

120 FERC ¶ 61,199  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

August 30, 2007

In Reply Refer To:  
Texas Eastern Transmission, LP  
Docket No. RP07-552-000

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

Attention: David A. McCallum  
Director, Rates and Tariffs

Reference: Original Sheet No. 537A, Third Revised Sheet No. 538  
and Second Revised Sheet No. 629 to  
FERC Gas Tariff, Seventh Revised Volume No. 1

Dear Mr. McCallum:

1. On August 2, 2007, Texas Eastern Transmission, LP (Texas Eastern) filed the above-referenced tariff sheets to add a new section 3.14(G)(4), Obligations Related to Storage Releases, to its General Terms and Conditions (GT&C). Texas Eastern states that the purpose of proposed section 3.14(G)(4) is to clarify procedures and obligations of parties applicable to capacity release transactions for storage services under Rate Schedules SS-1 and FSS-1. Texas Eastern requests waiver of the Commission's notice requirements so that the referenced tariff sheets may go into effect on September 1, 2007. The Commission finds good cause to grant the requested waiver. Accordingly, the Commission will accept the instant tariff sheets, subject to conditions, to be effective September 1, 2007.

2. In regard to the instant filing, Texas Eastern states that:

- Proposed subsection 3.14(G)(4)(a) requires that a releasing customer provide quantity information specific to the storage services and make assurances of the availability of service elements for the release;
- Proposed subsection 3.14(G)(4)(b) provides that a replacement customer arrange the related transportation for the storage gas and comply with obligations imposed under the applicable storage service rate schedule;

- Proposed subsection 3.14(G)(4)(c) requires that a replacement customer withdraw or transfer all storage inventory by the end of the term of the release;
- Proposed subsection 3.14(G)(4)(d) states the obligations of the releasing customer, replacement customer, customer to whom storage inventory is to be transferred, and Texas Eastern regarding a recall of the released capacity;
- Proposed subsection 3.14(G)(4)(e) provides for the cash-out of any remaining inventory not resolved otherwise in accordance with the provisions of section 3.14(G)(4).

3. Texas Eastern also states that section 3.14(G)(3) has been moved from Third Revised Sheet No. 538 to Original Sheet No. 537A without any textual changes. Finally, Texas Eastern states that a reference to the proposed new subsection 3.14(G)(4) has been added to Texas Eastern's Applicable Shrinkage Adjustment provision on Second Revised Sheet No. 629.

4. Texas Eastern asserts that its proposed changes will benefit its customers participating in the capacity release of storage services by providing certainty of responsibility and obligations by all parties, streamlining of administration through the LINK® system, greater control of the process by the customer and reduction in potential errors by Texas Eastern. Texas Eastern states that currently it performs certain of the processes manually. Texas Eastern explains that, as a result of its proposed changes, the obligations of all parties and procedures to be followed will be specifically set out, the process will be automated in LINK® and the customers will have the advantage of managing their own storage inventories and the related transactions.

5. Public notice of the instant filing was issued on August 3, 2007. 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 (2007)), 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. Northeast Energy Associates (Northeast) filed comments in support of the instant filing, and a request for clarification of Commission policy.

6. Northeast states that Texas Eastern's proposal is a useful addition to its tariff that will streamline the capacity release process under the storage Rate Schedules SS-1 and FSS-1. Therefore, Northeast supports Texas Eastern's proposal and requests the Commission approve the revised tariff language promptly and as filed. Northeast also requests that the Commission provide additional clarification in connection with approval of the filed tariff language. Northeast states that the proposed new language in subsection 3.14(G)(4) provides, among other things, that "[i]f the Releasing Customer proposes or requires a transfer of all or a portion of its Storage Inventory in conjunction with its release of storage capacity rights, it shall so specify in its offer to release

capacity.”<sup>1</sup> Northeast states this provision could apply in the event that the release of storage capacity was to take place in the context of a releasing shipper seeking a third party to manage its SS-1 or FSS-1 storage assets.

7. Northeast is concerned that, given the Commission’s comments in *Louis Dreyfus Energy Services, L.P.*<sup>2</sup> where the Commission stated that a releasing shipper cannot tie a release of its capacity to any extraneous conditions, a transfer to the replacement shipper of not only title to storage capacity but also title to inventory in storage could be construed as an improper tying arrangement.<sup>3</sup> Northeast requests that the Commission clarify that release of storage capacity along with associated storage inventory in accordance with the proposed tariff provision is consistent with Commission regulations, including the prohibition on tying.

8. The Commission articulated the prohibition against the tying of capacity in Order No. 636-A, where it stated that:

[t]he Commission reiterates that all terms and conditions for capacity release must be posted and non-discriminatory and must relate solely to the details of acquiring transportation on the interstate pipelines. Release of capacity cannot be tied to any other conditions. Moreover, the Commission will not tolerate deals undertaken to avoid the notice requirements of the regulations. Order No. 636-A at 30,559.

