

128 FERC ¶ 61,104
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Texas Gas Transmission, LLC

Docket Nos. RP09-317-000 and
RP09-317-001

ORDER ACCEPTING TARIFF SHEETS SUBJECT TO CONDITIONS

(Issued July 30, 2009)

1. On January 30, 2009, Texas Gas Transmission, LLC (Texas Gas) filed revised tariff sheets¹ to modify sections 10.2 and 20.1 of the General Terms & Conditions (GT&C) of its tariff to provide it the authority to make reasonable contributions for upgrades to certain delivery facilities (the January 30 filing). Specifically, the revised tariff language would allow Texas Gas to pay for part or all of the cost of modification or construction of facilities at a delivery point or points if Texas Gas and the customer agree to extend a service agreement at mutually agreeable rates for a term of at least five years. In an order issued on February 27, 2009,² the Commission accepted and suspended the filing, subject to refund and conditions, to be effective August 1, 2009, or an earlier date specified in a subsequent Commission order. The Commission directed Texas Gas to clarify whose facilities, the pipeline's or the shipper's, were to be improved by the subject proposal and to clarify the proposed tariff language accordingly. The Commission further directed Texas Gas to demonstrate why, if the facilities to be improved are not owned by Texas Gas, the Commission should involve itself in a non-jurisdictional contractual arrangement between Texas Gas and its customers for the construction of non-jurisdictional facilities.

¹ Second Revised Sheet No. 2200 and First Revised Sheet No. 3201 to Texas Gas' FERC Gas Tariff, Third Revised Volume No. 1.

² *Texas Gas Transmission, LLC*, 126 FERC ¶ 61,184 (2009) (February 27, 2009 Order).

2. On March 13, 2009, in compliance with the February 27, 2009 Order, Texas Gas filed additional information (the March 13 filing). As discussed below, the Commission accepts the subject tariff sheets and proposal effective August 1, 2009, subject to conditions as set forth in the body of this order.

Notice, Interventions, and Comments

3. Public notice of the filing was issued May 27, 2009, with comments due as provided in section 154.210 of the Commission's regulations.³ The Indicated Shippers⁴ filed comments which are discussed below.

Background

4. In its original proposal, Texas Gas sought to add language to its tariff giving it the authority to contribute to the improvement of a customer's delivery point facilities where the customer has agreed to a long-term extension of its service agreement and the economic value of that extension justifies the capital benefit to both parties. Texas Gas stated that this ability would bring long-term value to the system, while also providing it the tools necessary to remain competitive and to maintain long-term relationships with its customers. Texas Gas further asserted that including the proposed provisions in its tariff eliminates any concerns that making such capital contributions could result in discriminatory conduct. National Grid Gas Delivery Companies requested clarification of the proposal; Indicated Shippers filed comments; and PSEG Energy Resources & Trade, LLC filed a protest.

Texas Gas' Compliance Filing

5. In its March 13 filing, Texas Gas clarifies that the facilities to be improved pursuant to the revised tariff language are the customer's facilities, not those of Texas Gas. Texas Gas acknowledges that the facilities to be covered by the subject proposal are non-jurisdictional and will remain non-jurisdictional.⁵ Texas Gas

³ 18 C.F.R. § 154.210 (2008).

⁴ Indicated Shippers include the following intervenors: BP America Production Company, BP Energy Company, and Marathon Oil Company.

⁵ Texas Gas references its blanket construction authorities without further elaboration. However, as defined in section 157.202(b)(2)(i) of the Commission's blanket certificate regulations, an "eligible facility" is a "facility subject to the Natural Gas Act jurisdiction of the Commission that is necessary to provide service within existing certificated levels." Thus, the regulations contemplate a certificate holder's construction of only facilities that it will use to provide service for its own customers

(continued...)

states that transportation contract amendment clearly falls under Commission jurisdiction. Further, Texas Gas confirms that its existing tariff does not provide it express authority to extend a customer's service agreement where a contribution-in-aid-of-construction to upgrade the customer's facilities is involved. Texas Gas states that its proposed tariff language is an integral aspect of the *quid pro quo* between a customer and Texas Gas.

6. Texas Gas claims that it proposed to revise its tariff language to allow it to make a contribution-in-aid-of-construction to upgrade non-jurisdictional customer facilities consistent with the Commission's order in *Southern Star Central Gas Pipeline, Inc. (Southern Star)*.⁶ Texas Gas states that, in *Southern Star*, the Commission found that a similar contribution-in-aid-of-construction provision rendered an agreement non-conforming. Texas Gas states that it proposed the revised language in GT&C section 20.1(a) to ensure that any agreements containing a contribution-in-aid-of-construction provision would be conforming. Texas Gas also notes that its proposed revised language in GT&C section 10.2(c) regarding contract extensions clearly states the *quid pro quo* required for the parties to agree to a contract extension.

