

118 FERC ¶ 61,159
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 28, 2007

In Reply Refer To:
Tennessee Gas Pipeline Company
Docket No. RP07-151-000

Tennessee Gas Pipeline Company
1001 Louisiana Street
Houston, Texas 77002

Attention: Marguerite Woung-Chapman, General Counsel

Reference: Fourth Revised Sheet No. 368
to FERC Gas Tariff, Fifth Revised Volume No. 1

Dear Ms. Woung-Chapman:

1. On January 29, 2007, Tennessee Gas Pipeline (Tennessee) filed a tariff sheet¹ to revise section XIX of the General Terms and Conditions of its Tariff (the Off-System Capacity provision). Tennessee proposes to revise the Off-System Capacity Provision to allow it to contract for off-system capacity for a specific shipper at the request of that shipper, provided that shipper is willing to pay Tennessee an additional amount not to exceed the charges Tennessee is obligated to pay the third party for the off-system capacity for the service. As discussed below the Commission accepts the instant tariff sheet as conditioned below to be effective March 1, 2007.

2. Tennessee states that its current Off-System Capacity provision provides that in the event Tennessee acquires off-system capacity and uses that capacity to render service for its shippers, Tennessee would render service pursuant to Tennessee's approved rates, terms and condition of its tariff. Tennessee states that it does not propose to change this aspect of its tariff. However, Tennessee states that by the instant filing it intends to revise its tariff to address situations where Tennessee would not ordinarily contract for, or otherwise make available for rendering of service, off-system capacity, but for a specific request, or by mutual agreement, of a shipper who desires the use of that capacity in conjunction with service on Tennessee. Tennessee states that it proposes to use the off-

¹ Fourth Revised Sheet No. 368, to Tennessee FERC Gas Tariff Fifth Revised Volume No. 1.

system capacity requested by a specific shipper for service to that shipper, provided that the subject is willing to pay Tennessee an additional amount not to exceed the charges Tennessee is obligated to pay the third party for the off-system capacity for the service. Tennessee states that contracting for such off-system capacity would provide additional shipper flexibility. Further, Tennessee asserts that its proposal is consistent with the Commission precedent.²

3. Public notice of the filing was issued 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, 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.

4. PSEG Energy Resources and Trade, LLC (PSEG) asserts that by the instant filing, Tennessee would apparently, for the first time, gain the right to charge the shipper directly for third party transportation costs that Tennessee incurs in providing the service. PSEG states it would appear that this provision would only be used in new service arrangements and would not be used to modify existing (or extensions of existing) service agreements or obligations against the wishes of an existing shipper. However it states that to the extent, Tennessee intends this provision to modify existing service agreements, PSEG protests the filing. PSEG states the provisions should not apply to existing service agreements or extensions of existing service agreements.

5. PSEG also states this filing raises a number of other questions regarding the rights and responsibilities of Tennessee system customers under such arrangements. For instance, PSEG asks whether there will be opportunities for Tennessee to make system use of idle off-system capacity, or for other individual customers to utilize any idle off-system capacity. PSEG also inquires into the cost responsibility of other shippers, if any, in the event of non-payment by the shipper utilizing the new off-system capacity. PSEG also states that it would be useful to learn how Tennessee plans to book these costs.

6. On February 14, 2007, Tennessee filed an answer.³ Tennessee responds that its proposed tariff provisions are not intended to modify a shipper's existing service agreements on Tennessee, or a shipper's rights contained under such agreements.

² Transmittal Letter at 2, *citing, ANR Storage Co.*, Docket No. RP06-421-000 (Unpublished Director Letter Order issued July 19, 2006).

³ Generally, answers to protest are not permitted unless ordered by the decisional authority. 18 CFR §213 (a)(2)(2006). In the instant case, the Commission will permit the answer because it assists the Commission in reaching a determination on Tennessee's filing.

7. Tennessee states that for capacity that Tennessee acquires at a shipper's specific behest, and for which that shipper is paying the charges associated with the third-party capacity, Tennessee does not intend for other shippers who are not bearing the costs of the off-system capacity to utilize such capacity, even if such capacity is idle. Tennessee asserts that under such circumstances, this is the only equitable result because the single shipper would be subsidizing other shippers' use of the capacity.⁴

8. Tennessee states that the system will bear none of the costs in the event of non-payment by the shipper utilizing the new off-system capacity. Tennessee states that it will still be a contract holder on that third party provider and remains liable for the associated charges to that third party provider. Tennessee asserts that under the provisions of the proposed tariff provision, other than the shipper who mutually agreed with Tennessee that Tennessee would take on the third party capacity, Tennessee cannot pass along the costs of the third party capacity to other shippers.

9. Finally, Tennessee states as to the accounting treatment, Tennessee will record third party charges incurred for any off-system capacity in accordance with the FERC Uniform System of Accounts. Costs incurred for transportation or compression services provided by third parties are to be recorded in FERC Account No. 858, Transmission and Compression of Gas by Others. Similarly, costs incurred for storage services provided by third parties will be recorded in FERC Account No. 824, Other Expenses. Revenues from services provided by Tennessee through the utilization of off-system capacity will be recorded in FERC Account Nos. 489.2 and 489.4 for transportation and storage services, respectively.

10. The Commission finds the proposed revision, as conditioned below, to be just and reasonable. The revision allows Tennessee, at the request of its shipper, to use off-system capacity for the benefit of the requesting shipper, provided the shipper is willing to pay an additional amount for the off-system capacity. Such tariff provisions recognize that when a pipeline and a shipper agree, a pipeline can provide a valuable service to the shipper by arranging for transportation of the shipper's gas to or from the pipeline. The charges incurred by the pipeline for this service are properly passed along to the shipper. Additionally, Tennessee has adequately addressed most of the concerns raised by PSEG. However, Tennessee states that it does not intend to permit other shippers to utilize idle capacity that it acquires at a specific shipper's behest. The Commission finds that this is not consistent with our policy in *Texas Eastern*⁵. The premise of the Commission

⁴ Tennessee points out that, under circumstances where the shipper who originally agreed to bear the cost for this off-system capacity defaults on its obligation to pay, Tennessee would be willing to post such capacity for shippers willing to assume the defaulting shipper's rights and obligations.

⁵ *Texas Eastern Transmission Corp.*, 74 FERC ¶ 61,074 (1996); *reh'g denied* 78 FERC ¶ 61,277 (1997), remanded for further proceedings, *Colorado Interstate Gas Co. v. FERC*, a146 F.3d 889 (D.C. Cir. 1998), Order on Remand, 93 FERC ¶61,273 (2000).

decision in Texas Eastern permitting pipelines to acquire upstream capacity for the benefit of its customers was that such capacity would be offered on an open access basis pursuant to the pipeline's open access Part 284 tariff.⁶ Therefore, the Commission is not persuaded by Tennessee's argument not to allow other shippers access to unused capacity that it obtained for the use of a specific customer. Such capacity must be offered pursuant to Tennessee's open access tariff.

11. Accordingly, the Commission accepts the instant tariff sheet to be effective on March 1, 2007 subject to Tennessee filing a revised tariff provision within 30 days of the date of this order to clarify its proposal as discussed above.

By direction of the Commission.

Magalie R. Salas,
Secretary.

cc: All Parties
Public File

⁶ *Texas Eastern*, 93 FERC at p 61,885-886.