

141 FERC ¶ 61,023  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony T. Clark.

East Tennessee Natural Gas, LLC	Docket Nos. RP12-1000-000
Ozark Gas Transmission, L.L.C.	RP12-1002-000
Saltville Gas Storage Company L.L.C.	RP12-1003-000
Texas Eastern Transmission, LP	RP12-1004-000

ORDER ACCEPTING TARIFF RECORDS

(Issued October 12, 2012)

1. On August 31, 2012, the four interstate pipelines referenced in the caption above (collectively “Pipelines”) filed revised tariff records<sup>1</sup> to establish procedures governing a replacement shipper’s request to pay the same negotiated usage or fuel charge that the pipeline granted to the releasing shipper. We find that the proposed tariff records listed in Footnote No. 1 are consistent with Commission policy and therefore, are accepted effective October 15, 2012 as requested.

**Background**

2. In their filings, the Pipelines each proposed tariff modifications to address the Commission’s policy with regard to when a pipeline is required to charge a replacement shipper the same discounted or negotiated usage or fuel charge as the releasing shipper. The Pipelines assert that the Commission previously determined to allow pipelines to apply the Commission’s existing selective discounting policy to decide on a case-by-case basis whether to give an asset manager replacement shipper the same discounted or

---

<sup>1</sup> East Tennessee Natural Gas, LLC, (East Tennessee), Docket No. RP12-1000, - FERC NGA Gas Tariff, East Tennessee Database 1, [49., Negotiated Rates, 1.0.0](#); Ozark Gas Transmission, L.L.C., (Ozark), Docket No. RP12-1002, FERC NGA Gas Tariff, Ozark Database 1, [32., Negotiated Rates, 1.0.0](#); Saltville Gas Storage Company L.L.C., (Saltville), Docket No. RP12-1003, FERC NGA Gas Tariff, Saltville Database 1, [32., Negotiated Rates, 1.0.0](#); Texas Eastern Transmission, LP, (Texas Eastern), Docket No. RP12-1004, FERC NGA Gas Tariff, Texas Eastern Database 1, [29., Negotiated Rates, 2.0.0](#).

negotiated usage or fuel charge as the that of the releasing shipper.<sup>2</sup> The Pipelines state that the instant filings are being made to clarify and streamline the procedures for passing through to a replacement shipper on a temporary basis the releasing shipper's negotiated charges by implementing on-line execution of negotiated rate agreements, thus eliminating the need for written execution of such agreements. The Pipelines also propose to revise the General Terms and Conditions (GT&C) of their respective tariffs to reflect that any statement of negotiated rates for the usage and/or fuel rates flowed through to the replacement shipper pursuant to the tariff will be filed with the Commission subsequent to the award of the capacity rather than subsequent to the execution of a negotiated rate letter agreement.

3. Texas Eastern, for example, specifically proposes to revise its tariff to: (1) provide that any potential replacement shipper that desires to acquire capacity on a temporary basis may request via its LINK® System to pay the releasing shipper's usage and/or fuel rates and that the pipeline will grant such request if the pipeline determines, in a not unduly discriminatory manner, that the potential replacement shipper is similarly situated to the releasing shipper; (2) provide that, in the event the pipeline denies the potential replacement shipper's request, the pipeline will notify such potential replacement shipper via e-mail of the reason for the denial, and that, in the event of such denial, the pipeline's recourse rates shall be applicable to any capacity awarded to the potential replacement shipper; and (3) reflect that any agreement for such negotiated usage and/or fuel rates applicable to capacity released on a temporary basis will be documented pursuant to the GT&C of its tariff and that the request from the potential replacement shipper and the pipeline's award via the LINK® System will serve as execution of the negotiated rate agreement.

### **Public Notice**

4. Public notice of the filings was issued on September 5, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2012)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2012)), 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.

5. Atmos Energy Corporation (AEC) filed a protest to the Pipelines' proposals in each docket and Atmos Energy Marketing LLC (AEM) filed a request for consolidation and a protest in each docket (collectively "protests"). On September 21, 2012, the Pipelines each filed nearly identical motions for leave to answer and answers to the

---

<sup>2</sup> See *e.g.*, Texas Eastern's filing at 1 (*citing Texas Eastern Transmission, LP*, 129 FERC ¶ 61,031 (2009) (*Texas Eastern*)).

protests in their individual dockets. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept the Pipelines' answers because they provided information that assisted us in our decision-making process.

### **Protests**

6. The protests generally raise two issues with regard to the Pipelines' proposals: (1) the timing of the determination as to whether a replacement shipper is "similarly situated" to a releasing shipper and (2) the application of that standard. AEC contends that the Pipelines have not provided sufficient information regarding the determination of "similarly situated" shippers and how that standard would be applied. According to AEC, it frequently uses asset managers to optimize the capacity of its state-regulated utilities, and that process may include negotiating an asset management agreement (AMA) with a winning bidder through a state mandated Request for Proposal (RFP) process. AEC claims it needs more information concerning the proposed similarly situated determination in order to ensure the transparency, efficiency and efficacy of its RFP process. AEM raises similar timing concerns, contending that under the Pipelines' proposal, a replacement shipper will be unable to know if it will get the releasing shipper's negotiated rates until after the close of bidding for a capacity release.<sup>3</sup> AEM states that the ability of a bidder to know the usage and fuel rates that it will be paying is vital to a bidder's ability to properly value the capacity being released. AEM also states that the proposed tariff language might cause problems for releasing shippers, as they might not know which proposal represents the highest value at the time they are required to select a winning bidder, because at the time it might not be known if the replacement shipper will qualify to receive the releasing shipper's negotiated rates.

