

135 FERC ¶ 61,115  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

May 5, 2011

In Reply Refer To:  
Texas Gas Transmission, LLC  
Docket No. RP11-1975-000

Texas Gas Transmission, LLC  
3800 Frederica Street  
Owensboro, KY 42301

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

Reference: Revision of General Terms & Conditions – To Revise “Types of Discounts” Language

Ladies and Gentlemen:

1. On April 5, 2011, Texas Gas Transmission, LLC (Texas Gas) filed a tariff record to revise its FERC NGA Gas Tariff (Tariff) Fourth Revised Volume No. 1, Section 6.9, Version 4.0.0.<sup>1</sup> Texas Gas states that section 6.9[4.2] specifies the types of generic discounts that are not considered to be material deviations from the *pro forma* service agreements in the Tariff, and with the instant filing, Texas Gas proposes to include an additional type of generic discount that it may grant without rendering a contract non-conforming. Texas Gas also proposes to delete a similar type of discount currently contained in item (vi) of the subject provision. Texas Gas maintains that the new type of discount provides additional clarity, and once implemented, will make the existing item (vi) discount unnecessary. Texas Gas seeks an effective date of May 5, 2011. As discussed below, the Commission grants waiver of the 30 day notice requirement<sup>2</sup> and accepts the revised tariff record, effective May 5, 2011, subject to condition.

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<sup>1</sup> Section 6.9, G T & C - Fuel, and Other Rates and Charges, 4.0.0. to Tariffs, FERC NGA Gas Tariff.

<sup>2</sup> Texas Gas requested a May 5, 2011 effective date, which provided the Commission one day less than the 30-day notice required by section 4(d) of the Natural Gas Act and the Commission’s regulations. 18 C.F.R. § 154.207 (2010). Absent

(continued)

2. New proposed section 6.9[4.2(vii)] as the Commission understands it, would allow customers to enter into discounted transactions at a rate that is calculated on a 100 percent load factor basis (assuming that the customer is using 100 percent of its capacity) for the volumes a customer actually does transport, even if the customer does not transport 100 percent of its capacity.<sup>3</sup> As Texas Gas explains, the rate will be paid for capacity purchased regardless of the quantities of gas actually transported. Texas Gas also proposes to delete a previously offered type of generic discount<sup>4</sup> that it now states will be subsumed in the new generic discount described above.

3. Public notice of Texas Gas' filing was issued on April 6, 2011. Interventions and protests were due April 18, 2011 as provided in section 154.210 of the Commission's regulations.<sup>5</sup> Pursuant to Rule 214,<sup>6</sup> all timely-filed motions to intervene and any unopposed motions 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. On April 11, 2011, the Tennessee Valley Authority filed a motion to intervene and comments in support of the Texas Gas filing. Louisville Gas and Electric Company (Louisville) and Memphis Light,

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Commission waiver of the 30-day notice requirement, the earliest the tariff change could become effective is May 6, 2011.

<sup>3</sup> The new tariff language at section 4.2 and (vii) would read in context as follows:

In all circumstances the discounted rate shall be between the maximum rate and the minimum rate applicable to the service provided. Any agreement establishing a discounted rate arrived at by formula will identify what rate component (i.e., reservation charge or commodity charge or both) is discounted and any formula for discounted rates will provide a reservation rate per unit of Contract Demand. [For example, Texas Gas may provide a specific discounted rate]:

(vii) calculated on a 100% load factor basis for volumes actually transported, inclusive of applicable surcharges [except fuel] and the applicable transportation rate components.

<sup>4</sup> The previously offered generic discount rate now being deleted provided for a discount as follows: "(vi) in a specified relationship to the quantities actually transported (i.e., that the rates shall be adjusted in a specified relationship to quantities actually transported . . . ."

<sup>5</sup> 18 C.F.R. § 154.210 (2010).

<sup>6</sup> 18 C.F.R. § 385.214 (2010).

Gas and Water Division (Memphis) filed timely comments asking the Commission to require Texas Gas to clarify the proposed tariff language as discussed below.

4. In its April 15, 2011 comments, Louisville states that while it does not oppose the proposal to broaden the pipeline's menu of permissible discounts, Louisville expresses concern about language that it believes to be problematic in Texas Gas' proposal, specifically the following language: "calculated on a 100% load factor basis for volumes actually transported, inclusive of applicable surcharges [except fuel] and the applicable transportation rate components." According to Louisville, Texas Gas' transmittal letter describes the new discount type as follows: "[t]his rate will be paid for capacity purchased regardless of the gas quantities actually transported" and as a "formula-based discount." Louisville asserts that the language "regardless of the gas quantities actually transported" appears to be in direct contradiction of the tariff's reference to "volumes actually transported." Further, Louisville asserts the transmittal letter characterizes the new discount language as a formula rate, although no formula appears in the proposed tariff language. Louisville asks the Commission to direct Texas Gas to provide a clear explanation of its proposed new discount type and to clarify the tariff language accordingly.

