

122 FERC ¶ 61,185
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 29, 2008

In Reply Refer To:
Texas Gas Transmission, LLC
Docket No. RP08-165-000

Texas Gas Transmission, LLC
3800 Frederica Street
Owensboro, KY 42301

Attention: Kathy D. Fort
Manager, Certificates and Tariffs

Reference: Second Revised Sheet Nos. 402, 418, 432, 444, 455 and 484 to FERC Gas
Tariff, Second Revised Volume No. 1

Dear Ms. Fort:

1. On January 17, 2008, Texas Gas Transmission, LLC (Texas Gas) filed the referenced tariff sheets to add certain language concerning the rights of first refusal and evergreen/rollover terms to the *pro forma* agreements in its NNS, SGT, SNS, FT, STF and FSS rate schedules. The tariff sheets are accepted effective March 1, 2008, subject to Texas Gas filing, within 15 days of the issuance of this order, revised tariff sheets in accordance with the discussion below.

2. In its transmittal letter, Texas Gas points out that the Commission approved Texas Gas' updated *pro forma* service agreements by unpublished letter order dated December 27, 2007, in Docket No. RP07-649-001. Texas Gas states that in that filing it inadvertently failed to include a contractual right of first refusal. Texas Gas states that the instant filing proposes to add an option to Rate Schedules NNS, SGT, SNS, FT, STF and FSS to allow a contractual right of first refusal, when mutually agreed to by the parties. Further, Texas Gas states that, the rollover term provision and the waiver of right of first refusal provision were approved in the previous *pro forma* filing in Docket No. RP07-649-000, and are more clearly specified in this filing as provisions which may be used upon mutual agreement.

3. Public notice of the filing was issued on January 28, 2008. Interventions and protests were due on or before February 4, 2008. Pursuant to Rule 214 (C.F.R. § 385.214 (2007)), all timely filed motions to intervene and any motion 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. A protest was filed jointly by the Western Tennessee Municipal Group; Jackson Energy Authority; City of Jackson, Tennessee; and the Kentucky Cities (together “Cities”). Texas Gas filed an answer to Cities’ protest. While the Commission’s regulations do not permit the filing of answers to protests,¹ the Commission will accept the answer because it provides additional information which aids in our decision making process.

4. Texas Gas proposes to add the following language concerning the extension or rollover of agreements:

[To the extent mutually agreed to, the following language set forth in 6.2 through 6.4 may apply. It is recognized that a Customer may have the right to an evergreen/rollover provision, (6.2) below, pursuant to section 32.2 of the General Terms and Conditions of the Texas Gas Tariff.]

5. Cities argues that the second sentence is too restrictive, and fails to recognize that all customers have a right to either an evergreen or rollover provision under section 32.2 of the General Terms and Conditions (GT&C) of Texas Gas’ tariff. Accordingly, Cities argues that to prevent potential confusion regarding the evergreen/rollover rights of transportation customers the Commission should require Texas Gas to revise the second sentence as follows:

It is recognized that a Customer, at its option, ~~may have~~ has the right to an evergreen/or rollover provision, (6.2) below, pursuant to section 32.2 of the General Terms and Conditions of the Texas Gas Tariff.

6. In its answer, Texas Gas states that it agrees that all customers have the right to select either a bilateral evergreen right (section 32.2(a)) or a unilateral rollover provision (section 32.2(b)), pursuant to section 32.2, unless a customer agrees to waive the right. However, Texas Gas argues that the language proposed by Cities is overly broad and does not recognize that a customer may elect to exclude the evergreen or rollover provision from its agreement or that Texas Gas and a customer may agree on a contractual ROFR under section 32.4 in lieu of an evergreen or rollover. Texas Gas states that after discussions with Cities, Texas Gas proposes, with Cities’ concurrence, to modify the second sentence as follows:

¹ 18 C.F.R. § 385.213 (2007).

It is recognized that a Customer, at its option, ~~may have~~ has the right to include in the agreement an evergreen/or rollover provision, (6.2) below, pursuant to section 32.2 of the General Terms and Conditions of the Texas Gas Tariff.

7. Accordingly, the Commission accepts Texas Gas' proposed tariff sheets to be effective March 1, 2008, subject to Texas Gas filing revised tariff sheets within 15 days of the issuance of this order, to reflect the revisions jointly developed by Texas Gas and Cities.

By direction of the Commission.

Kimberly D. Bose,
Secretary.