

138 FERC ¶ 61, 228
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Texas Gas Transmission, LLC

Docket No. RP12-461-000

ORDER ACCEPTING TARIFF RECORDS

(Issued March 30, 2012)

1. On March 1, 2012, Texas Gas Transmission, LLC, (Texas Gas) filed revised tariff records¹ to make its temporary Winter No-Notice Service under Rate Schedule WNS a permanent service. As discussed below, the Commission accepts the proposed tariff records to be effective April 1, 2012.

I. Background

2. In Docket No. RP10-360-000, the Commission accepted Texas Gas' proposal to establish an experimental Winter No-Notice Service (WNS service) under Rate Schedule WNS.² The experimental WNS service permits contract demand that varies on a monthly basis subject to certain specifications³ and provides WNS shippers with two additional nomination cycles. The experimental Rate Schedule WNS accepted in Docket No. RP10-360-000 is set to expire on March 31, 2012.

¹ Texas Gas Transmission, LLC, FERC NGA Gas Tariff, Tariffs, [Section 5.9, Rate Schedules - WNS, 2.0.0](#); [Section 6.12, G T & C - Nominations, Confirmations, and Scheduling, 2.0.1](#).

² *Texas Gas Transmission, LLC*, 130 FERC ¶ 61,158 (2010); *Texas Gas Transmission, LLC*, Docket No. RP10-360-001 (Apr. 7, 2010) (unpublished delegated letter order).

³ The monthly contract demand for any single month under a winter no-notice service agreement must be at least 50 percent of the highest contract demand quantity of any other month under that service agreement.

3. In the instant filing, Texas Gas has filed tariff records to establish Rate Schedule WNS as a permanent service. Texas Gas explains that the experimental WNS service addresses the winter peaking requirements of the electric generation market as well as the needs of any other party seeking winter-only no-notice service. Texas Gas states that all terms and conditions of the permanent WNS service will be identical to the existing experimental WNS service except for the elimination of the experimental service's two additional intra-day nomination cycles. Texas Gas explains that after the experimental WNS service was implemented, the Commission accepted Texas Gas' proposed Enhanced Nominations Service (ENS) in Docket No. RP11-2569-000, which provides for eleven additional intra-day nomination cycles to all firm customers that add ENS Service, including WNS customers.⁴ Accordingly, in the instant filing, Texas Gas proposes to eliminate the additional nomination cycles from the permanent WNS rate schedule. Texas Gas states that based upon the experience gained with WNS during the past two winter seasons, Texas Gas has determined that it is able to provide this service without adversely affecting any firm service currently being provided to other customers.

II. Notice, Interventions, Comments, and Protests

4. Public notice of the filing was issued on March 2, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2011)). Pursuant to Rule 214 (18 C.F.R. § 385.214), all timely filed motions to intervene and any unopposed 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. On March 13, 2012, BP America Product Company and BP Energy Company (collectively, BP), filed a protest. Tennessee Valley Authority (TVA), and Kentucky Utilities Company (Kentucky Utilities) submitted comments. On March 19, 2012, Texas Gas filed an answer. Commission accepts the answer filed by Texas Gas because it has provided information that assisted our decision-making process.

5. TVA and Kentucky Utilities support Texas Gas' proposal. TVA states that the experimental WNS service was valuable during the winter of 2010, which TVA characterizes as a difficult winter for the bulk power system. TVA states that a permanent WNS service when combined with the newly proposed ENS service will give gas fired generators a number of flexible options for winter operations. Similarly, Kentucky Utilities states that the permanent WNS service will expand the menu of services to better accommodate the needs of electric generators.

⁴ *Texas Gas Transmission, LLC*, 137 FERC ¶ 61,093 (2011), *order on compliance*, 138 FERC ¶ 61,176 (2012).

6. However, BP urges the Commission to reject Texas Gas' proposal. BP states that Texas Gas' proposal is inconsistent with the Natural Gas Act, which prohibits any rate or service condition that gives "any undue preference or advantage" to certain shippers or that imposes any "unreasonable difference" in rates or service conditions.⁵ BP contends that granting variable contract demand rights to WNS service shippers and not to all other firm service shippers provides WNS shippers with an unfair competitive advantage. BP states that allowing a shipper to adjust its monthly contract demand allows a shipper to tailor their contract demand to match seasonal fluctuations. As a result, BP states that WNS service shippers can afford to bid a higher rate and longer duration of service compared to other firm service shippers. BP also states that shippers that lack variable monthly contract demand face higher risks and costs in acquiring capacity on Texas Gas compared to shippers with variable monthly contract demand. BP states that these factors are particularly important given the intense competition in natural gas markets. BP cites cases in which the Commission held that variable contract demand was an impermissible non-conforming deviation from the pipeline's *pro forma* service agreement.⁶ In these cases, BP states that the Commission determined that variable contract demand rights are a valuable right and that the Commission has prohibited parties from offering these rights to only one class of shipper and not to all shippers.

