141 FERC ¶ 61,172
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.

Texas Eastern Transmission, LP Docket No. RP13-237-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS AND ESTABLISHING TECHNICAL CONFERENCE

(Issued November 29, 2012)

1. On October 31, 2012, Texas Eastern Transmission, LP (Texas Eastern) filed revised tariff records[1] to reflect revisions to the Applicable Shrinkage Adjustment (ASA) Percentages and Surcharges of its tariff. In addition, Texas Eastern submitted its Annual Interruptible Revenue Reconciliation Report (Report). For the reasons discussed below, the Commission accepts and suspends the instant tariff records, to become effective December 1, 2012, subject to refund, the outcome of a technical conference, and further order of the Commission.

Details of the Filing

2. Pursuant to section 15.6 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff, Texas Eastern recovers its projected cost of fuel consumed to provide service and lost and unaccounted for (LAUF) gas on an in-kind basis through its ASA Percentages. In addition, that section requires Texas Eastern to true up past over- or under-recoveries of fuel through its ASA Surcharge. The tariff requires Texas Eastern to file annually to revise both its ASA Percentages and its ASA Surcharges. According to Texas Eastern, it calculates the ASA Percentages by subtracting the base percentage (currently effective tariff percentage) from a projected requirement, the latter of which is determined by dividing the annual projected quantities of gas used or lost by the projected annual transportation and storage service quantities. Texas Eastern states that in calculating these percentages, it uses the average of the last three years of historical shrinkable quantities plus annual actual throughput. Texas Eastern further states that it calculates the ASA Surcharges using the net monetary balance recorded in the Shrinkage Deferred Account as of August 31 for each given year, allocating that balance to each

[1] *See* Appendix for list of tariff records.

service category or Rate Schedule *pro rata* based on fuel used or lost, and dividing the resulting allocated amounts by the projected usage charge determinants for the annual period.

3. Texas Eastern states that in the current filing it is proposing revisions to its tariff ASA Percentages and ASA Surcharges to include the assessment of fuel charges for certain contract paths that Texas Eastern claims were historically backhauls but are now forward hauls. Texas Eastern states that it is also proposing changes in its ASA Surcharge rates in order to clear the net balance in the ASA Deferred Account as of August 31, 2012. Texas Eastern states that the instant filing includes a decrease in the annual average ASA percentage for typical long-haul service[2] of 1.53 percent and an increase in the ASA Surcharge of 0.37 cents per dth.

4. As noted, Texas Eastern proposes to assess fuel charges on all contract paths in the Access Area of its system, even those that were historically considered back haul transportation. Texas Eastern claims its proposed changes are supported by recent analyses of system flows in all zones of its system, which showed that the current collection of fuel no longer reflects actual system flows and fuel use in the Access Area. Texas Eastern states that significant new supply sources have emerged outside the Access Area, which have precipitated a material shift in customer sourcing patterns across Texas Eastern's system. Specifically, Texas Eastern states that nomination patterns for gas sourced in, or moving into, the Access Area have shifted and that customer-nominated flows that are counter to historical flows in the Access Area now are as likely to occur as customer-nominated flows in the same direction as historical flows. Texas Eastern asserts that although the direction of flows has been changing over the previous few years, the flows in the Access Area counter to the historical direction were not significant enough to warrant the change to Texas Eastern's fuel rate design until this year. Texas Eastern contends that because it is not feasible under these circumstances to make case-by-case determinations of actual flows in order to establish which individual transactions should be assessed fuel, the proposed assessment methodology reasonably addresses potential subsidization issues among its Access Area shippers. Texas Eastern further states that in accordance with Part 4, section 16 of its tariff, it is proposing separate fuel rates for: (1) customers with a fowardhaul contract, or whose contract path is counter to historical flows and wholly within the access area; and (2) customers whose path is counter to historical flows and extends from the pipeline's Market Area zones 1, 2, or 3 to any Access Area zone.

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[2] Based on the 100 percent load factor price under Rate Schedule FT-1 from the Access Zone East Louisiana to Market Zone M3 (ELA-M3).

5. Texas Eastern states it is also proposing revisions in the ASA Percentages and ASA Surcharges, as well as LAUF Percentages, for various incremental projects. Texas Eastern states that it is tracking the fuel requirements of these incremental and lease projects (i.e., the TIME Project, the Discovery Lease Project, the Texas Gas Lease, the TIME II Project, the TIME III Project and the TEMAX Project) separately from the system ASA fuel requirements to ensure that existing customers do not subsidize costs resulting from these projects.

6. In addition, Texas Eastern states that in accordance with section 15.8(D) of the GT&C of its tariff, it is submitting the Annual Interruptible Revenue Reconciliation Report. According to Texas Eastern, it has included reconciliations of the interruptible revenues under its applicable rate schedules (Rate Schedule IT-1, ISS-1, LLIT, PAL, VKIT and MLS-1) for the twelve-month period ended June 30, 2012. Texas Eastern contends that these reconciliations show that the revenues it received during this twelve month period under Rate Schedules IT-1, ISS-1 and PAL did not exceed the cost of service threshold, and thus no credit is due to the ASA Deferred Account. Texas Eastern also states that no credits resulted with respect to Rate Schedules LLIT, VKIT and MLS-1.

<u>Notice of Filing, Interventions, Protests, and Answer</u>

7. Public notice of the filing was issued on November 1, 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 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.

