135 FERC ¶ 61,132
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.

Texas Gas Transmission, LLC Docket No. RP11-2008-000

ORDER ACCEPTING TARIFF RECORDS SUBJECT TO CONDITIONS

(Issued May 13, 2011)

1. On April 15, 2011, Texas Gas Transmission, LLC, (Texas Gas) filed, to be effective May 15, 2011, revised tariff records[1] to modify the creditworthiness provisions in its tariff. As discussed below, the Commission accepts the proposed tariff records to be effective May 15, 2011,[2] subject to conditions as discussed below.

I. Background

2. In this filing, Texas Gas proposes to replace the creditworthiness provisions in its tariff which it states have not been significantly changed since the early 1990s. Texas Gas states that these revisions are consistent with the Commission's Creditworthiness Policy Statement,[3] and that the proposed tariff records are based upon the

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[1] *See* Appendix.

[2] Texas Gas requested a May 15, 2011 effective date for the filed tariff sheet, which provided 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). The Commission grants waiver of the 30-day notice requirement to allow the sheet to become effective as proposed.

[3] *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, FERC Stats. & Regs. ¶ 31,191 (2005) (Creditworthiness Policy Statement).

creditworthiness provisions of an affiliated pipeline, Gulf Crossing Pipeline Company LLC (Gulf Crossing).[4]

3. Texas Gas states that under its proposal, a customer is creditworthy if it meets three conditions. To be creditworthy, a shipper must have an unenhanced senior unsecured debt rating equivalent to at least BBB- from Standard & Poor's or Fitch or Baa3 from Moody's. Second, Texas Gas states that if the debt rating is equivalent to BBB- or Baa3, the proposed tariff records also require a long term and short term outlook of stable or positive. Third, Texas Gas proposes to require that the net present value of the sum of a customer's reservation charge fees, utilization fees, and any other associated fee be less than five percent of the customer's tangible net worth. Texas Gas adds that if a customer does not meet the tangible net worth factor, the customer can request to be evaluated under proposed section 6.5[2(d)], which includes an alternative mechanism to assess creditworthiness and considers such factors as financial statement analysis, financial and trade reference checks and credit reports, whether a party is subject to bankruptcy or similar proceedings and various issues related to litigation against the customer.

4. Texas Gas proposes to adopt a provision specifically designed for "small customers" whereby those customers using Rate Schedules SGT and SGL could be deemed creditworthy based upon past payment history. Texas Gas also proposes to adopt a provision which requires non-creditworthy small customers to provide three months of security based upon estimated average fees.

5. In addition, Texas Gas proposes to require security for any imbalance gas incurred by non-creditworthy customers. Texas Gas proposes to include the right to require security for any gas loaned to non-creditworthy customers under any of its various rate schedules, including Rate Schedule PAL and certain of its no-notice rate schedules (Rate Schedules NNS, SNS, and SGT). Texas Gas states that for PAL customers, the security amount must equal the estimated maximum loaned quantity specified in the customer's executed service agreement valued in accordance with the existing cash-out provisions of Texas Gas' tariff. For the no-notice schedules, Texas Gas notes that, unlike other interstate pipelines, it owns the storage gas that supports its no-notice services, and, thus, Texas Gas states that it proposes that new, non-creditworthy no-notice customers be required to provide security in an amount equal to the customer's estimated total applicable withdrawal volumes multiplied by the estimated imbalance and loan gas price. For existing, non-creditworthy no-notice customers, the loaned gas will be valued at the Index Price determined using section 6.14(7) of the Texas Gas tariff.

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[4] Both Texas Gas and Gulf Crossing are owned by Boardwalk Pipeline Partners, LP.

6. Texas Gas intends to reduce the required security for any rate schedule if the customer has repaid some or all of its imbalances. Texas Gas would have the right to re-compute the market value of any quantities of gas loaned to a customer on a daily basis, and to require additional security upon two business days' notice any time Texas Gas' re-computation indicates a dollar amount for security that exceeds the level of security previously posted by the customer by 10 percent or more.

7. Texas Gas also proposes language allowing Texas Gas to consider the credit status of non-creditworthy customers when allocating available capacity when considering the net present value (NPV) of a non-creditworthy customer's bid. Texas Gas explains that it will adjust the NPV of the non-creditworthy customer's bid by the bidder's risk of default using Standard & Poor's most recent "Global Corporate Average Cumulative Default Rates by Rating Modifier table" and the indicated risk of default with a rating above BBB- for Standard & Poor's or Fitch, Baa3 by Moody's, or an equivalent rating as determined by Texas Gas. Texas Gas states that this proposal allows Texas Gas to take into account the relatively lesser value of a non-creditworthy shipper's bid.

