

125 FERC ¶ 61,164  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

November 12, 2008

In Reply Refer To:  
Tennessee Gas Pipeline Company  
Docket Nos. RP91-203-076  
RP92-132-064

Tennessee Gas Pipeline Company  
1001 Louisiana Street  
Houston, TX 77002

Attention: Melissa G. Freeman  
Senior Counsel

Reference: Compliance Status Report

Dear Ms. Freeman:

1. On October 1, 2008, Tennessee Gas Pipeline Company (Tennessee) filed a Status Report to comply with the Commission's order in Docket Nos. RP91-203-075 and RP92-132-063 issued June 30, 2008.<sup>1</sup> Specifically, Tennessee was required to meet with its customers to discuss amending its May 15, 1995 Settlement (1995 Settlement), and to report back to the Commission by October 1, 2008.<sup>2</sup> Customers seek recovery of an environmental remediation surcharge, while Tennessee seeks to preserve the funds that may prove to be necessary to complete the required remediation. In light of Tennessee's filing and shippers' comments, we now establish settlement judge procedures.

---

<sup>1</sup> *Tennessee Gas Pipeline Co.*, 123 FERC ¶ 61,318 (2008) (June 30 Order).

<sup>2</sup> The recovery of PCB/HSL remediation costs was established in a contested settlement filed on May 15, 1995 in this docket. The Commission approved the 1995 Settlement in *Tennessee Gas Pipeline Co.*, 73 FERC ¶ 61,222 (1995), *order on reh'g*, 74 FERC ¶ 61,174 (1996). As discussed in this order, the Settlement may be extended for up to a total of 15 years.

2. On May 30, 2008, pursuant to the 1995 Settlement, Tennessee filed to extend for two years the time to recover the costs of remediating polychlorinated biphenyl (PCB) and other hazardous substance list (HSL) contamination on its system. The PCB adjustment surcharge would continue to be \$0.00/Dth through June 30, 2010. The Commission accepted the proposed tariff sheets, “conditioned upon Tennessee meeting with its customers to discuss amending the Settlement ... to come to a mutually agreeable solution for the vast over-collection sums, while safeguarding Tennessee’s ability to complete its PCB/HSL remediation.”<sup>3</sup>

3. The 1995 Settlement established a PCB/HSL cost recovery mechanism, applying to Tennessee’s Federal and State mandated programs to assess and remediate PCB/HSL contamination. The 1995 Settlement permits Tennessee to recover \$17 million per year of certain defined “eligible costs” related to the PCB/HSL remediation and established a PCB adjustment surcharge to recover eligible costs for the period from July 1, 1995 to June 30, 2000. The Settlement allows Tennessee to file for extensions of the adjustment period in 24-month increments, in order to eliminate the Recoverable Cost/Revenue Account (RCRA) balance or to reflect additional eligible costs.<sup>4</sup>

4. Tennessee has previously filed, on May 31, 2000, May 31, 2002, May 31, 2004 and May 31, 2006, for consecutive 24 month extensions of the PCB adjustment period, at a decreased PCB surcharge of \$0.00/Dth. The Commission granted these extensions.<sup>5</sup>

---

<sup>3</sup> *Tennessee Gas Pipeline Co.*, 123 FERC ¶ 61,318 at P 22.

<sup>4</sup> Article IV, Section B.4.b states, in part:

The PCB adjustment shall be extended after the PCB Adjustment Period in 24-month increments as necessary to collect additional costs to eliminate the account balance calculated in accordance with this Article IV or to reflect additional Eligible Costs. Within 120 days of the end of the final 24-Month Period Tennessee shall, if necessary, refund to each shipper subject to this Stipulation an amount necessary to ensure that Tennessee does not recover more than the amounts provided under this Article IV (as limited by Article III E).

<sup>5</sup> *Tennessee Gas Pipeline Co.*, 91 FERC ¶ 61,315 (2000); *Tennessee Gas Pipeline Co.*, 99 FERC ¶ 61,375 (2002); *Tennessee Gas Pipeline Co.*, 107 FERC ¶ 61,332 (2004); and *Tennessee Gas Pipeline Co.*, 115 FERC ¶ 61,389 (2006).

