126 FERC ¶ 61,200
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 5, 2009

In Reply Refer To:
Tennessee Gas Pipeline Company
Docket No. RP09-339-000

Tennessee Gas Pipeline Company
1001 Louisiana Street
Houston, Texas 77002

Attention: Susan T. Halbach, Senior Counsel

Reference: Revised Tariff Sheets Implementing Sale of Interim Capacity without ROFR

Dear Ms. Halbach:

1. On February 3, 2009, Tennessee Gas Pipeline Company (Tennessee) filed revised tariff sheets[1] to implement a provision that allows Tennessee to sell capacity to a firm shipper for service to commence more than a year in the future and, before the commencement of that service, to offer the same capacity to other shippers on an interim basis without a Right of First Refusal (ROFR). Tennessee requests an effective date of March 5, 2009 for the proposed changes. The Commission accepts tariff sheets effective March 5, 2009, as requested.

2. Tennessee proposes to add a new section 5.11 to the General Terms and Conditions (GT&C) of its tariff to establish certain terms and conditions under which the pipeline may sell "interim" capacity to shippers without a ROFR. As Tennessee explains, such interim capacity may be available in situations where a shipper executes a firm service agreement for transportation that will commence one year or more into the future. Until that firm service is actually needed, interim capacity may be available for sale.

[1] Tenth Revised Sheet No. 324 and Original Sheet No. 405F to Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1.

3. Tennessee states that Article XXVIII, section 5 of GT&C of its tariff already provides the process by which generally available capacity is awarded, including the prospective sale of available capacity. However, Tennessee states, when it sells capacity on a prospective basis (e.g. under an agreement that commences one year or more in the future), its tariff currently does not address the sale of interim capacity, and whether the interim capacity may otherwise be entitled to a ROFR. Since Tennessee's tariff already has an open season bidding process for available capacity which includes a prearranged deal program providing that bids be evaluated and awarded on a net present value (NPV) basis, Tennessee asserts that its new section 5.11 will specifically address the sales of interim capacity without a ROFR. Finally, Tennessee proposes to modify section 10.4.2(e) of its GT&C to clarify that a shipper that enters into a limited-term firm service agreement pursuant to Tennessee's proposed new section 5.11 will not qualify for a ROFR.

4. Tennessee argues that the Commission has addressed the issue of how pipelines, in light of future service agreement commitments, may sell capacity on an interim basis by limiting ROFR for such interim capacity. Tennessee asserts that the Commission has allowed these limitations where the capacity is first subjected to a posting and bidding process, and the bidding process employs a NPV evaluation methodology. Specifically, Tennessee states that the Commission recently considered similar ROFR proposals in an order on remand in *Gas Transmission Northwest Corporation* (*GTN*) and in the proceeding *Northern Natural Gas Company* (*Northern Natural*).[2] Tennessee asserts that in *GTN*, the Commission recognized the benefits of capacity sales for service to commence in the future through the company's proposed prearranged deal program, whereby the company's shippers were allowed to reserve available, unsubscribed capacity beginning at a future date and the company could sell the capacity in the interim without a ROFR. Tennessee states that in *Northern Natural*, the Commission permitted the company to sell capacity under contract for a future period to a shipper without ROFR, provided that the company either adopted a prearranged deal program similar to *GTN* or formulated an open season bidding process for available capacity with bids subject to evaluation on a NPV basis. Consistent with the above precedent, Tennessee states that it is now proposing to implement a provision that allows it to sell interim capacity without a ROFR.

5. Notice of Tennessee's filing was issued on February 5, 2009. Interventions and protests were due on February 17, 2009 as provided in section 154.210 of the Commission's regulations.[3] Pursuant to Rule 214,[4] all timely-filed motions to intervene

[2] *See Gas Transmission Northwest Corp*., 109 FERC ¶ 61,141 (2004) and *Northern Natural Gas Co*., 109 FERC ¶ 61,388 (2004).

[3] 18 C.F.R. § 154.210 (2008).

and any motions to intervene out-of-time 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. The New England Local Distribution Companies[5] (New England LDCs) filed comments stating that the Commission should not accept Tennessee's filing before obtaining additional information from the company. On February 24, 2009, Tennessee filed an answer to address the concerns raised by New England LDCs. While the Commission's regulations do not permit the filing of answers to protests,[6] the Commission grants Tennessee's request for leave to answer because it provides additional information that will aid in our decision making process.

6. New England LDCs argue that Tennessee's filing is vague and raises more questions than it answers. Specifically, New England LDCs assert that Tennessee must explain the interrelationship between the proposed section 5.11 and existing section 5.8 of its tariff which allows the company to reserve capacity for future expansions and sell that capacity in the interim without a ROFR.

