153 FERC ¶ 61,122
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

East Tennessee Natural Gas, LLC — Docket No. RP15-1317-000

ORDER ACCEPTING TARRIF RECORDS

(Issued October 30, 2015)

1. On September 30, 2015, East Tennessee Natural Gas, LLC (East Tennessee) filed tariff records to reflect changes to its cashout mechanism in Rate Schedules LMS-MA and LMS-PA and changes to its supply aggregation service under Rate Schedule SA.[1] The Commission will accept East Tennessee's proposed tariff records to be effective November 1, 2015, as discussed below.

I. Background

2. East Tennessee states that during the 2014-2015 heating season, it issued a series of operational flow orders (OFOs) and operational alerts to maintain operational integrity. East Tennessee asserts that operating conditions caused by changes in the utilization of its system caused the need for such actions. East Tennessee states that following the heating season it met with its customers to discuss changes to reduce or prevent similar operating conditions in the future. East Tennessee states that no consensus was reached in this meeting but that it has elected to continue the discussions regarding the need for tariff changes.

3. In the instant filing, East Tennessee proposes revisions to its cashout mechanism in Rate Schedules LMS-MA and LMS-PA, and its supply aggregation service under Rate Schedule SA. East Tennessee states that revisions to its cashout mechanism are necessary because the current index prices reflected in its existing cashout mechanism are tied to outdated references to the Tennessee Gas Pipeline (Tennessee) cashout mechanism, which Tennessee revised in a manner that is no longer consistent with the

[1] *See* Appendix.

workings of East Tennessee's cashout mechanism. Specifically, East Tennessee proposes to revise its cashout mechanism in Rate Schedules LMS-MA and LMS-PA by replacing references to Tennessee's cashout mechanism with representative index prices. East Tennessee states that as of August 1, 2015, Tennessee no longer publishes regional prices that are applicable to the cashout mechanism currently used by East Tennessee. Pursuant to the instant proposal in Section 7.5(c) of Rate Schedule LMS-MA and section 7.2(a) of Rate Schedule LMS-PA, East Tennessee will determine its cashout prices utilizing prices published in *Gas Daily's* "Daily Price Survey" for the "Tennessee, 500 Leg" for the relevant month. East Tennessee also proposes to remove language in section 7.5(a) of Rate Schedule LMS-MA that added East Tennessee's transportation rate and fuel to the cashout price calculation, because its newly proposed index price is a delivered price that already incorporates those components. East Tennessee states that its proposed index is based upon a liquid trading point that is directly connected to East Tennessee's system.

4. In regard to the proposal to modify its supply aggregation (pooling) services provided under Rate Schedule SA, East Tennessee asserts that the terms and conditions of that rate schedule need to be updated and clarified to reflect current operational practices. East Tennessee asserts that Rate Schedule SA is currently not used, but that it has recently received its first request from a customer for pooling service under Rate Schedule SA. East Tennessee states that its proposed revisions to Rate Schedule SA will permit it to effectively administer the pooling service and allows customers to efficiently utilize the service. East Tennessee states that Rate Schedule SA allows customers to aggregate supplies within defined pooling areas and clarifies that, while customers may transfer gas between Rate Schedule SA agreements, transfers of gas between different pooling areas must utilize transportation.

5. East Tennessee also states that its revised Rate Schedule SA will permit any party, not just a Rate Schedule SA agreement holder, to nominate gas into or out of a pool and also requires that Rate Schedule SA agreement holders are responsible for keeping their pools balanced. East Tennessee maintains that transportation to and from the pools will be scheduled pursuant to the scheduling provisions in General Terms and Conditions (GT&C) Section 15, and nominations for the transportation of gas to or from a paper pooling point will be scheduled on a secondary firm basis pursuant to GT&C Section 15. East Tennessee also proposes to revise the definition of the pooling areas in GT&C Section 1.

