

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 30, 2004

In Reply Refer To:
Tennessee Gas Pipeline Company
Docket Nos. RP91-203-073
RP92-132-061

Tennessee Gas Pipeline Company
9 Greenway Plaza
Houston, TX 77046

Attention: David E. Maranville
Senior Counsel

Reference: See Enclosure for list of Tariff Sheets

Dear Mr. Maranville:

1. On May 28, 2004, Tennessee Gas Pipeline Company (Tennessee) filed the referenced tariff sheets, pursuant to a May 15, 1995 Settlement (1995 Settlement),¹ to extend the time to recover the costs of remediating polychlorinated biphenyl (PCB) and other hazardous substance list (HSL) contamination on its system. The referenced tariff sheets reflect a two-year extension of its PCB Adjustment (surcharge) of \$0.00/Dth through June 30, 2006. The Commission accepts the proposed tariff sheets to become effective on July 1, 2004.

2. The 1995 Settlement resolved issues to establish a PCB/HSL cost recovery mechanism applying to Tennessee's Federal and State mandated programs to assess and remediate PCB/HSL contamination. The 1995 Settlement permits Tennessee to recover \$17 million per year of certain defined "eligible costs" related to the PCB/HSL remediation and established a PCB adjustment surcharge to recover eligible costs for the period from July 1, 1995 to June 30, 2000. The 1995 Settlement states that the PCB

¹ The recovery of PCB/HSL remediation costs was established in a contested settlement filed on May 15, 1995. The Commission approved the 1995 Settlement in *Tennessee Gas Pipeline Co.*, 73 FERC ¶ 61,222 (1995), *reh'g*, 74 FERC ¶ 61,174 (1996).

Adjustment Period shall be extended in 24-month increments to eliminate the Recoverable Cost/Revenue Account balance or to reflect additional eligible costs.²

3. On May 31, 2000, Tennessee filed for a 24-month extension of the initial PCB Adjustment Period and for authorization to decrease the PCB surcharge to \$0.00/Dth. In an order issued June 29, 2000, the Commission approved Tennessee's proposal by extending the PCB remediation recovery period until July 1, 2002, and authorizing the requested reduction of the PCB surcharge.³

4. On May 31, 2002, Tennessee filed tariff sheets to extend for another 24 months, until June 30, 2004, the adjustment period to recover the cost of the PCB/HSL remediation. Tennessee proposed to leave the PCB surcharge at \$0.00 during this second extended period. The Commission approved Tennessee's proposal by extending the PCB remediation recovery period until June 30, 2004, and leaving the PCB surcharge at \$0.00/Dth.⁴

5. Tennessee has now filed tariff sheets to extend for another 24 months, through June 30, 2006, the adjustment period to recover the cost of the PCB/HSL remediation. Tennessee proposes to leave the PCB surcharge at \$0.00/Dth during this third extended period.

6. Based upon its current projections, Tennessee estimates that it will be incurring costs for the PCB/HSL remediation until the end of year 2006, and estimates that it may need to spend approximately another \$45 million in order to reach that goal, but it is possible that the required expenditures will exceed that amount.

² Article IV, Section B.4.b states, in part:

The PCB adjustment shall be extended after the PCB Adjustment Period in 24-month increments as necessary to collect additional costs to eliminate the account balance calculated in accordance with this Article IV or to reflect additional Eligible Costs. Within 120 days of the end of the final 24-Month Period Tennessee shall, if necessary, refund to each shipper subject to this Stipulation an amount necessary to ensure that Tennessee does not recover more than the amounts provided under this Article IV (as limited by Article III E).

³ Tennessee Gas Pipeline Co., 91 FERC ¶ 61,315 (2000).

⁴ Tennessee Gas Pipeline Co., 99 FERC ¶ 61,375 (2002).

