126 FERC ¶ 61,184
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Acting Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Texas Gas Transmission, LLC   Docket No. RP09-317-000

ORDER ACCEPTING AND SUSPENDING REVISED TARIFF SHEETS, SUBJECT TO REFUND AND CONDITIONS

(Issued February 27, 2009)

1. On January 30, 2009, Texas Gas Transmission, LLC (Texas Gas) filed revised tariff sheets to modify sections 10.2 and 20.1 of the General Terms & Conditions (GT&C) of its tariff to provide it the authority to make reasonable contributions for upgrades to a customer's delivery facilities.[1] Specifically, the revised tariff language would allow Texas Gas to pay for part or all of the cost of modification or construction of customer-owned facilities at a delivery point or points if Texas Gas and the customer agree to extend a service agreement at mutually agreeable rates for a term of at least five years. As discussed below, the Commission accepts and suspends the filing, subject to refund and conditions, to be effective August 1, 2009, or some earlier date specified in a subsequent Commission order.

Description of the Filing

2. Texas Gas states that it has been serving customers at certain locations for a number of years and that, over time, certain of the interconnect facilities may need to be updated or replaced. To provide the pipeline and its customers another tariff-based option to address these situations, Texas Gas proposes to add language giving it the authority to contribute to the improvement of a customer's delivery point facilities where the customer has agreed to a long-term extension of its service agreement and the economic value of that extension justifies the capital benefit to both parties. Texas Gas

[1] Second Revised Sheet No. 2200 and First Revised Sheet No. 3201 to FERC Gas Tariff, Third Revised Volume No. 1.

contends that this ability will bring long-term value to the system, while also providing it the tools necessary to remain competitive and to maintain long-term relationships with its customers. Texas Gas further asserts that including the proposed provisions in its tariff eliminates any concerns that making such capital contributions could result in discriminatory conduct. Pursuant to section 154.7(a)(9) of the Commission's regulations,[2] Texas Gas also moved to place the revised tariff sheets into effect at the end of a minimal suspension period.

Notice, Interventions, and Comments

3. Public notice of the filing was issued February 3, 2009, with interventions and protests due as provided in section 154.210 of the Commission's regulations.[3] Pursuant to Rule 214,[4] 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 at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Louisville Gas and Electric Company and the Tennessee Valley Authority intervened in support of the instant proposal. National Grid Gas Delivery Companies (National Grid)[5] requested clarification of certain aspects of the proposal, and Indicated Shippers[6] filed comments. PSEG Energy Resources & Trade, LLC (PSEG) filed a protest. Texas Gas filed an answer in response to the comments and protest. The Commission's regulations prohibit answers to protests unless otherwise ordered by the decisional authority;[7] however, in this case, the Commission will accept the answer filed

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[2] 18 C.F.R. § 154.7(a)(9) (2008).

[3] 18 C.F.R. § 154.210 (2008).

[4] 18 C.F.R. § 385.214 (2008).

[5] The National Grid Gas Delivery Companies include Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY; KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery LI; Boston Gas Company, Colonial Gas Company, EnergyNorth Natural Gas, Inc., and Essex Gas Company, collectively d/b/a KeySpan Energy Delivery NE; Niagara Mohawk Power Corporation d/b/a National Grid; and The Narragansett Electric Company d/b/a National Grid. All of these companies are subsidiaries of National Grid USA.

[6] Indicated Shippers include the following intervenors: BP America Production Company, BP Energy Company, and Marathon Oil Company.

[7] 18 C.F.R. § 213(a)(2) (2008).

by Texas Gas because it contains additional information that assisted the Commission in its decision-making process.

4. National Grid asserts that Texas Gas should clarify how the proposed change to section 20.1(a) of the GT&C will operate in conjunction with the existing provisions of section 20.1(a). National Grid also asks Texas Gas to clarify whether it is proposing to recover its capital contributions for upgraded or new delivery point facilities relating to five-year contract extensions under sections 4 or 5 of the Natural Gas Act (NGA), whether it is proposing to recover such capital contributions from system customers on a rolled-in basis, or whether it proposes to recover such capital contributions from individual customers on an incremental basis. National Grid further asks whether Texas Gas is proposing to file for negotiated rate authority to recover its capital contributions associated with five-year contract extensions from affected customers as part of the "mutually agreeable rates" between Texas Gas and any such affected customer.

5. While they do not oppose allowing Texas Gas and a shipper to make such an agreement for capital contributions, Indicated Shippers ask the Commission to require Texas Gas to clarify that such capital contributions will not be included in its rate base in any future rate case or otherwise included in its future rates.[8] Indicated Shippers assert that, absent the clarifications they seek, Texas Gas' proposal to subsidize the construction or upgrade of an individual shipper's delivery point facilities is particularly troublesome because Texas Gas does not explain (1) whether it would be able to propose to roll the capital contributions into its recourse rates; or (2) how the Commission would determine whether such roll-in is appropriate, just and reasonable, and not unduly discriminatory and preferential.

