

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 29, 2007

In Reply Refer To:
Texas Eastern Transmission, LP
Docket Nos. IN05-4-001, IN05-4-002, and
IN05-4-003

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

Attention: Richard J. Kruse, Vice President
Rates, Regulatory Affairs and Chief Compliance Officer

Reference: Compliance Filing

Dear Mr. Kruse:

1. On February 27, 2006, Texas Eastern Transmission, LP, (Texas Eastern) filed 49 transportation and storage contracts for Commission review and a tariff sheet¹ listing the contracts as including non-conforming provisions pursuant to section 154.112(b) of the Commission's regulations.² Texas Eastern requests an effective date of April 28, 2006 for its tariff sheet. On March 3, 2006 and on September 22, 2006, Texas Eastern filed supplements to the February 27, 2006 filing. The supplemental filings include five additional non-conforming storage contracts and revised tariff sheets listing the contracts as including non-conforming provisions.³ Texas Eastern originally requested an April 28, 2006 effective date for the tariff sheet filed in its March 3, 2006 filing but subsequently, requested a September 22, 2006 effective date for the superceding tariff sheet it filed with its September 22, 2006 filing. As discussed below, the Commission will accept all

¹ Original Sheet No. 543A to FERC Gas Tariff, Seventh Revised Volume No. 1.

² 18 CFR §154.112 (b) (2006).

³ Sub Original Sheet No. 543A to FERC Gas Tariff, Seventh Revised Volume No. 1 (March 3, 2006 filing); Second Revised Sheet No. 543A to FERC Gas Tariff, Seventh Revised Volume No. 1 (September 22, 2006 filing).

tendered contracts for filing. In addition, the Commission accepts Second Revised Sheet No. 543A to be effective on September 22, 2006 and rejects as superceded, and therefore moot, Sub Original Sheet No. 543A and Original Sheet No. 543A.

Background

2. On February 25, 2005, the Commission issued an “Order Approving 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 and Texas Eastern’s Affiliated Marketers.⁴ The Agreement required Texas Eastern to review its current gas transportation service contracts and to identify any agreements with material deviations from its *pro forma* service agreements that have not previously been reported to the Commission. Texas Eastern states that the instant filings are tendered to comply with this requirement.

Details of Filings

3. Based on its review of its transportation contracts, Texas Eastern states that it has determined that the subject contracts contain non-conforming provisions that materially deviate from its *pro forma* service agreements in one or more of six categories of non-conforming provisions. As described by Texas Eastern, a contract may appear in several categories. For each contract filed, Texas Eastern includes in Appendix B of its filing, a “Contract Summary Sheet” which reflects all language that deviates from the *pro forma* service agreements. In its Contract Summary Sheet, Texas Eastern also provides commentary concerning why it does not believe that certain of the deviations contained therein are material.

4. Texas Eastern states that, for the most part, the material deviations can be grouped into the following six categories: (1) certificate related service contracts; (2) contracts with Exhibit B storage withdrawal ratchets; (3) contracts with access area entitlement reduction provisions; (4) contracts with Maximum Daily Quantity (MDQ) ramp-up provisions; (5) contracts containing a condition precedent regarding capacity allocation, and; (6) contracts restricting Texas Eastern’s right to change the notice of termination period.⁵

⁴ *Texas Eastern Transmission LP*, 110 FERC ¶ 61,188 (2005). The Office of Market Oversight and Investigations has recently been reorganized and renamed. OMOI is now the Office of Enforcement.

⁵ In addition to these groups of contracts, Texas Eastern identifies two contracts that contain certain other material non-conforming provisions as well as contracts in

Notice

5. Public notices of the filings were issued with protests due as provided by the Commission's regulations (18 CFR §385.211 (2006)). No protests were received.

