

144 FERC ¶ 61,226
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 23, 2013

In Reply Refer To:
Tennessee Gas Pipeline Company, L.L.C.
Docket No. RP11-1566-000

Tennessee Gas Pipeline Company, L.L.C.
1001 Louisiana
Houston, TX 77002

Attention: Milton Palmer, Jr.
Director, Rates and Regulatory Affairs

Dear Mr. Palmer:

1. On September 9, 2012, Tennessee Gas Pipeline Company, L.L.C. (Tennessee) filed a Revenue Sharing Report (Report), pursuant to Article X of a Settlement filed September 30, 2011 (Settlement), and approved by the Commission in an order dated December 5, 2011.¹ According to Tennessee, the Settlement resolved, with limited exceptions, the outstanding issues in Docket Nos. RP11-1566-000 and RP11-2066-000, Tennessee's last general NGA Section 4 rate proceeding. The Settlement became effective on January 1, 2012.

2. According to Tennessee, Article X of the Settlement sets forth Tennessee's obligation to establish a Revenue Sharing Mechanism for the term of the Settlement to share with eligible customers on an annual basis seventy five percent of any excess revenues collected. The Settlement established a Revenue Crediting Threshold of \$885 million for each twelve month period from June 1 through May 31 (Annual Revenue Sharing Period) of the rate moratorium provided for in the Settlement. The Settlement provides that Eligible Customers are entitled to 75 percent of the excess revenues beyond the \$885 million threshold.

3. Tennessee states that the Settlement further requires Tennessee to file an annual report detailing the implementation of these revenue-sharing provisions. According to

¹ *Tennessee Gas Pipeline Co., L.L.C.*, 137 FERC ¶ 61,182 (2011).

the Settlement, “Such report shall include General System Revenues by rate schedule and FERC account, and shall identify revenues described in Paragraph A.1(g) included in General System Revenues. Such report shall also detail the computation of the Excess Revenues, if any, including each Eligible Customer’s share of such Excess Revenues.”² Tennessee states in the instant Report that the General System Revenues received by Tennessee for the applicable Revenue Sharing Period were \$884,813,709, which is \$186,291 below the Revenue Crediting Threshold.

4. Several parties filed comments or protests. National Fuel Gas Distribution Corporation, the National Grid Delivery Companies³ and the Tennessee Customer Group (TCG)⁴ request that the Commission require Tennessee to provide additional information. Specifically those entities question Tennessee’s calculations resulting in annual general system revenues just below the Revenue Crediting Threshold, and request monthly information on a per-customer and per-rate schedule basis, which they claim they need to definitively verify the accuracy of Tennessee’s calculations. In addition, several parties requested that Tennessee provide the monthly information for the same 12-month period on a per-customer and per-rate schedule basis, both as a supplement to the Report that was filed on September 26, 2012 and also as a part of all future annual reports made pursuant to Article X of the Settlement.

² Tennessee Gas Pipeline Company Settlement Stipulation and Agreement, Article X, Section D.

³ The National Grid Gas Delivery Companies includes the following entities: The Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corporation d/b/a National Grid; Boston Gas Company, Colonial Gas Company, collectively d/b/a National Grid; Niagara Mohawk Power Corporation d/b/a National Grid; and The Narragansett Electric Company d/b/a National Grid, all subsidiaries of National Grid USA, Inc.

⁴ The Tennessee Customer Group includes the following entities: CenterPoint Energy Corp.; City of Clarksville Gas and Water Department, City of Clarksville; City of Corinth Public Utilities Commission; Delta Natural Gas Company, Inc.; Greater Dickson Gas Authority; Hardeman Fayette Utility District; Henderson Utility Department; Holly Springs Utility Department; Humphreys County Utility District; Town of Linden; Morehead Utility Plant Board; Portland Natural Gas System, City of Portland; Savannah Utilities; Springfield Gas System, City of Springfield; City of Waynesboro; and West Tennessee Public Utility District. In addition, the following intervenors subsequently joined the TCG: Athens Utilities; City of Florence, Alabama; Hartselle Utilities; City of Huntsville, Alabama; Municipal Gas Authority of Mississippi; North Alabama Gas District; Tuscumbia Utilities and Sheffield Utilities.

5. TCG also alleges that there are numerous inconsistencies between the calculation of revenues set forth in the Report and the calculation of revenues set forth in Tennessee's fourth quarter Form No. 2 for the end of 2012.⁵ TCG claim that the report does not provide sufficient information for Tennessee's customers or the Commission to corroborate the accuracy of its revenue calculations. TCG requests that the Commission require Tennessee to provide a schedule reconciling the differences between the revenue calculations set forth in the Report and the Form 3-Qs covering the same time period involved in the Report—i.e., the 12 months ending May 2012, and that Tennessee provide the monthly information for the same 12-month period on a per-customer and per-rate schedule basis, both as a supplement to the Report that was filed on September 26, 2012 and also as a part of all future reports that are filed pursuant to Article X of the Settlement.

6. On November 7, 2012 Tennessee filed a response to the comments and protests. Tennessee states that the General System Revenues included in the Report are accurate and in compliance with the Settlement. Tennessee further states that in an effort to resolve the issues raised, it provided the parties the requested reconciliation of the Report to its Form No. 3-Q.⁶ Despite the additional information, the parties declined to withdraw their pleadings.

