

108 FERC ¶ 61,192
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Texas Eastern Transmission, LP

Docket No. RP03-542-002

ORDER ON REHEARING AND CLARIFICATION

(Issued August 17, 2004)

1. On June 28, 2004, Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., and Philadelphia Gas Works (the Companies) filed a request for rehearing or clarification of the Commission's letter order issued on June 14, 2004.¹ The June 14, 2004 Order accepted Texas Eastern Transmission, LP's (Texas Eastern) compliance filing supporting its proposed EPC (electric power cost) tracker rates, with the exception of its proposed allocation of electric power costs related to the Texas Eastern Incremental Market Expansion (TIME) Project. The June 14, 2004 Order set for hearing the issues raised by the compliance filing and protests regarding the appropriate rate treatment for incremental electric power costs attributable to the TIME project, and conditioned Commission acceptance of the EPC rates on the outcome of the hearing. In this order, the Commission denies the Companies' request for rehearing, and clarifies the issues set for hearing by the June 14, 2004 Order. This order benefits the public because it helps ensure that a complete record will be established in the hearing below.

I. Background

2. On July 1, 2003, Texas Eastern filed, pursuant to section 15.1 of the General Terms and Conditions of its tariff, revised tariff sheets to implement its semi-annual adjustment of the electric power cost component of its rates. Texas Eastern contended that the proposed adjustments reflected changes in its projected expenditures for electric power required to operate transmission compressors for the twelve months beginning August 1, 2003. Additionally, Texas Eastern included in this filing, for the first time,

¹ Texas Eastern Transmission, LP, 107 FERC ¶ 61,268 (2004).

costs and billing determinants for the TIME Project.² Specifically, Texas Eastern stated that it would divide the actual costs associated with the new electric compressor unit at the Lambertville Station and the previously-existing electric compressors along the TIME Project's transportation path between TIME Project customers and existing system services customers, based on actual throughput volume. Texas Eastern contended, in response to protests, that this allocation was appropriate because it operates its system (including the TIME Project compressor) on an integrated basis, and thus the TIME Project benefits existing customers, as well as TIME customers, under certain conditions.

3. On July 31, 2003, the Commission issued an order conditionally accepting and suspending Texas Eastern's proposed tariff sheets.³ The Commission stated in the order that despite Texas Eastern's further explanation in its answer of the allocation of electric power costs related to the TIME Project, questions remained regarding whether Texas Eastern's allocation of electric power costs between the incremental TIME Project customers and existing system customers resulted in a subsidization of the TIME Project by existing customers.⁴ The Commission required Texas Eastern to further explain and justify its proposed methods for determining the allocation of electric power costs related to the TIME Project, noting that "Texas Eastern must show how its methods ensure that system shippers are not subsidizing the costs of the TIME project."⁵

4. On August 20, 2003, Texas Eastern submitted a filing in compliance with the Commission's July 31, 2003 Order. In that filing, Texas Eastern offered further explanation and justification of its proposed allocation of electric power costs related to the TIME Project. Specifically, Texas Eastern stated that costs should be allocated to match the costs of service to those customers benefiting from that service, and that existing shippers that directly benefit from the TIME Project should be responsible for paying the costs associated with that benefit. Texas Eastern asserted that the TIME

² The TIME Project was authorized by the Commission on June 28, 2002, to increase Texas Eastern's capacity by 100,000 Dth/d, and included the installation of a new 10,000 HP electric driven compressor at the existing Lambertville Compressor Station in Hunterdon County, New Jersey. *See* Texas Eastern Transmission, LP, 99 FERC ¶ 61,383 (2002).

³ Texas Eastern Transmission, LP, 104 FERC ¶ 61,180 (2003).

⁴ *Id.* at P 21.

⁵ *Id.* at P 22.

Project provides benefits to existing customers because the new Lambertville compressor is used during off-peak periods to displace less-efficient mainline compressors, thereby reducing electric power and fuel costs system wide. Additionally, Texas Eastern argued that the TIME Project provides enhanced reliability benefits to existing customers, because it reduces the impact to the system in the event of a shutdown of an existing gas compressor, and that the increased delivery pressures resulting from the new Lambertville compressor benefit existing downstream customers by making more capacity available for use on a secondary or interruptible basis.