8. Texas Gas also proposes other language that allows Texas Gas to use any major rating agency in its credit determinations; provides that interest payable on collateral shall be based upon the actual rate earned or the overnight rate available at any time period where such security funds are on deposit; and specifies that creditworthiness for expansion projects will be identified in precedent agreements and may differ from customers obtaining capacity after the pipeline is operational. Texas Gas also clarifies creditworthiness provisions related to a party to an operational balancing agreement.

II. Notice and Interventions

9. Public notice of the filing was issued on April 18, 2011. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2010)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2010)), 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. PSEG Energy Resources & Trade LLC (PSEG ER&T) and Western Tennessee Municipal Group,[5] Jackson Energy Authority, City of Jackson, Tennessee, and the

[5] The Western Tennessee Municipal Group consists of the following municipal distributor-customers of Texas Gas: City of Bells, Gas & Water, Bells, Tennessee; Brownsville Utility Department, City of Brownsville, Brownsville, Tennessee; City of Covington Natural Gas Department, Covington, Tennessee; Crockett Public Utility District, Alamo, Tennessee; City of Dyersburg, Dyersburg, Tennessee; First Utility District of Tipton County, Covington, Tennessee; City of Friendship, Friendship,

(continued…)

Kentucky Cities[6] (collectively, Cities) filed protests. Proliance Energy, LLC (ProLiance), and Louisville Gas & Electric Company (Louisville) submitted comments. On May 4, 2011, Texas Gas filed an answer. On May 6, 2011, Cities filed an answer to Texas Gas' answer. The Commission accepts the answer filed by Texas Gas and the answer filed by Cities because they have provided information that assisted our decision-making process.

III. Discussion

Use of Credit Agency Ratings to Determine Creditworthiness

10. Cities states that Texas Gas' criteria for determining creditworthiness is unfair to cities and municipalities because these entities do not have credit ratings.[7] Cities states that Texas Gas' criteria for determining creditworthiness relegates municipalities and others to subjective standards because entities without capital stock, such as a municipality, cannot meet the credit rating requirement since they do not have credit ratings.

11. PSEG ER&T objects to section 6.5 (2)(a)(1) which it states provides that in the event there is a split rating between rating agencies, Texas Gas will rely on the lower rating. PSEG ER&T states that the more typical arrangement is to rely upon the higher stated rating, and that the Commission should require Texas Gas to rely upon the higher rating.

12. Regarding section 6.5(2)(a)(2), PSEG ER&T states that despite the fact that a BBB-/Baa3 rating is generally deemed to be investment grade and therefore creditworthy, Texas Gas would, in the case of companies with a negative outlook, consider any company with that rating non-creditworthy if that the company happens to have a negative outlook. PSEG ER&T states Texas Gas has presented no rationale for any

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Tennessee; Gibson County Utility District, Trenton, Tennessee; Town of Halls Gas System, Halls, Tennessee; Humboldt Gas Utility, Humboldt, Tennessee; Martin Gas Department, Martin, Tennessee; Town of Maury City, Maury City, Tennessee; City of Munford, Munford, Tennessee; City of Ripley Natural Gas Department, Ripley, Tennessee.

[6] The Kentucky Cities are the Cities of Carrollton and Henderson, Kentucky.

[7] Cities states a municipal system may lack a credit rating not because it is in financial difficulty but for precisely the opposite reason – because it is able to generate the cash required for their operations without venturing into debt.

blurring of the line between investment and non-investment grade shippers and the Commission should reject this provision and confirm that all investment grade customers are fully creditworthy, whether or not a negative outlook is a part of the analysis.

13. In its answer, Texas Gas asserts that its proposal appropriately provides the creditworthiness evaluation criteria for customers, including for all local distribution companies (LDCs) and notes the Commission has previously rejected a proposal to provide different credit treatment for LDCs.[8]

Commission Determination

14. Texas Gas' provisions in sections 6.5(2)(a)(1)-(2) comply with Commission policy. To the extent that a shipper is rated by multiple credit ratings agencies, Commission policy permits pipelines to use the lower rating to determine a shipper's creditworthiness.[9] In addition, the Commission has also permitted pipelines to consider Outlook and CreditWatch ratings when determining whether a minimum investment-grade shipper is creditworthy, stating these ratings reflect the agency's degree of confidence that the borrower will be able to meet its promised payments as scheduled and finding the ratings to be useful tools for parties trying to assess a company's creditworthiness.[10] Moreover, parties that do not satisfy these criteria can become creditworthy through section 6.5(2)(d).