5. On April 18, 2011, Memphis filed comments also asking the Commission to direct Texas Gas to clarify its proposal. Memphis states that Texas Gas claims that the new 100 percent load factor discount provides additional clarity and once implemented, will render unnecessary the existing item (vi) discount. Memphis contends that it is not clear that the new 100 percent load factor discount will in all cases render the current item (vi) discount provision unnecessary. For example, Memphis asserts that under the current item (vi) language, Texas Gas can enter into discount agreements based on quantities actually delivered without any relationship to load factor, 100 percent or otherwise. Memphis states that, with the new tariff language, it appears that such discounts would no longer be available because the list of items in section 6.9[4.2] defines the types of generic discounts that Texas Gas may offer. Memphis asks the Commission to require the pipeline to clarify its intent.

6. On April 19, 2011, Texas Gas filed a motion to file an answer to the comments and its answer. Under Rule 214(a)(2) of the Commission's regulations, answers to comments are prohibited unless otherwise ordered by the decisional authority.<sup>7</sup> The Commission will accept Texas Gas' answer because it clarifies the pipeline's intent in filing this proposal.

7. In response to Louisville's comments, Texas Gas states that the new generic discount type simply clarifies Texas Gas' right to offer to a customer an all-inclusive

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<sup>7</sup> 18 C.F.R. § 385.213(a)(2) (2010).

discount rate that includes all charges for firm transportation service, except fuel. Texas Gas explains that this all-inclusive rate is based on the assumption that the customer will flow all of its contract quantity (100 percent load factor). According to Texas Gas, for billing purposes, the total all-inclusive discount rate paid by the customer remains the same regardless of actual quantities transported; however, the actual reservation and commodity components of that rate shift within Texas Gas' minimum and maximum recourse rates such that the total rate paid under the firm contract equals the all-inclusive rate. Thus, Texas Gas asserts its discounted rate may be calculated on a 100 percent load factor basis for volumes actually transported. Texas Gas contends that this will provide rate certainty for both the customer and the pipeline, regardless of the gas quantities actually transported under a firm agreement.

8. Texas Gas emphasizes that the proposed discount does not provide a firm service rate to be charged and that its proposal is similar to what a pipeline charges for interruptible service. Texas Gas points out that interruptible rates are derived by combining the applicable reservation charge and commodity charges into a 100 percent load factor commodity charge that is multiplied by the quantity actually transported during a month. Texas Gas explains that it cannot charge for firm service in this manner under discounted rate agreements. Further, states Texas Gas, its Modified Fixed Variable rate design has two components: (1) a demand charge that recovers a majority of its fixed costs, and (2) a commodity charge that recovers the remaining fixed costs along with its variable costs. According to Texas Gas, the type of rate that Louisville suggests would require the pipeline to recover all costs through a commodity charge or stated rate multiplied by the quantity shipped. Texas Gas states that this type of rate, also generally known as a "volumetric firm rate," can only be achieved through a negotiated rate agreement, which allows for a change in cost recovery, but must be approved by the Commission. Texas Gas concludes that its all-inclusive discount provision consists of both demand and commodity rate components rather than being a volumetric rate.

9. In response to Memphis' comments, Texas Gas states that its proposal does not eliminate any of the existing discounts in its tariff, but instead clarifies the pipeline's ability to grant an all-inclusive discount. Texas Gas maintains that the former tariff provision that Texas Gas has proposed to delete from section 6.9[4.2(vi)] also was intended to allow for an all-inclusive rate. Texas Gas emphasizes that it is not reducing or increasing the types of discounts it may offer.

10. Finally, Texas Gas explains that it is offering to correct its proposed section 6.9[4.2(vii)], which currently includes the term "volumes." Texas Gas states that, to be consistent with the remainder of section 6.9[4.2] of the GT&C, it proposes to change this term to "quantities." Texas Gas submits that the clarifications it has provided render any other tariff language changes unnecessary.

11. The Commission has approved a similar discount provision in *Gulf South Pipeline Co., LP*.<sup>8</sup> Texas Gas' answer filed on April 19, 2011 addresses Louisville and Memphis' concerns, explaining that the additional discount type clarifies its right to offer an "all-inclusive" discount rate, which is a type of formula rate already permitted by its FERC Tariff and that the new proposed discount does not provide a firm service rate to be charged the same way the pipeline charges for its interruptible service.<sup>9</sup> Further Texas Gas explains that the proposal does not eliminate any existing discounts and that it is willing to revise its tariff language to make clearer its ability to offer an all-inclusive discounted rate.

12. Accordingly, the Commission accepts Texas Gas' subject filing, effective May 5, 2011, subject to Texas Gas filing within 15 days of date of the order, revised tariff records at GT&C section 6.9[4.2] in accordance with the discussion in this order and Texas Gas' April 19, 2011 Answer.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

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<sup>8</sup> 107 FERC ¶ 61,036 at P 8-9 (2004), accepting Gulf South's tariff sheets, Sixth Revised Sheet No. 1415, Fourth Revised Sheet No. 1416 and First Revised Sheet No. 1417, to its FERC Gas Tariff, Sixth Revised Volume No. 1.

<sup>9</sup> In any event, a pipeline is generally not obligated to offer or continue to offer any particular type of generic discount.