

110 FERC ¶ 61,188
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
Duke Energy Marketing America, LLC,
Duke Energy Trading and Marketing, L.L.C.,
Duke Energy Marketing Canada Corp.,
DETM Marketing Northeast, LLC

Docket Nos. IN05-4-000

Texas Eastern Transmission, LP

PA03-14-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued February 28, 2005)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Staff of the Division of Investigations and Enforcement, Office of Market Oversight and Investigations (OMOI), Texas Eastern Transmission, LP (Texas Eastern) and Duke Energy Marketing America, LLC, Duke Energy Trading and Marketing, L.L.C. (DETM), Duke Energy Marketing Canada Corp. (successor of Duke Energy Resources Management Company), and DETM Marketing Northeast, LLC, (collectively referred to as Texas Eastern's Affiliated Marketers). This order is in the public interest because it resolves alleged violations relating to the Commission's marketing affiliate rules, as well as certain of its reporting, posting and archiving requirements with a settlement that requires Texas Eastern to take remedial action regarding its contract records and requires Texas Eastern and its Affiliated Marketers to follow a detailed three-year Compliance Plan.
2. The Agreement resolves an operational audit in Docket No. PA03-14-000 and a subsequent non-public, preliminary investigation in Docket No. IN05-4-0000 that were conducted by OMOI under Part 1b of the Commission's regulations, 18 C.F.R. 1b (2004). The Agreement covers the time from the beginning of the audit period, January 1, 2002, through September 21, 2004 (the day before the implementation date for the Commission's current Standards of Conduct for Transmission Providers in 18 C.F.R. Part 358 (2004)).

3. The alleged violations relate to failing to follow: (1) several of the Commission's Standards of Conduct for Interstate Pipelines with Marketing Affiliates in 18 C.F.R. Part 161 (2003); (2) the requirement to file service agreements with material deviations (18 C.F.R. § 154.1(d) (2004)); and (3) certain posting and/or archiving requirements relating to Index of Customers (18 C.F.R. § 284.13(c)(2004)), discounts (18 C.F.R. § 250.16 (2004)), retention of contracts (18 C.F.R. § 225.3, Item 3 (2004)), and keeping records of computations of collateral determinations (18 C.F.R. §§ 250.16, 284.12, 284.13(a), (b), (c), and (d), 225.3, Item 3, and Part 201, General Instruction No. 2 (2004)). The Standard of Conduct allegations relate to improper sharing of non-public transportation information, non-affiliated shipper information, providing affiliates with a preference in creditworthiness scoring, maintaining a complete log of uses of discretion concerning tariff provisions and maintaining complete and updated organizational charts. Texas Eastern neither admits nor denies any violations of Natural Gas Act or the Commission's regulations.

4. The audit and investigation also concluded that two of Texas Eastern's marketing affiliates during the audit and investigative period, Duke Energy Resources Management Company and Energy Plus, violated the Commission's capacity release rules (18 C.F.R. § 284.8 (2004)) by releasing capacity to another Texas Eastern marketing affiliate, DETM, without posting the capacity. Texas Eastern's Affiliated Marketers neither admit nor deny any violations of the Natural Gas Act or the Commission's regulations.

5. The facts stipulated in the Agreement by Texas Eastern concern, among other things: instances in which an employee of Texas Eastern provided a marketing affiliate employee with information regarding the availability of interruptible capacity for same-day or next-day service in response to an inquiry from the marketing affiliate employee; instances in which Texas Eastern removed DETM's electronic access to transportation information for certain non-affiliated shippers days or weeks after learning that DETM was no longer acting as an agent for the shippers; instances in which Texas Eastern enabled DETM to have access to accounts on Texas Eastern's LINK system relating to non-affiliated shippers before Texas Eastern obtained a written Designation of Agent form for DETM from those shippers; two discount rate agreements containing terms that were not in Texas Eastern's tariff that it had not reported to the Commission; and a creditworthiness evaluation model that contained an option to score an additional point for an affiliate. The facts stipulated in the Agreement by the Affiliated Marketers concern Texas Eastern capacity that was interchangeably used between two affiliates without using the capacity release mechanism in Texas Eastern's tariff.

6. The Agreement contains five major components:

A. Texas Eastern agrees to review its current gas transportation service contracts to identify any agreements with material deviations that have not previously been reported to the Commission. Texas Eastern will file each of those agreements with

the Commission and provide OMOI with a list of those unfiled agreements for which it determined that the deviations were not material. If OMOI determines that contracts on the list have material deviations, Texas Eastern will file them as well.

B. Texas Eastern agrees to review all the files of its current gas transportation service contracts and seek to obtain copies of all missing contracts.

C. Texas Eastern agrees to follow the three year Compliance Plan in Appendix A to the Agreement. The Compliance Plan requires Texas Eastern to create and implement procedures relating to, among other things: training, posting and maintaining discount information, Index of Customers, organizational charts, document retention and maintenance of contracts, enforcing tariff provisions and maintaining a log of uses of discretion or waivers concerning tariff provisions, reporting non-conforming terms and conditions, access to work areas and databases, affiliate access to customer information, and preventing the disclosure of non-public transmission information to its Energy Affiliates. Texas Eastern agrees to perform quarterly audits in many of these areas to ensure compliance (the frequency of which may be reduced in OMOI's discretion) and to file an annual Compliance Report for each of the next three years.

D. Texas Eastern agrees to make a payment of \$500,000 to the U.S. Treasury.

E. Texas Eastern's Affiliated Marketers agree to follow the Compliance Plan in Appendix B to the Agreement, which covers training in and compliance with the Commission's capacity release regulations. Texas Eastern's Affiliated Marketers also agree to require their employees to participate in the training that Texas Eastern is required to provide under its Compliance Plan.

7. The Agreement does not address or resolve issues pending in any other docketed matter.

The Commission finds:

The Agreement provides an equitable resolution of this matter and is in the public interest.

The Commission orders:

(A) The attached Stipulation and Consent Agreement is approved in its entirety without modification and is incorporated into this order.

(B) Docket Nos. IN04-5-000 and PA03-14-000 are terminated, save for determination of compliance with this Order and the attached Agreement.

Docket Nos. IN05-4-000 and PA03-14-000

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(C) The Commission's approval of the attached Stipulation and Consent Agreement does not constitute approval of, or precedent regarding, any principle or issue in this matter.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.