

129 FERC ¶ 61,105
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 4, 2009

In Reply Refer To:
Tennessee Gas Pipeline Company
Docket Nos. RP91-203-076 and RP92-132-064

Tennessee Gas Pipeline Company
1001 Louisiana Street
Houston, TX 77002

Attention: Melissa G. Freeman
Senior Counsel

Reference: Offer of Settlement

Dear Ms. Freeman:

1. On April 13, 2009, Tennessee Gas Pipeline Company (Tennessee) filed an Offer of Settlement in the above-referenced docket. On May 5, 2009, the Presiding Administrative Law Judge certified the Offer of Settlement to the Commission as uncontested.¹ The uncontested settlement resolves all the issues for which the Commission established settlement judge procedures in its November 12, 2008 letter order.²

¹ *Tennessee Gas Pipeline Co.*, 127 FERC ¶ 63,007 (2009).

² *See Tennessee Gas Pipeline Co.*, 125 FERC ¶ 61,164 (2008).

2. The following is a summary of the major provisions of the uncontested settlement, which serves as an Amendment to the original stipulation and agreement filed with the Commission on May 15, 1995 (1995 Settlement).

- a. Article I provides that the instant Settlement is intended to modify the underlying 1995 Settlement only in the manner specified, and that in all other respects the 1995 Settlement remains in force and effect.
- b. Article II provides the specific manner in which the 1995 Settlement is modified. The major terms of the Settlement are as follows:
 - i. Interim refunds in the amount of \$156.6 million (the Interim Refund Amount) will be paid to Tennessee's shippers, reflecting the Recoverable Cost/Revenue Account (RCRA) balance as of 12/31/2008, and 10% carrying charges through 06/30/2009, net of \$10 million in an account to be retained by Tennessee to pay the customers' share of additional eligible costs;
 - ii. The interim refunds will be paid to customers, beginning on July 1, 2009 (or within twenty days of the Amendment Effective Date, defined in Article III below), in quarterly installments over a three year period amortized at a rate of 8 percent. The first six quarterly installments will be of \$9.6 million each, while the last six quarterly installments will be of \$20.06 million each. Payments to specific shippers will be allocated pro rata based on surcharge collections during the polychlorinated biphenyl (PCB) Adjustment Period.
 - iii. Tennessee is permitted, without penalty, to refund to all shippers all or any portion of the Interim Refund Amount or the RCRA balance early, after which it will re-determine the Interim Refund Amount. Tennessee may also make early refunds solely to all shippers whose allocated share of the Interim Refund Amount does not exceed \$10,000.
 - iv. If eligible costs to be paid by the shippers under the 1995 Settlement exceed the retained \$10 million, the costs will first be netted against any remaining amount in the Interim Refund Amount and, if that is insufficient, the PCB surcharge as provided for in the 1995 Settlement shall be reinstated.
 - v. As of July 1 2009, carrying charges computed under the 1995 Settlement shall be computed using the higher of either 8% or the FERC-approved interest rate for pipeline refunds.

- vi. The term of the 1995 Settlement is clarified to extend as long as Tennessee is incurring eligible costs, or cost recovery or refund payments are incomplete.
- c. Article III contains three provisions regarding the legal character of the Amendment:
 - i. The Amendment Effective Date shall be the date that a Commission order approving the Amendment without modification becomes final.³ Within thirty days after the Amendment Effective Date, Tennessee shall file revised tariff sheets enacting the settlement.
 - ii. The Amendment and the 1995 Settlement form a single, indivisible agreement.
 - iii. Finally, Article III, Section C provides as follows: “During the term of this Amendment, any modification to this Amendment must satisfy the ‘public interest’ standard of review as set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).”

3. Pursuant to the order of the Chief Judge, initial comments were due April 23, 2009, and reply comments were due April 28, 2009. No adverse comments were filed. Several parties filed comments supporting or not opposing the Settlement. The Presiding Administrative Law Judge certified the Settlement to the Commission as uncontested on May 5, 2009.

4. In light of *Maine Pub. Util. Comm’n v. FERC*,⁴ the Commission may not accept the standard of review provided in Article III, Section C as currently written. As such, the Settlement is approved conditioned on the settling parties revising the standard of review. An acceptable substitute provision would be the “most stringent standard

³ For example, an order becomes final thirty days after its issuance if no parties seek rehearing. See 18 C.F.R. § 385.713(b) (2009).

⁴ 520 F.3d 464, 477-78 (D.C. Cir. 2008), cert. granted sub nom., *NRG Power Marketing, LLC v. Maine Pub. Util. Comm’n*, 129 S. Ct. 2050; 173 L. Ed. 2d 1132 (April 27, 2009).

permissible under applicable law.” Tennessee must, within thirty days of this order, file a revised standard of review provision.

5. Subject to this condition, and subject to Tennessee filing actual tariff sheets identical to the pro forma tariff sheets in Exhibit A of its filing, the Settlement appears to be fair and reasonable and in the public interest. Accordingly, it is hereby approved pursuant to Rule 602(g) of the Commission’s Rules of Practice and Procedure.⁵ The Commission’s approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵ 18 C.F.R. § 385.602(g) (2009).