

134 FERC ¶ 61,068
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 31, 2011

In Reply Refer To:
Texas Eastern Transmission, LP
Docket No. RP11-1632-000

Texas Eastern Transmission, LP
5400 Westheimer Court
Houston, TX 77056-5310

Attention: Richard J. Kruse
Vice President, Rate, Regulatory Affairs

Reference: Addition of Hourly Flow Flexibility Provisions to Rate Schedule FT-1

Ladies and Gentlemen:

1. On December 20, 2010, Texas Eastern Transmission, LP (Texas Eastern) filed revised tariff records¹ to add provisions allowing shippers to obtain hourly flow flexibility at firm delivery points. Specifically, Texas Eastern proposes to add: Section 2.3 and Section 6.2 to its Rate Schedule FT-1; the definition for “Maximum Hourly Quantity” (MHQ) to its General Terms & Conditions (GT&C); and a blank to Exhibit B of the *pro forma* FT-1 service agreement in its tariff to state the shipper’s specified MHQ. For the reasons discussed below, the Commission accepts the tariff filing subject to conditions.

2. Texas Eastern proposes tariff revisions “[i]n response to customer interest in having firm hourly flow flexibility at Points of Delivery.”² Texas Eastern states that its proposal establishes a process for shippers under Rate Schedule FT-1 to obtain defined, firm hourly flow flexibility at its firm delivery points. Texas Eastern states that it would construct facilities necessary to provide the firm hourly flexibility for future customers who agree to the appropriate rate or cost reimbursement for the facilities. Texas Eastern states its proposal is similar in concept to services currently provided through its Market

¹ FERC NGA Gas Tariff, *Texas Eastern Database 1*, Records Nos.: 2., Rate Schedule FT-1, 1.0.0; 1., Definitions, 2.0.0; 2.2, Exhibit B for FT-1 Service Agreement, 1.0.0.

² Texas Eastern Transmittal at 1.

Lateral Service, Rate Schedule MLS-1. Texas Eastern states the proposed “contractual right to hourly flexibility ... is in addition to, and not in lieu of, [the] current hourly flexibility provided on the Texas Eastern mainline system under Rate Schedule FT-1 on an undefined basis.”³ Moreover, Texas Eastern contends the proposed provisions do not diminish existing hourly swing service for Rate Schedule FT-1 shippers. Texas Eastern also asserts these changes obviate the need to file bilateral firm MHQ agreements as non-conforming contracts.

3. Texas Eastern states that it is contemporaneously submitting an application for a certificate of public convenience and necessity for its New Jersey-New York Expansion Project (NJ-NY Project).⁴ Texas Eastern asserts the NJ-NY Project will deliver gas at an hourly rate greater than 1/24th of a shipper’s Maximum Daily Quantity (MDQ). However, it contends the hourly flow tariff provisions proposed here are not dependent on the processing the certificate application.

4. Texas Eastern proposes to revise its tariff in four places. First, its GT&C defines MHQ as follows:

The term “Maximum Hourly Quantity” shall mean the maximum quantity of gas in Dth that, upon receipt of such gas for Customer’s account, Pipeline will deliver on a primary firm basis to Customer during any hour at the Primary Point(s) of Delivery as specified in the Exhibit(s) to an executed service agreement.

5. Second, new Section 2.3 of Rate Schedule FT-1 establishes a process where the pipeline estimates the facilities and costs required to provide a shipper with a firm MHQ at a given delivery point. Texas Eastern will include the MHQ in the shipper’s service agreement, subject to Texas Eastern and the shipper agreeing on an appropriate rate or cost reimbursement for the MHQ facilities and receipt of all necessary regulatory approvals for construction of the facilities. This section further provides Texas Eastern will not limit the shipper’s right to hourly flow flexibility normally available under Rate Schedule FT-1.

6. Third, new Section 6.2 of Rate Schedule FT-1 explains the use of hourly flow quantities as follows:

With respect to Points of Delivery subject to an MHQ,
Customer shall be entitled to accept delivery of Gas on a firm

³ *Id.* at 2.

⁴ Docket No. CP11-56-000.

basis from Pipeline pursuant to this Rate Schedule at such Point of Delivery, at a rate no greater than the hourly gas flow rate multiplied by the scheduled daily quantity and up to the applicable quantity and duration limits, as specified in the executed service agreement. In no event shall Customer be entitled to a delivery of a quantity of gas on any Day in excess of Customer's MDQ.

7. Fourth and finally, Texas Eastern proposes to modify Exhibit B of its *pro forma* FT-1 service agreement. Exhibit B, which currently provides blanks for the pipeline and shipper to specify terms such as Point of Delivery and Maximum Daily Delivery Obligation, would now also include an additional blank to specify the Maximum Hourly Quantity.

8. Public notice of the filing issued December 21, 2010, with interventions and protests due January 3, 2011. Pursuant to Rule 214,⁵ all timely filed motions to intervene and any motion 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. On January 3, 2011, the Municipal Defense Group (MDG)⁶ submitted a protest; Statoil Natural Gas LLC (Statoil) and Hess Corporation (Hess) each submitted comments in support.