7. AEC and AEM request that the Commission suspend the implementation of the revised tariff records for the maximum period allowed and convene a technical conference on this issue. AEC and AEM state that this delay will enable parties to execute AMAs for the upcoming winter season without interference and allow more time for the Spectra affiliated companies to update their LINK® Systems. AEM also requests that the Commission consolidate the four related dockets because according to AEM they are virtually identical and raise the same issues.

---

<sup>3</sup> AEM notes that some of the negotiated rate agreements specify whether the negotiated rates are or are not transferrable. AEM states that for negotiated rates that are transferrable, the proposed tariff language seems to create an additional barrier to the transfer of those negotiated rates.

**Answer**

8. The Pipelines in their answers argue that the protests are collateral attacks on the Commission's order in *Texas Eastern*, and more broadly on the Commission's selective discounting policy. The Pipelines note that the protesters participated in the proceedings underlying the Texas Eastern order, where they raised concerns regarding the sufficiency of the "similarly situated" standard for an undue discrimination analysis. The Pipelines claim the Commission rejected the protesters' arguments when, in establishing the general rule for pass through of negotiated usage and fuel charges in *Texas Eastern*, the Commission stated that pipelines may "decide on a case by case basis whether to give the asset manager the same discounted or negotiated usage or fuel rate."<sup>4</sup> The Pipelines assert that the protests challenge the timing and standards of the Pipeline's proposed procedures for the flow through of discounts to replacement shippers, both issues that were already decided in *Texas Eastern* and other prior orders. The Pipelines assert their filings were submitted in full accordance with the guidelines set forth in *Texas Eastern*.

9. The Pipelines also contend that the protests raise issues outside the scope of this proceeding. Specifically, with regard to the timing issue, the Pipelines note that the proposed tariff modifications do not change the existing process for determining whether a replacement shipper qualifies for a releasing shipper's negotiated charges. The Pipelines note that the process must work as it currently does because a pipeline cannot determine whether a replacement shipper is similarly situated until the pipeline is aware of the shipper's demand characteristics. The Pipelines state that the instant filings simply streamline the timing of the paperwork after a similarly situated determination has been made.

10. The Pipelines also argue that there are no material issues of fact that would warrant a technical conference in this proceeding, and that the protesters have not met their burden for either a technical conference or to consolidate the cases.

**Discussion**

11. The Commission finds that the Pipelines' proposals are just and reasonable, and thus, we accept them effective October 15, 2012 as requested. The Pipelines' filings propose procedures for allowing a replacement shipper to request the same negotiated usage or fuel charge as the releasing shipper is paying. Those procedures, which entail allowing potential replacement shippers to request the same rates as the releasing shipper, and the pipeline granting or denying that request based on whether the two shippers are similarly situated, are reasonable and consistent with the Commission's selective discounting policy and the guidelines for making such determination provided in *Texas Eastern*.

---

<sup>4</sup> Pipelines' answer at 4 (*quoting Texas Eastern* at, 129 FERC ¶ 61,031 at P 25).

12. First, as the Pipelines' note in their answers, the Commission established in *Texas Eastern* that interstate pipelines may, but are not required, to pass through a discounted or negotiated usage or fuel charge to a replacement shipper. The Commission also established that pipelines could make decisions whether to allow pass through on a case-by-case basis in accordance with our selective discounting policy.<sup>5</sup> That policy permits pipelines to determine, on a non-discriminatory basis, whether customers are similarly situated. As we noted in *Texas Eastern*, in the asset management context, an asset manager replacement shipper is likely to be similarly situated to the releasing shipper when the asset manager truly steps into the shoes of the releasing shipper. For example, regarding the situation where a pipeline granted a releasing shipper a delivery point discount and the replacement shipper provides service to the releasing shipper at that point, we stated that "we cannot envision a scenario where the asset manager replacement shipper would not be deemed to be similarly situated to the releasing shipper."<sup>6</sup> The Pipelines' instant filings are consistent with that policy and the guidelines in *Texas Eastern*. Thus, the protesters' arguments challenging those prior determinations are impermissible collateral attacks on our prior holdings and are rejected.

13. Second, the tariff modifications submitted with the Pipelines' filings, which streamline the process by which a replacement shipper can obtain a transportation agreement at the replacement shipper's negotiated rate, do not implicate the timing issue raised in the protests. As the Pipelines point out, the filings do not modify the timing for the Pipelines to make a similarly situated determination as to a potential replacement shipper. It is inherent in the capacity release program that the contracting process between the replacement shipper and the pipeline cannot take place until after the releasing shipper has chosen its replacement shipper and any bidding for the release has been completed. Thus, the protests on this point are rejected.

14. Given our decision to accept the proposed tariff records effective October 15, 2012, as requested, we deny the requests for a technical conference and for consolidation.

The Commission orders:

(A) The proposed tariff records listed in Footnote No. 1 are accepted, effective October 15, 2012.

---

<sup>5</sup> *Policy for Selective Discounting by Natural Gas Pipelines*, 111 FERC ¶ 61,309 (2005).

<sup>6</sup> *Texas Eastern*, 129 FERC ¶ 61,031 at P 22.

(B) The Protests by Atmos Energy Corporation and Atmos Energy Marketing LLC, are rejected, and Atmos Energy Marketing LLC's motion for consolidation is denied.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.