

150 FERC ¶ 61,166  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
Norman C. Bay, and Colette D. Honorable.

Tennessee Gas Pipeline Co., LLC

Docket No. RP11-1566-000

ORDER GRANTING PETITION

(Issued March 4, 2015)

1. On February 19, 2015, Tennessee Gas Pipeline Co., LLC (Tennessee) filed a petition to (i) shorten the maximum rate case suspension period to no shorter than three months in any new rate case filing made pursuant to the Stipulation and Agreement (2011 Settlement), approved by the Commission in Docket No. RP11-1566-000,<sup>1</sup> which settled Tennessee's most recent general rate case; (ii) amend the 2011 Settlement to include a new Article XVI.F to waive the refund floor during any deferral period of the new rate case; and (iii) waive section 154.303(a)(1) of the Commission's regulations to use the base and test periods from the current settlement negotiations. For the reasons discussed below the Commission grants the petition.

**Background**

2. Article XVI of the 2011 Settlement which resolved Tennessee's last general rate case, contains a provision requiring Tennessee to file a new general rate case under section 4 of the Natural Gas Act (NGA) with new rates to be effective, assuming a five-month suspension period, on or before November 1, 2015.<sup>2</sup> Tennessee states that, with the 30-day notice period and the likelihood of a maximum five-month suspension period, Article XVI requires it to file a new rate case on or before May 1, 2015.

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<sup>1</sup> *Tennessee Gas Pipeline Co.*, 137 FERC ¶ 61,182, at P 14 (2011).

<sup>2</sup> Article XVI.E of the 2011 Settlement provides: "Unless [Tennessee] has previously filed an NGA Section 4 general rate case pursuant to the provisions of this Settlement, [Tennessee] shall be required to file a general rate case to be effective no later than November 1, 2015. [Tennessee] can assume a five-month suspension period for a rate increase when complying with this requirement."

Tennessee submits that, in anticipation of this deadline, it had preliminary settlement discussions with numerous interested customers and state commissions and made a significant effort to contact all interested persons. Tennessee states that, after notification, it then hosted an initial settlement meeting in Newark, New Jersey, on December 2, 2014.

3. Tennessee states that, since that initial meeting, it has been responding to information requests from the Active Parties<sup>3</sup> who have signed a confidentiality agreement, and set up a website to allow access to Tennessee's responses and certain other data. Tennessee further states that it has participated in four conference calls to which all interested persons were invited and the Active Parties have also held separate conversations among themselves. Tennessee states that it convened a settlement meeting on February 13, 2015, in Newark, New Jersey. Tennessee further states that the Active Parties believe that it is appropriate to continue the negotiations.

### **The Petition**

4. Tennessee states that the terms of the instant petition have been either agreed to or not objected to by the Active Parties. In order to allow additional time for the current settlement negotiations, while maintaining the benefit of the November 1 effective date for the new rate case required by the 2011 Settlement, Tennessee requests that the Commission permit a shortened suspension period in a new rate case filing made pursuant to the 2011 Settlement. Specifically, Tennessee requests the suspension period for any new rate case filing equal the number of days between the filing date and November 1, 2015, after allowing for the thirty-day notice period, provided, however, such suspension period shall be no shorter than three months. Tennessee states that the shortened suspension period would only apply to a proposed rate increase and not to any tariff changes it may propose that do not affect rates. Tennessee states that granting its request for a shortened suspension period would allow it to postpone filing a new rate case until July 1, 2015.

5. Tennessee states that, if the Commission grants this petition, it anticipates holding additional settlement conferences. Tennessee further states that, while it and the Active Parties are interested in pursuing settlement discussions, they cannot be certain at this point that these discussions will culminate in the filing of a stipulation and agreement. Tennessee asserts that, absent the requested shortening of the suspension period, it will have to turn its attention to preparation of its rate filing and litigation. Tennessee states that it believes that continued negotiations without the pressure of a May 1 filing date is a better course and, even if negotiations are successful, it is doubtful they will conclude in

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<sup>3</sup> The participants in the meetings and settlement discussions are referred to as the Active Parties.

sufficient time to permit the preparation and filing of a comprehensive settlement prior to May 1.

6. Tennessee asserts that Commission policy recognizes that while “tariff filings generally should be suspended for the maximum period permitted by statute . . . shorter suspensions may be warranted where suspension for the maximum period may lead to harsh and inequitable results.”<sup>4</sup> Tennessee further asserts that the Commission has shortened the maximum statutory suspension period to permit a rate case filing to remain in compliance with settlement provisions and to meet market demands.<sup>5</sup> Tennessee requests that the Commission grant the petition in order to allow additional time for resolution in lieu of litigation consistent with the Commission’s efforts to encourage settlements, particularly since the Active Parties either support or do not oppose this petition.

7. Tennessee also contends the shortening of the suspension period to a minimum of three months will not harm its shippers, each of whom will remain protected by any applicable refund obligation effective November 1, 2015, as well as by the proposed settlement amendment discussed below. Tennessee asserts that, by granting this petition, neither the Commission nor any non-participant in the pre-filing settlement discussions would be deprived of the statutory notice period, the opportunity to intervene and protest, or having all relevant issues resolved in any suspension order or ensuing rate case. Tennessee asserts that the intent of the parties expressed in the 2011 Settlement that the effective date for new rates to be November 1, 2015, will be carried out. Tennessee contends that, therefore, it is appropriate for the Commission to agree to exercise its discretion and shorten the suspension period as proposed herein should Tennessee make an NGA Section 4 rate case filing on July 1, 2015.