9. MDG argues the proposed revisions submitted by Texas Eastern may adversely affect existing shippers and, therefore, may be unjust and unreasonable.⁷ MDG claims the proposed changes inappropriately affect all Texas Eastern services and could affect other firm shippers by constraining capacity at particular times throughout the day. MDG contends that, by amending the GT&C's definitions and Rate Schedule FT-1, Texas Eastern is extending the proposed tariff changes to all shippers instead of the discrete group that choose to take the enhanced hourly service. Specifically, by placing the definition of MHQ in the GT&C, MDG claims Texas Eastern takes a step towards introducing MHQ restrictions to its mainline services regardless of the rate schedule.

⁵ 18 C.F.R. § 385.214 (2010).

⁶ For purposes of this docket, the Municipal Defense Group consists of the following entities, all of whom state that they are municipalities under the Natural Gas Act: Borough of Chambersburg, PA; Batesville, IN; Cairo Public Utility Company, IL; Gloster, MS; Harrisburg, AR; Horton Highway Utility District, TN; Lawrenceburg, TN; Loretto, TN; Middleborough Municipal Gas and Electric Department, MA; Norwich Department of Public Utilities, CT; Smyrna, TN; and Utica, MS.

⁷ MDG Protest at 3.

10. MDG notes the Commission rejected Texas Eastern's previous attempts to implement firm transportation on an hourly basis. In 2001, Texas Eastern proposed establishing the concept of MHQ under Rate Schedule MLS-1. MDG and other LDCs protested, seeking clarification that MHQ limitations would not apply to mainline shippers under pre-existing firm rate schedules. The Commission limited MHQ to Rate Schedule MLS-1 and required Texas Eastern to place the definition of MHQ in the Rate Schedule MLS-1 rather than the GT&C.⁸

11. Moreover, MDG states the changes to Rate Schedule FT-1 allow Texas Eastern to provide two different services under the same rate schedule: the standard service and a premium service with variable MHQ rights. As such, MDG questions Texas Eastern's intent when it could have offered a new, separate rate schedule.

12. MDG contends the Commission must modify Texas Eastern's proposal to explicitly protect the rights of existing firm shippers, or reject the proposal. To remedy the potential adverse effects of the proposed provisions, MDG proposes modifications. MDG suggests relocating the definition of MHQ from the GT&C to a specific rate schedule, as was done in Rate Schedule MLS-1. Alternatively, MDG suggests the definition specify that it only applies to specific executed service agreements under Rate Schedules FT-1 and MLS-1. In addition, MDG proposes adding a phrase to Section 2.3 to require that the pipeline find that "such enhanced service for Customer will not have an adverse impact on existing firm shippers."⁹

13. MDG is also concerned that any elections to use flexible hourly rights could adversely affect other shippers. MDG posits that in a fully subscribed system, or portion of the system, a change to one shipper's hourly delivery right would be detrimental to another shipper or group of shippers. MDG contends the Commission would not have an opportunity to assess whether the service enhancement will adversely affect other shippers in cases where Texas Eastern does not construct new facilities, because Texas Eastern asserted it would not file such contracts as non-conforming. As proposed, therefore, the Commission could not review for potential adverse impacts or undue discrimination on a case-by-case basis.

14. MDG also challenges the factual basis of Texas Eastern's assertion that its proposal would not harm existing shippers. MDG argues this assertion requires an evidentiary hearing to analyze the interaction between the proposed tariff revisions and existing services.¹⁰ In the interim, it urges the Commission to suspend the proposal.

⁸ *Id.* at 4 (citing *Texas Eastern Transmission, L.P.*, 101 FERC ¶ 61,130, at P 11 (2002)).

⁹ *Id.* at 10.

¹⁰ *Id.* at 11.

MDG notes Texas Eastern labeled its filing “NJ-NY Hourly Flow Filing” and since the NJ-NY Project is far from completion, Texas Eastern will not be harmed by a five-month suspension.¹¹

15. Hess filed comments to record its understanding that Texas Eastern has agreed to delete the potentially ambiguous phrase “upon receipt of such gas for Customer’s account” from the proposed definition of MHQ.¹² Hess states that removing the phrase will clarify that under the new service option, a shipper would have a firm hourly swing service at specified delivery point(s) subject to a defined MHQ as set forth in the shipper’s service agreement. The shipper would also continue to deliver gas at its receipt point(s) as it does currently under Rate Schedule FT-1.

16. Statoil filed comments in support of Texas Eastern’s proposal. Statoil notes the proposal would enhance Statoil’s service provided by the NJ-NY Project because shippers on the NJ-NY Project will benefit from additional flexibility.

17. On January 12, 2011, Texas Eastern filed an answer to the protest. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority.¹³ We will accept Texas Eastern’s answer because it provided information that assisted us in our decision-making process.