<u>Tangible Net Worth Test</u>

15. Similar to Cities objections to the use of credit ratings for LDCs and municipalities, Cities also objects that LDCs and municipalities cannot satisfy the Tangible Net Worth test. As a result, Cities request that Texas Gas amend its creditworthiness provisions to include a clearly defined limited exception for municipalities based on a revision to the Tangible Net Worth definition and through an additional payment-history test as set forth in section 6.5(2)(e).

16. PSEG ER&T and Louisville also express concerns that Texas Gas' Tangible Net Worth proposal may have the unintended consequence of downgrading the credit status of existing, creditworthy customers solely because they have made the otherwise

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[8] Citing *Gulf South Pipeline Co., LP*, 103 FERC ¶ 61,129 (2003), *reh'g granted in part*, 107 FERC ¶ 61,273 (2004), *order on reh'g and compliance*, 111 FERC ¶ 61,110 (2005).

[9] *Northern Natural Gas Co.*, 102 FERC ¶ 61,076, at P 28-30 (2003).

[10] *Kern River Gas Transmission Co.*, 131 FERC ¶ 61,271, at P 12-21 (2010).

favorable commitment to Texas Gas of entering into long-term contracts for firm transportation services. For example, Louisville states that it might not satisfy the proposed Tangible Net Worth provision because of the significant net present value of reservation charges Louisville will be obligated to pay under its long-term service agreements with Texas Gas. Louisville states Commission policy generally favors long-term commitments to pipeline systems and it would be contrary to Commission policy, and not be just and reasonable, for Texas Gas to implement a new credit standard that serves as a disincentive to long-term contracting. Similarly, ProLiance questions Texas Gas' use of Tangible Net Worth as an evaluation factor and seeks clarification regarding the Tangible Net Worth factor included in section 6.5(2) and states that a five percent threshold that applies to all service agreements for the entire contract term seems to provide shippers with a disincentive to enter into long term agreements and may unduly discriminate against shippers who have entered into long term contracts.

17. Louisville believes that it and companies like it would be more likely to satisfy the Tangible Net Worth criterion if Texas Gas' evaluation included consideration of Louisville's parent company's Tangible Net Worth and Louisville proposes an additional factor to be added to the list of other factors Texas Gas may consider in section 6.5(2) (d) to allow Louisville and other similarly situated customers to be deemed creditworthy if the shipper's parent company's Tangible Net Worth meets the five percent criterion.

18. PSEG ER&T similarly objects that the five percent criterion will hinder its business practices and urges the Commission to reject this aspect of the proposal. PSEG ER&T states that it is unfamiliar with any credit provision similar to Texas Gas' provision that would deem a company non-creditworthy solely because its aggregate agreements with Texas Gas over the course of their terms is greater than five percent of the company's net worth.

19. In its answer, Texas Gas states that the tangible net worth standard is fully consistent with Commission policy and has been approved by the Commission in numerous cases. Texas Gas states that Louisville's concerns about its credit status are unfounded and that Louisville will continue to be creditworthy under the new credit provisions based, in part, on section 6.5(2)(d)(9), which states that Texas Gas will consider "the nature of the Customer's business and the effect on that business of general economic conditions and economic conditions specific to it, including Customer's ability to recover the costs of Texas Gas' services through filings with regulatory agencies or otherwise to pass on such costs to is customers." Texas Gas also agrees to modify section 6.5(2)(d) to apply to any customer that cannot meet the creditworthiness provisions of section 6.5(2)(a), and not just upon customer request. Texas Gas also agrees to modify section 6.5(2)(b) to be applicable to any customer with a parental guarantee that cannot meet the creditworthiness provisions of section 6.5(2)(a).

Commission Determination

20. The Commission has accepted the Tangible Net Worth test as a criterion for determining the creditworthiness of a shipper in a variety of creditworthiness proceedings and has allowed this requirement to be applied to all customers. In addition, the Commission has approved tangible net worth limits below the five percent proposed by Texas Gas.[11] Moreover, tangible net worth is not the sole determinant of creditworthiness in Texas Gas' tariff, and those shippers that do not satisfy this criterion may attempt to become creditworthy under proposed section 6.5(2)(d). Thus, the Commission accepts Texas Gas' proposed tangible net worth provision. Texas Gas is directed to modify its tariff as stated in its answer in response to concerns about reliance on the parent in order to determine creditworthiness.