5. Tennessee's status report states that on August 26, 2008, Tennessee met with a small group of customers to discuss possible scenarios under the Settlement to address over-collections, and that Tennessee proposed a "walk-away" resolution providing substantial refunds to customers. Tennessee states that it circulated a more detailed proposal via e-mail on September 5, 2008, and has since participated in numerous telephone conversations and e-mail exchanges addressing specific questions on the proposal. Tennessee admits that consensus has not been reached, but states that it is continuing these discussions with its customers to determine if an acceptable resolution can be reached, and proposes to report back to the Commission on the status of its discussions by February 1, 2009.

6. Public notice of Tennessee's filing was issued on October 22, 2008, with interventions and protests due on or before October 28, 2008. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2008)), all timely filed motions to intervene are granted. Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (collectively "ConEd"), New Jersey Natural Gas Company (New Jersey Gas) and Tennessee Customer Group<sup>6</sup> filed comments.

7. ConEd requests that the Commission declare Tennessee's report incomplete. ConEd states its belief that Tennessee has collected more funds than its customers could be obligated to pay. It therefore requests that the Commission require Tennessee to calculate its over-collections "in the manner required by the Settlement, and [] refund the excess amounts it is holding to its customers at the earliest practicable date."<sup>7</sup>

8. New Jersey Gas and Tennessee Customer Group both call upon Tennessee to convene a meeting with all of its customers to further settlement discussions. Both state their support for Tennessee's ongoing efforts to achieve a mutually agreeable solution with its customers. They assert, however, that Tennessee's efforts have been too narrowly focused on private, bi-lateral discussions with individual customers and groups of customers. Tennessee Customer Group alleges, therefore, that "Tennessee has yet to

---

<sup>6</sup> The Tennessee Customer Group consists of: Centerpoint Energy Mississippi Gas; City of Clarksville Gas and Water Department, City of Clarksville; City of Corinth Public Utilities Commission; Delta Natural Gas Company, Inc.; Greater Dickson Gas Authority; Hardeman Fayette Utility District; Henderson Utility Department; Holly Springs Utility Department; Humphreys County Utility District; Town of Linden; Morehead Utility Plant Board; Portland Natural Gas System, City of Portland; Savannah Utilities; Springfield Gas System, City of Springfield; City of Waynesboro; and West Tennessee Public Utility District.

<sup>7</sup> ConEd October 14, 2008 Comments at 3.

fulfill the condition upon which its tariff sheets in this proceeding were accepted, i.e., meeting with its customers to discuss amending the Settlement.”<sup>8</sup> New Jersey Gas argues that a meeting would improve the transparency of negotiations and would provide a forum for Tennessee to present information and expedite reaching consensus.

9. The Commission finds that Tennessee has complied with the Commission’s June 30 Order, but so far the settlement process does not appear to be fully inclusive and transparent, and the parties have not made sufficient progress toward settlement. We encourage the parties to make every effort to settle their dispute. To aid the parties in their settlement efforts, we direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission’s Rules of Practice and Procedure.<sup>9</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>10</sup> The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge may provide the parties with additional time to continue their settlement discussions, if appropriate, and shall file a report at least every 60 days thereafter, informing the Commission and the Chief Judge of the parties’ progress toward settlement.

The Commission orders:

(A) The Commission accepts Tennessee’s Status Report for filing purposes as in compliance with the June 30 Order.

(B) Pursuant to Rule 603 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2008), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603

---

<sup>8</sup> Tennessee Customers Group Comments at 1-2 (quoting *Tennessee Gas Pipeline Co.*, 123 FERC ¶ 61,318 at P 22).

<sup>9</sup> 18 C.F.R. § 385.603 (2008).

<sup>10</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission’s website contains a list of Commission judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) – click on Office of Administrative Law Judges).

and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(C) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and with the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge may provide the parties with additional time to continue their settlement discussions, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.