8. Indicated Shippers,[3] Chesapeake Energy Marketing, Inc. (Chesapeake), Southwest Energy, L.P. (Southwest) and Topaz Power Holdings, LLC (Topaz) filed protests to Texas Eastern's proposal. The protesting parties state that Texas Eastern has not demonstrated that its proposal to assess fuel for contract paths that have historically been characterized as backhaul transportation is just and reasonable. Specifically, Indicated Shippers contend that to the extent that any flow of gas in Texas Eastern's Access Area still constitutes backhaul transportation, Texas Eastern fails to justify why the assessment of fuel for such transportation is now warranted. Indicated Shippers argue that the Commission has previously found that fuel charges should apply only when compression is required and thus, back hauls are exempt from such charges.

[3] Consisting of Anadarko Petroleum Corporation, Anadarko Energy Services Company, ConocoPhillips Company, ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobile Corporation, Noble Energy, Inc. and SWEPI LP.

Additionally, Indicated Shippers state that Texas Eastern has not demonstrated that all transportation service in its Access Area now flows in the same direction as the actual movement of gas in the pipeline. Indicated Shippers contend that simply stating backhaul volumes of gas now account for a larger percentage of total volumes of gas in the Access Area than in prior years does not mean that the actual direction of flow is changing. Further, Indicated Shippers assert that Texas Eastern does not explain why it is unable to make a determination of actual flows in its Access Area given that it controls the physical operation of the pipeline.

9. Chesapeake protests that Texas Eastern's proposed fuel charges would require backhaul shippers, who reduce the amount of fuel gas on the system, to subsidize forward haul shippers. Chesapeake argues that Texas Eastern has not indicated what percentage of traditional backhauls now cause Texas Eastern to incur compressor fuel, or if specific backhauls do incur compressor fuel, or why all backhaul shippers to the Access Area should be required to pay compressor fuel charges. Chesapeake requests the Commission schedule a technical conference to consider the complex issues raised by Texas Eastern's filing.

10. Southwest and Topaz make similar arguments regarding Texas Eastern's lack of factual support for its proposal. They also contend that the proposal directly contravenes the definition of "Applicable Shrinkage" in section 1 of the GT&C of Texas Eastern's tariff, which states among other things that, "Applicable Shrinkage for transportation transactions consisting solely of backhaul transportation shall be zero."

11. On November 21, 2012, Texas Eastern filed an answer to the protests. 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 unless otherwise ordered by the decisional authority. We will accept Texas Eastern's answer because it provided information that assisted us in our decision-making process.

12. In its answer, Texas Eastern asserts that its proposal is just and reasonable and should be accepted effective December 1, 2012 as requested, and that the request for a technical conference should be denied. Texas Eastern claims that it conducted extensive outreach to its customers regarding its system flow changes and its intention to file the instant proposal, and thus any claims from customers that there was no opportunity for feedback on the changes are meritless. Texas Eastern states that contrary to claims in the protests it is not changing the definition of back haul or proposing to assess fuel charges on back haul transactions. Texas Eastern claims it is merely recognizing that due to changes in system flows, transactions that were historically back haul transactions are now forward haul transactions that no longer qualify for the tariff backhaul fuel charge exemption. Texas Eastern further asserts that it is not feasible for it to track actual system flows on a case-by-case basis and that Commission policy does not require such individual contract tracking.

Discussion

13. The Commission has reviewed Texas Eastern's Filing, the protests, and Texas Eastern's answer. Based on our review of the pleadings, we cannot find that Texas Eastern has shown its proposed tariff records to be just and reasonable. Accordingly, the Commission will accept the tariff records for filing, and suspend their effectiveness for the period set forth below, subject to the conditions set forth in this order.

14. Further, as a result of our review of the pleadings, we find that Texas Eastern's proposal raises operational and technical issues that will best be addressed at a technical conference where staff and all parties will have an opportunity to further discuss their concerns and Texas Eastern's justifications for its proposal. Accordingly, Commission staff will convene a technical conference to further discuss the issues raised in this proceeding. At the technical conference, Texas Eastern must be prepared to address all the issues raised by protesters in their pleadings.

Suspension

15. The Commission's policy regarding suspensions is that tariff 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 inconsistent with other statutory standards.[4] 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.[5] The Commission finds that because this tracker filing subject to a true-up a minimal suspension period is appropriate. Therefore, the Commission will accept and suspend the proposed tariff records to be effective December 1, 2012, subject to refund and to the outcome of the technical conference established herein and further order of the Commission.

The Commission orders:

(A) The tariff sheets listed in the Appendix are accepted and suspended to become effective December 1, 2012, subject to refund and to the outcome of the technical conference established herein.

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[4] *See Great Lakes Gas Transmission Co*., 12 FERC ¶ 61,293 (1980) (five-month suspension).

[5] *See Valley Gas Transmission, Inc*., 12 FERC ¶ 61,197 (1980) (one day suspension).

(B) The Commission's staff is directed to convene a technical conference to address the issues raised by Texas Eastern's filing and to report the results of the conference to the Commission within 120 days of the date this order issues.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Texas Eastern Transmission, LP
FERC NGA Gas Tariff
Texas Eastern Database 1

1., Rate Schedule CDS, 12.0.0
2., Rate Schedule FT-1, 18.0.0
3., Rate Schedule SCT, 12.0.0
4., Rate Schedule IT-1, 12.0.0
9., Rate Schedule SS-1, 10.0.0
10., Rate Schedule FSS-1, 4.0.0
11., Rate Schedule ISS-1, 4.0.0
13., Rate Schedule SS, 9.0.0
14., Notice of Rate Change Adjustments, 11.0.0
16., Percentages for Applicable Shrinkage, 3.0.0
1., Rates, 10.0.0