

135 FERC ¶ 61,004  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Eastern Shore Natural Gas Company

Docket No. RP11-1873-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS,  
SUBJECT TO FURTHER REVIEW AND OTHER CONDITIONS

(Issued April 6, 2011)

1. On March 7, 2011, Eastern Shore Natural Gas Company (Eastern Shore) filed certain tariff records<sup>1</sup> to amend the creditworthiness provisions currently contained in its tariff. Eastern Shore requests that the tariff revisions contained in the instant filing be made effective April 1, 2011. As discussed below, the Commission accepts and suspends for the minimum suspension period the subject tariff records effective April 1, 2011, subject to Eastern Shore submitting a more complete explanation of its filing.

**Public Notice and Responsive Pleadings**

2. Public notice of the filing was issued on March 7, 2011. Interventions and protests were due March 21, 2011. Pursuant to Rule 214,<sup>2</sup> all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Three parties filed protests, which are discussed below: Easton Utilities Commission (Easton), Delmarva Power & Light Company (Delmarva), and Exelon Corporation (Exelon) on behalf of its utility operating company subsidiary PECO Energy Company. Easton, Delmarva, and Exelon collectively protest the entirety of Eastern Shore's filing, which we review by issue below.

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<sup>1</sup> See Appendix for list of tariff records.

<sup>2</sup> 18 C.F.R. § 385.214 (2010).

## Discussion

3. The Commission believes that, without further explanation, Eastern Shore's submission does not comply with section 154.7(a)(6) of the Commission's regulations, which requires any tariff filing to include a letter of transmittal containing a "detailed explanation of the need for each change or addition to the tariff or executed service agreement" as well as "all relevant precedents relied upon to prepare its filing."<sup>3</sup> These changes require greater explanation as to the impact on customers and consistency with Commission policy, and in particular the *Policy Statement on Creditworthiness*, which Eastern Shore invokes with no further explanation.<sup>4</sup> Accordingly, we accept and suspend the subject tariff records effective April 1, 2011, subject to Eastern Shore submitting a more complete explanation of each of the elements of its filing.<sup>5</sup>

## Objective Criteria for Creditworthiness

4. Eastern Shore's proposed revised GT&C section 11(e) would state, "[Transportation Service Provider] shall not be required to provide service to any Service Requester that fails to meet [Transportation Service Provider's] creditworthiness requirements set forth in Section 19 of these [GT&C]." Section 19(a) lists the information that Service Requesters must provide, while the remaining subsections of section 19 provide the consequences for and possible remediation of any finding of a lack of solvency or ongoing non-creditworthiness.

5. Easton and Exelon protest that Eastern Shore's proposal is unjust and unreasonable because it fails to delineate clear and objective creditworthiness standards. Both parties argue that Commission precedent requires pipelines to "establish and use objective criteria for determining creditworthiness."<sup>6</sup> Easton argues that the Commission has found a lack of clear criteria provides pipelines with too much discretion and leaves

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<sup>3</sup> 18 C.F.R. § 154.7(a)(6) (2010).

<sup>4</sup> *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, FERC Stats. & Regs. ¶ 31,191 (2005) (*Policy Statement on Creditworthiness*).

<sup>5</sup> See, e.g., *Natural Gas Pipeline Company of America*, 96 FERC ¶ 61,207, at 61,673 (1999); *Viking Gas Transmission Company*, 110 FERC ¶ 61,172 at P 6 (2005).

<sup>6</sup> E.g., Easton Protest at 2 & n.3 (citing *Policy Statement on Creditworthiness*, FERC Stats. & Regs. ¶ 31,191 at P 10; *Kern River Gas Transmission Co.*, 127 FERC ¶ 61,103, at P 34 (2009) (*Kern River*); and *Tennessee Gas Pipeline Co.*, 102 FERC ¶ 61,075, at P 41 (2003) (*Tennessee*)).

the determination of creditworthiness open to the possibility of undue discrimination.<sup>7</sup> Exelon urges the Commission to direct Eastern Shore to include a statement in its tariff of the objective criteria that will be used to determine whether a shipper is creditworthy.

