

122 FERC ¶ 61,014
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Texas Eastern Transmission, LP

Docket No. RP07-552-002

ORDER ON REHEARING

(Issued January 7, 2008)

1. Rehearing and clarification have been requested of the Commission's August 30, 2007 Order (August 30 Order)¹ which accepted, subject to condition, a proposal by Texas Eastern Transmission, LP (Texas Eastern) clarifying its procedures and obligations applicable to capacity release transactions for storage services. As discussed below, the Commission denies rehearing and clarification, without prejudice to the parties raising the same policy issues in their comments on the Notice of Proposed Rulemaking in Docket No. RM08-1-000.²

Background

2. On August 2, 2007, Texas Eastern filed revised tariff sheets proposing to add sections 3.14(G)(4)(a) through (e) to its General Terms and Conditions (GT&C) to clarify the procedures for the release of storage capacity under Rate Schedules SS-1 and FSS-1. Among other things, the new sections would require the releasing shipper to ensure that its storage capacity is available upon the commencement of the release, require that the replacement shipper be responsible for arranging any necessary transportation service, clarify the procedures for the releasing shipper to recall its capacity, and provide that any portion of the replacement shipper's inventory not withdrawn at the end of the release would be cashed out.

¹ *Texas Eastern Transmission, LP*, 120 FERC ¶ 61,199 (2007).

² *Promotion of a More Efficient Capacity Release Market*, 72 Fed. Reg. 65,916 (November 26, 2007), 121 FERC ¶ 61,170 (2007).

3. On August 30, 2007, the Commission accepted the tariff sheets, to be effective September 1, 2007, subject to the condition that Texas Eastern remove certain language from its proposed section 3.14(G)(4)(a). That language provided that “[i]f the Releasing Customer proposes or requires a transfer of all or a portion of its Storage Inventory in conjunction with its release of storage capacity rights, it shall so specify in its offer to release capacity.” The Commission stated that the proposed tariff provision appeared to constitute a broad authorization for releasing shippers on Texas Eastern’s system to tie their release of storage capacity to an extraneous condition (*i.e.* the taking of gas inventory) in all situations. The Commission determined that the proposed provision violates the Commission’s current tying prohibition policy as articulated in Order No. 636-A and *Louis Dreyfus Energy Services, L.P.*, which prohibits a releasing shipper from tying the release of its capacity to any extraneous conditions.³ The Commission directed Texas Eastern to file revised tariff sheets, deleting the proposed language in section 3.14(G)(4)(a).

4. On September 14, 2007, Texas Eastern concurrently filed (1) to comply with the August 30 Order in this proceeding, (2) a limited section 4 filing in Docket No. RP07-693-000 proposing to revise its cash out mechanism, and (3) a request for clarification or rehearing of the August 30 Order. In its compliance filing, Texas Eastern removed the language in section 3.14(G)(4)(a) which the Commission required it to remove. In the Docket No. RP07-693-000 proceeding, Texas Eastern proposed to modify section 3.14(G)(4)(a) by providing that, in the event that any portion of storage inventory is not withdrawn or transferred within three business days of the effective date of the release, the storage inventory will be cashed out, based on the average of the lowest weekly Spot Index Prices for the four Access Area Zones, as determined pursuant to GT&C section 8.5(C)(3), for the month preceding the effective date of the release.

5. In its request for clarification or rehearing of the August 30 Order, Texas Eastern stated that it sought rehearing only to the extent the Commission did not approve the new cash-out filing in Docket No. RP07-693-000. The Public Service Commission of the State of New York (NYPSC) and KeySpan Delivery Companies (KeySpan) also filed requests for rehearing or, alternatively, clarification of the August 30 Order. The issues raised by those rehearing requests are set forth and discussed below.

6. By director’s letter order, Texas Eastern’s compliance filing was accepted, effective September 1, 2007, because it removed the language that violated the Commission’s policy prohibiting tying the release of capacity to any extraneous conditions. Subsequently, on October 12, 2007, the Commission accepted the cash-out

³ *Louis Dreyfus Energy Services, L.P.*, 114 FERC ¶ 61,246 at P 19 (2006) (*Louis Dreyfus*); *see also Natural Gas Pipeline Co.*, 64 FERC ¶ 61,295 at 63,079 (1993), holding that tying a purchase of gas in storage to a release of the storage capacity would be discriminatory.

mechanism proposed in Docket No. RP07-693-000, effective October 1, 2007, finding that it is consistent with the cash out mechanism already in place for replacement customers in GT&C section 3.14(G)(4)(e), that the Commission has found to be just and reasonable.⁴

Discussion

7. The Commission denies the three requests for clarification and/or rehearing for the reasons discussed below.

8. In its request, Texas Eastern stated that, if the Commission approved its revised cash-out procedure that it submitted on September 14, 2007 in Docket No. RP07-693-000, there would be no need for the Commission to address Texas Eastern's request for clarification or rehearing. Because the Commission has approved this cash-out proposal, the Commission denies Texas Eastern's request for clarification or rehearing as moot.

