

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

July 31, 2008

In Reply Refer To:  
Tennessee Gas Pipeline Company  
Docket No. RP08-338-001

Tennessee Gas Pipeline Company  
1001 Louisiana Street  
Houston, Texas 77002

Attention: Melissa G. Freeman, Senior Counsel

Reference: June 6, 2008 Compliance Filing

Dear Ms. Freeman:

1. On June 6, 2008, Tennessee Gas Pipeline Company (Tennessee) filed Substitute Thirteenth Revised Sheet No. 405C and Substitute Original Sheet No. 405C.01 to Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1, along with clarifying examples, in compliance with a letter order issued by the Commission in this proceeding on May 29, 2008.<sup>1</sup> As discussed in more detail below, the Commission rejects the June 6, 2008 filing, and conditions acceptance of the April 30, 2008 filing on Tennessee filing revised tariff language consistent with this order within ten days of the date of this order.

2. Public notice of the June 6, 2008 filing was issued on June 11, 2008. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.<sup>2</sup> Pursuant to Rule 214,<sup>3</sup> 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

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<sup>1</sup> *Tennessee Gas Pipeline Co.*, 123 FERC ¶ 61,217 (2008) (May 29, 2008 Letter Order).

<sup>2</sup> 18 C.F.R. § 154.210 (2008).

<sup>3</sup> 18 C.F.R. § 385.214 (2008).

at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. No interventions, adverse comments, or protests were filed.

3. On April 30, 2008, Tennessee filed tariff sheets to revise several sections of its tariff pertaining to the modification of Primary Receipt and Primary Delivery Points under its various rate schedules related to its “net present value” (NPV) mechanism for allocating capacity and Reduction Option provision. Among other things, Tennessee proposed revisions to section 5.7 of Article XXVIII, of the General Terms and Conditions (GT&C) of its tariff to exclude certain changes in Primary points from the requirements of an Open Season as described in section 5 of that article of the GT&C.<sup>4</sup> Hess Corporation (Hess) filed comments on Tennessee’s proposal. Hess stated that it did not oppose the substance of Tennessee’s proposal, but believed the wording of the proposed revisions to General Terms and Condition (GT&C) article XXVIII, section 5.7, was ambiguous and should be modified. Specifically, Hess asserted that the proposed language that would permit a primary point change without an open season in two circumstances included a double-negative, and therefore was confusing. In its comments, Hess offered alternative language.

4. In the May 29, 2008 Letter Order, the Commission agreed with Hess that the double-negative in the proposed tariff language created an ambiguity that should be corrected. However, the Commission found that the more troublesome aspect of the proposed revision was that it was unclear what the process would be for other shippers to express interest in available capacity, and what the deadline would be for them to express that interest. Further, the Commission stated that it was unclear how the proposed changes were consistent with section 5.1 of Article XXVIII of the GT&C. The

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<sup>4</sup> The proposed exceptions to the requirement to hold an open season provided:

Notwithstanding this Section 5.7, an open season for a change of primary points for available capacity on Transporter’s system posted as generally available shall not be required

“(i) when the change is necessitated by the proposed abandonment of facilities associated with a Shipper’s primary point or points unless otherwise required by Transporter; or

“(ii) upon mutual agreement of Transporter and Shipper when the proposed change would result in an NPV of zero

provided that a shipper has not expressed interest in the available capacity necessary to effectuate the changes until an Open Season has been conducted in accordance with Section 5.1.

Commission found that the revised tariff language which Tennessee had proposed to include in section 5.7 of the GT&C of Tennessee's tariff was ambiguous and, accordingly, may be unjust and unreasonable. The Commission accepted and suspended the proposed tariff provisions, to be effective June 1, 2008, subject to the condition that Tennessee file to revise its proposed tariff language to clarify its intent, and to include examples of how its proposal is intended to work.

5. In the instant filing, Tennessee states that it has proposed revised tariff language to clarify that exceptions to the requirement to hold an open season (now to be designated as the "Open Season Exceptions") in section 5.7 (i) and (ii) will require that the relevant capacity has first been posted as generally available, and that Tennessee has first addressed other shipper requests for the same capacity, either by effectuating any Open Season Exceptions on a first-in-time basis or by holding an Open Season in accordance with section 5.1 of Article XXVIII of the GT&C. Specifically, Tennessee proposes to replace the last sentence of section 5.7 of its April 30, 2008 proposal with the following provision:

Transporter shall not effectuate any Open Season Exceptions for capacity for one Shipper for which another Shipper ("first-in-time Shipper") has previously expressed interest until after it effectuates any Open Season Exceptions for the first-in-time Shipper or holds an Open Season in accordance with Section 5.1.