Application of Creditworthiness Factors

21. ProLiance seeks clarification as to when Texas Gas has the right to apply the creditworthiness factors proposed in section 6.5(2). ProLiance contends that in proposed section 6.5(2)(b), Texas Gas states "if a customer is not rated, Texas Gas *may* establish creditworthiness based upon" (emphasis added) three separately defined criteria. ProLiance requests the Commission require Texas Gas to clarify what evaluation factors Texas Gas will use in the event it decides not to apply the factors listed in Section 6.5(2)(b).

Commission Determination

22. Although Texas Gas proposes in its answer to revise section 6.5(2)(b) to be applicable to any customer that cannot meet the creditworthiness provisions of section 6.5(2)(a), its proposed language in the answer states that "[i]f the customer does not meet the criteria described above, Texas Gas *may* establish creditworthiness based upon" (emphasis added) three separately defined criteria. The revised language still provides Texas Gas with discretion as to whether it will use the factors in section 6.5(2)(b) to determine whether a shipper is creditworthy. Therefore, consistent with ProLiance's concerns, Texas Gas is directed to explain why it used the word "may" and not a more definitive term, such as "shall," in the proposed revision to 6.5(2)(b).

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[11] *See, e.g., Columbia Gulf Transmission Co.*, 117 FERC ¶ 61,073 (2006) (3 percent); *Columbia Gas Transmission Corp.*,119 FERC ¶ 61,041 (2007) (3 percent).

Alternative Creditworthiness Standards

23. Cities states that Texas Gas' objective criteria for determining creditworthiness relegates municipalities and others to subjective standards since entities without capital stock, such as a municipality, cannot meet Texas Gas' proposed "Tangible Net Worth" test for creditworthiness or the credit rating requirement since they do not have credit ratings. Cities states that if a customer cannot meet the criteria for creditworthiness under section 6.5(2)(a)-(c) then it must determine creditworthiness under section 6.5(2)(d), which is an open-ended provision that would permit Texas Gas to evaluate creditworthiness based on the pipeline's review of a list of specified information and without any defined standards as to how Texas Gas would determine whether the shipper is creditworthy. In its protest and its answer, Cities also states that the Commission has previously acknowledged a distinction between municipalities and other entities when considering creditworthiness provisions related to the Commission's electric regulation.[12]

Commission Determination

24. Contrary to Cities' concerns, the availability of 6.5(2)(d) provides Texas Gas' customers, including municipalities, with a reasonable opportunity to meet Texas Gas' creditworthiness standards if these customers do not qualify under 6.5(2)(a) –(c). Thus, the Commission accepts as just and reasonable the proposed criteria in subsection 6.5(2)(d). The list provided by Texas Gas identifies information regarding other criteria that may be used by Texas Gas to aid in its determination as to a customer's credit status and to find a customer creditworthy. While Commission policy requires the pipeline to provide minimum objective criteria in its tariff for determining creditworthiness, the policy also permits consideration of each customer's unique circumstances, and the Commission's requirement for objective standards does not interfere with the pipeline's right to exercise its business judgment in evaluating a shipper's creditworthiness.[13]

Security for Customers Using No-Notice Service

25. Cities states that Texas Gas' proposed provisions in section 6.5(4) would require a non-creditworthy shipper to post security for loaned gas associated with storage and for imbalances and should not apply to LDCs with city-gate meters. Cities states that Texas

[12] Cities Answer at p. 2-3 (citing *Carolina Power & Light Co.*, 103 FERC ¶ 61,129 (2003) and *Entergy Services, Inc.*, 106 FERC ¶ 61,142 at P 9-11).

[13] *Creditworthiness Policy Statement*, FERC Stats. & Regs. ¶ 31,191 at P 10; *Tennessee Gas Pipeline Co.*, 103 FERC ¶ 61,275, at P 40-41 (2003), *on reh'g*, 105 FERC ¶ 61,120 (2005).

Gas justifies this proposal on the basis that a non-creditworthy shipper has a strong economic incentive to withdraw as much gas as possible from storage in order to monetize the gas when faced with financial difficulty. However, Cities counters that this provision has no applicability to LDCs that are dependant on the storage function of no-notice services to serve their temperature-sensitive customers and that LDCs would not act in a manner to risk access to the storage gas required to make the service work effectively. In addition, Cities states requiring LDCs to post security at the levels contemplated by these provisions would be very difficult for many LDCs, whose revenue stream is limited by the rates they collect from customers.

26. With regard to calculating the credit support for gas loaned under no-notice service, Louisville recommends adding a provision to clarify that credit support must be reestablished by the first day of November, to define when a customer would have to repost credit support for the upcoming withdrawal season.