5. In its June 14, 2004 Order, the Commission accepted Texas Eastern's explanations and justifications for the other portions of its EPC rate filing, but set the issues regarding the allocation of electric power costs related to the TIME Project for hearing. The Commission stated that "[t]he threshold issue is whether any allocation of TIME Project electric power costs to system shippers is at all appropriate."⁶ The Commission found that there were material facts in dispute, and that the record was insufficient to support a decision. Further, the Commission stated that the issues raised in the instant docket with regard to the allocation of electric power costs attributable to the TIME Project would benefit from a formal hearing, where a full record could be developed. Therefore, the Commission conditioned its acceptance of the EPC rate filing on the outcome of a hearing on these issues.

II. Request for Rehearing or Clarification

6. In their request for rehearing or clarification, the Companies ask the Commission to find that Texas Eastern has not borne its burden of proof to establish its proposed allocation of TIME Project electric power costs to entities other than the TIME shipper, New Jersey Natural, as just and reasonable. The Companies state that the Commission first addressed the allocation of TIME Project electric power costs when it issued a certificate for the TIME Project in its June 28, 2002 Order.⁷ In that order, the Companies explain, the Commission cited *Iroquois Gas Transmission System, L.P.*⁸ in support of its finding that "customers using the TIME Project facilities will be responsible for the costs attributable to the use of the project facilities, including electric and fuel costs," and directed Texas Eastern to adjust its tracking mechanisms to ensure that existing customers were not subsidizing the costs of the new incremental service provided by the

⁶ Texas Eastern Transmission, LP, 107 FERC ¶ 61,268 at P 41.

⁷ Citing Texas Eastern Transmission, LP, 99 FERC ¶ 61,383 (2002).

⁸ 97 FERC ¶ 61,379 (2001).

TIME Project.⁹ The Companies point out that Texas Eastern then filed tariff sheets, on July 1, 2003, showing a proposed allocation of \$135,345 of TIME Project electric power costs to system customers, and also filed an answer to the Companies' protest of that proposal, representing two attempts by Texas Eastern to justify its proposed allocation. The Companies assert that, notwithstanding these first "two bites at the apple," it still had not explained how its proposed methodology "results in an appropriate amount of costs being allocated to TIME shippers or how it ensures against subsidization of TIME costs."¹⁰ Further, the Companies note, following the Commission's July 31, 2003 Order requiring Texas Eastern to provide more explanation and justification of its proposed tariff sheets, Texas Eastern provided a compliance filing and further answer to the Companies, representing two more attempts by Texas Eastern to justify its proposed allocation of TIME Project electric power costs. The Companies characterize the Commission's June 14, 2004 Order as granting Texas Eastern a fifth attempt to justify its proposed allocation.

7. The Companies request that the Commission, on rehearing, find that Texas Eastern has not met its burden of proving that its allocation of TIME Project electric power costs to existing customers is appropriate, and require Texas Eastern to charge all of these costs to TIME Project shippers. Specifically, the Companies assert that Texas Eastern, in its four attempts to date, has not met its threshold burden under section 4 of the Natural Gas Act (NGA)¹¹ to establish that its allocation of some of the TIME Project electric power costs to existing system shippers is appropriate. Additionally, the Companies argue that even if Texas Eastern crosses that threshold, it cannot establish that the proposed allocation methodology is just and reasonable, as required by the NGA. The Companies go on to contend that Texas Eastern cannot establish the threshold appropriateness of the allocation of TIME Project electric power costs to existing customers because under *Iroquois Gas Transmission System, L.P.*,¹² "incremental electric costs must be 'matched' to the customers that benefit from the expansion involved."¹³ Additionally, they note that the Commission, in its initial certificate order for the TIME

⁹ Texas Eastern Transmission, LP, 99 FERC ¶ 61,383 at ¶ 62,627.

¹⁰ Request for Rehearing or Clarification at 3, *citing* Texas Eastern Transmission, LP, 104 FERC ¶ 61,180 (2003).

