123 FERC ¶ 61,217
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 29, 2008

In Reply Refer To:
Tennessee Gas Pipeline Company
Docket No. RP08-338-000

Tennessee Gas Pipeline Company
1001 Louisiana Street
Houston, Texas 77002

Attention: Melissa G. Freeman, Senior Counsel

Reference: Revisions to Open Season Requirements for Primary Point Changes and Reduction Option Provision

Dear Ms. Freeman:

1. On April 30, 2008, Tennessee Gas Pipeline Company (Tennessee) filed tariff sheets[1] to revise several sections of its tariff pertaining to the modification of Primary Receipt and Primary Delivery Points under its various rate schedules related to its "net present value" (NPV) mechanism for allocating capacity and Reduction Option provision. Hess Corporation (Hess) filed comments, which are discussed below. As discussed in more detail in this order, the Commission accepts and suspends the proposed tariff revisions, to become effective June 1, 2008, subject to refund and condition, and further Commission action.

2. Tennessee's tariff provides for it to use NPV criteria to evaluate bids received in an open season for available capacity on its system. Tennessee's tariff also includes provisions permitting bidders to include in their bids options to terminate their service agreement early or to reduce the capacity held under the service agreement (Reduction Option).[2]

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[1] *See* Appendix for list of tariff sheets.

[2] *Tennessee Gas Pipeline Co.,* 91 FERC ¶ 61,292, *order on compliance,* Docket No. RP00-300-002, (August 23, 2000) (unpublished letter order).

3. In the instant filing, Tennessee is proposing to modify its tariff to address several issues pertaining to the modification of primary receipt and primary delivery points (collectively, Primary Points) under its various rate schedules related to its NPV capacity allocation mechanism, including the Reduction Option provision.

4. Among other things, Tennessee is proposing to expand the Reduction Option provision in section 5.2 of Article XXVIII of the tariff's GT&C to permit a bidder to include in its bid an option to change primary points in a manner which would reduce the reservation charges applicable to the service agreement. Tennessee is further proposing to permit a bidder to propose forms of consideration other than cash payments in exchange for a Revenue Reduction Option. Thus the change would enable a bidder to propose not only exit payments but also consideration, for example, in the form of new contractual commitments to Tennessee.

5. Finally, Tennessee states that it is proposing to revise the language in section 5.7 of Article XXVIII of the tariff's GT&C to provide for two exceptions to the application of the Open Season requirements detailed in section 5 of Article XXVIII of the tariff's GT&C. Tennessee states that the proposed changes are in direct response to shipper feedback. Specifically, Tennessee is proposing to exclude changes of Primary Points from the Open Season requirements detailed in section 5.1 of Article XXVIII of the tariff's GT&C if: (1) the changes are necessitated by a proposed abandonment of facilities associated with a shipper's Primary Point(s) unless otherwise required by Tennessee or (2) Tennessee and a shipper mutually agree when the proposed change(s) would result in an NPV of zero. Tennessee submits that these changes improve the ease of doing business on Tennessee without detrimentally impacting the manner in which its generally available capacity is awarded to shippers on its system. Before either exception is available, Tennessee states that the available capacity must have been posted as generally available on Tennessee's system and must not be subject to a pending request as contemplated by section 5.1 of Article XXVIII of the tariff's GT&C.

6. Tennessee states that, if the Primary Point change is necessitated by a proposed abandonment of facilities associated with a shipper's Primary Point(s), Tennessee will continue to comply with the provisions of section 157.18 of the Commission's Regulations. In the case of both exceptions, Tennessee retains the ability to ensure that, to the extent it believes it could maximize revenue through an Open Season because of the potential to sell incremental mainline capacity in lieu of (or in addition to) primary point capacity, it has the opportunity to do so.[3] Tennessee claims that the Commission

[3] Tennessee states that the Commission acknowledged Tennessee's right to allocate "new capacity" going beyond changes to Primary Points on an NPV basis. *Tennessee Gas Pipeline Co.*, 94 FERC ¶ 61,097 (2001).

has approved, subject to the pipeline posting all available firm capacity, tariff provisions which allow for the pipeline to sell its firm capacity either through an open season or on a first-come, first-served basis.[4]

7. Public notice of the filing was issued on May 2, 2008. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.[5] Pursuant to Rule 214,[6] 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 this proceeding or place additional burdens on existing parties. Hess filed comments, to which Tennessee filed an answer. Although answers to protests are not permitted by Rule 213(a)(2), 18 C.F.R § 385.213(a)(2), the Commission finds good cause to waive the rule and to permit Tennessee's answer in the instant proceeding.

8. Hess states that it does not oppose the substance of Tennessee's proposal, but believes the wording of Tennessee's proposed revisions to GT&C article XXVIII, section 5.7, is ambiguous and should be modified. Hess notes that Tennessee proposes to modify article XXVIII, section 5.7 to permit a primary point change without an open season in specified circumstances. Hess notes that Tennessee further proposes that it would hold an open season if a shipper has expressed an interest in the available capacity necessary to effectuate the change.

9. Hess contends that, as set forth in the tariff, the open season exception in the event of shipper interest is stated as a double-negative, and the format is confusing. Hess proposes the following modification:

> Notwithstanding this Section 5.7, an open season for a change of primary points for available capacity on Transporter's system posted as generally available shall not be required

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[4] *Citing Northern Natural Gas Company*, 118 FERC ¶ 61,053, at P 51 and fn.41 (2007), *citing Northern Natural Gas Co.*, 110 FERC ¶ 61,361, at P 10 (2005) ("[H]owever, the Commission has not required pipelines to sell capacity solely through open seasons. Rather, so long as the pipeline posts all available firm capacity, it may sell that capacity on a first-come, first-served basis.")

