

150 FERC ¶ 61,239  
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.

East Tennessee Natural Gas, LLC

Docket No. RP15-575-000

ORDER ACCEPTING TARIFF RECORDS

(Issued March 31, 2015)

1. On February 27, 2015, East Tennessee Natural Gas, LLC (East Tennessee), filed revised tariff records<sup>1</sup> to conform its reservation charge crediting tariff provisions to current Commission policy. For the reasons discussed below, the Commission accepts the revised tariff records effective April 1, 2015, as requested.

**I. Background**

2. In *Natural Gas Supply Association, et al.*,<sup>2</sup> the Commission encouraged interstate pipelines to review their tariffs to determine whether their individual tariff complies with the Commission's policy concerning reservation charge credits, and, if not, make an appropriate filing to comply. In general, the Commission requires all interstate pipelines to provide reservation charge credits to their firm shippers during both *force majeure* and *non-force majeure* outages. The Commission requires pipelines to provide full reservation charge credits for outages of primary firm service caused by *non-force majeure* events, including routine maintenance. The Commission requires pipelines to provide partial reservation charge credits during *force majeure* outages, to allow risk sharing for events for which neither party is responsible. Partial credits may be provided pursuant to: (1) the No-Profit method under which the pipeline gives credits equal to its return on equity and income taxes starting on Day 1; or (2) the Safe Harbor method under which the pipeline provides full credits after a short grace period when no credit is due

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<sup>1</sup> See Appendix.

<sup>2</sup> *Natural Gas Supply Association, et al.*, 135 FERC ¶ 61,055 at P 2, *order on reh'g*, 137 FERC ¶ 61,051 (2011) (NGSA).

(i.e., 10 days or less).<sup>3</sup> The U.S. Court of Appeals for the District of Columbia Circuit affirmed the Commission's reservation charge crediting policy in *North Baja Pipeline, LLC v. FERC*.<sup>4</sup>

3. The Commission has also allowed partial crediting for outages due to orders issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to section 61039(c) of Chapter 601 of Title 49 of the U.S. Code for a transitional two-year period.<sup>5</sup> Section 23(a) of the Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011 (2011 Act) added section 60139 to U.S. Code. Sections 60139(a) and (b) require pipelines to verify their records to confirm the maximum allowable operating pressure (MAOP) of certain pipeline segments and submit to PHMSA documentation relating to each pipeline segment for which the pipeline's records are insufficient to confirm the established MAOP. Section 60139(c) provides that, after receiving this information, PHMSA must require pipelines to reconfirm the MAOP of any pipeline segments with inadequate documentation "as expeditiously as economically feasible," and PHMSA must determine what interim actions "are appropriate for the pipeline owner or operator to take to maintain safety until a [MAOP] is confirmed." The Commission found that outages resulting from PHMSA orders issued pursuant to section 60139(c) are not the routine scheduled outages in the normal course of business for which full credits are required. Rather, such outages are one-time nonrecurring events comparable to those for which partial crediting is allowed as *force majeure* events.<sup>6</sup>

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<sup>3</sup> See, e.g., *Tennessee Gas Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022 (1996), *order on reh'g*, Opinion No. 406-A, 80 FERC ¶ 61,070 (1997), *as clarified by*, *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 63 (2006). The Commission has stated that pipelines may also use some other method which results in an equitable sharing of the risk.

<sup>4</sup> *North Baja Pipeline, LLC v. FERC*, 483 F.3d 819, 823 (D.C. Cir. 2007), *aff'g*, *North Baja Pipeline, LLC*, 109 FERC ¶ 61,159 (2004), *order on reh'g*, 111 FERC ¶ 61,101 (2005).

<sup>5</sup> *Gulf South Pipeline Co., LP*, 141 FERC ¶ 61,224, at P 40 (2012), *order on reh'g and compliance filing*, 144 FERC ¶ 61,215 (2013) (*Gulf South*); *Gulf Crossing Pipeline Co. LLC*, 141 FERC ¶ 61,222, at P 40 (2012), *order on reh'g and compliance filing*, 145 FERC ¶ 61,021 (2013) (*Gulf Crossing*); *Texas Gas Transmission, LLC*, 141 FERC ¶ 61,223, at P 39 (2012), *order on reh'g and compliance filing*, 145 FERC ¶ 61,100 (2013) (*Texas Gas*) (collectively referred to as *Gulf South, et al.*).

<sup>6</sup> *Gulf South*, 141 FERC ¶ 61,224 at n.25; *Gulf Crossing*, 141 FERC ¶ 61,222 at n.24; *Texas Gas*, 141 FERC ¶ 61,223 at n.26.