6. The Commission's *Policy Statement on Creditworthiness* requires pipelines to establish and use objective evaluative criteria, but refused to prescribe any "defined set of criteria" that all pipelines must use.<sup>8</sup> As discussed below, section 19(a) lists the information that Service Requesters must provide, but Eastern Shore's tariff and transmittal are silent on how the data will be reviewed. The *Policy Statement on Creditworthiness*, however, considers the collection of objective data to be a separate question from the question of whether and how that data will be reviewed in an objective manner.<sup>9</sup> Accordingly, we direct Eastern Shore to submit a more complete explanation of how it will determine whether a shipper is creditworthy.

### **Clarity and Burden of Various Reporting Requirements**

7. The protesters object to the clarity and overall burden of the proposed reporting requirements. As a general matter, the protesters object to the increased number of documents, and the requirement for existing shippers to update all documents "at least annually," or "at any time if [Transportation Service Provider] is not reasonably satisfied," pursuant to proposed GT&C section 19(d). Easton argues that these two requirements are duplicative. The proposed requirement to update documents whenever Eastern Shore "is not reasonably satisfied" is reasonable, Easton argues, but there is no reason for an annual update when Eastern Shore has no reason to be concerned about a given shipper.

8. The protesters also raise particular objections to several of the individual requirements. First, Exelon objects to Eastern Shore's proposal in section 19(a)(1) to require shippers to provide, among other documents, "copies of all annual bond covenant calculations ... and a statement that it is currently in compliance with all of its bank and bond covenants."

9. Exelon states that in the *Creditworthiness Policy Statement*, the Commission enumerated a list of information that would provide pipelines with sufficient data with which to evaluate shipper credit, but did not include information related to bond covenants or bank covenants. Exelon argues that while the Commission left open the

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<sup>7</sup> Easton Protest at 2 & n.4 (citing *Tennessee*, 102 FERC ¶ 61,075 at P 41).

<sup>8</sup> *Policy Statement on Creditworthiness*, FERC Stats & Regs. ¶ 31,191 at P 10.

<sup>9</sup> Compare *id.* at 7-8 with *id.* at 9-10.

possibility that pipelines might be permitted to require additional information to evaluate a shipper's creditworthiness, the Commission made it clear that the pipeline would be required to "justify why the additional data is necessary in the particular case."<sup>10</sup> Here, Exelon contends that Eastern Shore has provided no justification for why this additional information is necessary or examples of any pipeline tariff that includes such a requirement. Accordingly, Exelon urges the Commission to require the pipeline to delete this portion to section 19(a)(1).

10. Proposed section 19(a)(2) would require: "In the event that a Service Requester, Shipper or Replacement Shipper files an 8-K report with the SEC, it shall provide written notice to the TSP within two (2) business days of filing such report."

11. Exelon argues that, as with the bond covenants, 8-K reports are not listed in the *Creditworthiness Policy Statement*. Delmarva and Exelon argue that Eastern Shore has provided no justification, as required by the *Creditworthiness Policy Statement*. Exelon notes that it is aware of the Commission approving requiring the forwarding of 8-K reports for construction projects, but that is not the case here. Exelon also argues that the two-day deadline is insufficient, and, in the event that the Commission does not reject this provision, requests a ten-day deadline instead. Delmarva argues that Form 8-K filings are made for any number of reasons, the vast majority of which would be irrelevant to Eastern Shore. Delmarva and Exelon argue that, considering that failure to promptly report could result in collateral requirements or terminating a customer, the Commission should reject this tariff provision.

12. Proposed GT&C section 19(a)(5) reads, "In addition to the requirements of section 19(a)(1), a state-regulated local distribution company shall also provide documentation from its regulating state commission (or equivalent authority) of an authorized gas supply cost recovery mechanism, which fully recovers both gas commodity and transportation capacity costs and is afforded regulatory asset accounting treatment in accordance with GAAP or equivalent."

13. Easton argues that section 19(a)(5) is both unclear and excessive. Easton states that it recovers its gas commodity and interstate transportation capacity costs through a purchased gas adjustment approved by Maryland's Public Service Commission. It expresses concern as to what "documentation from its regulating state commission" it must provide to Eastern Shore, and who must provide it. Easton argues that the tariff language should be clarified so that the shipper may provide its own documentation, and not place any burden to report on the state of Maryland's Public Service Commission.