[5] 18 C.F.R. § 154.210 (2007).

[6] 18 C.F.R. § 385.214 (2007).

(i) when the change is necessitated by the proposed abandonment of facilities associated with a Shipper's primary point or points unless otherwise required by Transporter; or

(ii) upon mutual agreement of Transporter and Shipper when the proposed change would result in an NPV of zero

provided that **if** a Shipper has ~~not~~ expressed interest in the available capacity necessary to effectuate the changes**, Transporter will conduct** ~~until~~ an Open Season **for that capacity** ~~has been conducted~~ in accordance with Section 5.1.

10. Hess asserts that its proposed alternative language more clearly reflects the intent to hold an open season prior to allowing a point change, in the event a shipper has expressed interest in the available capacity necessary to make the point change.

11. In its answer, Tennessee states that while it appreciates the interest demonstrated by Hess in the instant proceeding, it believes that the tariff language as originally proposed completely and unambiguously captures Tennessee's intent with regard to the subject revisions. Accordingly, Tennessee asserts that no changes to the proposed tariff language are warranted.

12. As proposed by Tennessee, revised section 5.7 of Article XXVIII, reads, in part: "an open season for a change of primary points for available capacity on Transporter's system posted as generally available shall not be required (i) when …, or (ii) … provided that a Shipper has not expressed interest in the available capacity necessary to effectuate the changes until an Open Season has been conducted in accordance with Section 5.1." The Commission agrees with Hess that, as written, this tariff language contains a double-negative, and in that respect creates ambiguity that should be corrected. However, the Commission finds that a more troublesome aspect of this provision is the clause beginning with "until." Since the purpose of the proposed added language is to establish an exception to the requirements of section 5.1 to hold an Open Season for capacity in the case of a change in primary points by an existing shipper, it is not clear what that clause means as it seems to assume that an Open Season will be held. It makes no sense to establish a deadline for other shippers to express interest in the capacity that appears to be tied to the start of an Open Season that the provision is intended to eliminate. Thus, it is unclear what the process is for other shippers to express interest in the capacity and what the deadline is for them to express that interest.

13. Further, it is unclear how the proposed changes to section 5.7 are consistent with section 5.1 of Article XXVIII. As drafted, the additional tariff language in section 5.7 seems to convey the intent that Tennessee will not be required to conduct an Open Season for capacity at the primary point that a shipper wishes to switch to unless at least

one other shipper also expresses interest in the available capacity at that point, in which case an open season must be conducted "in accordance with section 5.1 of Article XXVIII." However, section 5.1 does not require more than one shipper to express interest in capacity for Tennessee to be required to hold an Open Season if the capacity is for longer than 92 days. Section 5.1 states in part:

> "Available capacity on Transporter's system will be posted on the PASSKEY system. When a Shipper expresses interest in available capacity for a period greater than 92 days, Transporter will post a notice on PASSKEY, wherein it will state that Transporter will receive bids for the forward haul or backhaul capacity in accordance with this Section 5."[7]

14. Accordingly, the Commission disagrees with Tennessee's assertion in its answer that the revised tariff language as proposed "completely and unambiguously captures Tennessee's intent." The Commission finds Tennessee's proposed revision to section 5.7 is ambiguous and, accordingly, may be unjust and unreasonable. Further, because Hess's proposed alternative language is based on Hess's own interpretation of Tennessee's intent, which we have found to be ambiguous, we will not direct Tennessee to adopt Hess's proposal. Accordingly, acceptance of the subject tariff revisions is conditioned on Tennessee filing to revise its proposed tariff language to clarify its intent regarding its proposal in section 5.7 within ten days of the date of this order and to include examples of how its proposal is intended to work.

15. Based on a review of the filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept the tariff sheets for filing and suspend their effectiveness for the period set forth below, subject to refund and condition.

16. The Commission's policy regarding suspensions is that tariff filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards.[8] It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum

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[7] Tennessee Gas Pipeline Company, FERC Gas Tariff, Fifth Revised Volume No. 1, Second Revised Sheet No. 405A.01.

[8] *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

period may lead to harsh and inequitable results.[9] Here, to reduce the administrative burden on Tennessee and its customers, the Commission will exercise its discretion to accept and suspend these tariff sheets for a minimal period, to become effective June 1, 2008, subject to refund, and subject to the condition discussed in Paragraph 14 above.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

cc: All Parties
Public File

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[9] *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

APPENDIX

Tennessee Gas Pipeline Company
FERC Gas Tariff, Fifth Revised Volume No. 1

Accepted and Suspended,
Subject to Refund and Condition,
Effective June 1, 2008:

Third Revised Sheet No. 158
Sixth Revised Sheet No. 220
Second Revised Sheet No. 405A.02
Original Sheet No. 405A.03
Thirteenth Revised Sheet No. 405C
Original Sheet No. 405C.01
First Revised Sheet No. 530A
First Revised Sheet No. 537B
First Revised Sheet No. 545B
First Revised Sheet No. 553B
First Revised Sheet No. 560P
First Revised Sheet No. 560Y