6. To comply with the May 29, 2008 Letter Order, in the instant filing Tennessee has also provided two examples of how this further revised and clarified tariff language is intended to work. In the first example, Shipper A wishes to abandon primary Receipt Point A, the Open Season Exception in section 5.7(i). Tennessee and Shipper A agree to change Shipper A's Receipt Point A to Receipt Point B without an Open Season in accordance with that Open Season Exception, as set forth in the proposed revised tariff language. In this example, no other shipper has previously expressed interest in capacity at Receipt Point B. Tennessee states that it may effectuate the proposed amendment with Shipper A without conducting an Open Season.

7. In the second example, Shipper A wishes to change its primary Receipt Point A to Receipt Point B, and that the proposed change would result in a NPV of zero, the Open Season Exception in section 5.7(ii). In this example, Shipper B previously expressed interest in capacity at Receipt Point B, either in the form of a request for new transportation service or as a request for a primary point change to an existing agreement. Tennessee states that before it addresses Shipper A's request for the receipt point amendment through an Open Season Exception, Tennessee must first address Shipper B's first-in-time request through either an Open Season Exception or by holding an Open

Season in accordance with section 5.1 of Article XXVIII of the GT&C. Tennessee states that Shipper A may participate in the Open Season conducted to address Shipper B's request, or Shipper A may wait until after such Open Season and avail itself of an Open Season Exception.

8. The Commission finds that Tennessee's proposed revised tariff language cited above is unclear. The Commission understands Tennessee's intent to be that, if Tennessee has sufficient capacity at a point to permit an existing shipper to change its primary delivery or receipt point to that point, an Open Season Exception may apply to that shipper and the capacity may be awarded to that shipper without an open season and notwithstanding the request for capacity at that point by a second-in-time shipper. Further, the Commission understands that, if the Open Season Exceptions do not apply to the first-in-time shipper, Tennessee will hold an open season for that capacity.<sup>5</sup> Therefore, the proposed language purporting to explain when the Open Season Exceptions would apply to the second-in-time shipper would appear to be superfluous since either the capacity would already have been awarded to the first-in-time shipper under the Open Season Exceptions or an open season for that capacity would already have been established.

9. While the Commission finds it acceptable for Tennessee to provide exceptions from its open season requirements in a case of a change in primary points, its proposed language in its June 6, 2008 filing to be added at the end of section 5.7 is unclear and potentially contradictory and, therefore, cannot be accepted. To comport with the Commission's foregoing understanding, Tennessee must file to propose additional language clarifying that: (1) if an Open Season Exception applies to a first-in-time shipper requesting a change in primary point, the capacity at that new point shall be awarded to that shipper without an open season notwithstanding that another shipper subsequently submits a request for that capacity before the capacity is awarded; and (2) if an Open Season Exception does not apply to the first-in-time shipper requesting a change in primary point, then Tennessee shall hold an open season for that capacity. Accordingly, Tennessee's June 6, 2008 filing is rejected, and the Commission further conditions acceptance of Tennessee's April 30, 2008 proposal on Tennessee filing to

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<sup>5</sup> Tennessee generally awards capacity based on the highest NPV bid and, in the case of a tie, based on the first-in-time bid. Existing section 5.7 provides that a change in primary point shall automatically be deemed the first-in-time bid at a zero NPV, except if the reservation charge changes to produce a higher NPV. Thus, since a pipeline can be expected to seek the highest value for its capacity, Tennessee may choose not to agree to an Open Season Exception under proposed section 5.7(ii) on a non-discriminatory basis if another request for capacity at that same point at a higher NPV subsequently is received. In that case, Tennessee could choose to hold an open season for the point capacity.

delete the proposed last sentence of section 5.7 and inserting language consistent with the directive above. Tennessee is directed to file revised tariff language consistent with this order within ten days of the date of this order.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

cc: All Parties  
Public File

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