Discussion

6. Section 154.1(d) of the Commission's regulations require a pipeline to file a contract which materially deviates for the pipeline's form of service agreement.⁶ In *Columbia Gas Transmission Corporation (Columbia)*, issued on November 21, 2001,⁷ the Commission clarified that a material deviation is any provision in a service agreement that: (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (2) affects the substantive rights of the parties.⁸ 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.⁹

7. Therefore, there are two general categories of material deviations: (1) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (2) provisions the Commission can permit without a substantial risk of undue discrimination. The Commission finds that the material deviations at issue here do not present a substantial risk of undue discrimination, as more fully discussed below.¹⁰

which certain *pro forma* language was omitted due to administrative oversight or to reflect elements of an agreement concerning the parties' right to reduce service, which are also discussed below.

⁶ 18 CFR §154.1(d) (2006).

⁷ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001) (*Columbia*).

⁸ In *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 at P 27 (2003), the Commission stated "[s]ince there would appear to be no reason for the parties to use language different from that in the form of service agreement other than to affect the substantive right of the parties, this effectively means that all language that is different from the form of service agreement should be filed with the Commission." *Id.* at P 32.

⁹ *Columbia* at p. 62,004.

¹⁰ See *ANR Pipeline Co.*, 97 FERC ¶ 61,252 at 62,115-16 (2001).

8. The Commission has reviewed the contracts identified by Texas Eastern as containing material deviations and finds that generally for the reasons presented by Texas Eastern and as discussed below, these deviations do not constitute a substantial risk of undue discrimination and that such deviations are therefore permissible.

9. The Commission's review of the contracts submitted by Texas Eastern reveals that a large number of these contracts were executed prior to the Commission's clarification in *Columbia* of the standards for determining whether a non-conforming provision would be considered to be a material deviation from the pipeline's *pro forma* service agreement. The Commission also finds that several contracts contain provisions that are now authorized by Texas Eastern's tariff after its inclusion in the subject contracts and that all of the contracts are ongoing and are relied upon by the parties. Moreover, no person has requested that the Commission modify or cancel these contracts. Therefore, as discussed below, the Commission finds that these deviations do not present a substantial risk of undue discrimination.

10. In regard to non-conforming provisions in contracts related to certificated pipeline expansions,¹¹ Texas Eastern asserts that the deviating provision in these contracts reflects the character of the applicable certificated service consistent with Texas Eastern's description of such service in the applicable certificate application. Texas Eastern requests that the Commission find these provisions to be permissible because they merely clarify the character of the certificated service. For example, Texas Eastern states that several contracts contain language that its obligation to deliver gas only extends to the points thereafter designated. Texas Eastern states that this merely reflects that these individually certificated services do not include flexible delivery point rights. Texas Eastern points out that one Rate Schedule FT-1 contract restricted a customer's secondary receipt point rights consistent with a settlement. Further, Texas Eastern states that one contract omitted references to its master receipt point list and also omitted a customer's obligation to abide by the receipt point pressure obligations contained in Texas Eastern's tariff because the facilities on which the transportation service was to be provided was not connected to Texas Eastern's system. The Commission finds that such deviations reflect the nature of the applicable certificated service and do not present a substantial risk of undue discrimination. Moreover, as pointed out by Texas Eastern, the Commission has previously accepted such provisions on its system.¹²

¹¹ Contract Nos. 331722, 331819, 331724, 331821, 331723, 331820, 331725, 331822, 800526 and 800474.

¹² *E.g.*, Texas Eastern Contract No. 331722 Contract Summary Sheet, *citing*, *Texas Eastern Transmission Corp.*, Docket No. GT95-10-000. (Unpublished order issued March 17, 1995).

11. Texas Eastern also identified three contracts¹³ with language permitting the customer to reduce its access area entitlements upon two years' notice. Texas Eastern states that all three contracts were entered into in 1997, prior to the Commission's 2001 orders clarifying the general standards for determining what constitutes a material deviation from the form of service agreement which must be filed pursuant to section 154.112(b) of the Commission's regulations.¹⁴ Therefore, Texas Eastern requests the Commission accept the contracts with Access Area Entitlement reduction provisions consistent with the Commission's treatment of other long standing contractual arrangements entered into before the Commission clarified its policies regarding materially non-conforming provisions.¹⁵ The Commission will accept these non-conforming contracts. While in the Commission's view the right to reduce service is a valuable right that substantially alters the service agreement, the Commission has accepted non-conforming contracts containing this type of provision, if such contracts were longstanding agreements entered into prior to the Commission's clarification of the standards governing materially non-conforming provisions. Such is the case with the instant contracts. Accordingly, because the subject contracts represent longstanding contractual commitments relied upon by the parties, the Commission will accept these non-conforming contracts as filed by Texas Eastern. However, Texas Eastern is reminded that consistent with our ruling in *Columbia Gas Transmission Corporation*, 97 FERC ¶ 61,221, at p. 62,010 (2001) any new contracts containing such non-conforming provisions must be filed with, and approved by, the Commission before they may be placed into effect.