27. In its answer, Texas Gas maintains that its security requirements apply to all of its customers and LDC customers should not be treated differently and that the Commission has previously rejected a proposal to provide different credit treatment for LDCs.[14] Texas Gas, however, agrees to add a provision to its tariff to clarify that credit support must be reestablished by the first day of November, before the first no-notice withdrawal of the winter season.

Commission Determination

28. The Commission accepts, subject to modification, Texas Gas's proposed section 6.5(4) involving security for loaned storage gas and imbalances as it relates to all customers, including LDCs with city-gate meters. Texas Gas owns the storage gas that supports its NNS, SGT and SNS services. This gas is loaned to customers and then later repaid to Texas Gas. Even if it is true that an LDC facing financial problems is less likely to try to monetize its gas than an energy marketer, this does not eliminate the risk and financial exposure to Texas Gas with regard to its storage and loaned gas. These loans represent a significant financial risk to Texas Gas and its proposed tariff provisions are appropriate in order to enable Texas Gas to manage that risk.

29. In its answer, Texas Gas stated that it would include in its tariff language specifying that credit support must be re-established by the first day of November. As a

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[14] Texas Gas Answer at 3 (citing *Gulf South Pipeline Co., LP*, 103 FERC ¶ 61,129, *reh'g granted in part*, 107 FERC ¶ 61,273, *order on reh'g and compliance*, 111 FERC ¶ 61,110).

condition of our acceptance, Texas Gas is directed to make this modification consistent with its answer.

Calculation of Three Months Collateral Requirement

30. Louisville states that the three months worth of reservation charge collateral is unclear because it does not specify which three months of reservation charges shall be used to calculate the credit support amount. Louisville recommends the provisions be clarified to specify whether three months' worth of reservation charges refers to the next three months, an average of the next twelve months, or some other measure of reservation charge responsibility.

31. In its answer, Texas Gas states that it agrees to clarify that the three months of collateral will be based upon three months of reservation charges under the applicable service agreement in which the seasonal customer's system utilization is the greatest.

Commission Determination

32. As a condition of acceptance, the Commission directs Texas Gas to incorporate this clarifying language into its proposed tariff.

Applicability of the Three Month Collateral Requirement to Guarantees

33. Finally, Louisville requests that the Commission require Texas Gas to modify its proposal to establish a limit for the amount of credit support provided under a guaranty to three months' worth of reservation charges when a shipper has been determined to be non-creditworthy. Louisville states if the Commission determines that the three months' worth of reservation charges is not the appropriate limit for guarantees, it suggests that the limit should be an amount reasonably determined by Texas Gas considering the reservation charges under customer's agreements and Texas Gas' ability to remarket the capacity in the event of customer's default.

34. Texas Gas states in its answer it is willing to include tariff language that will set limits on parental guarantees based on the factors set forth in Louisville's request.

Commission Determination

35. As the Commission has explained, in the case of a guarantee, the parent or third-party is guaranteeing that in the event of a default by the shipper, the guarantor will pay

the applicable charges, not just the collateral.[15] Thus, we will not grant Louisville's request to establish a limit for the amount of credit support provided under a guaranty to three months' worth of reservation charges. However, in its answer, Texas Gas has agreed to limit the scope of its parental guarantee to an amount based upon the reservation charges under the customer's agreements and Texas' Gas' ability to remarket the capacity in the event of the customer's default and is directed to modify its proposal consistent with its answer. Therefore, Texas Gas is directed to modify its proposal consistent with its answer.

Proposal for a Technical Conference

36. ProLiance suggests that it would be appropriate for the Commission to establish a technical conference to discuss the proposal, given the fact that Texas Gas is replacing its existing creditworthiness provisions. ProLiance states a technical conference will provide full clarification and help alleviate any concerns ProLiance might have with the filing.

Commission Determination

37. The Commission finds that a technical conference is not required in order to resolve the issues in this proceeding, and therefore denies ProLiance's request for a technical conference.

The Commission orders:

The tariff records in the Appendix are accepted effective May 15, 2011, subject to the conditions discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[15] *PG&E Gas Transmission, Northwest Corp.*, 105 FERC ¶ 61,382 (2003).

Appendix

Texas Gas Transmission, LLC
Tariffs
FERC NGA Gas Tariff

Tariff Records Effective May 15, 2011, Subject to Conditions:

Section 1, Table of Contents, 3.0.0
Section 6.2, G T & C - Definitions, 3.0.0
Section 6.5, G T & C - Creditworthiness, 2.0.0
Section 6.13, G T & C - Allocations, 2.0.0