18. Texas Eastern argues that firm shippers have existing, undefined hourly flexibility rights, but notes that this flexibility is limited, for example, if system conditions require an Operational Flow Order (OFO).¹⁴ Texas Eastern reaffirms its assertion that some shippers have expressed interest in receiving more robust hourly swing rights for certain firm delivery points. Texas Eastern quotes MDG as stating that, “[p]rovided that there is no adverse impact on other firm shippers, MDG has no objection to enhanced hourly

¹¹ *Id.* at 11-12.

¹² Hess Comments at 3.

¹³ 18 C.F.R. § 385.213(a)(2) (2010).

¹⁴ Texas Eastern Answer at 3 & n.9 (quoting *Texas Eastern Transmission, L.P.*, 98 FERC ¶ 61,215, at P 78 (2002) (“The only time that uniform hourly takes are required are (1) when necessary to protect the integrity of the system or satisfy the pipeline’s firm obligations, as specified in the nominations procedures for non-no-notice firm service under Section 4.1(B)(1) of the GT&C; or (2) when there is a drop in delivery pressure, as specified in the OFO procedures of Section 4.3(h) of the GT&C.”)).

rights.”¹⁵ Texas Eastern argues it is not advocating uniform hourly flows on its system,¹⁶ and that MDG’s concerns are misplaced.

19. In order to assure MDG further that its proposal will not adversely affect other firm shippers, Texas Eastern provides three changes it states it will file should the Commission find them necessary. First, Texas Eastern proposes to revise the definition of MHQ to address MDG’s protest and Hess’s comments. As amended, the definition would read:

The term “Maximum Hourly Quantity” shall mean, where the Pipeline and Customer have agreed to defined, firm hourly flow flexibility, the maximum quantity of gas in Dth that Pipeline will deliver on a primary firm basis to Customer during any hour at the Primary Point(s) of Delivery as specified in the Exhibit(s) to an executed service agreement.

20. Second, Texas Eastern would add bracketed text to Exhibit B of the FT-1 Form of Service Agreement to specify that the exhibit will enumerate an MHQ if, and only if, the shipper has reached an agreement with the pipeline that specifies an MHQ. Third, in Section 2.3 of Rate Schedule FT-1, Texas Eastern would add a requirement that, before approving flexible hourly service for a specific shipper, the pipeline must first find the service will not have an adverse impact on existing firm shippers. With these further changes and assurances, Texas Eastern argues there is no need for an evidentiary hearing or suspension, and the Commission should approve its modified proposal without further conditions.

21. We find Texas Eastern’s proposal, as revised in its answer, to be just and reasonable. Texas Eastern and MDG agree that the *status quo* on Texas Eastern’s system is that its tariff grants hourly flexibility when operationally feasible. In particular, as the Commission has held:

The only time that uniform hourly takes are required are (1) when necessary to protect the integrity of the system or satisfy the pipeline's firm obligations, as specified in the nominations procedures for non-no-notice firm service under Section 4.1(B)(1) of the GT&C; or (2) when there is a drop in

¹⁵ *Id.* at 4 (quoting MDG Protest at 6).

¹⁶ *Id.* at 4.

delivery pressure, as specified in the OFO procedures of Section 4.3(h) of the GT&C.¹⁷

22. With the amendments proposed in Texas Eastern's answer, the *status quo* will be maintained for all firm shippers who do not wish to contract for the enhanced flexibility offered by the proposed tariff revisions. The amended Exhibit B and definition of MHQ clarifies that ordinary firm shippers are not subject to any new MHQ restrictions. The amended Section 2.3 of Rate Schedule FT-1 clarifies Texas Eastern is not authorized to degrade existing firm service to satisfy a request for enhanced hourly flexibility. Therefore, in determining what facilities it must construct to provide a shipper with its requested firm MHQ at a given delivery point, Texas Eastern must ensure that those facilities are sufficient to avoid any reduction in the existing hourly flexibility provided to other shippers. Given this, we find it unnecessary to conduct an evidentiary hearing.

23. Further, we find the proposed hourly flexibility service is just and reasonable as a new, optional service. This service appears to provide a targeted mechanism for Texas Eastern to match additional supply at targeted points with customer demand. However, we find that the term "hourly gas flow rate" to be ambiguous as it is not clear whether it means a simple fraction of the 24-hour gas day per hour (e.g., 1/12) or a rate of flow per hour (e.g., 200 Dth/hour). Therefore, we direct Texas Eastern to file tariff language that resolves this ambiguity as part of its compliance filing. Accordingly, we accept Texas Eastern's filing, to become effective February 1, 2011, as requested, subject to it filing tariff sections implementing the amendments proffered in its answer and clarifying the definition of hourly gas flow rate, within 15 days of the date this order issues.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

cc: Public Files
All Parties

¹⁷ *Texas Eastern Transmission, L.P.*, 98 FERC ¶ 61,215, at P 78 (2002), quoted in Texas Eastern Answer at 3 & n.9 and MDG Protest at 3.