

127 FERC ¶ 61,123
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Texas Gas Transmission, LLC

Docket No. RP09-505-000

ORDER ACCEPTING TARIFF SHEETS, SUBJECT TO CONDITIONS

(Issued May 8, 2009)

1. On April 9, 2009, Texas Gas Transmission, LLC (Texas Gas) filed revised tariff sheets¹ to add language to section 10 of the General Terms & Conditions (GT&C) of its tariff to require that when a customer extends a service agreement, it will sign a new service agreement based upon the then-current tariff; if the new service agreement includes non-conforming provisions, the agreement will be filed with this Commission as non-conforming. Texas Gas originally sought an effective date of May 9, 2009, but proposed a new effective date of August 1, 2009 in its answer. Texas Gas's revised tariff sheets are accepted, subject to the conditions set forth herein, to be effective August 1, 2009.

I. Description of the Filing

2. Texas Gas states that it has an affirmative obligation to ensure that its service agreements are in conformance with its tariff's current *pro forma* agreements, consistent with *Southern Star*.² Therefore, Texas Gas seeks to require customers to sign a new service agreement each time an agreement is extended (whether through an evergreen, roll-over, or right of first refusal provision) to ensure that all new service agreements either conform to the current tariff's *pro forma* service agreement or contain a set of readily identifiable non-conforming provisions. Texas Gas recognizes that this change may shift some administrative burden onto customers, but contends that the benefits of

¹ Second Revised Sheet No. 2 and First Revised First Revised Sheet No. 2200 to FERC Gas Tariff, Third Revised Volume No. 1.

² *Southern Star Central Gas Pipeline, Inc.*, 125 FERC ¶ 61,082 (2008) (*Southern Star*).

meeting its regulatory obligations exceed the administrative burden of the service agreement renewal process.

II. Notice, Interventions, and Comments

3. Notice of Texas Gas's filing was issued on April 14, 2009. 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 filed before the 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. Protests were filed by the following: Louisville Gas and Electric Company (Louisville); Western Tennessee Municipal Group,³ the Jackson Energy Authority, City of Jackson, Tennessee, and the Kentucky Cities⁴ (collectively, Cities); and Memphis Light, Gas and Water Division, City of Memphis, Tennessee (Memphis).

4. In its protest, Louisville states that Texas Gas, as a result of an internal audit, identified a number of service agreements that do not conform with the current *pro forma* service agreements. Louisville asserts that Texas Gas informed Louisville that Texas Gas would propose additional tariff modifications to incorporate into their *pro forma* service agreements some of the non-conforming provisions identified in the internal audit. Although Louisville does not disagree with Texas Gas's objective in this filing, it expresses concern that without knowing what other revisions Texas Gas may make to its *pro forma* service agreements, the proposed tariff provision could deny customers the continued benefit of provisions in their existing service agreements. Therefore, Louisville requests that the Commission suspend Texas Gas's proposal to require

³ The Western Tennessee Municipal Group consists of the following municipal distributor-customers of Texas Gas: City of Bells, Gas & Water, Bells, Tennessee; Brownsville Utility Department, City of Brownsville, Brownsville, Tennessee; City of Covington Natural Gas Department, Covington, Tennessee; Crockett Public Utility District, Alamo, Tennessee; City of Dyersburg, Dyersburg, Tennessee; First Utility District of Tipton County, Covington, Tennessee; City of Friendship, Friendship, Tennessee; Gibson County Utility District, Trenton, Tennessee; Town of Halls Gas System, Halls, Tennessee; Humboldt Gas Utility, Humboldt, Tennessee; Martin Gas Department, Martin, Tennessee; Town of Maury City, Maury City, Tennessee; City of Munford, Munford, Tennessee; City of Ripley Natural Gas Department, Ripley, Tennessee.

⁴ The Kentucky Cities are the Cities of Carrollton and Henderson, Kentucky. They are municipal distributor-customers of Texas Gas.

customers to execute new service agreements until Texas Gas has incorporated all of the non-conforming provisions into its *pro forma* service agreements.

5. In their protest, Cities state that they are captive customers of Texas Gas that, for the most part, take service under contracts, executed during the restructuring in 1993, that contain unilateral rollover provisions. Cities explain that in 2007, Texas Gas filed extensive revisions to its tariff, which Cities believed could adversely affect their service.⁵ Cities explains that in response to their concerns, Texas Gas filed a clarification that customers would not be required to execute new service agreements when existing agreements rolled over for an additional term. Cities states that they were satisfied with Texas Gas's assurance, and therefore did not spend any resources further scrutinizing the filing. In light of the position taken by Texas Gas in this previous filing, Cities argues that it would be inequitable for Texas Gas to change course and apply the changes made in the 2007 Filing to Cities when they rollover individual contracts.