12. Texas Eastern states that certain contracts contain Exhibit B storage withdrawal ratchet provisions that differ materially from the withdrawal ratchet provisions contained in section 6.3 of Rate Schedule SS-1.¹⁶ Texas Eastern states that these withdrawal

¹³ Contract Nos. 800241, 800242, and 800381.

¹⁴ See *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001); *ANR Pipeline Co.*, 97 FERC ¶ 61,222 (2001).

¹⁵ Texas Eastern February 27, 2006 Transmittal letter at 8, *citing*, *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at p. 62,010 (2001); *ANR Pipeline Co.*, 98 FERC ¶ 61,247, at p. 62,002 (2002) (supporting approval of certain contracts with deviations determined to be material under the standard announced in *Columbia* because such contracts were long-standing agreements upon which parties had a greater reliance interest than the newly entered into contracts).

¹⁶ Texas Eastern's February 27, 2006 filing identifies Contract Nos. 400226, 400227, 400193, 400225, 400186, 400181, 400200, 400223, 400229, 400224, 400187,

ratchets were incorporated into the new contracts to reflect the combined withdrawal flexibility previously available under each customer's separate pre-Order No. 636 contracts. Texas Eastern further states that these Exhibit B storage withdrawal ratchets were publicly filed with the Rate Schedule SS-1 contracts in Texas Eastern's Order No. 636 contract filings in Docket No. GT95-10-000 without any protests relating to the Exhibit B storage withdrawal ratchets.¹⁷ The Commission finds that these deviations represent an attempt to reflect the combined withdrawal flexibility available under each customer's separate pre-Order No. 636 contracts and that the parties have long relied upon these contracts. As such, as discussed above, the Commission will accept such contracts and finds that these provisions do not present a substantial risk of undue discrimination.

13. Texas Eastern states that several contracts contain provisions that provide for future increases in Maximum Daily Quantity (MDQ) from the original MDQ under the contract (i.e., MDQ Ramp-up Provisions).¹⁸ Texas Eastern asserts that this does not represent a risk of undue discrimination under its tariff because Texas Eastern has modified its tariff provisions to allow varying MDQs to all customers on a not unduly

400221, 400188, 400216, 400120, 400196, 400190, 400192, 400233, 400211, and 400191, as containing Exhibit B Storage ratchets with non-conforming language. In its March 3, 2006 filing Texas Eastern adds Contract Nos. 400184, 400220, and 400185 in this category. Subsequently, in its September 22, 2006 filing, Texas Eastern also identified Contract Nos. 400238, and 400237, as containing Exhibit B storage ratchets with non-conforming language.

¹⁷ Texas Eastern February 27, 2006 Transmittal letter at 7, *citing, Texas Eastern Transmission Corp.*, 70 FERC ¶ 61,307 (1995); *Texas Eastern Transmission Corp.*, Docket No. GT95-10-002, issued June 27, 2006 (Unpublished); *Texas Eastern Transmission Corp.*, Docket Nos. GT05-003 and GT05-004 issued November 2, 1995 (Unpublished).

