

127 FERC ¶ 61,189
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 28, 2009

In Reply Refer To:
Texas Eastern Transmission, LP
Docket No. RP09-508-000

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

Attention: Janice Devers
General Manager - Tariffs and Commercial Development

Reference: Tariff Revisions for Conforming Service Agreements

Dear Ms. Devers:

1. On April 10, 2009, Texas Eastern Transmission, LP (Texas Eastern) filed revised tariff sheets¹ to reflect changes that incorporate the concept of aggregate maximum daily delivery obligations (AMDDO) in the Form of Service Agreement under Rate Schedules CDS, FT-1, SCT and SS-1. Texas Eastern states the changes will ensure that service agreements containing these provisions conform to the *pro forma* service agreements in its tariff. The revised tariff sheets listed in the Appendix are accepted, subject to the conditions set forth herein, to be effective June 1, 2009.

2. Sections 14.5 through 14.10 of Texas Eastern's General Terms & Conditions provide that the total amount of a shipper's Maximum Daily Delivery Obligation (MDDO), which is the maximum quantity of gas the pipeline is obligated to deliver to its customer at each of its primary delivery points cannot exceed its Maximum Daily Quantity (MDQ),² which is the maximum quantity of

¹ See Appendix.

² See Section 1 of the General Terms and Conditions (GT&C) of Texas Eastern's tariff defining MDQ.

gas that Texas Eastern is obligated to deliver to the customer on any day.³ Exhibit D of the *pro forma* service agreement under Rate Schedules CDS, FT-I and SCT and Exhibit C of the *pro forma* service agreement under Rate Schedule SS-I include a space for filling in the shipper's MDQ. Exhibit B of the *pro forma* service agreement under Rate Schedules CDS, FT-I and SCT and Exhibit A of the Form of Service Agreement under Rate Schedule SS-I currently include spaces for listing a shipper's primary points (referred to as "Points of Delivery") and the MDDO at each of those points.⁴

3. In the instant filing, Texas Eastern states that its contracts with its customers for service under these four rate schedules include an MDQ and an MDDO. However, Texas Eastern states that some of its existing service agreements with shippers also include AMDDOs. Texas Eastern states that this term refers to the aggregate amount of gas that it is obligated to deliver on any day at all the shipper's primary delivery points under one or more contracts. However, its *pro forma* service agreements currently contain no space for filling in the shipper's AMDDO. Therefore, Texas Eastern proposes to add at the bottom of each of the exhibits concerning a shipper's primary delivery points the following language:

Notice: The Maximum Daily Delivery Obligation ("MDDO") at any Point of Delivery may also be further limited by a specified aggregate MDDO ("AMDDO"), as applicable, where the same Point(s) of Delivery is(are) reflected as a Point of Delivery on one or more of Customer's Service Agreements.

Texas Eastern does not propose to make any other tariff revision concerning AMDDOs.

4. Texas Eastern states that it first included AMDDO specifications in certain customer contracts before restructuring under Order No. 636, based on shared meter capability and/or shared upstream capacity, and the customers retained such AMDDO specifications in their Part 284 and/or Natural Gas Act section 7(c) contracts through the Order No. 636 restructuring process. Texas Eastern further

³ For example, section 14.9 states, in part, that "in no event shall a Customer be entitled to Section 14.9 Firm Capacity in excess of such Customer's aggregate Transportation Path Quantity in each zone under Rate Schedules CDS, FT-1, SCT and/or SS-1."

⁴ These exhibits also include spaces for filling in certain other delivery point information not here relevant.

states that only those customers that had contracts in place with it prior to the Order No. 636 restructuring (or their successor entities⁵) currently have AMDDO provisions in their agreements.

5. Texas Eastern provides the following hypothetical example (at 2) to illustrate how the AMDDO concept works in practice in the context of specific delivery points, capacity release and groups of delivery points:

Assume a customer, Shipper A, a legacy customer from restructuring, has three firm service agreements with Texas Eastern. Each of these agreements has a Maximum Daily Quantity of 10,000 dekatherms per day (Dth/d) and the same three primary firm delivery points (Points 1 through 3), each with an MDDO of 6,000 Dth/d. At each point, the sum total of the MDDOs under all 3 contracts is 18,000 Dth/d. At some point prior to Order No. 636, however, Texas Eastern and Shipper A agreed that, at Point 1 for instance, there is an AMDDO limit of 10,000 Dth/d, at Point 2 there is an AMDDO limit of 15,000 Dth/d, and at Point 3, there is an AMDDO limit of 12,000 Dth/d. Thus, on any given day, Shipper A cannot nominate primary firm deliveries at Point 1 on a firm basis under its collective agreements that exceed 10,000 Dth, nor could it nominate primary firm deliveries of more than 15,000 Dth, in the aggregate, at Point 2 on any day, nor could it nominate primary firm deliveries of more than 12,000 Dth, in the aggregate, at Point 3 on any day.