7. In its answer, Texas Gas explains the Natural Gas Act allows reasonable differences in service between classes of service. Texas Gas explains that Rate Schedule WNS creates a new class of service and may contain differences from other classes of service provided by Texas Gas, such as traditional firm transportation service under Rate Schedule FT. Texas Gas states that no Commission policy exists which requires a pipeline to include variable MDQ rights in all of its existing transportation services or none at all.

8. Texas Gas further notes that all of the cases cited by BP relate to material deviations in non-conforming contracts.⁷ Texas Gas elaborates that a non-conforming provision is only available to the shipper with the non-conforming provision in its service agreement and not to other similarly situated shippers using the same service. In contrast,

⁵ BP Protest at 2 (citing 15 U.S.C. § 717c(b)).

⁶ BP Protest at 4-5 (citing *Texas Eastern Transmission, LP*, 102 FERC ¶ 61,028 (2003) (*Texas Eastern*); *Equitrans, L.P.*, 135 FERC ¶ 61,130 (2011) (*Equitrans*); and *Questar Pipeline Co.*, 132 FERC ¶ 61,152 (2010) (*Questar*)).

⁷ Texas Gas Answer at 3 (citing *Texas Eastern*, 102 FERC ¶ 61,028; *Equitrans*, 135 FERC ¶ 61,130; and *Questar*, 132 FERC ¶ 61,152).

Texas Gas explains that under rate schedule WNS, the varying monthly contract demand will be available to all shippers using WNS service.

9. Texas Gas further adds that in *Texas Eastern*, one of the cases relied upon by BP, the Commission required that the pipeline remove the non-conforming provision permitting varying monthly contract demand or offer the service to all FT-1 shippers. Texas Gas emphasizes that the Commission did not require the pipeline to offer the varying monthly contract demand to all firm shippers, just FT-1 shippers. Similarly, Texas Gas notes that under its proposal, all WNS shippers will have the ability to select varying monthly contract demands during the winter season.

10. Texas Gas also states that it already offers several different no-notice services that allow for seasonal contract demands, and a short term firm service under Rate Schedule STF which allows customers to contract for seasonal firm transportation capacity. Texas Gas adds that to the extent BP asserts it needs seasonal demand rights, it can request WNS service.

III. Discussion

11. The Commission accepts the proposed tariff records. A pipeline may offer varying monthly contract demand for certain types of firm service without offering varying monthly contract demand for all firm services.⁸ Under Texas Gas' proposal, any shipper may request WNS service and the varying monthly contract demand will be available to all shippers using WNS service. Thus, Texas Gas' proposal does not provide undue preference or advantage to any shipper.

12. BP's reliance upon the Commission's policies related to non-conforming service agreements is misplaced. The Commission prohibits non-conforming service agreements in which the pipeline grants varying contract demand to one particular shipper without offering the same opportunity to other shippers that are using the same rate schedule. In such circumstances, the pipeline must either remove the non-conforming provision or offer it to all shippers under the same rate schedule.⁹ However, the Commission does not require, as suggested by BP, that if the pipeline offers the varying contract demand for one particular firm service, the pipeline must also offer the varying contract demand to all

⁸ Texas Gas currently offers variable contract demand rights under Rate Schedule STF (Short-Term Firm Transportation Service). Section 5.2, Rate Schedules - STF, 3.0.0.

⁹ *Texas Eastern*, 102 FERC ¶ 61,028 at P 6; and *Questar Pipeline Co.*, 131 FERC ¶ 61,011, at P 5 (2010).

shippers or all firm shippers; rather, the Commission only requires that the varying contract demand be available to those shippers using the same firm service. In the instant proceeding, Texas Gas' proposed tariff language offers all WNS service shippers the option of varying monthly contract demand. Thus, the Commission will accept Texas Gas' proposed WNS service as consistent with the Commission's prior decisions.

The Commission orders:

The tariff records referenced in footnote 1 of this order are accepted, effective April 1, 2012.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.