8. Tennessee requests that, in conjunction with permitting a shortened suspension period for any new rate case filing pursuant to the 2011 Settlement, the Commission take two further actions to protect the parties from any harm as a result of the shortened suspension period. First, Tennessee has attached a new Article XVI.F in Attachment A which it requests to be added as an amendment to the 2011 Settlement. Tennessee asserts that, in order to avoid any adverse consequences to shippers from any delay of the effective date of any rate reduction ordered by the Commission in a new rate case, it has agreed to waive the section 4 refund floor for a limited period equal to the length of the deferral of the section 4 filing. Tennessee contends that this is consistent with the

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<sup>4</sup> Tennessee Petition at 5 (citing *Gulf South Pipeline Co.*, 149 FERC ¶ 61,173, at P 26 (2014) (citing *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980))).

<sup>5</sup> *Id.* (citing *Natural Gas Pipeline Co. of Am.*, 71 FERC ¶ 61,391 at 62,530 (1995)).

provision approved in *Southern Natural Gas Co.*, 142 FERC ¶ 61,078, at P 29 (2013) (*Southern*). The amendment provides that, if at the conclusion of the new rate case litigation, the Commission reduces Tennessee's rates below its existing rates, customers will receive refunds, with interest, down to the Commission approved rates, even if those rates are below the refund floor, for the number of days between May 1, 2015, and the actual filing date of a new rate case.<sup>6</sup>

9. Second, Tennessee seeks waiver of section 154.303(a)(1) of the Commission's regulations<sup>7</sup> so that it may use the same base and test periods that are being used in the settlement negotiations in any rate case filing should negotiations prove to be unsuccessful. Tennessee states that the data used to facilitate these settlement discussions is premised upon a 12-month base period ending December 31, 2014, and a 9-month adjustment period ending September 30, 2015. Tennessee further states that, under section 154.303(a)(1), the use of this test period data in a litigated proceeding would require Tennessee to make a rate case filing no later than May 1, 2015. Tennessee states that it has had to proceed under parallel tracks to prepare its rate case filing and engage in pre-filing settlement negotiations and intends to use a base period ending December 31, 2014, if its pre-filing settlement discussions are unsuccessful and a general NGA section 4 rate case filing must be made. Tennessee further states that, if the Commission grants its request for a shortened suspension so that it can delay its new rate case filing, the proposed base period would no longer be in compliance with the Commission's regulations because its filing date would be more than four months after the close of its base period.

10. Therefore, Tennessee requests a waiver of section 154.303(a)(1) so that it may make its general NGA section 4 rate case filing, to the extent necessary, after May 1, 2015, while retaining the Calendar Year 2014 base period. Tennessee asserts that failure to grant this waiver would prejudice Tennessee and penalize it for its good faith efforts to settle by requiring Tennessee to compile data based on new base and test periods. Tennessee contends that granting the waiver preserves the benefits of the November 1 effective date bargained for by the parties to the 2011 Settlement and permits the same base and test period underlying its settlement negotiations.<sup>8</sup> Tennessee further contends

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<sup>6</sup> Therefore, if the filing is postponed until July 1 and the Commission ultimately sets a rate below the refund floor, Tennessee will make refunds for the two months prior to the date the rates established by the Commission take effect, down to the level approved by the Commission.

<sup>7</sup> 18 C.F.R. § 154.303(a)(1) (2014).

<sup>8</sup> Tennessee Petition at 9 (citing *Southern*, 142 FERC ¶ 61,078 at PP 35, 38).

that, if it has to file a rate case, use of the same base and test periods may facilitate negotiations at that time since all parties will be familiar with the underlying data.

### **Notice and Responsive Pleadings**

11. Public notice of Tennessee's filing was issued on February 20, 2015. Responses were due on or before on February 24, 2015. Pursuant to Rule 214,<sup>9</sup> 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 this proceeding or place additional burdens on existing parties. No protests or adverse comments to the petition were filed.

### **Discussion**

12. The Commission grants Tennessee's unopposed petition for good cause shown. The shortened suspension period will permit the parties an opportunity to resolve issues concerning revised rates on Tennessee without litigation consistent with the Commission's goal of encouraging settlements. Further, the requirement in the 2011 Settlement that Tennessee file a new rate case will be substantially preserved and the goal of achieving a settlement of the issues will be encouraged through continued settlement negotiations. The effective date for the new rates of November 1, 2015, is the date set forth in the 2011 Settlement and the base and test period will be the same as those used in the settlement negotiations. The parties to a new rate case will not be deprived of the statutory notice period, the opportunity to intervene and protest, or having all relevant issues resolved in any suspension order or ensuing rate case. Shippers will remain protected by a refund obligation effective November 1, 2015, with a waiver of the refund floor protecting shippers from any delay in the effective date of any rate reduction ordered by the Commission.

13. The Active parties have either agreed to or not objected to Tennessee's petition which will allow continuing negotiations in order to reach a settlement concerning Tennessee's rates. Accordingly, the Commission finds that it is fair and reasonable and in the public interest to grant the petition and give the parties an opportunity to continue negotiations which could result in a settlement and avoid the need for Tennessee to file, and the parties to litigate, a new rate case.

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<sup>9</sup> 18 C.F.R. § 385.214 (2014).

The Commission orders:

Tennessee's petition is granted, as discussed in the body of this order.

By the Commission

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.