¹⁸ Contract Nos. 870180, 800473, and 870017. Texas Eastern points out that effective September 1, 2005, the latter two contracts were permanently released from Public Service Electric and Gas Co., to PSEG Power, LLC., and that these superceding contracts do not contain materially non-conforming language. Therefore, Texas Eastern states that Contract Nos. 800473 and 870017 are not reflected on the tariff sheet submitted with the February 27, 2006 filing. Texas Eastern February 27, 2006 Transmittal letter at fn. 28. Furthermore, Texas Eastern states that the Commission approved the staging of the ramp up of MDQs under these contracts in Docket No. CP92-184-000. Texas Eastern February 27, 2006 Transmittal letter at 9, *citing, Texas Eastern Transmission Corp.*, 62 FERC ¶ 61, 019 (1993); 64 FERC ¶ 61,069 (1993); 70 FERC ¶ 61,299 (1995); and, 70 FERC ¶ 61, 298 (1995).

discriminatory manner.¹⁹ The Commission finds that the contracts in question either no longer contain the deviating term, or in the case of Contract No. 870180, that the increases in MDQ have already occurred. In any event, these are longstanding agreements which have been relied upon by the parties and the deviating terms in question are now moot. Therefore, the Commission will accept these contracts without further action.

14. Texas Eastern has also filed certain contracts that contain a material deviation concerning capacity allocation.²⁰ Specifically, Texas Eastern states that these contracts contain language specifying that the contract will be deemed null and void if the customer is not awarded capacity. Texas Eastern states the provision is merely a condition precedent to the effectiveness of the contract, and that the provision facilitates a customer's ability to nominate any awarded capacity in a timely fashion by permitting Texas Eastern and the customer to complete the administrative aspects of contracting prior to the award of the capacity, without creating any rights or obligations for the parties, if such award is not ultimately made pursuant to Texas Eastern's tariff. The Commission finds that this type of provision is a material deviation from the form of service agreement and that it constitutes a substantial risk of undue discrimination. However, since the customers under these contracts have been awarded capacity, the provisions are now moot, and the Commission will accept them without further action. If Texas Eastern believes that this method of contracting is beneficial for customers and itself, and wishes to negotiate service contracts using this method in the future, Texas Eastern must offer such rights to its customers through a generally available tariff provision.

15. Texas Eastern also states that several contracts contain language that restricts its right to change the notice of termination period as specified within the contract.²¹ Specifically, Texas Eastern states that six contracts under Rate Schedule CDS contain language in Article II that restricts its right to change the notice of the termination period described in Article II. Texas Eastern points out that Article III of the Rate Schedule CDS form of service agreement states that it may not file to change the term of the agreement but does not specify a restriction on changing the notice of the termination period. Texas Eastern states that the subject language clarifies that Texas Eastern may not circumvent the restriction regarding changes to the term of the agreement by filing to shorten the notice of termination period. The Commission finds that this deviation is

¹⁹ Texas Eastern February 27, 2006 Transmittal letter at 5, *citing, Texas Eastern Transmission, L.P.*, 106 FERC ¶ 61,066 (2004).

²⁰ Contract Nos. 830089, 830103, 910341, and 910066.

²¹ Contract Nos. 800529, 800290, 800527, 800304, 910445, and 910446.

permissible. The subject provision clarifies that Texas Eastern does not possess a unilateral right to change the notice of termination period and as such it does not present a significant risk of undue discrimination.

16. Texas Eastern identifies two other contracts containing deviations that do not fall within the six categories described above. One contract, Contract No. 330840 under Rate Schedule FTS, contains a notice of termination period of 12 months rather than the 24 months provided for in the *pro forma* service agreement. Texas Eastern states that this provision was incorporated into the contract during Texas Eastern's Order No. 636 restructuring and that it reflects the balancing of interests in connection with the conversion of the customers' pre-existing bundled sales services to transportation only services. The Commission finds that this is a material deviation, however, as set forth above, this is a longstanding contract relied upon by the parties and as such the Commission will accept this ongoing, non-conforming contract as filed.

17. Texas Eastern states that the other individual contract, Contract No. 910082 for interruptible storage service under Rate Schedule ISS-1, changes the period by which the customer must withdraw gas from storage when Texas Eastern needs the storage capacity for firm storage from the three days provided for in the *pro forma* service agreement to seven days. Texas Eastern states that the seven day withdrawal period was included in the contract at the specific request of the shipper and that this provision has never been utilized. Texas Eastern states that the customer receiving service under this contract was notified on May 18, 2005, regarding Texas Eastern's intent to terminate this contract effective May 31, 2006, in accordance with the terms of the contract.²² The Commission finds that this constitutes a material deviation. The Commission notes that due to the timing of Texas Eastern's February 27, 2006 filing, Texas Eastern was required to include this contract as a non-conforming contract. However, if as Texas Eastern indicates, the contract was terminated as of May 31, 2006, the Commission need not further discuss this item. Texas Eastern is directed to inform the Commission if this contract has not been terminated.