## II. Details of the Filing

4. East Tennessee's existing tariff does not contain any reservation charge crediting provisions. As requested by the Commission in *NGSA*, East Tennessee proposes to add new General Terms and Conditions (GT&C) sections 9 and 10 to provide the reservation charge crediting provisions consistent with Commission policy. Proposed section 9 of the GT&C will provide the reservation charge crediting provisions for firm transportation service under firm Rate Schedules FT-A and FT-L, while proposed GT&C section 10 will provide the reservation charge crediting provision applicable to LNG-based storage service under Rate Schedule LNGS. East Tennessee states its proposed reservation charge crediting tariff provisions are consistent the reservation charge crediting provisions the Commission recently approved in *Texas Eastern*.<sup>7</sup>

5. In proposed section 9.1, East Tennessee proposes to provide full reservation charge credits to customers for outages of primary firm service due to non-*force majeure* events. In sections 9.1(i) through (iv), East Tennessee proposes to calculate the reservation charge credits to be provided during non-*force majeure* outages based on "the lesser of" of the following quantities:

(i) the quantity of gas that East Tennessee failed to deliver which qualified for scheduling at the highest scheduling priority in its tariff;<sup>8</sup>

(ii) when East Tennessee gives seven days' or less advance notice of the outage before the Timely Nomination Cycle for the applicable day, the shipper's average usage of primary firm service during the seven day period immediately before the outage;

(iii) when East Tennessee gives more than seven days' advance notice of the outage, the shipper's average usage during the same calendar days of the preceding year as the outage, with an adjustment based on any increase or decrease in the shipper's firm contractual entitlements during that year;  
or

(iv) the shipper's firm contractual entitlement under Customer's service agreement minus the quantity of gas actually delivered.

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<sup>7</sup> *Texas Eastern Transmission, Inc.* 149 FERC ¶ 61,143 (2014) (*Texas Eastern*).

<sup>8</sup> That scheduling priority is set forth in section 15.3(a)(i) of East Tennessee's GT&C, and is the equivalent of a primary firm scheduling priority.

6. In proposed section 9.2, East Tennessee proposes to provide partial reservation charge credits pursuant to the Safe Harbor method for *force majeure* events and outages due to orders issued by PHMSA pursuant to Section 61039(c) prior to April 1, 2017. Under its proposal, East Tennessee would provide no reservation charge credits during the first 10 days of these outages; after that 10 day period, it would provide full credits calculated pursuant to section 9.1. Proposed section 9.3 provides the circumstances that would prevent a customer from receiving reservation charge credits, i.e., outages due to the conduct of customers or other parties outside the control of the pipeline.

7. East Tennessee states that its proposed section 10 operates similarly to section 9 but applies to Rate Schedule LNGS, an LNG-based storage service. Proposed section 10.1 contains East Tennessee's provisions for non-*force majeure* events and section 10.2 contains East Tennessee's provisions for *force majeure* events. Proposed section 10.3 provides the circumstances that would prevent a customer from receiving reservation charge credits.

8. Finally, East Tennessee also proposes to revise its *force majeure* clause GT&C section 24.1 "Excuse of Performance Remedies." East Tennessee proposes to remove maintenance-type activities from the list of circumstances where East Tennessee's performance is excused consistent with Commission policy.

### **III. Public Notice**

9. Public notice of East Tennessee's filing was issued on March 3, 2015. Interventions and protests were due as provided by section 154.210 (18 C.F.R. § 154.210 (2014)) of the Commission's regulations. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2014), all timely motions to intervene and any unopposed motions to intervene out-of-time filed before the 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. Tennessee Valley Authority (TVA) submitted a protest, and, on March 19, 2015, East Tennessee filed an answer to the protest (Answer)<sup>9</sup> which are discussed below.

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<sup>9</sup> Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits answers to protests or answers unless otherwise permitted by the decisional authority. 18 C.F.R. § 385.213(a)(2) (2014). However, the Commission accepts East Tennessee's Answer since it will not delay the proceeding, may assist the Commission in understanding the issues raised, and will ensure a complete record.

#### IV. Discussion

10. We find that East Tennessee's proposed tariff records are consistent with the Commission's reservation charge crediting policy, and therefore we accept those tariff records effective April 1, 2015, as requested.

11. In its protest, TVA states that it does not support any limits or qualifications to shippers receiving full reservation charge credits for non-*force majeure* events or certain orders issued by PHMSA. TVA views these types of events as typical to operating in the energy industry and not valid exemptions to full reservation charge credit obligations. TVA asserts that it has contracted for long-term, firm requirements, and this proposal does not allow TVA to recoup that investment and may result in it not having needed generation. TVA opposes any criteria limiting a full contractual quantity credit in any situation other than *force majeure*.