7. Tennessee states that as of the end of 2003, it has spent approximately \$212 million (in current unadjusted dollars) in eligible costs on the PCB/HSL remediation project (Project). It states that sixty-three compressor stations were targeted for PCB clean-up under the PCB/HSL Project. Tennessee also states that it has completed on-facility remediation for all sixty-three of those compressor stations. It states that approximately fifteen of the targeted facilities also have “off-facility” issues, and Tennessee has finished remediation of six of those fifteen as of the end of 2003. Tennessee projects that it will be able to complete remediation of the approximately nine remaining sites with off-facility issues by the end of the year 2006. Tennessee explains that the addition to the projected schedule is due to circumstances outside of Tennessee’s control. Specifically, Tennessee states that the most significant uncertainty is the United States Environmental Protection Agency’s (EPA) stance with regard to the off-facility sites. Tennessee states that the EPA and several states have recently indicated that they may also require post-remediation monitoring to demonstrate the remediation was effective. Tennessee states that at this stage there is no certainty as to the cost and schedule for any future post-remediation monitoring requirements. Additionally, although Tennessee has completed several remediation projects in Kentucky, which the State has approved, there are several remediation projects Tennessee has completed that the State has not yet approved. Tennessee is continuing to make progress with Kentucky and believes it will ultimately receive approval for all of its remediation projects in that State.

8. Tennessee states that through year 2003, the Recoverable Cost/Revenue Account balance indicated a pre-collection credit of approximately \$115 million (in 1992 dollars), and of the \$45 million that is estimated to be needed to complete the project, the customers' share of that amount is estimated at approximately \$26 million (in 1992 dollars) which will be applied to the pre-collected amount as of the end of year 2003. Tennessee states that based on these estimates Tennessee may have over-collected by as much as \$87 million, and its customers will be compensated for any pre-collected or over-collected funds by the 1995 Settlement provision⁵ requiring that Tennessee pay interest at a minimum of 10 percent, which it states is more than twice the current FERC interest rate.

9. Tennessee represents that the two-year extension of the PCB Adjustment Period is consistent with the terms of the 1995 Settlement and will allow Tennessee to offset the additional eligible costs necessary to complete the Project against the revenues collected through the PCB Adjustment Period, while continuing to protect existing customers from further over-collections.

10. Public notice of Tennessee’s filing was issued on June 4, 2004. Interventions and protests were due as provided in Section 154.210 of the Commission’s regulations

⁵ Article IV, Section C.1.c.

(18 C.F.R. § 154.210 (2003)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (1999)), all timely filed motions to intervene and any motions to intervene out-of-time before the issuance date of this order are granted. National Fuel Gas Distribution Corporation (Distribution) filed a protest and KeySpan Delivery Companies (KeySpan) filed a motion in support of Distribution's protest.

11. Distribution protests Tennessee's proposal to retain as much as \$87 million in PCB surcharge revenues and carrying charges in excess of its projected liabilities, without explanations as to how its estimates of future remediation costs and projected completion date were determined.

12. Distribution cites to information contained in Tennessee's most recently filed 10-K for the fiscal year ended December 31, 2003 which it asserts raises concerns for Distribution regarding the continued availability of the Recoverable Cost/Revenue Account or any over-collection amount belonging to Distribution and consequently, its ratepayers. Distribution states that these concerns are particularly so since Tennessee does not assert that its current 24-month extension request will be its last.

13. Distribution states that it understands that Tennessee may not be able to predict with certainty how much it will need to expend to complete the PCB/HSL Project, but it does not understand it to be reasonable for Tennessee to continue holding approximately \$87 million more than the \$26 million (in 1992 dollars) customer share it expects to expend in the PCB/HSL Project. Distribution argues that the amount over-collected continues to grow each year, while the estimated amount needed to complete the PCB/HSL Project continues to decline. Based upon these trends, Distribution argues that it appears as though the over-collection amount Tennessee holds will continue to grow.