¹¹ 15 U.S.C. § 717c (2000).

¹² 97 FERC ¶ 61,379.

¹³ Request for Rehearing or Clarification at 4.

Project, stated that electric power costs for the TIME Project are attributable to TIME Project customers. The Companies argue that by ignoring these precedents, and the fact that Texas Eastern has not met its burden to date, the Commission erred in setting the case for hearing and giving Texas Eastern a fifth opportunity to meet its burden.

8. The Companies argue, further, that while the Commission states that material issues of fact exist, it has not identified those issues and explained why they are relevant to the threshold question of the appropriateness of assigning TIME Project electric power costs to existing customers. They assert that there are only two possibilities: “[a]s a matter of policy, there either are or are not situations in which system customers must pay a portion of electric costs attributable to the TIME Project Lambertville compressor.”¹⁴ According to the Companies, if such situations do not exist, as it asserts *Iroquois* and the TIME Project certificate order establish, “Texas Eastern cannot bear its burden of proof and its proposed allocation of TIME [electric power] costs to system shippers must be rejected.”¹⁵ Alternatively, the Companies state, if *Iroquois* and the order certifying the TIME Project can be read to suggest that circumstances might warrant the allocation of TIME Project electric power costs to system shippers, then Texas Eastern must show that such circumstances exist. The Companies assert, however, that there are no circumstances in which system shippers should be required to pay TIME electric power costs. They state that Texas Eastern provided service to existing system customers prior to the installation of the TIME Project, and that it has not been asserted that the new TIME Project compressor is necessary to continue to provide system services. As a result, the Companies assert, allocating electric power costs of the TIME Project to existing customers amounts to a prohibited subsidy of the project. Finally, the Companies contend that Texas Eastern’s argument, that existing customers benefit from the TIME Project because its new compressor is used to compress system gas, is immaterial because the new compressor is required to compress system gas only because of the TIME Project’s addition of incremental volumes to the system. They argue that “it makes no sense for Texas Eastern to assert that its system customers must pay EPC [electric power] costs incurred to make the Time project work,”¹⁶ but this is what its “benefits” argument boils down to.

¹⁴ *Id.* at 4.

¹⁵ *Id.*

¹⁶ *Id.* at 5.

9. In the event the Commission does not grant rehearing of the June 14, 2004 Order, the Companies request that the Commission clarify its order to give guidance as to the factual and/or policy issues the parties should address to permit the Commission to resolve the threshold issue of whether any allocation of TIME Project electric costs to system shippers is at all appropriate. Further, they request that the Commission identify the "material facts in dispute in this case that must be resolved in order to create a record sufficient to support a decision on the threshold issue."¹⁷ Accordingly, they request that the Commission clarify its statement in the June 14, 2004 Order that "there are material facts in dispute in this case and . . . the record is insufficient to support a decision."¹⁸ They assert that given the number of submissions already on the record in this case, it is fair to say that neither they nor Texas Eastern know what circumstances would justify the allocation of Time Project electric power costs to system customers. The Companies assert that such clarification will focus the hearing and avoid wasting the resources of the parties and the Commission.

III. Discussion

10. The Commission denies rehearing and, to the limited extent discussed below, grants clarification of the June 14, 2004 Order. As noted in the June 14, 2004 Order, the Commission is unable to resolve the cost allocation issues raised by Texas Eastern's filing without the benefit of a full hearing record. Therefore, it was not error to deny the Companies' request to summarily reject Texas Eastern's proposed allocation methodology and to establish a hearing proceeding. Contrary to the Companies' assertion, neither the June 28, 2002 TIME Project certificate order nor the October 11, 2002 Order Denying Rehearing and Granting Clarification definitively ruled on the issue of what electric power costs attributable to the use of the Lambertville compressor are the responsibility of the TIME Project customers, *i.e.*, New Jersey Natural, and whether any such costs may be allocated to existing customers' rates. Nor do those orders rule, as the Companies contend, that "there [are] no such situations" in which system customers must pay a portion of electric costs attributable to the TIME Project Lambertville compressor. The Commission, instead, accepted Texas Eastern's own proposal for a full allocation of all construction costs of the TIME Project Lambertville compressor to New Jersey Natural in incremental transportation rates and deferred the resolution of any specific electric power cost allocation issues to Texas Eastern's EPC tracker proceedings. Accordingly, rehearing is denied.