12. TVA's objections are meritless. As East Tennessee asserts in its Answer,<sup>10</sup> East Tennessee's filing complies with the Commission's current policy regarding reservation charge credits for outages due to non-*force majeure* outages and section 61039(c) orders issued by PHMSA. The Commission has established its policy in numerous proceedings, and East Tennessee's proposed tariff language is consistent with that precedent. TVA fails to identify any Commission orders concerning reservation charge crediting with which East Tennessee's proposal fails to comply. In effect, TVA's protest is concerned with the Commission's policy rather than East Tennessee's implementation of that policy. However, TVA fails to make an argument which would support either not applying or altering the policy in this case.

13. The Commission's established policy recognizes that, in some circumstances, i.e., outages solely due to customers or other parties outside the control of the pipeline, exemptions to the requirement of full crediting for non-*force majeure* outages, are appropriate. For example, the Commission has approved the exemption from the requirement to provide reservation charge credits due to the conduct of upstream or downstream entities when an outage is due solely to the conduct of entities outside the control of the pipeline.<sup>11</sup> East Tennessee's proposed crediting exemptions for outages due to the conduct of entities outside its control include language limiting the exemption to situations when East Tennessee is otherwise available to receive or deliver gas, thus ensuring that these exemptions are limited to situations where the outage is due solely to

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<sup>10</sup> Answer at 2 and 4.

<sup>11</sup> See, e.g., *Gulf South*, 141 FERC ¶ 61,224 at PP 82-83; *Texas Eastern*, 149 FERC ¶ 61,143 at PP 184-185.

the conduct of others as required by Commission policy.<sup>12</sup> That language also makes clear that East Tennessee would be required to provide partial reservation credits when a *force majeure* event affects both its system and the system of an upstream or downstream pipeline, consistent with the Commission's *Paiute* decision.<sup>13</sup> Therefore, East Tennessee's proposal to exempt certain non-*force majeure* outages from the full crediting requirement fully complies with the Commission's reservation charge crediting policy.

14. In addition, as discussed above, in *Gulf South, et al.*,<sup>14</sup> the Commission stated that it would allow partial reservation charge crediting for outages of primary firm service required to comply with orders issued by PHMSA pursuant to section 60139(c) for a transitional two-year period. Therefore, East Tennessee's proposal to provide partial reservation charge credits for such outages is also consistent with Commission policy.

15. Accordingly, the Commission accepts East Tennessee's proposed tariff records effective April 1, 2015, as consistent with current Commission policy.

The Commission orders:

The tariff records listed in the Appendix to this order are accepted to become effective April 1, 2015.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>12</sup> *Texas Eastern*, 149 FERC ¶ 61,143 at P 185.

<sup>13</sup> *Paiute Pipeline Co.*, 139 FERC ¶ 61,089, at P 31 (2012).

<sup>14</sup> *Gulf South*, 141 FERC ¶ 61,224 at P 40, 144 FERC ¶ 61,215; *Gulf Crossing*, 141 FERC ¶ 61,222 at P 40, 145 FERC ¶ 61,021; *Texas Gas*, 141 FERC ¶ 61,223 at P 39, 145 FERC ¶ 61,100. See also *Dominion Transmission, Inc.*, 142 FERC ¶ 61,154 (2013), *order on reh'g and compliance filing*, 146 FERC ¶ 61,101 (2014), *Portland Natural Gas Transmission Sys.*, 143 FERC ¶ 61,181 (2013), *order on reh'g*, 150 FERC ¶ 61,184 (2015).

**Appendix**

**East Tennessee Natural Gas, LLC**  
**FERC NGA Gas Tariff**  
**East Tennessee Database 1**

*Tariff Records accepted effective April 1, 2015*

[Part 1, Table of Contents, 3.0.0](#)

[1., FT-A Firm Transportation Service, 3.0.0](#)

[2., FT-L Firm Lateral Transportation Service, 2.0.0](#)

[4., LNGS Liquefied Natural Gas Storage Service, 1.0.0](#)

[Part 6, General Terms and Conditions, 2.0.0](#)

[9., Reservation Charge Crediting for Firm Transportation Service, 1.0.0](#)

[10., Reservation Charge Crediting for LNGS Service, 0.0.0](#)

[11-13., Reserved for Future Use, 0.0.0](#)

[24., Excuse of Performance and Remedies, 1.0.0](#)