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<sup>10</sup> *Creditworthiness Policy Statement*, FERC Stats & Regs. ¶ 31,191 at P 8.

14. Delmarva argues that section 19(a)(5) is unduly discriminatory towards local distribution companies. Delmarva argues that the use of the word “fully” implies that Eastern Shore could, with “practically unfettered” discretion, override a state’s determination of whether the state-approved gas cost recovery mechanism is sufficient, and that “[t]he level of information that could be required ... through such a poorly drafted tariff provision could be enormous.”<sup>11</sup> Finally, Delmarva argues that this requirement would be duplicative, since whether a shipper “has a state-approved gas cost recovery mechanism would no doubt be reflected in its credit rating agency reports.”<sup>12</sup> Accordingly, Delmarva urges the Commission to reject the provision.

15. Proposed G&TC section 19(a)(6) would require a “bank reference, at least three (3) trade references and two (2) credit references (one (1) if only one is available)” which show that “there is sufficient short-term debt capacity to meet future obligations.”

16. Exelon argues that under the *Creditworthiness Policy Statement*, providing credit rating reports should suffice, and that providing additional references is excessive. Delmarva argues that the pre-existing tariff, which required one bank reference and three trade references, was sufficient, and that the extra two references are excessive and unsupported. Delmarva also argues that Eastern Shore’s new requirement that references vouch for undefined terms such as sufficient capacity and future obligations “would give the pipeline carte blanche to act in a punitive or discriminatory manner with little shipper recourse, and it should be rejected.”

17. Proposed GT&C section 19(a)(7)(ii) would require the chief financial officer for every shipper to attest that the shipper “is not subject to the uncertainty of pending liquidation or regulatory proceedings in state or federal courts that could cause a substantial deterioration in its financial condition.”

18. Easton argues that no regulated shipper in good faith could ever make the attestation that section 19(a)(7)(ii) would require. Easton argues that “[u]ncertainty is inherent in every regulatory proceeding,” and that while there may be a low probability of a substantial deterioration in any given rate proceeding, an officer could never attest in good faith “that there is *no* uncertainty in pending regulatory proceedings.”<sup>13</sup>

19. The Commission’s *Policy Statement on Creditworthiness* lists several sources of information that it finds sufficient “in most cases,” but also expressly allows pipelines to,

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<sup>11</sup> Delmarva Protest at 7.

<sup>12</sup> *Id.*

<sup>13</sup> Easton Protest at 11.

“in appropriate cases, seek to require additional information.” However, in order to permit such a tariff requirement, the Commission held, the pipeline “should be able to justify why the additional data is necessary in the *particular* case.”<sup>14</sup> Eastern Shore fails to even assert that its particular circumstances are in any way different from the typical pipeline.

20. Accordingly, we accept section 19(a) subject to further review, and to Eastern Shore providing further explanation as follows. For section 19(a)(1), Eastern Shore should explain why it is reasonable to require bank and bond covenants above and beyond the *Policy Statement* list. For section 19(a)(2), Eastern Shore should explain, given the SEC’s practices for publishing 8-K reports, whether 2 days’ notice is sufficient to meet the *Policy Statement*’s guidance that the SEC report should be publicly available.<sup>15</sup> For section 19(a)(5), Eastern Shore should address Easton’s concern that the information must be supplied not by the shipper but by the state government, and if so, how this would comply with the *Policy Statement* phrasing implying that it is shippers who must provide documentation from their state commissions.<sup>16</sup> For section 19(a)(7)(ii), Eastern Shore should define “uncertainty”, explain how a shipper could comply given Easton’s ethical concerns, and explain why it is reasonable to require this attestation above and beyond the *Policy Statement* list.

### **Right of First Refusal**

21. Eastern Shore proposes to add a new GT&C section 13(d)(3), stating, “A Shipper must meet [Transportation Service Provider’s] creditworthiness requirements to have its Bid taken into consideration when determining the Best Bid.”

22. Easton expresses concern that, especially since the term “creditworthiness requirements” is not defined, this section might be used to curtail an existing shipper’s right to match the best bid. Easton urges the Commission to clarify that this provision only applies to bids by competing shippers and not to the capacity holder that has a right to match the highest bid under the right of first refusal.

