tennessee states that it made the March 29 filing in compliance with the findings of the Audit of Index of Customers performed by the Division of Operational Audits, Market Oversight and Investigations.<sup>2</sup> East Tennessee states it has submitted the tariff sheet pursuant to sections 154.201 and 154.203 of the Commission regulations identifying two contracts (Contract No. 410210 with Powell Clinch Utility District (Powell Clinch) and Contract No. 410518 with Piedmont Natural Gas Company (Piedmont)) as non-conforming contracts.

4. The Commission accepts for filing the two non-conforming service agreements (service agreement nos. 410210 and 410518) and the referenced tariff sheet effective May 1, 2006.

5. East Tennessee states that the Powell Clinch contract deviates from the form of service agreement because the provisions in Exhibit A of the contract provide for a non-elective increase of its Maximum Daily Transportation Quantity (MDTQ) from 500 Dth to 1,000 Dth, on November 1, 2006. East Tennessee states this provision is similar to the same type of non-elective increase in MDTQ that the Commission reviewed and approved in Docket No. RP06-40-000.<sup>3</sup> In that order, the Commission held that the MDTQ increase provisions did not present a risk of undue discrimination because East Tennessee now has a tariff provision offering such contractual provisions to other shippers on a not unduly discriminatory basis (section 5.9 of its General Terms and Conditions). East Tennessee requests that consistent with the order issued in Docket No. RP06-40-000, the Commission accepts this contract, effective September 1, 2005.

6. East Tennessee states that in connection with its marketing of incremental capacity, East Tennessee entered into Contract No. 410158 with Piedmont at a discounted rate for the primary term with an MDTQ of 25,000 Dth. The contract's primary term extends through October 2020, and the contract will then roll over for five-year increments unless the shipper gives a specified notice to terminate the agreement. The

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<sup>2</sup> The audit finding, among other things, determined that East Tennessee failed to file a contract (Contract No. 410138) as a non-conforming agreement with the Commission. The audit finding recommended that East Tennessee review all contracts currently in effect for additional material deviations from the form of service agreement and file the contracts with the Commission if necessary by April 1, 2006.

<sup>3</sup> *East Tennessee*, 113 FERC ¶ 61,177 (2005).

five-year rollover increments are referred to as the secondary term of the contract. East Tennessee states that Article X (Term of Contract) contains a non-conforming provision that provides Piedmont with a right of first refusal (ROFR) at the end of the secondary term of the contract to the extent that Piedmont pays the applicable maximum recourse rate for the entire contractual MDTQ of 25,000 Dth for the entire secondary term of the contract. East Tennessee states that it did not file this contract with the Commission prior to the effective date of the contract due to an administrative error. East Tennessee states that it recognizes that the Commission requires materially non-conforming contracts to be filed prior to the commencement of service and states that it has instituted significant additional measures to enhance the process of identification and review of potentially non-conforming contracts. Accordingly, East Tennessee requests the Commission approve the contract as submitted herein out of time.

7. Public notice of the filing was issued on March 10, 2006. Interventions and protests were due as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (C.F.R. § 385.214 (2006)), all timely filed 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. No adverse comments or protests were filed.

8. The Commission accepts the non-conforming service agreement between Powell Clinch and East Tennessee. The Commission finds the provisions of the Powell Clinch agreement to be similar to provisions previously approved by the Commission as permissible, since they do not present a risk of undue discrimination. The Commission also accepts the non-conforming service agreement between Piedmont and East Tennessee. The regulatory ROFR required by section 284.221(d) of the Commission's regulations is limited to firm, long-term shippers paying the maximum rate. Since the instant contract provides for the shipper to pay a discounted rate, at least during the primary term, the shipper is not eligible for the ROFR at the end of the primary term. However, the non-conforming provisions provide that, if Piedmont and East Tennessee agree that Piedmont will pay the maximum recourse rate for the entire contractual MDTQ for the relevant five year secondary term, it will receive a ROFR at the end of that secondary term. This ROFR is consistent with the regulatory ROFR set forth in section 284.221(d) of the Commission's regulations which is limited to firm shippers paying the maximum rates.<sup>4</sup> However, within 15 days of this order East Tennessee must modify its tariff to offer similar ROFR rights to shippers who agree to pay the maximum rate for the entire secondary term of contracts of the contract which were discounted during the primary term on a not unduly discriminatory basis.

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<sup>4</sup> 18 C.F.R. § 284.221(d).

By direction of the Commission.

Magalie R. Salas,  
Secretary.