II. Public Notice of the Filing and Responsive Pleadings

6. Public notice of the filing was issued on October 6, 2015. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2015)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2015)), 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. Protests to the filing were submitted by the Tennessee Valley Authority (TVA) and East Tennessee Group (ETG). Comments were also submitted by Atmos Energy Marketing, LLC (Atmos). On October 20, 2015, East Tennessee filed an answer in the instant proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, [18 C.F.R. §213 (a) (2) (2015)] prohibits an answer to a protest unless otherwise ordered by the decisional authority. The Commission will accept East Tennessee's answer because it has provided information that assisted us in our decision-making process.

7. TVA agrees with East Tennessee that the existing methodology for calculating cashouts is no longer viable and that the Tennessee 500 Leg is a liquid trading point. However, TVA states that it opposes the Tennessee 500 Leg index as the sole cashout index on the East Tennessee system because it is weighted against customers that only hold capacity on the east side of the East Tennessee system. TVA asserts that East Tennessee should adopt a different cashout mechanism that would be tied to contracted delivery points whereby all contracts with primary delivery point(s) west of Topside would be cashed out at the 100 percent weighted average of the Tennessee 500 Leg, and all contracts with primary delivery point(s) east of Topside would be cashed out at 100 percent of Transco's Zone 5 index price. TVA also opposes East Tennessee's proposal to retain the current minority/majority methodology for calculating imbalance pricing[2]

[2] East Tennessee's imbalance cashout mechanism uses a high/low monthly pricing system in lieu of the average monthly spot price system, and incorporates majority/minority pricing system. *East Tennessee Natural Gas Co.*, 88 FERC ¶ 61,287 (1999); *see also East Tennessee Natural Gas Co*., Docket No. RP02-218-001, Letter Order (Aug. 29, 2002); *East Tennessee Natural Gas Co.*, Docket No. RP01-323-000, Letter Order (May 3, 2001); *East Tennessee Natural Gas Co.*, 90 FERC ¶ 61,338 (2000). East Tennessee uses its majority/minority pricing methodology to combat price arbitrage on its cashout mechanism because until the end of the cashout period a customer will not know whether it is in the minority or majority of shippers on the East Tennessee system. A customer is designated as being in the minority or the majority based on whether their imbalance is in same direction as the majority of the other parties' imbalances (Majority), or whether their imbalance is in the opposite direction (Minority). Moreover, East Tennessee's high low pricing system requires a shipper that owes East Tennessee gas to pay a higher price than if East Tennessee owes the shipper gas during the cashout period.

and asserts that East Tennessee should implement a fifth week methodology to deter arbitrage.[3]

8. TVA and ETG raise concerns with East Tennessee's proposal to modify its Supply Aggregation Service (pooling) provisions. TVA states that while pooling promotes liquidity, which benefits all customers, East Tennessee neglected to specify whether a pooling customer would be able to choose a pooling area as a primary receipt point.

9. ETG argues that East Tennessee failed to show that changes in its pooling provisions serve the public convenience and necessity. ETG also expresses concerns that East Tennessee's proposal to establish pooling areas may be construed as dividing the pipeline into zones, either for rate purposes or for flexibility purposes. ETG states that any acceptance by the Commission of the pooling proposal must not be construed to pre-approve zones on the East Tennessee system for any purpose other than pooling.

10. ETG also asserts that East Tennessee maintains that its Rate Schedule SA pooling service would be a secondary firm priority service, and that it would be governed by GT&C Section 15. ETG states that if all service to and from pooling points is added to the secondary firm priority services on the East Tennessee system, there is a risk that ETG member service would be interrupted or curtailed because they were forced by constraints on the system to use secondary receipt points to get deliveries made to their primary firm, city gate delivery points. Finally, ETG states that the proposed pooling provisions leave unclear whether shippers would have to pay charges only once, or twice, on service to or from a paper pooling point. ETG requests clarification on this issue.

