

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

September 9, 2005

In Reply Refer To:  
Tennessee Gas Pipeline Company  
Docket No. RP96-312-148

Tennessee Gas Pipeline Company  
1001 Louisiana Street  
Houston, TX 77002

Attention: Jacques A. Hodges, Attorney

Reference: Negotiated Rate Agreements - Service Package Nos. 48445, 48426 and  
48427

Dear Mr. Hodges:

1. On August 12, 2005, Tennessee Gas Pipeline Company (Tennessee) filed: (1) a gas transportation agreement and amended and restated negotiated rate letter agreement entered into between Tennessee and Wyeth Pharmaceuticals Inc. (Wyeth) pursuant to Tennessee's Rate Schedule FT-IL (Service Package No. 48445); (2) a gas transportation agreement and negotiated rate letter agreement entered into between Tennessee and Bay State Gas Company (Bay State) pursuant to Tennessee's Rate Schedule FT-IL (Service Package No. 48426); and (3) a gas transportation agreement between Tennessee and Bay State pursuant to Tennessee's Rate Schedule FT-A (Service Package No. 48427). Consistent with Tennessee's requested effective date, the FT-IL and FT-A Agreements and negotiated rate agreements are accepted effective September 12, 2005, as proposed. This acceptance is subject to the condition set forth below.

2. Public notice of the filing was issued on August 25, 2005. Interventions and protests were due as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2005)), all timely filed motions to intervene and any 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. No protests or adverse comments were filed.

3. In summary, the Wyeth FT-IL transportation agreement and the applicable negotiated rate agreement provide for a primary contract term of twenty years following the commencement date, and a transportation quantity of 8,000 Dth of gas per day. The

applicable FT-IL rate, which is inclusive of surcharges, will be a monthly reservation rate of \$1.2167 per Dth and an authorized overrun rate equal to the negotiated monthly reservation charge multiplied by 0.0328. The agreement also provides that in no event will Tennessee collect more than Tennessee's maximum applicable demand and commodity rate under Rate Schedule FT-IL. In addition, Wyeth will pay applicable fuel and loss and unaccounted for charges.

4. The Bay State FT-IL transportation agreement and the applicable negotiated rate agreement provide for a primary contract term of ten years following the commencement date, and a transportation quantity of 17,000 Dth of gas per day. The applicable FT-IL rate, which is not inclusive of surcharges, will be a monthly reservation rate of \$2.736 per Dth and a daily commodity rate of \$0.00 per Dth. The agreement also provides that in no event will Tennessee collect more than Tennessee's maximum applicable demand and commodity rate under Rate Schedule FT-IL. In addition, Bay State will pay applicable fuel and loss and unaccounted for charges.

5. Bay State's FT-A transportation agreement provides for a primary contract term of ten years following the commencement date, and a transportation quantity of 17,000 Dth of gas per day. The rates, charges, and surcharges to be paid by Bay State to Tennessee for the transportation service provided will be in accordance with Tennessee's Rate Schedule FT-A.

6. Tennessee states that the Wyeth and Bay State FT-IL Service Agreements and the Bay State FT-A Service Agreement contain provisions that deviate from Tennessee's *pro forma* Incremental Lateral Transportation Agreement and *pro forma* Firm Transportation Agreement, respectfully, and that Tennessee is submitting the non-conforming agreements for Commission review and approval. Tennessee states that if the Commission determines that the service agreements contain material deviations, Tennessee requests that the Commission approve the agreements as filed, and that Tennessee will file revised tariff sheets listing these contracts as non-conforming in its tariff.

7. Tennessee states that these non-conforming agreements contain several deviations from the *pro forma* agreements of which the most significant being changes to Article II, sections 2.1 and 2.2.<sup>1</sup> First, Tennessee states that section 2.1 deviates from the *pro forma*

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<sup>1</sup> For example, other miscellaneous deviations include: (1) Tennessee modified Article VI, section 6.1 by removing "effective date" and inserting "Commencement Date" to conform with Article II; (2) the words "all other" were inserted before "applicable" in the Bay State FT-IL Agreement to reiterate that the shipper is responsible for all applicable charges and surcharges; (3) certain sections were modified by adding the ending "ance" to "accord" to form "accordance"; and (4) Article XIII states that notices sent to Tennessee shall be sent to the attention of Transportation "Control," instead of Transportation Services.

service agreements because it includes a condition precedent requiring Tennessee to receive and accept all necessary regulatory and non-regulatory authorizations to provide the service and complete construction of the necessary facilities before it is obligated to commence service to Wyeth or Bay State, respectively. Tennessee states that this deviation is reasonable because, unlike most service agreements entered into between Tennessee and a customer that provide service through facilities that exist, the service discussed in the subject Wyeth and Bay State FT-IL and FT-A Service Agreements cannot be provided unless the facilities necessary to provide the service are constructed and the necessary authorizations are received. Second, Tennessee states that section 2.2 is added to explain that Tennessee will notify Wyeth or Bay State after it completes construction of the facilities necessary to commence service and the service will commence thirty days after that notice is provided (the commencement date). Tennessee states that this deviation is reasonable because service cannot commence prior to construction of the necessary facilities and Article II, section 2.2 describes how and when Tennessee will notify Wyeth or Bay State of the completion of construction.

8. The Commission's regulations require that pipelines include in their tariff a Form of Service Agreement, and file any contract that deviates materially from the Form of Service Agreement.<sup>2</sup> The filing of non-conforming service agreements enables the Commission and other interested parties to review the contract to determine whether the material deviations comply with the requirements of the Natural Gas Act, including that the pipelines have not engaged in undue discrimination.

9. In *East Tennessee Natural Gas Company*, the Commission found that any difference in the language between the negotiated agreement and the pro forma service agreements constitutes a material deviation.<sup>3</sup> However, not all material deviations are impermissible. If the Commission finds that such deviation does not constitute a substantial risk of undue discrimination the Commission may permit the deviation.<sup>4</sup> The Commission finds that the deviations contained in the non-conforming service agreements with Wyeth and Bay State are permissible deviations because they do not

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<sup>2</sup> 18 C.F.R §§ 154.1(d) and 154.110 (2005). The Commission has held that a material deviation includes any provision in a service agreement that is not in the approved language of the Form of Service Agreement and: (1) goes beyond filling-in-the- blank spaces with the appropriate information allowed by the tariff; or (2) affects the substantive rights of the parties. *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 at P 27 (2003).

<sup>3</sup> *East Tennessee Natural Gas Co.*, 107 FERC ¶ 61, 197 at P 16 (2004).

<sup>4</sup> *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 at 62,004 (2001).

present a substantial risk of undue discrimination. Therefore, the Commission accepts these contracts subject to Tennessee filing revised tariff sheets, within 15 days of the issuance of this letter order, listing these non-conforming service agreements in its tariff.

By direction of the Commission.

Magalie R. Salas,  
Secretary.