7. Tennessee states that the inconsistencies between Tennessee's calculation of General System Revenues in the Revenue Sharing Report and the revenues reported in Tennessee's Form No. 3-Q are explained by a difference in reporting requirements. Specifically, Tennessee states that the General System Revenues by rate schedule reflected in Tennessee's report are calculated on a production month basis, i.e., revenues by rate schedule for the month of June are reported in June, while the revenues by rate schedule as reported on the Form Nos. 2/3-Q are reported on an accounting month basis, i.e., revenues by rate schedule for the month of June are reported in July.⁷ Tennessee further states that the General System Revenues by rate schedule in the report are reported net of Settlement refunds, while the revenues by rate schedule as reported on the Form Nos. 2/3-Q are reported before Settlement refunds. According to Tennessee, the Form Nos. 2/3-Q includes a separate line item labeled "Provision for Rate Refunds."

8. Tennessee also claims that the Settlement definitively establishes the information Tennessee is obligated to provide in its Report, i.e., "General System Revenues by rate schedule and FERC account." Tennessee states that the Settlement does not require that

⁵ TCG Protest p. 2.

⁶ Tennessee Answer p. 2. Tennessee filed a spreadsheet reconciling the differences between its Report and its Form No. 3-Q with its response.

⁷ Tennessee Answer at p. 3.

Tennessee provide the per-customer, per rate schedule level of detail requested by protesters.⁸ Tennessee argues that the Commission cannot require Tennessee to provide the additional information requested by protesters without changing the terms of the settlement. Tennessee further points out that Article XVI, Paragraph B, of the Settlement provides that the standard of review for changes sought by the settling parties shall be “the ‘public interest’ standard for review set forth in *United Gas Pipe Line Co., v. Mobile Gas Services Corp.*, and *Federal Power Commission v. Sierra Pacific Power Co.*”⁹ Because the protesters were all settling parties, Tennessee contends that the Commission would have to find that the additional requirements for the contents of the Report are required by the public interest.

9. TCG, National Grid, National Fuel and PSEG Energy Resources & Trade LLC, New Jersey Natural Gas Company, and NJR Energy Services Company filed answers to Tennessee’s response, arguing that the only way that a customer can meaningfully check the accuracy of Tennessee’s overall revenue presentation is to compare the level of revenue for each customer reflected in TGP’s report with the customer’s own records concerning amounts paid to TGP. Those parties also claim that Tennessee’s position that the request for additional information is inconsistent with the Settlement is belied by the explicit text of the Settlement which requires Tennessee to file a report “detailing” its General System Revenues. The protesters contend that to “detail” means to report

⁸ Tennessee further argues that compiling and providing the additional requested information would impose a significant and undue burden on Tennessee. Tennessee estimates that providing the information requested by protesters would require an additional 260 man hours. Tennessee Answer p. 6.

⁹ Tennessee Answer p. 7 (citing Settlement, Art. XVI, Paragraph B, and *Dominion Transmission, Inc. v. FERC*, 533 F.3d 845, 848 (D.C. Cir. 2008)) (*Dominion v. FERC*). Art. XVI, Paragraph B, of the Settlement provides:

(1) Except as provided in Section 2 below, the standard for review for any proposed change to Settled Matters, to be effective during the Rate Moratorium, shall be the “public interest” standard for review set forth in *United Gas Pipe Line Co., v. Mobile Gas Services Corp.*, and *Federal Power Commission v. Sierra Pacific Power Co.* In any such proceeding, Supporting and Non-Opposing Parties shall not support any such change to be made effective during the Rate Moratorium.

(2) With respect to proposed changes to any Settled Matter sought by non-settling parties or the Commission acting *sua sponte*, the standard of review shall be the just and reasonable standard.

“minutely and distinctly,” not in summary fashion as done by Tennessee. Protesters further argue that nothing in the Settlement suggests that the Commission or any party is precluded from requesting additional data to substantiate Tennessee’s reported amounts.

10. The Commission has reviewed Tennessee’s Report and finds that it complies with the terms of the Settlement. As Tennessee explains in its answer, the reasons for the discrepancies between the Report and its Form No. 3-Q are attributable to differences in reporting requirements for the two reports and the way the data is calculated. Further, the data provided by Tennessee to support the Report is consistent with the language of the Settlement. The Settlement specifies that Tennessee is to file the general system revenue data by rate schedule and FERC account, which Tennessee did. The Settlement makes no mention, however, of providing monthly information on a per-customer basis as requested by the protesters. It seems reasonable that if the parties’ intentions were that Tennessee would report the revenue data to a per customer level of detail, they would have so specified in the Settlement language.

11. As noted above, the Settlement provides that the standard of review for any change to the Settlement proposed by a settling party “shall be the ‘public interest’ standard for review set forth in” *Mobile* and *Sierra*. Here, the protesters are all settling parties. In light of this more stringent standard of review, we find that the protesters have not provided a sufficient basis for the Commission to modify the Settlement to require Tennessee to submit additional information.¹⁰ Accordingly, the Commission finds that Tennessee has met its revenue reporting requirement as required by the Settlement, and we will not require Tennessee to file the additional requested information. Based on this ruling, we also reject the requests to require Tennessee to include such additional information in its future reports required under Article X of the Settlement.

By the direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁰ See also *Dominion Transmission, Inc., v. FERC*, 533 F.3d 845, 848 (D.C. Cir. 2008) (addressing request by settling parties that the Commission require a pipeline to file additional supplemental information beyond what was specifically defined in a Commission approved settlement).