11. TVA, ETG, and Atmos voice a number of additional concerns related to the need for East Tennessee to develop tariff mechanisms that increase reliability. These

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[3] TVA asserts that East Tennessee should employ a fifth week method to discourage price arbitrage under its cashout method. While TVA provides little detail of its proposal, in general under an average monthly cashout mechanism arbitrage opportunities may arise because a reasonable estimate of the cashout price may sometimes be determined prior to the end of the gas flow month, thus potentially affording cashout parties an economic incentive to adjust their imbalance positions to realize the price differential between the estimated cashout price and the then-existing spot price. The addition of a fifth week into the determination of the monthly average price cashout is thought to discourage price arbitrage by making it more difficult for shippers to predict and capitalize on the average cashout price during the last week of gas flow during the month because there will still be a week of prices to add to the calculation after the end of the gas month. Moreover, the addition of a fifth week does not increase the harshness of the penalty system. *See Texas Gas Transmission Corp.*, 97 FERC ¶ 61,349 (2001).

intervenors also express concern that the changes proposed will have limited, if any, impact on addressing operational concerns on the East Tennessee system. ETG asserts that East Tennessee has not provided its customers with a diagnosis of, or a set of solutions to, the potential causes of the service disruptions that occurred last winter. TVA states that changes are needed with regards to OBA imbalances and East Tennessee's OFO penalties and procedures and suggests that a conference be held to fully consider the tariff changes necessary to avoid the impairment of transportation service on East Tennessee's system this winter heating season.

12. In its answer, East Tennessee recognizes that additional tariff changes may be needed to address the changed operating conditions on its system. However, it states that the parties' comments indicate that a substantial gap still exists among its shippers concerning what changes would be reasonable. Therefore, it asserts that the Commission should accept its proposed limited tariff changes which are needed immediately, while East Tennessee and its customers continue to seek consensus on further tariff changes.

III. Discussion

13. For the reasons discussed below, the Commission accepts East Tennessee's instant filing as a reasonable interim measure to address current problems on East Tennessee's system during the upcoming winter heating season, while the parties continue to consider further tariff changes.

A. Cashout Mechansim

14. East Tennessee's proposal to revise its cashout mechanism in Rate Schedules LMS-MA and LMS-PA by replacing references to Tennessee's cashout mechanism with representative index prices from Tennessee 500 Leg for the relevant month is reasonable. First, the current cashout mechanism must be revised because it relies on information which will no longer be published. No party disputes this fact. Second, East Tennessee states that it chose the Tennessee 500 Leg index because it is a liquid trading point directly connected with the East Tennessee system. TVA opposes this index location, stating that the Tennessee 500 Leg is weighted against customers holding capacity only on East Tennessee's east side and contends that other indices and a cashout mechanism based upon the location of the customers' primary points may be preferable. East Tennessee responds that it considered other index points including those championed by TVA but determined that its proposed point is preferable to other available points based on liquidity and proximity to East Tennessee's system.

15. In addition, East Tennessee has shown that the proposed Tennessee 500 Leg index satisfies the requirements of the *Price Index Order*.[4] In that order, the Commission specified that the pipeline or utility making a tariff filing proposing to use a new price index in a tariff or change an existing price index bears the burden of showing that the index satisfies certain criteria. These criteria are as follows:

a. The index must be published or provided by an index developer that has met all or substantially all of the standards in five areas addressing: (1) code of conduct and confidentiality; (2) completeness; (3) data verification, error correction, and monitoring; (4) verifiability; and (5) accessibility.[5]

b. For a particular price index location to be used in a jurisdictional tariff, the index location must meet or exceed one or more of the minimum criteria for liquidity, i.e., the index must be developed based on a sufficient number of reported transactions involving sufficient volumes of natural gas or electricity.[6]

16. The *Price Index Order* stated that, if a pipeline or utility proposes to use an index location published by one of the price index developers identified in the *Price Index Order* and demonstrates that the index location meets one or more of the applicable criteria for the appropriate review period, the Commission will apply a presumption that the proposed index location will result in just and reasonable charges.[7]

17. On October 8, 2015, the Commission issued a data request requiring that East Tennessee provide certain information concerning its index point so that the Commission could determine its compliance with the *Price Index Order*. On October 9, 2015, East Tennessee complied with the Commission's request. In response to whether it had met the criteria necessary to place a price index into a jurisdictional tariff, East Tennessee stated that in the instant case, it chose an index point published by Platt's *Gas*

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[4] *Order Regarding Future Monitoring of Voluntary Price Formation, Use of Price Indices in Jurisdictional Tariffs, and Closing Certain Tariff Dockets,* 109 FERC ¶ 61,184 (2004) (*Price Index Order*).

