FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 10, 2005

In Reply Refer To:
Texas Eastern Transmission, LP
Docket No. RP06-30-000

Texas Eastern Transmission, LP
P.O. Box 1642
Houston, Texas 77251-1642

Attention: Gregg E. McBride
Vice President, Rates & Economic Analysis

Reference: Elimination of Penalty Limitations

Dear Mr. McBride:

1. On October 14, 2005, Texas Eastern Transmission, LP (Texas Eastern) filed revised tariff sheets[1] to remove the $25 per Dth cap on penalties to be assessed against shippers who violate capacity curtailment orders, Action Alert orders, or Operational Flow Orders (OFOs). The Commission accepts the tariff sheets effective November 14, 2005, as proposed.

2. Notice of Texas Eastern's filing was issued on October 20, 2005, with interventions and protests due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2005). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2005), all timely 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. Northeast Energy Associates, A Limited Partnership (Northeast Energy), Process Gas Consumers Group (PGC), and Amerada Hess Corporation (Amerada Hess) filed protests to the filing. The protests are discussed below.

[1] Second Revised Sheet Nos. 559 and 561 to FERC Gas Tariff, Seventh Revised Volume No. l.

3. Texas Eastern's tariff currently provides that if a shipper violates a capacity curtailment order or OFO, Texas Eastern shall assess a penalty of three times the applicable daily *Gas Daily* price posting on all quantities in excess of authorized quantities. It further provides that if a shipper violates an Action Alert order, Texas Eastern shall assess a penalty of 110 percent of the applicable daily *Gas Daily* price posting on all excess quantities. These penalties are currently capped at $25 per Dth. However, Texas Eastern asserts that, with the significant increases in natural gas prices of the last several years, the $25 cap may no longer be enough of an economic penalty to deter shippers from violating curtailment orders. Therefore, Texas Eastern proposes to eliminate the cap on penalties, but not make any other changes to the penalty provisions.

4. Northeast Energy and PGC protest Texas Eastern's proposal, arguing that the revised penalty provisions are contrary to established Commission policy that a pipeline may include a penalty in its tariff only to the extent necessary to prevent the impairment of reliable service, and any such penalty must be "narrowly designed." All protestors argue that a penalty level of three times an index price would be excessive. Northeast Energy and PGC argue that it is Texas Eastern's burden to show that its alternative to a capped penalty structure is just and reasonable and narrowly tailored to deter conduct detrimental to its system operations. Northeast Energy states that the Commission has found that a penalty of two times a relevant index price is sufficient to deter undesirable behavior by shippers and argue that two times an index price is more reasonable in Texas Eastern's case. Amerada Hess proposes that Texas Eastern's penalties in excess of $25 be limited to 200 percent of the daily index price.

5. All protests go to the issue of the level of the penalties permitted in Texas Eastern's proposal. The existing penalties have been accepted by the Commission as a just and reasonable means to deter undesirable behavior which may threaten the operational integrity of the pipeline. Texas Eastern asserts that, given the changed circumstances, these penalties are no longer sufficient to deter undesirable behavior. Texas Eastern argues persuasively that the significant rise in current market prices for natural gas, coupled with the very real possibility of even higher prices in the future, has seriously diminished the effectiveness of the current penalties.

6. Penalties are designed to provide an economic disincentive to shippers that might take actions which could threaten the operational integrity of the pipeline in the absence of such penalties. For a penalty to be effective, it must create the needed economic incentive to deter actions that may compromise system integrity. Given the current increased gas prices and the potential for prices to continue rising, Texas Eastern's current penalties are capped at a level that may no longer act as a deterrent to actions that might threaten pipeline operations. Texas Eastern's current penalty structure for capacity curtailment orders and OFOs is three times the index price and protestors have not persuaded the Commission that these levels are unjust and unreasonable. Capacity curtailment orders, Action Alert orders, and OFOs are placed into effect to protect the

operational integrity of the pipeline. Penalties are only assessed on those shippers who take actions that may compromise pipeline operations, and penalty revenues are credited to shippers who abide by the capacity curtailment order, Action Alert order, or OFO. In addition, the Commission has recently approved similar penalty provisions on other pipelines as just and reasonable.[2] The Commission therefore accepts Texas Eastern's proposal to remove the cap on penalties as a reasonable action to preserve the operational integrity of the pipeline.

7. The Commission accepts Texas Eastern's revised tariff sheets effective November 14, 2005.

By direction of the Commission.

Magalie R. Salas,
Secretary.

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[2] *Viking Gas Trans. Co.*, 112 FERC ¶ 61,098 (2005); *Midwestern Gas Trans. Co.*, 112 FERC ¶ 61,345 (2005); *accord Northwest Pipeline Corp.*, 100 FERC ¶ 61,347 P77 (20002) (approving tariff containing Operational Flow Order penalty equal to the greater of $10.00/Dth or four times the highest absolute price reflected in the local daily price survey with no tolerance bands).