9. In their rehearing requests, both NYPSC and KeySpan raise general policy issues concerning the circumstances under which releasing shippers should be permitted to include in releases of storage capacity conditions concerning the treatment of storage gas inventory. The NYPSC argues that there are numerous situations where including storage inventory with a temporary release of capacity is just and reasonable. For example, it states that, if a local distribution company (LDC) is releasing storage capacity to a marketer participating in a state retail choice program during the winter heating season, the release of the storage capacity without the inventory would be worthless. The NYPSC explains this is because the marketer would have no opportunity to inject the necessary storage inventories in order to provide peak deliverability.

10. If the Commission denies rehearing on the ground that Texas Eastern's proposed tariff language was overly broad, the NYPSC requests the Commission to clarify that there can be situations where it is appropriate and reasonable to allow the release of storage capacity in connection with the transfer of related storage inventory. The NYPSC specifically requests that the Commission clarify that a release of storage capacity in a prearranged deal to a retail marketer under a retail access program, coupled with a transfer of storage inventory, does not constitute an improper tying condition.

11. In its request, KeySpan seeks clarification that neither the August 30 Order nor any other order or regulation of the Commission precludes storage customers from arranging a sale and transfer of gas in storage to a replacement shipper at the same time that the storage customer prearranges a release of capacity at maximum rates under section 284.8(h)(1) of the Commission's regulations. KeySpan states that LDCs have contracted for the majority of storage capacity in the northeastern part of the country, and

⁴ *Texas Eastern Transmission, LP*, 121 FERC ¶ 61,026 (2007).

they rely on summer storage injections in order to meet the peak day and winter season requirements of their end-use customers. KeySpan also states that, because of limitations on the amount of gas that can be injected or withdrawn on any day, LDCs must gradually inject gas into storage during the summer and then gradually withdraw the gas over the winter period. As a result, it asserts that, when an LDC desires to release its storage capacity, there is generally a need to make an arrangement to dispose of the gas currently in storage. Accordingly, KeySpan asserts that the Commission should find that such arrangements are reasonable and do not constitute improper tying, particularly where the release is at the maximum rate. To the extent that the Commission determines that the sale and transfer of storage gas to a replacement shipper accepting a prearranged release of storage capacity at maximum rates is not permissible, KeySpan seeks rehearing of the August 30 Order.

12. On November 15, 2007, the Commission issued a Notice of Proposed Rulemaking entitled the “Promotion of a More Efficient Capacity Release Market” in Docket No. RM08-1-000. In that proceeding, the Commission, among other things, requested comment on similar policy issues as are raised in NYPSC and KeySpan’s requests for clarification and/or rehearing. Specifically, the Commission requested comment on whether it should clarify its prohibition on tying to allow a releasing shipper to include conditions in a storage release concerning the sale and/or repurchase of gas in storage inventory.⁵ The Commission also requested comment on whether capacity releases by LDCs made as part of retail choice programs should be treated as similar to capacity releases made as part of an asset management arrangement, which the Commission proposed to exempt from both the prohibition against tying and the requirement that non-maximum rate releases be posted for bidding.

13. The Commission finds that the issues NYPSC and KeySpan have raised in the requests for clarification and/or rehearing in this proceeding are general policy issues which are more appropriately addressed in the Docket No. RM08-1-000 rulemaking proceeding. Accordingly, while the Commission denies rehearing and clarification on the ground that Texas Eastern’s instant proposal was overbroad under current Commission policy, this denial is without prejudice to NYPSC, KeySpan, and other parties raising the same issues in their comments on the Notice of Proposed Rulemaking in Docket No. RM08-1-000.

The Commission orders:

(A) The request for clarification and rehearing by Texas Eastern is denied as moot.

⁵ *Promotion of a More Efficient Capacity Release Market*, 121 FERC ¶ 61,170 (2007) at P 82.

(B) The requests for clarification and rehearing by NYPSC and KeySpan are denied, without prejudice to raising the same issues in the comments on the Notice of Proposed Rulemaking in Docket No. RM08-1-000.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.