[5] *Id.* at P 39 and Ordering Para. (C) (citing *Policy Statement on Natural Gas and Electric Price Indices,* 104 FERC ¶ 61,121, at P 33 (2003) (2003 Index Policy Statement)).

[6] *Id.* at P 66 and Ordering Para. (D).

[7] *Id.* P 68.

Daily, which is one of the price index developers pre- approved in the *Price Index Order.*[8]

18. Next, in response to whether the price index point chosen by East Tennessee was consistent with the *Price Index Order's* requirement that for a particular price index location to be used in a jurisdictional tariff, the index location must meet or exceed one or more of the minimum criteria for liquidity, i.e., the index must be developed based on a sufficient number of reported transactions involving sufficient volumes of natural gas, East Tennessee states that its Index met the requirements of the *Price Index Order*. Specifically, East Tennessee states that it has verified that the proposed index meets or exceeds the minimum daily index criteria of an average daily volume traded of at least 25,000 Dths, an average daily number of transactions of five or more, or an average daily number of counterparties of five or more. East Tennessee also provided detailed information reflecting that from July 1, 2015, through September 28, 2015, the average daily volume traded was 115,589 Dth and the average number of transactions was 23.

19. Given this demonstration by East Tennessee, the Commission finds that it has adequately shown that the new price index it proposes to include in its cashout mechanism meets the requirements of the *Price Index Order.* Accordingly, even though protesters have suggested alternative methods by which East Tennessee may have proposed a cashout methodology, the Commission finds that given the need for a representative price on its system before the upcoming heating season, the tariff records submitted by East Tennessee are just and reasonable.

20. East Tennessee concedes that the instant revision to its cashout mechanism is not a panacea for all system ills, and it remains concerned that its proposed cashout index change revisions may not be sufficient to provide appropriate incentives to customers to minimize imbalances nor allow the pipeline to be kept whole when imbalances accrue on the west end of the system, and the pipeline is required to support those imbalances by acquiring higher priced gas on the east end of the system. In its Answer, East Tennessee states that it proposed the instant revisions because it was unable to reach a consensus among its customers and East Tennessee was forced to file the proposed, limited changes, because East Tennessee believes such revisions are "necessary immediately," even though it finds some merit in the customer suggestions that were not adopted. Therefore, East Tennessee pledges to continue discussions with the customers in the spring of 2016 regarding the need for further changes to protect the reliability of primary firm service on its system.

21. Given East Tennessee's need to revise its tariff cashout provision and the fact that the index chosen appears to provide representative prices derived at a liquid point for its

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[8] *Id*. P 39

system prior to the upcoming heating season, the Commission finds that the instant revisions to the cashout mechanism are just and reasonable. The fact that protestors have suggested other methodologies does not compel the Commission to find that the instant revisions proposed by East Tennessee are not just and reasonable.

22. The Commission encourages East Tennessee and its customers to continue to address this issue and the other operational concerns raised by the customers in this proceeding in time for full implementation of any solutions before the 2016-2017 heating season.