7. In its answer, Tennessee states that its proposal simply allows the sale of capacity pursuant to section 5 of its GT&C on a limited-term basis without ROFR prior to the commencement of a future firm service agreement. Tennessee asserts that the proposed section 5.11 has no relationship to or impact on section 5.8 of its GT&C. Tennessee contends that the existing section 5.8 provides it with the authority to reserve certain specified types of capacity for use in an expansion project. Although there is no relationship between the proposed section 5.11 and section 5.8, Tennessee argues that there is a similarity between the two in that the reservation of capacity for a future expansion project can likewise result in capacity that can be sold on a limited-term basis up to the in-service date of the expansion project.

8. Similarly, Tennessee states that the proposed section 5.11 covers the situation where, to the extent that Tennessee enters into a firm service agreement that commences one year or more in the future pursuant to its existing authority under section 5.10 using generally available capacity, the interim capacity that results can only be sold on a limited-term basis up to the commencement date of the future firm service agreement.

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[4] 18 C.F.R. § 385.214 (2008).

[5] The New England Local Distribution Companies ("New England LDCs") include: Bay State Gas Company, The Berkshire Gas Company, Connecticut Natural Gas Corporation, Fitchburg Gas and Electric Light Company, City of Holyoke, Massachusetts, Gas and Electric Department, Northern Utilities, Inc., NSTAR Gas Company, The Southern Connecticut Gas Company, Westfield Gas & Electric Department, and Yankee Gas Services Company.

[6] 18 C.F.R. § 385.213 (2008).

9. The Commission finds that Tennessee's proposed section 5.11 is consistent with Commission policy. In *GTN*,[7] the Commission held that "permitting a pipeline to sell capacity for service to commence in the future . . . will benefit customers with long lead times who do not need capacity right now, but need assurance that they can get capacity in the future." Accordingly, the Commission stated it would waive the ROFR requirement for interim sales of the capacity committed to a future shipper, so long as certain conditions were met. These conditions included the requirement that the sale of the capacity for service to commence in the future must have been accomplished through an open season bidding process permitting bids for capacity for service to commence either immediately or in the future, the bids must have been evaluated on a net present value basis, and the bid for the capacity in the future must have provided the highest net present value as of the time of the open season. This would ensure that when the capacity was sold for service to commence in the future, there was no other shipper wishing to purchase the capacity either immediately or in the future who placed a higher value on the capacity.[8] Tennessee's proposed tariff language, at sections 5.11(a) through (c) complies with all these requirements. Therefore, no change to the proposed tariff is necessary, and we hereby reject New England LDCs' comments with regard to this provision.

10. Second, New England LDCs contend that it is unclear whether Tennessee's proposal will permit the sale of future expiring capacity as interim capacity. New England LDCs aver that section 5.8 does not grant Tennessee this authority in the context of capacity reserved for planned expansions. New England LDCs state that the issue was raised with Tennessee prior to the filing of this proposal, and it appears that Tennessee intends to use proposed section 5.11 to engage in these transactions. Therefore, New England LDCs argue that the Commission should limit Tennessee's proposal to current unsubscribed capacity or other unwanted capacity.

11. Tennessee counters that its proposal is already limited to available capacity and has nothing to do with expiring contract capacity or an existing shipper's right to retain such capacity. Tennessee asserts that its proposed section 5.11 indicates that the contemplated purchase of future capacity under section 5.10 pertains to the sale of generally available capacity, and the associated firm service agreement must be awarded and entered into pursuant to section 5. Tennessee contends that any interim capacity that results from such a future capacity award is also generally available capacity that must be made available for transportation service pursuant to section 5 of the company's GT&C. In addition, Tennessee states that its proposal simply involves whether it can offer certain

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[7] 109 FERC ¶ 61,141 at P 15.

[8] *Northern Natural*, 109 FERC ¶ 61,388 at P 29.

limited-term capacity without a ROFR, consistent with Commission policy. Tennessee Gas asserts that it is required to make such capacity available to the market and desires to do so in the most efficient way possible. Tennessee asserts that its existing tariff and its proposed tariff revisions conform to the Commission's stated policy.

12. By its terms, proposed section 5.11 only addresses the sale of currently unsubscribed and available capacity. Its purpose is to allow Tennessee to sell that capacity for service to commence in the future, and then offer it on interim basis without a ROFR before the future service commences. For example, section 5.11(a) provides that the "future capacity must have been sold through an open season bidding process permitting bids for capacity *for service to commence immediately* or anytime in the future." (Emphasis supplied). Tennessee can only accept bids for service to commence immediately, if the capacity is currently unsubscribed. Such bids cannot be accepted for capacity another shipper currently holds under a contract that will expire at some point in the future.

13. Accordingly, the revised tariff sheets are accepted effective March 5, 2009.

By direction of the Commission. Commissioner Kelliher is not participating.

Kimberly D. Bose,
Secretary.