6. Texas Eastern asserts that AMDDOs may also be used to cover a group of delivery points on a single contract or across a customer's contracts subject to AMDDO, and such a group AMDDO works in the same way as the AMDDO at one specific point described above. Texas Eastern further asserts that, in the example above, an additional group limitation of 25,000 Dth/d could be applied to the AMDDOs for points 2 and 3, further limiting the aggregate primary firm deliveries to the two meters across all of the three contracts to a total of 25,000 Dth/d. Texas Eastern states that, even though the AMDDOs for those two points total 27,000 Dth/d, Shipper A could only deliver on a primary firm basis a total of 25,000 Dth/d to the combination of those two points under its three service agreements. Texas Eastern further states that certain AMDDOs may only apply

⁵ Texas Eastern states that customers may have succeeded to these pre-Order No. 636 contracts with AMDDO provisions through various means, including through merger, purchase, consolidation, capacity release, a name change, or a complete or partial assignment of the agreements.

during certain seasons, with no AMDDO at some or all of the points during the remainder of the year.

7. Texas Eastern states that the individual contracts to which AMDDO apply are each allocated their proportionate share of contractual rights in the LINK System for purposes of permanent and temporary capacity release. Texas Eastern further states that this proportionate share of AMDDO then becomes the MDDO limit that may be released at a given meter under a given contract, except for permanent or temporary releases of all of a customer's contracts that are subject to AMDDO provisions. Texas Eastern asserts that, in the event of such a permanent or temporary release of all of the customer's AMDDO contracts, all of the MDDO provisions associated with the contracts being released transfer, permanently or temporarily as applicable, to the replacement customer. Texas Eastern further asserts that it will accommodate (i) such a permanent or temporary release of all of a customer's AMDDO contracts or (ii) a permanent or temporary release with a share of contractual rights other than a proportionate share going to the replacement customer, provided that the releasing customer in either case provides Texas Eastern with sufficient advance notice to process the request and effectuate the release.

8. Public notice of the filing was issued on April 14, 2009, with comments due on April 22, 2009. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2008)), all timely filed motions to intervene and any motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late interventions at this stage of the proceeding will not disrupt the proceeding or place additional burdens on the existing parties. No adverse comments or protests were filed.

9. Section 154.1(d) of the Commission's regulations requires that pipelines file all service agreements which contain material deviations from the pipeline's *pro forma* service agreement. This permits the Commission and other interested parties to review the material deviations to ensure that they are just and reasonable and not unduly discriminatory, as required by NGA section 4.⁶ Texas Eastern has proposed to revise its *pro forma* service agreements so that AMDDO provisions may be included in customer service agreements, without those provisions constituting material deviations which must be filed for Commission review. However, based upon Texas Eastern's description of its existing contracts containing AMDDO provisions, the Commission is concerned that Texas Eastern's proposed revision to its *pro forma* service agreement is insufficient for this purpose.

⁶ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001).

10. In the examples Texas Eastern gives of contracts containing AMDDOs, each contract includes MDDOs at the shipper's primary delivery points which, in aggregate, exceed the shipper's MDQ under that contract.⁷ As described by Texas Eastern, the AMDDOs place an aggregate limit on the shipper's right to nominate deliveries at those points on any particular day. However, giving the shipper any right to have MDDOs at its primary delivery points in excess of its MDQ appears to be contrary to sections 14.5 through 14.9 of Texas Eastern's GT&C limiting a shipper's MDDOs at its primary points to its MDQ. As a result, a service agreement which contains MDDOs in excess of MDQ must materially deviate from Texas Eastern's *pro forma* service agreement. A material deviation is "any provision of a service agreement which goes beyond filling in the spaces in the form of service agreement *with the appropriate information provided for in the tariff* and that affects the substantive rights of the parties."⁸ Filling in spaces for MDDOs with amounts which exceed a shipper's MDQ is not provided for in Texas Eastern's tariff and affects the substantive rights of the parties by giving them additional primary delivery point rights. Texas Eastern's proposed revision to its *pro forma* service agreement does not cure this problem.

11. The Commission concludes that Texas Eastern's proposed inclusion of a space for setting forth a shipper's AMDDO in certain *pro forma* service agreements, without any other change to its tariff, fails to adequately explain the terms and conditions under which Texas Eastern allows a shipper to have MDDOs in excess of MDQ, thus triggering the need to also include AMDDOs in the service agreement. Therefore, while the Commission finds it acceptable for Texas Eastern to revise its *pro forma* service agreement to permit the inclusion of AMDDOs, Texas Eastern must revise its tariff to set forth the not unduly discriminatory terms and conditions under which a shipper is permitted to have MDDOs at its primary delivery points in excess of its MDQ, together with an

⁷ Each contract in Texas Eastern's example has an MDQ of 10,000 Dth/d and three primary points with MDDOs at each point of 6,000 Dth/d. Thus, the MDDOs under each contract total 18,000 Dth/d, while the MDQ is only 10,000 Dth/d.

⁸ *Id.* (emphasis supplied).

AMDDO limiting the use of those MDDOs. Accordingly, Texas Eastern is directed, within thirty days of the date of this order, to file revised tariff sheets consistent with the above discussion.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

cc: All Parties

APPENDIX

Texas Eastern Transmission, LP
FERC Gas Tariff, Seventh Revised Volume No. 1

Tariff Sheets Accepted Effective June 1, 2009

Second Revised Sheet No. 809

Second Revised Sheet No. 823

Second Revised Sheet No. 838

Second Revised Sheet No. 952