6. PSEG protests the filing, stating that a number of questions must be answered before the Commission approves Texas Gas' proposal, including, *inter alia*:

- Would Texas Gas have operational control over the facilities, or would that responsibility reside with the customer, and how would operations and maintenance (O&M) expenses be allocated?

- How would the facilities be entered into the books of the respective companies?

[8] Indicated Shippers state that the agreement by Texas Gas to make a capital contribution could be in the form of a negotiated rate agreement between Texas Gas and the shipper or as part of a reimbursement or similar agreement between Texas Gas and the shipper. In either case, state Indicated Shippers, it should be clear in the agreement that Texas Gas is assuming the risk of not recovering the costs associated with the capital contributions.

- What is the purpose of the pipeline's proposal? Is the pipeline trying to keep near-bankrupt customers on the system? Is the pipeline attempting to bolster its own financial situation?

- Is this proposal really intended to support economic development?

- How will the pipeline exercise its discretion as to how much of the upgrade to fund?

7. PSEG states that Texas Gas provides no examples of specific projects it would seek to undertake. PSEG argues that Texas Gas' proposal would unjustifiably exclude the bulk of its Zone 4 customers from participation in this program and thus may be discriminatory.

8. In addition, PSEG states that there is no explanation provided in the proposal regarding the circumstances when the pipeline would pay some and when it would pay all of the costs of a proposed modification of customer-owned facilities PSEG also states that the proposal leaves unstated whether Texas Gas will seek to recover those funds from customers. PSEG emphasizes that the Commission should not accept any tariff language that would result in either: (1) one set of customers subsidizing the business operations of another set of customers, or (2) customers subsidizing non-service related investments that benefit the pipeline's shareholders.

9. In its answer, Texas Gas argues that the intent of its proposal is clear on its face and that it will pay for some or all of the costs of the upgrade if the customer is willing to extend the term of its service agreement for at least five years at mutually agreeable rates. According to Texas Gas, this will not change anything related to ownership rights of the facilities, O&M obligations, regulations, or gas custody transfer.

10. Texas Gas emphasizes that its intent is to create long-term, stable value, and to assess the value of a proposal, it will compare the value of the long-term revenue stream to be obtained from the contract extension with the upfront capital costs necessary to perform the construction or modification of the customer's facilities. Texas Gas adds that it will consider other relevant factors as well on a case-by-case basis.

11. Texas Gas clarifies that its capital contributions under this proposal will not be financed with non-shareholder money. Texas Gas states that, when it files a rate case, if it includes its cash contributions in proposed rates, the Commission will have the opportunity to determine whether such costs may be included in the pipeline's rates. Texas Gas further argues that its proposal will not discriminate against similarly-situated customers. Texas Gas points out that National Grid, which supports the proposal, is a downstream customer.

Commission Determination

12. Based upon a review of the filing, protest, comments, and Texas Gas' answer, the Commission finds that the proposed tariff language has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission accepts the tariff sheets for filing and suspends their effectiveness for the period set forth below.

13. The Commission's policy regarding suspensions is that 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.[9] 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.[10] Such circumstances do not exist here. Accordingly, the Commission shall suspend the effectiveness of the subject tariff sheets until August 1, 2009, or some earlier date specified in a subsequent Commission order, subject to refund and subject to Texas Gas providing sufficient support for its proposal.

14. The Commission observes that, in its transmittal letter, Texas Gas refers to upgrades to "customer facilities," while the proposed new tariff language does not make it clear that any such upgrades will be to facilities owned by the customer. The existing tariff language in GT&C sections 10.2 and 20.1 makes it clear that modifications may be made to facilities that are for the customer's benefit, but that such facilities remain the property of Texas Gas. Facilities that are not owned by Texas Gas are beyond the jurisdiction of the Commission. What Texas Gas and any of its non-jurisdictional customers might contract to do with the customer's facilities is not a matter to be covered by a Commission-approved tariff. Texas Gas is directed to clarify whose facilities are to be improved by the subject proposal and to clarify the proposed tariff language accordingly. If the facilities to be improved are not owned by Texas Gas, Texas Gas is further directed to demonstrate why the Commission should concern itself with what appears to be a non-jurisdictional contractual arrangement between Texas Gas and its customers for the construction of non-jurisdictional facilities.

The Commission orders:

Texas Gas' filing is accepted and suspended to be effective August 1, 2009, or

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

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

some earlier date specified in a subsequent order, subject to refund and to Texas Gas providing additional support for its proposal, as discussed above, within 30 days of the date of this order.

By the Commission. Commissioner Kelliher is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.