

125 FERC ¶ 61,232
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.

Tennessee Gas Pipeline Company

Docket Nos. RP91-203-076
RP92-132-064

ORDER DENYING REQUEST FOR STAY

(Issued November 26, 2008)

1. By letter order issued in these dockets on November 12, 2008,¹ the Commission directed the Chief Administrative Law Judge to appoint a settlement judge and to convene a settlement conference as soon as practicable. On November 17, 2008, Tennessee Gas Pipeline Company (Tennessee) filed a Motion for Stay of Settlement Judge Procedures (Motion). For the reasons discussed below, we will deny the request for a stay.

2. The underlying issue in this case arises out of a May 15, 1995 Settlement (1995 Settlement),² addressing recovery of the costs of remediating polychlorinated biphenyl (PCB) and other hazardous substance list (HSL) contamination on its system. Under the terms of the 1995 Settlement, Tennessee has sought several two-year extensions of the time to recover the costs of PCB/HSL remediation. Tennessee filed its most recent request on May 30, 2008, seeking to extend the operation of the 1995 Settlement through June 30, 2010. In its filing, Tennessee also indicated that it has been engaged in

¹ *Tennessee Gas Pipeline Co.*, 125 FERC ¶ 61,164 (November 12 Order).

² The recovery of PCB/HSL remediation costs was established in a contested settlement filed on May 15, 1995 in this docket. The Commission approved the 1995 Settlement in *Tennessee Gas Pipeline Co.*, 73 FERC ¶ 61,222 (1995), *reh'g*, 74 FERC ¶ 61,174 (1996). Pursuant to Article XIII of the 1995 Settlement, it took effect on the date that the Commission denied rehearing (February 20, 1996), and may continue for a period of up to 15 years from that date.

negotiations regarding the disposition of unused funds previously collected pursuant to the 1995 Settlement. Several intervenors opposed the extension and sought immediate refunds of overcollected funds, while others who supported Tennessee's request nonetheless requested that the Commission should condition acceptance on Tennessee meeting with its customers to develop a workable solution to the refund issue. On June 30, 2008, the Commission accepted Tennessee's request, conditioned upon Tennessee meeting with its customers to discuss amending the Settlement, as Tennessee had offered to do in its filing, and reporting back to the Commission by October 1, 2008.³ On October 1, 2008, Tennessee filed its compliance report, stating that it had met with a small group of customers to address the refund issue. Once again, parties filed comments seeking refunds or at least a more open and inclusive settlement negotiation process on Tennessee's part. In the November 12 Order, the Commission found that Tennessee had complied with the Commission's June 30 Order, but found that, so far, the settlement process did not appear to be fully inclusive and transparent, and that the parties had not made sufficient progress toward settlement. The Commission, therefore, directed that a settlement judge be appointed within fifteen days, in order to aid the parties in their resolution of the dispute over the 1995 Settlement.

3. In the instant Motion, Tennessee moves to stay the appointment of the settlement judge indefinitely, unless and until Tennessee chooses to request a settlement conference.⁴ As grounds for the request, Tennessee asserts that the economic environment in which Tennessee was willing to pursue informal discussions has changed. In particular, Tennessee cites the global credit crunch, which it states has strained its budget, as well as its ongoing efforts to repair hurricane damage to its facilities on and near the Gulf of Mexico.⁵ These conditions, Tennessee asserts, have diminished the benefits of attempting to settle. Tennessee further asserts that granting its motion would not harm other parties since, under the terms of the 1995 Settlement, Tennessee must eventually pay interest on the balance of funds held at a minimum rate of 10 percent, which exceeds the current Commission interest rate.⁶

4. On November 19, 2008, the Commission issued notice of the Motion, shortening the answer period and permitting interested parties to submit answers by November 20, 2008. Three parties filed answers: New Jersey Natural Gas Company (New Jersey

³ *Tennessee Gas Pipeline Co.*, 123 FERC ¶ 61,318 (June 30 Order).

⁴ Motion at 5.

⁵ *Id.* at 4.

⁶ *Id.* at 5.

Natural), The Dominion LDCs,⁷ and National Fuel Gas Distribution Corporation (Distribution).

5. New Jersey Natural does not object to Tennessee's motion. The Dominion LDCs and Distribution, however, both asked the Commission to deny the motion. The Dominion LDCs argue that the current economic climate, rather than diminishing the benefit of settlement as Tennessee argues, has heightened the need for prompt action to allocate Tennessee's vastly overcollected funds. Distribution, likewise, argues that the economic environment magnifies the need to settle, since Tennessee's rate payers would benefit from the return of overcollected sums at a time when credit markets are tight. Further, Distribution expresses concern that, as they read Tennessee's motion, Tennessee intends to use the PCB/HSL remediation funds for purposes other than PCB/HSL remediation. Distribution states that the 1995 Settlement did not contemplate the use of PCB/HSL remediation funds for general pipeline expenses such as hurricane damage repair. If Tennessee truly lacks funds for expenses other than PCB/HSL remediation, Distribution argues, then they should be making a rate filing.

6. Under the Administrative Procedure Act, the Commission "may postpone the effective date of action taken by it" if it "finds that justice so requires."⁸ In deciding whether justice requires a stay, the Commission generally requires several factors, including:

- (1) whether the party requesting the stay will suffer irreparable injury without a stay;
- (2) whether issuing the stay may substantially harm other parties;
and
- (3) whether a stay is in the public interest.⁹

⁷ The Dominion LDCs consist of The East Ohio Gas Company d/b/a Dominion East Ohio, The Peoples Natural Gas Company d/b/a Dominion Peoples, and Hope Gas, Inc. d/b/a Dominion Hope.

⁸ 5 U.S.C. § 705 (2006).

⁹ *Empire District Electric Co.*, 123 FERC ¶ 61,205, at P 4 (2008); *Transcontinental Gas Pipe Line Corp.*, 119 FERC ¶ 61,284, at P 6 (2007).

The Commission's general policy is to refrain from granting stays of its orders, in order to assure definiteness and finality in Commission proceedings.¹⁰

7. If the party requesting the stay is unable to demonstrate that it will suffer irreparable injury absent a stay, we need not examine the other factors.¹¹ A showing of irreparable injury must be more than unfavorable economic circumstances or loss of profits,¹² and Tennessee has made no such showing here. The Commission finds that it would not cause irreparable harm to Tennessee for Tennessee to participate in settlement negotiations. Further, the effect on Tennessee of global credit conditions and Tennessee's efforts to repair storm damage are irrelevant to the question of irreparable harm in light of the 1995 Settlement's limitations on how Tennessee may use the funds at issue. Accordingly, we deny Tennessee's motion.

The Commission orders:

The request for stay is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁰ *Id.*

¹¹ *Transcontinental Gas Pipe Line Corp.* at P 6.

¹² *Olympic Pipe Line Co.*, 102 FERC ¶ 61,055, at P 17 (2003).