¹⁷ *Id.* at 1.

¹⁸ *See* Texas Eastern Transmission, LP, 107 FERC ¶ 61,268 at P 41.

11. In response to the Companies' alternate request to clarify the "factual and/or policy issues" to be addressed in the hearing, as the Commission stated in the June 14, 2004 Order, the Commission set for hearing "the issues raised by the filing and protests"¹⁹ and that the resolution of these issues "would benefit from a formal hearing where all the issues can be thoroughly ventilated and a full record can be compiled."²⁰ Therefore, all factual and policy issues, including the issues and arguments that the Companies raised in their September 2, 2003 and October 1, 2003 comments, can be raised at the hearing below and should be addressed by Texas Eastern and the parties in the record.²¹ These include issues the Companies raised regarding how the Commission's Statement of Policy on *Certification of New Interstate Gas Pipeline Facilities*,²² and the Commission's application of that policy in the underlying TIME Project certificate proceeding and in other Commission proceedings where the allocation of operating costs of incrementally-priced expansion projects was at issue, and should be applied in the context of this electric power tracker case. Accordingly, because the parties may present any position they wish on the issue of how Commission policy should apply to the specific facts of this case, it is premature to accept the Companies' claim that it is not "material" that system gas is compressed by the TIME Project Lambertville compressor.²³ The Companies' further claims that "there are no circumstances in which system shippers should be required to pay TIME EPC costs" and that "any allocation of TIME EPC costs to system shippers constitutes a prohibited subsidy of the TIME Project"²⁴ go to the merits of the issues set for hearing and, therefore, should be addressed in the hearing proceeding.

¹⁹ 107 FERC ¶ 61,268 at P 1.

²⁰ 107 FERC ¶ 61,268 at P 41.

²¹ The Commission reminds the parties that the Commission's Rules of Practice and Procedure require that any brief on exceptions to the initial decision must include a concise discussion of the policy considerations that may warrant full Commission review and opinion, and briefs opposing exceptions must include a rebuttal of such policy considerations. 18 C.F.R. §§ 385.711(b)(2)(iii) and (b)(3)(ii) (2004).

²² *Certification of New Interstate Natural Gas Pipeline Facilities (Certificate Policy Statement)*, 88 FERC ¶ 61,227 (1999), *order clarifying statement of policy*, 90 FERC ¶ 61,128, *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000).

²³ Request for Rehearing or Clarification at 5.

²⁴ Request for Rehearing or Clarification at 5.

12. Turning to the Companies' request to "identify the 'material facts' which, if resolved by the hearing process, would permit the Commission to answer the threshold question"²⁵ of whether any Lambertville electric power costs at all should be allocated to system customers, the Commission does not wish to hamstring the parties in arguing their respective positions on that or any other question that may be raised. It would be premature to rule on the materiality of facts as yet not established or on legal theories regarding the application of Commission policy that may affect the relevancy or materiality of such facts. However, we clarify that, at a minimum, Texas Eastern bears the burden to prove with substantial evidence its claim that system customers benefit from its use of the Lambertville compressor, that such benefit can be quantified, and that existing customers will not subsidize the costs resulting from the TIME Project under its proposed cost allocation methodology and rates. Ultimately, Texas Eastern bears the burden to prove with substantial evidence that its proposed cost allocation methodology and rates are just and reasonable and consistent with its tariff and Commission policy. The Presiding Administrative Law Judge is instructed to ensure that a full record is established to permit the Commission to render a reasoned decision on all factual and policy issues raised in this case.

The Commission orders:

(A) The Companies' request for rehearing is denied, as discussed in the body of this order.

(B) The Companies' alternative request for clarification is granted to the limited extent as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

²⁵ Request for Rehearing or Clarification at 6.