

129 FERC 61,168  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

November 20, 2009

In Reply Refer To:  
Texas Gas Transmission, LLC  
Docket No. RP09-515-001

Texas Gas Transmission, LLC  
3800 Frederica Street  
P.O. Box 20008  
Owensboro, Kentucky 42304-0008

Attention: J. Kyle Stephens  
Vice President, Regulatory Affairs and Rates

Reference: Explanation of Proposed Tariff Provisions  
for Bypass Relief and Regulatory Out

Mr. Stephens:

1. On May 29, 2009, Texas Gas Transmission, LLC (Texas Gas) filed additional information as required by Commission letter order issued on May 15, 2009.<sup>1</sup> In its April 16, 2009 filing, Texas Gas proposed to add bypass relief and regulatory out provisions for NNS, NNL, SGT, or SGL customers<sup>2</sup> to its tariff. Texas Gas also proposed to void terms in existing contracts which do not conform to the proposed bypass and regulatory out tariff provisions. In the May 15 Order, the Commission accepted Texas Gas's filed tariff sheets,<sup>3</sup> effective May 16, 2009, subject to Texas Gas's further explanation of the impact of its proposal on existing contracts or customers. As discussed below, the Commission finds that Texas Gas has provided sufficient support for its proposal and accepts Texas Gas's filing as proposed.

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<sup>1</sup> *Texas Gas Transmission, LLC*, 127 FERC ¶ 61,137 (2009) (May 15 Order).

<sup>2</sup> Rate Schedule NNS and Rate Schedule NNL are both No-Notice Firm Transportation Services. Rate Schedule SGT and Rate Schedule SGL are both Small Customer General Firm Transportation Services.

<sup>3</sup> Original Sheet No. 2007 and Sheet No. 2008 to FERC Gas Tariff, Third Revised Volume No. 1.

2. In the April 16 filing, Texas Gas stated that it recently completed a review of its transportation and storage contracts in accordance with the Commission's order in *Southern Star Central Pipeline, Inc.*<sup>4</sup> Texas Gas stated that during this review, it identified certain no-notice contracts that contained various forms of bypass relief or regulatory out provisions.<sup>5</sup> Texas Gas noted that none of these provisions are part of its *pro forma* service agreements or its tariff, and that in order to provide its no-notice customers with these types of protection in the future, Texas Gas was proposing to include similar provisions to grant NNS, NNL, SGT, or SGL customers the right to reduce their applicable contract demand as a result of certain events and upon written notice to Texas Gas. Memphis filed comments stating that it did not oppose the instant filing, but that insufficient information had been provided to support voiding all existing contract provisions regarding bypass and/or regulatory out.

3. In the May 15 Order, the Commission directed Texas Gas to file an explanation of the impact of its proposal on existing contracts or customers. The Commission stated that the explanation must demonstrate how Texas Gas's proposed tariff provisions may differ from the forms of bypass and regulatory out provisions in existing agreements.

4. In its May 29 compliance filing, Texas Gas states that it conducted a review of its transportation and storage contracts. Texas Gas states this review involved a sample of approximately 1,300 agreements from all of Texas Gas's rate schedules, which equates to approximately 59 percent of Texas Gas's active transportation and storage contracts.

5. Texas Gas asserts that its proposed bypass-out language will benefit nearly all no-notice customers on its system, and will not have an appreciable adverse affect on current no-notice customers. Texas Gas states that its review sample includes two no-notice service agreements with bypass relief provisions. Texas Gas states that the first agreement requires the customer to provide 30 days notice, as opposed to 60 days notice in the proposed tariff provision, in order to exercise the bypass relief provision to reduce contract demand. Texas Gas states that the requirement of 60 days notice as opposed to 30 days is inconsequential compared to the benefit to all Texas Gas customers being provided uniform bypass out rights. Texas Gas represents that other bypass provisions of the first agreement do not grant any rights beyond those available to other Texas Gas

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<sup>4</sup> 125 FERC ¶ 61,082 (2008) (*Southern Star*).