6. Cities also argue that Texas Gas's proposal has not been shown to be just and reasonable because it would diminish their rollover rights, essentially changing such automatic rollover rights into nothing more than a right of first refusal. Cities note that rollover rights, unlike the right of first refusal, provides the stability of continuing service under the same terms indefinitely, and therefore allows the customer to choose whether to switch to a new agreement at the end of the contract term. Cities therefore argues that Texas Gas should be required to demonstrate that there will be no substantive differences between the service agreements under which they currently take service and the new *pro forma* service agreements that they would be required to execute upon contract extension.

7. Cities further allege that the Texas Gas's proposal is neither necessary nor sufficient to achieve compliance with the Commission's policy that requires the filing of non-conforming service agreements with the Commission. If compliance with Commission policy is Texas Gas's goal with this filing, Cities argue that any non-conforming service agreements should be filed now, not when they are to be extended.

8. In its protest, Memphis states that the stated basis for Texas Gas's filing—compliance with *Southern Star*—is incorrect. Memphis contends that *Southern Star* did not require generic modification of existing contracts, either currently or upon extension. Rather, Memphis states that the Commission's emphasis in *Southern Star* was to require the filing of all contracts with material deviations and put pipelines on notice that it would not be lenient to future violations of this requirement. Therefore, Memphis contends that Texas Gas has failed to support its proposal, and notes that Texas Gas could achieve its goal by simply filing all non-conforming agreements with the Commission.

⁵ Texas Gas, August 31, 2007 Filing, Docket No. RP07-649-000 (2007 Filing).

9. Memphis also objects the additional administrative burden that will be placed on customers as a result of Texas Gas's filing. Moreover, absent clarification from Texas Gas, Memphis states that customers have no means of determining the nature or extent of the additional burden that they may face. Memphis expresses particular concern that the proposed tariff provision could have the effect of rendering a service agreement null and void to the extent that it does not match the *pro forma* service agreement at the time of extension, forcing them to bear the burden of ensuring their existing rights are continually reflected in their new service agreements.

10. On April 28, 2009, Texas Gas filed an answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to protests unless otherwise ordered by the decisional authority. We will accept Texas Gas's answer because it has provided information that assisted us in our decision-making process.

11. Texas Gas states that its filing is part of a larger program that involves a thorough review of its contracts for unfiled agreements that materially deviate from its *pro forma* agreements. Texas Gas further states that it has self-reported potential violations to the Commission's Office of Enforcement and is working with Enforcement Staff to remedy any concerns. Texas Gas explains that in addition to this filing, it is taking additional steps to ensure compliance, including: filing non-conforming agreements with the Commission; proposing certain tariff modifications so that rights in some non-conforming provisions will be granted to all shippers; renegotiating contracts with customers to eliminate non-conforming provisions where Texas Gas is unwilling to make such provisions generally available; and revising its *pro forma* agreements to reduce the number of non-conforming agreements.

12. Texas Gas states that contrary to Louisville's assertions, suspension of its proposal is not necessary because the timing of the proposed provision will not affect whether a customer can continue to receive the benefit of any non-conforming provision. Rather, Texas Gas states that all its proposal would require is that when an agreement is renewed, the parties sign a new agreement. Texas Gas states that the sole purpose of this tariff revision is to provide Texas Gas with tariff authority to enhance its ability to comply with Commission policy, and notes that it is making a number of additional tariff changes in response to its internal review of its contracts and tariff.⁶ Accordingly, Texas Gas states that it is willing to propose a new effective date of August 1, 2009, in order to provide time for its other contemplated changes to become effective.

⁶ Texas Gas cites its filing in Docket No. RP09-515-000 as an example of such tariff changes.

13. Texas Gas disagrees with arguments by Cities and Memphis that Texas Gas has no continuing obligation to ensure all service agreements conform to the then-current *pro forma* agreements. Texas Gas responds that it does have such an obligation and its proposal here is one aspect of a larger program to ensure ongoing compliance with the Commission's regulations and part of a strategy to ensure future compliance. Texas Gas states that its proposal will ensure transparency and enable customers to replace contract language that has become non-conforming due to the evolution of Texas Gas's tariff with conforming language, if they so desire.

14. Texas Gas also responds to the concerns of Memphis and Cites, explaining that nothing in this proposed tariff change will nullify rollover rights or non-conforming provisions. Rather, Texas Gas states that the provision is meant to ensure that Texas Gas and shippers specifically intend to carry forward non-conforming provisions in extended service agreements.

