

125 FERC ¶ 61,379
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 30, 2008

In Reply Refer To:
Texas Eastern Transmission, LP
Docket No. RP99-480-024

Texas Eastern Transmission, LP
P.O. Box 1642
Houston, TX 77251-1642

Attention: Janice K. Devers, General Manager
Tariffs and Commercial Development

Reference: First Revised Sheet Nos. 120 and 121 and Original Sheet
Nos. 120A and 121A to FERC Gas Tariff, Seventh Revised
Volume No. 1

Dear Ms. Devers:

1. On December 3, 2008, Texas Eastern Transmission, LP (Texas Eastern) filed the above referenced tariff sheets and two letter agreements, each dated November 26, 2008, to modify two previously filed and accepted negotiated rate agreements between Texas Eastern and New Jersey Natural Gas Company (New Jersey Natural) and Texas Eastern and PSEG Power, LLC (PSEG).¹ In both agreements, Texas Eastern is proposing to cap the Applicable Shrinkage Adjustment charge at 2.6 percent for the period December 1, 2008 through November 30, 2009 and provide that the fuel caps referenced in the negotiated rate agreements apply to any replacement customer pursuant to a capacity release transaction.

2. On December 5, 2008, Texas Eastern filed with the Commission, in Docket No. RP09-143-000, a request that the Commission acknowledge that (a) the capacity release posting and bidding requirements of its tariff and Commission regulation will not apply to the negotiated fuel caps associated with the service agreements with New Jersey

¹ Both negotiated rate agreements were accepted by the Commission for FT-1 service on the TIME II Project facilities in a Delegated Letter Order on October 28, 2008 in Docket No. RP99-480-022.

Natural and PSEG, and (b) Texas Eastern is not required to file individual negotiated rate sheets with each replacement shipper on the basis of the negotiated fuel cap.

Alternatively, Texas Eastern requests that the Commission grant the appropriate waivers of the posting and bidding and filing requirements associated with the negotiated fuel caps. The Commission accepts and suspends the proposed tariff sheets, to be effective December 1, 2008, subject to refund and further Commission review in conjunction with review of Texas Eastern's December 5, 2008 request in Docket No. RP09-143-000 for acknowledgement that the capacity release posting and bidding and filing requirements do not apply to the negotiated fuel caps, those agreements or waiver of those requirements.

3. Texas Eastern proposes to modify the negotiated rate tariff sheets, and accordingly the negotiated rate agreements, to: (a) clarify that each negotiated rate shipper is responsible to pay the Applicable Shrinkage Adjustment rate for all gas transported from a receipt point upstream of the primary incremental transportation path;² (b) provide that, from December 1, 2008 to November 30, 2009, the Applicable Shrinkage Adjustment rate payable by each negotiated rate shipper will be capped at 2.6 percent for all gas quantities transported from receipt points within or downstream of the primary incremental transportation path, up to shipper's MDQ;³ and (c) provide that the fuel caps referenced in the negotiated rate agreements (i.e., 3.6 percent and 2.6 percent, as applicable) apply to any replacement customer pursuant to a capacity release in accordance with section 3.14 of the General Terms and Conditions of Texas Eastern's tariff, except with respect to gas transported from receipt points upstream of the primary receipt point specified in the service agreement.

4. Texas Eastern executed letter agreements with New Jersey Natural and PSEG to indicate the parties' agreement to the negotiated rate provisions, as amended, on the pro forma tariff sheets.

5. Notice of Texas Eastern's filing was issued on December 5, 2008. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2008). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2008), all timely filed motions to intervene and any motions to intervene out-of-time before the

² The primary incremental transportation path is defined in each negotiated rate tariff sheet as the path from the customer's primary receipt point to the customer's primary delivery point.

³ In the previously accepted negotiated rate agreements, the Applicable Shrinkage Adjustment rate was capped at 3.6 percent for the entire term of the agreements.

issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. No adverse comments or protests were filed.

6. Based upon a review of Texas Eastern's filing, the Commission finds that the proposed tariff sheets tendered in the instant docket have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. The Commission will review this proposal further and make its determination in conjunction with review of Texas Eastern's December 5, 2008 request in Docket No. RP09-143-000 for acknowledgment that the capacity release posting and bidding and filing requirements do not apply to the negotiated fuel caps of those agreements or waiver of those agreements. Accordingly, the Commission shall accept the proposed tariff sheets and suspend their effectiveness for the period set forth below, subject to refund and further Commission review.

7. The Commission's policy regarding suspensions is that tariff filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards.⁴ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.⁵ Here, the Commission will exercise its discretion to accept and suspend the proposed tariff sheets for a minimal period, to become effective December 1, 2008, subject to refund and further review.

The Commission orders:

Texas Eastern's proposed tariff sheets are accepted and suspended, to become effective December 1, 2008, subject to refund and further Commission review.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

⁵ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).