23. We interpret new GT&C section 13(d)(3), as proposed, to merely repeat that the shipper holding the right of first refusal has an ongoing obligation to be creditworthy,

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<sup>14</sup> *Policy Statement on Creditworthiness*, FERC Stats & Regs. ¶31,191 at P 8 (emphasis added).

<sup>15</sup> *Id.* at P 7(j).

<sup>16</sup> *Id.* at P 7, 7(m).

under both Eastern Shore's existing and proposed tariff. As this provision does not appear to affect the right of first refusal as such, we accept this proposed tariff section.

### **Definition of Public**

24. Proposed GT&C section 19(a)(3) and (4) provided that, in addition to the requirements of GT&C section 19 (a)(1), "public entities" shall provide the information listed in section 19(a)(3), while "non-public entities" shall provide the information listed in section 19(a)(4). Both lists require the most recent publicly available interim financial statements and an attestation by the chief financial officer or equivalent that the information submitted to Eastern Shore is true, correct, and in accordance with Generally Accepted Accounting Principles (GAAP) or equivalent. Section 19(a)(3) requires the officer to attest that the information is "a fair representation of the entity's financial condition," while section 19(a)(4) instead requires "an existing sworn filing showing the entity's financial condition."

25. Easton states that, as a municipality, it is unclear whether it should follow section 19(a)(3) or instead section 19(a)(4), since "public entities" is not defined. Easton argues that section 19(a)(4) is at best duplicative and at worst, presumes incorrectly that all non-public entities have on hand an existing sworn statement showing their financial condition which has been filed with some other entity. Easton argues that it should not be subject to credit sanctions under section 19(a)(4).

26. The Commission finds that Easton, as a municipality, is unambiguously a public entity under any reasonable interpretation of that phrase. Accordingly, Easton's concern that it may not be able to comply with proposed GT&C section 19(a)(4) is moot.

### **Communication**

27. Easton argues that Eastern Shore's proposed tariff language in section 19(e) of the GT&C states that a shipper may request a re-evaluation of Eastern Shore's creditworthiness determination, but it does not expressly state that Eastern Shore has an obligation to inform the shipper of its creditworthiness determination whenever such a determination has been made. Easton states that the Commission has been clear that pipelines have a duty to provide notice to shippers of a change in their credit status. Easton notes that Eastern Shore's proposal incorporates NAESB standards, but argues that those principles address communication methods generally and do not address the express obligation to inform shipper's when a creditworthiness determination has been made. Accordingly, Easton contends that Eastern Shore should be required to insert language in its GT&C that clearly establishes its obligation to provide notice to customers regarding its creditworthiness determinations.

28. Delmarva states that in the proposed section 19(d)(2), if Eastern Shore institutes a credit review, a shipper should respond to Eastern Shore's request for information "on or

before the due date specified in the request.” However, Delmarva contends that Eastern Shore has not provided any parameters on how much time a shipper may have to respond to such a request. Delmarva argues that this provision could allow Eastern Shore to give a shipper little to no time to respond to a massive information request, and urges the Commission to require Eastern Shore to include in its tariff a clear, minimum amount time provided to shippers needing to respond to a section 19(d) information request.

29. The Commission notes that proposed GT&C section 19(e)(2) reads, in relevant part, that “After [Transportation Service Provider] receives a ... request for re-evaluation, ... [Transportation Service Provider] shall provide to the Shipper or Replacement Shipper a written response within five (5) Business Days after it receives such request. Such written response shall include either a determination of creditworthiness status, clearly stating the reason(s) for the [Transportation Service Provider’s] decision, or an explanation supporting a future date by which a re-evaluation will be made.” The Commission finds this language sufficient to address Easton’s concerns, since it affirmatively obligates Eastern Shore to provide a response to a request for re-evaluation.