<sup>5</sup> Texas Gas explains that "bypass relief" is the right of a customer to reduce its applicable contract demand as a result of a bypass of its existing facilities. Texas Gas explains that "regulatory out" is the right of a customer to reduce its contract demand if a regulatory authority during a regulatory proceeding requires such customer to unbundle its merchant function or to provide open access transportation on some or all of its facilities.

customers, and thus, its removal should not adversely impact the shipper. Specifically, Texas Gas states that this agreement provides that, if Texas Gas's shipper resumes service to its end use customer, the shipper can increase its contract demand on Texas Gas's pipeline up to the amount of the prior reduction, subject to availability of capacity and FERC authorization. Texas Gas explains that the contractual provision is unnecessary because customers already have this right under Texas Gas's tariff.

6. Texas Gas states that the second service agreement also requires the customer to provide only 30 days notice, as opposed to 60 days notice. Texas Gas asserts that other bypass relief provisions of the second agreement are more restrictive than the proposed tariff language and thus the customer will benefit from the proposed new tariff provisions.

7. Texas Gas states that its proposed regulatory out language provides rights and obligations consistent with all other regulatory out provisions in its service agreements that are currently in effect. Texas Gas explains that, historically, it has utilized three different forms of regulatory out provisions in its no notice agreements. Texas Gas states that two of these forms of regulatory out provisions have provided greater flexibility to the customer than the proposed revised tariff language. These two contractual provisions contained language permitting the customer to exercise its regulatory out rights if the customer was either required or permitted to unbundle its no-notice services. Texas Gas's proposed tariff language permits a customer to exercise its regulatory out right only if the customer is required to unbundle its no-notice services. Texas Gas notes, however, that both of these contractual provisions contained a deadline by which the customer had to exercise its unbundling rights, and in every case, these provisions have expired. Therefore, Texas Gas contends that none of the sampled agreements still grant any Texas Gas customer the right to exercise either of these provisions, and declaring these provisions to be null and void will have no effect on customers under these contracts.

8. Texas Gas states that the third form of regulatory out provision, which is still in effect in a number of Texas Gas's no notice agreements, does not ensure that the customer is released from stranded portions of its contract demand. Texas Gas states that the third form of the regulatory out provision only requires that, in the event of unbundling, Texas Gas and the customer renegotiate in good faith to devise terms and conditions that are mutually acceptable. Texas Gas states that these contractual provisions neither require an agreement to be reached nor address what will happen if one is not reached. Texas Gas contends that, presumably, the agreement would continue without modification, leaving the customer with its full contract demand requirement, including stranded capacity, despite unbundling. Further, Texas Gas notes that given that the contractual language requires individual negotiation of terms and conditions with each customer, it leaves open the possibility that different customers could demand disparate terms and conditions.

9. In contrast, Texas Gas contends that its proposed tariff language ensures that customers are provided uniform regulatory out rights in the event of mandatory unbundling. Texas Gas further asserts that its proposed tariff language sets forth the terms and conditions that will apply whenever a regulatory out is triggered, and it ensures that all customers will be treated uniformly.

10. Notice of Texas Gas's filing was issued on June 2, 2009, with protests due on June 10, 2009. No comments or protests were filed.

11. Based on our review of Texas Gas's compliance filing, the Commission accepts Texas Gas's proposed bypass and regulatory out tariff provisions, effective May 16, 2009, as just and reasonable and not unduly discriminatory. Furthermore, the additional information provided by Texas Gas does not indicate that the proposal to void existing contractual regulatory out and bypass relief provisions in favor of the proposed tariff language is unjust or unreasonable. Rather, voiding the existing contractual provisions will ensure that NNS, NNL, SGT, or SGL customers are treated uniformly. Moreover, no party has asserted that Texas Gas's proposal undermines customer contractual arrangements, and no party has protested the adequacy of the explanation provided by Texas Gas pursuant to our May 15 Order. Thus, the Commission orders that the contractual regulatory out and bypass provisions that are inconsistent with Texas Gas's proposed tariff provisions are void effective the date this order issues.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

cc: All Parties  
Public File