15. Texas Gas affirms in its answer that extension rights currently in existing service agreements will not be affected by its proposal. However, Texas Gas then states that if its *pro forma* agreements or tariff has changed such that a contract being extended would have different rights after the extension than before, any changes in rights should be negotiated as part of the extension. Texas Gas contends that any additional administrative burden that customers may face due to this proposal is outweighed by the benefit of reducing the number of non-conforming service agreements that must be filed and await Commission approval. Texas Gas notes that it will soon file to replace all of its *pro forma* service agreements and parties will have an opportunity to review and comment on those agreements at that time.⁷

16. On May 1, 2009, Dominion Transmission, Inc. (Dominion) filed a motion to intervene out-of-time and comments in support of Texas Gas's proposal. Dominion asserts that Texas Gas's proposal is non-discriminatory, provides clarity to Texas Gas and its customers, and ensures compliance with Commission policy on a going-forward basis.

III. Commission Determination

17. We accept Texas Gas's proposed tariff revisions, subject to the conditions discussed below, to be effective August 1, 2009, as requested by Texas Gas in its answer.⁸ Commission policy requires that all service agreements that contain non-

⁷ On April 29, 2009, Texas Gas filed revised *pro forma* service agreements in Docket No. RP09-548-000.

⁸ Although Texas Gas originally requested an effective date of May 9, 2009, for its revised tariff sheets, it proposed an August 1, 2009 effective date in its answer in order to
(continued)

conforming provisions must be filed with this Commission.⁹ Although we disagree with Texas Gas's assertion that *Southern Star* somehow compels its proposal to require customers who extend their contracts to enter into a new service agreement that conforms to the current tariff's *pro forma* service agreement,¹⁰ we nonetheless find that it is a reasonable means by which Texas Gas can ensure its compliance with Commission policy.

18. Our acceptance of this provision, however, is subject to our understanding that Texas Gas's proposal is administrative in nature, and that it will have no substantive effect as to the rights or obligations under a new service agreement when a customer elects to rollover an expiring agreement that permits such rollover. Texas Gas repeatedly indicates in its answer that its proposal is not meant to nullify non-conforming terms or rollover rights in existing agreements.¹¹ Therefore, we accept this provision, contingent on our understanding as to its ministerial nature, such that a shipper's rollover right will endure, and need not be renegotiated anew by the shipper upon entering a new service agreement with Texas Gas.

19. Texas Gas's proposal provides a mechanism that will assist Texas Gas in continually monitoring the status of its service agreements and determining when it needs

provide time for Texas Gas to make additional tariff filings as part of its comprehensive review of its tariff and service agreements. We find this later effective date to be appropriate in light of Texas Gas's plan to implement the results of its comprehensive review. Therefore, we waive section 154.207 of the Commission's regulations, 18 C.F.R. § 154.207 (2008), which does not permit filing of a tariff change more than 60 days prior to the proposed effective date. Good cause exists for this waiver because it will enable Texas Gas and its customers to better plan and coordinate the implementation of Texas Gas's comprehensive tariff and service agreement review.

⁹ See *Southern Star*, 125 FERC ¶ 61,082 at P 7 (citing *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,010 (2001); *ANR Pipeline Co.*, 98 FERC ¶ 61,247, at 62,002 (2002)).

¹⁰ *Southern Star* requires only that pipelines comply with Commission policy on filing non-conforming agreements with the Commission, indicating that the Commission may use its penalty authority to enforce this policy in the appropriate circumstances. *Southern Star*, 125 FERC ¶ 61,082 at P 10.

¹¹ See, e.g., Texas Gas, April 28, 2009 Answer, at 8.

to file non-conforming service agreements with the Commission.¹² Therefore, we find this provision to be just and reasonable and not unduly discriminatory.

20. Texas Gas notes that its proposal may result in an additional administrative burden on its customers who will be required to execute new service agreements under the proposed tariff provision. To reduce this burden on customers, we shall require Texas Gas to provide shippers with the following for each initial service agreement executed as a result of this tariff change: (1) a draft service agreement based upon the current *pro forma* service agreement that reflects the terms and conditions of service under the expiring contract, and (2) an explanation of how each component in the expiring service agreement is included in the proposed draft service agreement (or in the General Terms and Conditions of Texas Gas's current tariff). These requirements should assuage customers' concerns as to the terms of service under a newly executed contract while at the same time achieving Texas Gas's goal of ensuring compliance with Commission policy.

The Commission orders:

The revised tariff sheets listed in footnote no. 1 are accepted, subject to the conditions discussed in this order, to be effective August 1, 2009.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹² We find that Texas Gas's proposal provides a useful method for monitoring the status of its service agreements on a forward-looking basis; however, we make no determination here as to whether Texas Gas is currently in compliance with our requirement to file non-conforming service agreements, as discussed in *Southern Star*.