14. Distribution requests that eligible shippers be afforded the opportunity to request, and receive, refunds of their pro-rata entitlements to a reasonable portion of over-collection of pre-collected PCB surcharge dollars. It states that in the event that the recoverable portion of the actual remaining eligible costs exceed the amount retained, Tennessee would continue to have the PCB surcharge mechanism in place to recover the additional amount.

15. Distribution also asks the Commission to obtain from Tennessee a more detailed explanation of the basis on which future expenditure estimates were calculated. Distribution believes this may be helpful in determining a reasonable estimate of anticipated costs so that the remaining Recoverable Cost/Revenue Account can be refunded to those shippers requesting a refund.

16. Distribution made the same request in Tennessee's May 31, 2000, PCB Adjustment Period filing proceeding in Docket Nos. RP91-203-071 and RP92-132-059.

The Commission, in its order issued June 29, 2000,⁶ denied Distribution's request to require refunds of over-collections at that time as inconsistent with the terms of the Settlement.⁷ The Commission held that there is no provision in the 1995 Settlement that would allow termination of the PCB Adjustment Period (and thus the PCB surcharge), which is required under the 1995 Settlement in order to trigger a refund obligation, and yet allow re-establishment of these mechanisms in the event that more eligible costs than are predicated are ultimately incurred.⁸

17. Thus, the Commission held that the 1995 Settlement provides for extensions in 24 month increments to permit Tennessee to recover eligible costs and does not provide for interim refund of precollected or over-collected costs, as once again requested by Distribution and KeySpan.⁹

18. The 1995 Settlement provides that beginning July 1, 1995, Tennessee shall compute carrying charges on the PCB/HSL recoverable costs/revenues account. Interest is computed based on the higher rate of 10 percent or the applicable FERC-prescribed interest rate (currently at 4.0 percent). Thus, the Commission held that customers are compensated for the time value of any precollected or over-collected funds.¹⁰ Finally, the 1995 Settlement includes a refund mechanism (Article IV, section B.3.b) specifying procedures for the refund of any overcollections within 120 days of the end of the final extension period to ensure that Tennessee does not recover more than the amounts provided for under the 1995 Settlement.

19. Accordingly, consistent with the Commission's prior orders, the Commission accepts the proposed tariff sheets reflecting a 24-month extension for PCB remediation recovery through June 30, 2006. Distribution's and KeySpan's requests to require refunds at this time are denied as inconsistent with the terms of the 1995 Settlement.

⁶ Tennessee Gas Pipeline Co., 91 FERC ¶ 61,315 (2000).

⁷ *Id.* at 62,089.

⁸ *Id.*

⁹ *Id.* ("The [1995] settlement provides for extensions in 24 month increments to permit Tennessee to recover eligible costs and does not provide for interim refund of precollected costs as requested . . ."). *See also, supra* note 2.

¹⁰ *Id.*

Further, we reject their request for additional information as unnecessary in light of our rejection of their request for refunds.

By direction of the Commission. Commissioner Kelly not participating.

Magalie R. Salas,
Secretary.

Enclosure

Tennessee Gas Pipeline Company
Docket Nos. RP91-203-073 and RP92-132-061
FERC Gas Tariff
Fifth Revised Volume No. 1

Tariff Sheets Effective July 1, 2004

Twenty-Ninth Revised Sheet No. 20
Eighteenth Revised Sheet No. 21
Thirtieth Revised Sheet No. 21A
Thirty-Sixth Revised Sheet No. 22
Fifth Revised Sheet No. 22.01
Thirtieth Revised Sheet No. 22A
Twenty-Third Revised Sheet No. 23
Fourteenth Revised Sheet No. 23B
Eighth Revised Sheet No. 23D
Seventh Revised Sheet No. 23F
Fifth Revised Sheet No. 23G
Third Revised Sheet No. 25A
Twenty-Second Revised Sheet No. 26
Thirty-Third Revised Sheet No. 26B
Twelfth Revised Sheet No. 27
Eighth Revised Sheet No. 407
Third Revised Sheet No. 408