B. Rate Schedule SA

23. East Tennessee states that it has received its first request for pooling service under Rate Schedule SA and its proposed changes in that rate schedule are needed so that East Tennessee can effectively administer the pooling service. ETG argues that East Tennessee must show that its Rate Schedule SA revisions serve the public convenience and necessity. The Commission finds that it has previously accepted East Tennessee's Rate Schedule SA as just and reasonable and that its proposed modifications to the rate schedule are also just and reasonable. The Commission requires pipelines to provide pooling service, if requested; therefore, the Commission finds East Tennessee's justification sufficient for its proposal to update its pooling provisions.[9]

24. Both TVA and ETG are concerned that East Tennessee neglected to specify the priority of a pooling point in its revisions. TVA states that a pooling area should be considered a primary receipt point, whereas ETG states that a pooling area should have secondary priority, below that of secondary-to-primary service. In its Answer, East Tennessee states that it does not propose any changes to the scheduling priority of pooling service. East Tennessee further states that pooling areas are secondary points under its tariff and that its tariff requires that East Tennessee schedule nominations to or from pooling areas with other similar-priority secondary nominations.

25. Pursuant to East Tennessee's tariff, under Rate Schedule FT-A "primary Receipt Point(s) for all gas transported by Transporter under this Rate Schedule on that portion of Transporter's system not designated as an Incremental Lateral shall be at the mutually

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[9] *Standards for Business Practices of Interstate Natural Gas Pipelines,* FERC Stats. & Regs., Regulations Preambles July 1996 - December 2000 ¶ 31,038 (1996) (Order No. 587). In this order, the Commission defined pooling as the aggregation of gas from multiple physical or logical points to a single physical or logical point. The Commission also adopted North American Energy Standards Board (NAESB) Standard 1.3.17, providing "If requested by a shipper or supplier on a transportation service provider's system, the transportation service provider should offer at least one pool."

agreeable interconnection(s) between Transporter's system and the connecting facilities of Shipper or Shipper's designee."[10] Therefore, according to East Tennessee's tariff, paper pooling points are not eligible as primary receipt points. As East Tennessee states in its answer, East Tennessee's proposed pooling points will be treated as having a secondary firm scheduling priority.

26. ETG also expresses concern that any acceptance by the Commission of East Tennessee's proposed pooling areas must not be construed to pre-approve zones on the East Tennessee system for any purpose other than pooling. In its Answer, East Tennessee confirms that it does not intend, through its instant filing, to introduce zones for rate purposes. The Commission finds that East Tennessee had adequately responded to ETG's concern. ETG also asserts that the proposed pooling provisions leave unclear whether shippers would have to pay charges only once, or twice, on service to or from a paper pooling point. The Commission's policy requires that charges can only be assessed once on volumes moving through a pool.[11] In the Commission's view, East Tennessee's tariff, as well as the proposed modifications, are consistent with this policy.

27. Finally, it is apparent from a review of the instant filing and associated submittals that East Tennessee and its customers face ongoing operational issues. The Commission accepts the revisions in the instant filing as just and reasonable and finds that such revisions are necessary for the upcoming heating season. The Commission takes East Tennessee's statement that it intends to meet with its customers to resolve these issues as a good faith effort to maintain its system in proper order. The Commission encourages these parties to resolve these issues in time for the Commission to fully consider the proposed tariff revisions before the 2016-2017 heating season.

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[10] East Tennessee Natural Gas, LLC, FERC NGA Gas Tariff, East Tennessee Database 1, 1., FT-A Firm Transportation Service, 3.0.0.

[11] *See Standards for Business Practices of Interstate Natural Gas Pipelines,* Order No. 587-F, FERC Stats. & Regs. ¶ 32,527 at 33,351 (1997) ("when a pool exists in a rate zone, the charge for shipment in that zone must be incurred either for shipment to the pool or shipment out of the pool.").

The Commission orders:

The proposed tariff records listed in the Appendix are accepted to be effective November 1, 2015, as requested.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

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

Tariff Records Accepted Effective November 1, 2015

8., LMS-MA Market Area Load Management Service, 3.0.0
9., LMS-PA Pooling Area Load Management Service, 3.0.0
10., SA Supply Aggregation Service, 1.0.0
1., Definition of Terms, 4.0.0
10.1, Reserved for Future Use, 1.0.0