30. We find, however, that the proposed tariff fails to provide a minimum time limit, in section 19(d)(2) or elsewhere, that could protect shippers from Eastern Shore demanding unreasonably prompt responses. We further note that proposed GT&C section 11(e) states that Eastern Shore “shall not be required to provide service” to a shipper that fails to comply with GT&C section 19, which could be interpreted as giving a creditworthy shipper who is tardy in responding fewer rights than a non-creditworthy shipper who posts three months’ collateral. We direct Eastern Shore to either include a just and reasonable deadline in its tariff, or else file an explanation of why it would be just and reasonable to not limit the pipeline’s authority to demand responses immediately without any minimal delay. We also direct Eastern Shore either to revise its tariff or explain why failure to respond to a request should lead to suspension of service rather than a requirement to provide collateral.

### **Interest Payments**

31. Eastern Shore proposes to add the following language at the end of proposed section 19(b)(7): “Prepayments held pursuant to Section 19(b)(1) shall accrue interest at the rate specified in Section 154.501(d) of the Commission’s regulations.”

32. Exelon agrees that such prepayments should accrue interest. However, Exelon requests that the Commission require Eastern Shore to include in section 19(b)(7) a statement that the interest shall accrue to the benefit of the shipper, consistent with the *Creditworthiness Policy Statement* and Commission precedent.

33. We interpret new GT&C section 19(b)(1), as proposed, to be ambiguous. Accordingly, we accept this tariff section subject to Eastern Shore either revising this section to state that interest accrues to the benefit of the shipper, or else file an

explanation of why it would be just and reasonable for interest to accrue to the benefit of any other party.

### **Suspension**

34. Based on a review of the filing, the Commission finds that the proposed tariff records have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept the tariff sheets for filing, and suspend their effectiveness for a minimum period to be effective April 1, 2011, subject to the conditions in this order.

35. The Commission's policy regarding tariff filing suspensions is that such filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.<sup>17</sup> It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.<sup>18</sup> The Commission finds that such circumstances exist here. Therefore, the Commission will exercise its discretion and suspend the proposed tariff sheets for the minimum period and permit them to become effective April 1, 2011, subject to review and other condition, and further order of the Commission.

### **The Commission orders:**

As discussed above, the Commission accepts and suspends the subject tariff records effective April 1, 2011, subject to Eastern Shore submitting a more complete explanation of its filing.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>17</sup> See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

<sup>18</sup> See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (minimum suspension).

APPENDIX

**Eastern Shore Natural Gas Company  
Third Revised Volume No. 1  
FERC NGA Gas Tariff**

**Tariff Records Accepted and Suspended,  
Subject to Further Review and Other Conditions,  
Effective April 1, 2011:**

Sheet No. 111, GTC section 11: Request for Service, Continued, 0.0.2  
Sheet No. 112, GTC section 11: Request for Service, Continued, 0.0.1  
Sheet No. 113, GTC section 11: Request for Service, Continued, 0.0.1  
Sheet No. 114, GTC section 11: Request for Service, Continued, 0.0.1  
Sheet No. 126, GTC section 13: Right of First Refusal Procedures, 0.0.2  
Sheet No. 126A, GTC section 13: Right of First Refusal Procedures, Cont, 0.0.2  
Sheet No. 127, GTC section 13: Right of First Refusal Procedures, Cont, 0.0.2  
Sheet No. 128, GTC section 13: Right of First Refusal Procedures, Cont, 0.0.2  
Sheet No. 129, GTC section 14: Proc for Allocating Available Firm Capacity, 0.0.2  
Sheet No. 144, GTC section 18: Payments, 0.0.2  
Sheet No. 145, GTC section 18: Payments, Continued, 0.0.2  
Sheet No. 146, GTC section 19: Creditworthiness of Service Requester, 0.0.2  
Sheet No. 147, GTC section 19: Creditworthiness of Service Requester, Cont, 0.0.2  
Sheet No. 148, GTC section 19: Creditworthiness of Service Requester, Cont, 0.0.2  
Sheet No. 148A, GTC section 19: Creditworthiness of Service Requester, Cont, 0.0.0  
Sheet No. 148B, GTC section 19: Creditworthiness of Service Requester, Cont, 0.0.0  
Sheet No. 148C, GTC section 19: Creditworthiness of Service Requester, Cont, 0.0.0  
Sheet No. 148D, GTC section 19: Creditworthiness of Service Requester, Cont, 0.0.0