7. Texas Gas states that in the alternative, if the Commission concludes that such a tariff provision is not necessary and that Texas Gas may enter into such agreements without risk of the agreements being considered non-conforming, then Texas Gas withdraws its proposed changes to section 20.1(a).

8. Finally, Texas Gas proposed to modify the revised tariff language to make clear that the subject facilities are customer-owned facilities. Texas Gas asserts that this modification will ensure that Texas Gas' tariff does not unnecessarily address non-jurisdictional matters, while clearly stating the *quid pro quo* required for the parties to agree to a contract extension.

Reply of the Indicated Shippers

9. Indicated Shippers state that they do not object to Texas Gas referencing in a service agreement the capital contributions it agrees to make to non-jurisdictional

under its Part 284 blanket transportation certificate or other certificate authorizations. Accordingly, Texas Gas is reminded that the authorization conferred by a Part 157 blanket certificate is for the construction and abandonment of facilities owned and operated by the certificate holder in the normal course of its business as an interstate transporter of natural gas. A pipeline cannot use its blanket certificate authorization to construct facilities that it intends to abandon to a third party upon their completion.

⁶ 125 FERC ¶ 61,082 (2008).

facilities, as long as the contribution for non-jurisdictional facilities does not become a jurisdictional cost as a result. Indicated Shippers assert that the Commission should require Texas Gas to clarify that capital contributions to a shipper's non-jurisdictional facilities should not be included in Texas Gas' rates in any future rate case. Indicated Shippers argue that a pipeline's maximum recourse rates are designed to recover the costs of the pipeline's jurisdictional facilities and services. According to Indicated Shippers, existing shippers should not be required to subsidize the construction or modification of an individual shipper's non-jurisdictional facilities, and accordingly, Indicated Shippers contend that the capital contributions for such construction or modification should not be reflected in Texas Gas' rates.

Commission Determination

10. The Commission will accept Texas Gas revised tariff language subject to the conditions discussed below. Texas Gas' proposal to include in its tariff a provision stating its willingness to offer a contribution-in-aid-of-construction to upgrade non-jurisdictional customer facilities in return for contract extensions of five years or more will help ensure that Texas Gas negotiates such provisions on a not unduly discriminatory basis.⁷ However, our review of Texas Gas' *pro forma* service agreements shows that there is no location or appendix where a contribution in aid of construction and related terms provisions may be memorialized as part of the service agreement. Therefore, the Commission's acceptance of Texas Gas's proposal is subject to the condition that it modify its *pro forma* service agreement to incorporate the new contribution in aid of construction provisions.

11. On February 20, 2009, Texas Gas filed an answer to the comments and protests that were filed in response to the January 30 filing. In its answer, and in reply to the parties' concern about the recovery of any contribution in aid of construction for non-jurisdictional facilities, Texas Gas stated that when it files a rate case, it will determine whether to include cash contributions as part of its proposed rates. Texas Gas also asserted that, like all costs proposed to be included in a pipeline's rates, such proposal will be subject to Commission approval and public comment and protest.⁸ The Commission finds that this statement may sweep too broadly, if Texas Gas intends presumptive rate case recovery of contributions in aid of construction of non-jurisdictional facilities.

12. In service agreements between pipelines and shippers, pipelines provide jurisdictional services on jurisdictional facilities, and shippers pay jurisdictional rates to

⁷ *Tennessee Gas Pipeline Co.*, 97 FERC ¶ 61,225, at 62,030 (2001).

⁸ Texas Gas' February 20, 2009 Answer at p. 8.

recover the costs that the pipeline incurs to provide those services. In the instant proposal, Texas Gas would pay for the modification or construction of non-jurisdictional facilities in exchange for a long-term contract to provide jurisdictional service. Section 284.10(c)(4)⁹ of the Commission's regulations states that any maximum rate must be designed to recover solely those costs which are properly allocated to the service to which the rate applies. The Commission permits recovery of lease costs or Account No. 858 costs related to the utilization of other companies' facilities by the pipeline to provide jurisdictional services. But there is no such presumption for pipelines to recover costs of a shipper's facilities that are not to be used by the pipeline to perform its jurisdictional services. The Commission expects Texas Gas will functionalize contributions in aid of construction of non-jurisdictional facilities and related transactions in non-jurisdictional accounts.

13. Finally, the Commission considers Texas Gas' proposed contribution in aid of construction as a special term and condition. Pursuant to section 284.13(b)(1)(viii)¹⁰ of the Commission's regulations, interstate pipelines must post such information on their Internet websites. Texas Gas must post its contributions in aid of construction and related terms and conditions consistent with section 284.13(b)(1)(viii).

The Commission orders:

Texas Gas' proposal as modified by the March 13 filing, and the tariff sheets listed in Footnote 1 of this order, are accepted effective August 1, 2009, subject to the conditions discussed above, and subject to Texas Gas filing revised tariff sheets within 30 days of the date of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁹ 18 C.F.R. § 284.10(c)(4) (2008).

¹⁰ 18 C.F.R. § 284.13(b)(1)(viii) (2008).