18. The Commission has also reviewed non-conforming contract provisions included in the instant filing that Texas Eastern classifies as immaterial. Here, the Commission agrees with Texas Eastern that these other deviations in the subject contracts are not material and do not present a substantial risk of undue discrimination. Although several of Texas Eastern's immaterial deviations require further discussion, all other deviations classified by Texas Eastern as immaterial are permissible.

²² February 27, 2006 Transmittal letter at 10.

19. Texas Eastern details two situations in which the form of service agreement language was deleted from the language contained in the subject contracts which Texas Eastern styles as immaterial deviations. Texas Eastern states that in five contracts²³ certain *pro forma* language was excluded from the contracts due to an administrative oversight.²⁴ Texas Eastern states that in order to correct these errors it is issuing written clarification to its customers specifying that the language was excluded in error and that it is correcting the contracts.²⁵ The Commission finds that the inadvertent omission of language from the form of service agreement from certain contracts constitutes a material deviation from the form of service agreement.²⁶ However, given Texas Eastern's decision to issue written clarification to its customers specifying that the language of the *pro forma* service agreement was excluded in error and its statement that it is correcting the subject contracts, the Commission finds that this oversight does not present a substantial risk of undue discrimination.

20. Second, Texas Eastern states that language from the *pro forma* service agreement was deleted in several contracts²⁷ to reflect the elements of the agreement concerning the parties' right to reduce service but argues that the agreement remains consistent with the pipeline's tariff.²⁸ Texas Eastern argues that the Commission has recently clarified that the deletion of text from the form of service agreement language, where such deletions reflect the elements of the agreement and are consistent with the pipeline's tariff, does not result in a material deviation or a substantial risk of discrimination.²⁹ Further, Texas Eastern states that the subject contracts reflect the terms reached by the parties and the parties' rights to agree to such terms under Texas Eastern's tariff. Texas Eastern presents these contracts in which language from the *pro forma* service agreement was purposely deleted in order to reflect the parties' agreement on their right to reduce service. The Commission finds that these deviations are immaterial because they simply reflect the fact that the parties were given an option by the tariff and they chose a course permitted

²³ Contract Nos. 400120, 400227, 400233, 400211, and 800304.

²⁴ See February 27, 2006 filing, Appendix B, Contract Summary Sheet for Contract Nos. 400120, 400227, 400233, 400211, and 800304.

²⁵ *Id.*

²⁶ Contract Nos. 400120, 400227, 400233, 400211, and 800304.

²⁷ Contract Nos. 800529, 800290, 800527, 800304, 910445, 910446, 400120, 400233, and 400229.

²⁸ See February 27, 2006 filing, Appendix B, Contract Summary Sheet for Contract Nos. 800529, 800290, 800527, 800304, 910445, 910446, 400120, 400233, and 400229.

²⁹ *Id.*, citing, *Garden Banks Gas Pipeline, LLC*, 113 FERC ¶ 61,132 at P7 (2005).

by the tariff.³⁰ In this instance, where the contracts reflect terms reached by the parties and the contracts remain consistent with the pipeline's tariff provisions, the Commission finds that such deviations are immaterial and do not present a substantial risk of undue discrimination.

21. Accordingly, the subject contracts are accepted for filing and Second Revised Sheet No. 543A is accepted effective September 22, 2006, as proposed. Substitute Original Sheet No. 543A and Original Sheet No. 543A are rejected as moot.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

³⁰ This option concerns the shippers' election to reduce service pursuant to certain partial volumetric reduction rights under Texas Eastern's tariff. *See Texas Eastern Transmission Corp.*, 102 FERC ¶ 61,262 at P24-29 (2003).