9. In *Louis Dreyfus Energy Services, L.P.*, Louis Dreyfus Energy Services (LDES) sought certain waivers of Commission policy to permit it to undertake a transaction involving a capacity release above the maximum rate cap and a long term firm natural gas sale and purchase agreement. Specifically, LDES requested (1) a waiver of the maximum rate ceiling generally applicable to releases of interstate pipeline capacity and (2) a waiver of the policy articulated in Order No. 636-A that limits the “tying” of gas

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<sup>1</sup> Northeast Motion at 2, *citing*, Original Sheet No. 537A.

<sup>2</sup> Northeast Motion at 3, *citing*, *Louis Dreyfus Energy Services, L.P.*, 114 FERC ¶ 61,246 at P 19 (2006) (*Louis Dreyfus Energy Services, L.P.*)

<sup>3</sup> *Id.*, *citing*, Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637, FERC Stats. & Regs. ¶ 31,091, *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, *reh’g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff’d in part and remanded in part sub nom. Interstate Natural Gas Ass’n of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127, *order on reh’g*, 106 FERC ¶ 61,088, *aff’d sub nom. American Gas Ass’n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005) Order No. 636-A at 30,559.

purchase and sale arrangements to released capacity. The Commission denied the requests for waiver.

10. In addressing LDES' request for waiver of the "tying" prohibition, the Commission stated that it had lifted its prohibition against tying arrangements in certain specific circumstances where the entity requesting such a waiver was attempting to exit the natural gas business.<sup>4</sup> However, LDES' argument as presented to the Commission was that the prohibition against tying arrangements related to arrangements whereby a releasing shipper required a replacement shipper to acquire relatively worthless capacity in connection with a release of more valuable capacity and that in the arrangement, LDES' proposed buyers would all wish to obtain both a long term gas supply and a means of transporting the supply to a liquid point in Louisiana and therefore there is no impermissible tying arrangement. The Commission stated that:

LDES proposes to tie its gas sales contracts to its release of capacity. While shippers may place some value on the sales contracts, this is not the sole consideration in determining whether the Commission's prohibition against tying arrangements has been breached.<sup>5</sup>

11. The Commission reasoned that, given its statements in Order No. 637-A, the relative value of the tied packages was not sufficient reason to lift its prohibition against tying arrangements. Because LDES had not shown good cause which would warrant waiver of the Commission's regulations or policies concerning the release of capacity, the Commission denied the request for waiver.<sup>6</sup>

12. In the instant proposal, Texas Eastern states that it seeks to establish and clarify procedures and obligations of parties applicable to capacity release transactions for storage services. As such it has proposed to include broad language stating that "[i]f the Releasing Customer proposes or requires a transfer of all or a portion of its Storage Inventory in conjunction with its release of storage capacity rights, it shall so specify in

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<sup>4</sup> 114 FERC ¶ 61,246 at P 21, *citing*, *Northwest Pipeline Corp. and Duke Energy Trading and Marketing*, 109 FERC ¶ 61,044 (2004) (*Northwest*) and *Tennessee Gas Pipeline Co.*, 111 FERC ¶ 61,509 (2005) (*Tennessee*).

<sup>5</sup> 114 FERC ¶ 61,246 at P 20.

<sup>6</sup> Moreover, the Commission stated that LDES' proposal was unlike other proposals the Commission approved which permitted the shippers to combine capacity and sales agreements into a single package because those arrangements were designed to effectuate a permanent release of capacity and gas sales contracts to a prearranged shipper in order to permit the shipper to permanently exit the gas business. *See* 114 FERC ¶ 61,246 at P 21 (2006).

its offer to release capacity.” This proposal would appear to constitute a broad authorization for shippers on its system to tie their release of storage capacity to an extraneous condition (*i.e.* the taking of gas inventory) in all situations. The Commission finds that this proposed tariff provision violates the Commission’s current tying prohibition policy as articulated in Order No. 636-A and *Louis Dreyfus Energy Services, L.P.*, which prohibits a releasing shipper from tying the release of its capacity to any extraneous conditions.<sup>7</sup> Texas Eastern is directed to file revised tariff sheets within 15 days of the issuance of this order, deleting the proposed language in section 3.14(G)(4) as discussed above. Accordingly, as modified, the Commission accepts Texas Eastern’s proposed tariff sheets subject to conditions, to be effective September 1, 2007.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Acting Deputy Secretary.

cc: All Parties

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<sup>7</sup> See also, *Natural Pipeline Co.*, 64 FERC ¶ 61,295 at 63,079 (1993), holding that tying a purchase of gas in storage to a release of the storage capacity would be discriminatory.