

153 FERC ¶ 61,243
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Eastern Shore Natural Gas Company

Docket No. RP16-140-000

ORDER ACCEPTING TARIFF RECORDS AND AGREEMENT
SUBJECT TO CONDITIONS

(Issued November 24, 2015)

1. On October 30, 2015, Eastern Shore Natural Gas Company (Eastern Shore) filed tariff records¹ reflecting a non-conforming Off Peak Firm (OPT \leq 90) Transportation Service Agreement between Calpine Energy Services, L.P. (Calpine) and Eastern Shore (Calpine OPT \leq 90 FTSA). Eastern Shore requests the tariff records be accepted effective November 30, 2015. As discussed below, the Commission accepts Eastern Shore's tariff records and the filed contract effective November 30, 2015, subject to conditions.

I. Background

2. Eastern Shore states that it is filing the Calpine OPT \leq 90 FTSA, Contract No. 010153, as non-conforming because Calpine has requested certain wording changes to Exhibits A and B of the *pro forma* OPT \leq 90 service agreement. According to Eastern Shore, Exhibits A and B of the *pro forma* provide that Eastern Shore may decline to schedule service for up to 90 days annually during the period between November 1 of any year and the next succeeding April (peak months).² Eastern Shore proposes to revise the *pro forma* OPT \leq 90 FTSA description of peak months for the Calpine OPT \leq 90 FTSA specifically to define peak months as two separate blocks of time, January through April and November through December, instead of the current period of November to April. Eastern Shore also proposes minor wording changes to the designation used for

¹ See Appendix.

² Eastern Shore, FERC Gas Tariff, [Sheet No. 27, Rate Schedule Off Peak Transportation, 0.0.0.](#)

Transportation Service Provider and Service Requester and revisions to the arrangement of the wording in Exhibits A and B.

3. Eastern Shore contends that while these wording changes constitute deviations from the *pro forma* service agreement, they are not intended to alter the substance or meaning of the *pro forma* Exhibits

4. Public notice of these filings was issued on November 2, 2015. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.³ Pursuant to Rule 214,⁴ 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. Easton Utilities Commission (Easton) filed comments.

II. Comments

5. In its comments Easton opposes the proposed revision to the definition of peak months in the Calpine OPT \leq 90 FTSA. Easton claims that the revisions to Exhibits A and B are substantive changes that alter the nature of the service provided to the shipper in comparison to the service that may be provided to other shippers under the terms of the OPT \leq 90 Rate Schedule. Easton contends that in a year where Eastern Shore exercises its right to decline to schedule service for 90 days from January to April, Calpine would enjoy uninterrupted service during the months of November and December in the following winter, because Eastern Shore would have already have used its ability to limit service in the earlier period. Easton notes that in contrast, all other OPT \leq 90 shippers with the *pro forma* definition of peak months as one period between November and April would be subject to having their OPT \leq 90 nominations declined during November and December.⁵

³ 18 C.F.R. § 154.210 (2015).

⁴ 18 C.F.R. § 385.214 (2015).

⁵ Easton Comments at 4.

6. Easton also states that Eastern Shore previously proposed nearly identical language, which the Commission rejected, in Docket No. RP14-1173, the proceeding establishing the OPT \leq 90 Rate Schedule. Easton asserts that in Docket No. RP14-1173, Eastern Shore proposed language that contained the same internal inconsistency between the definition of peak months in the *pro forma* and the definition of peak months in the OPT \leq 90 Rate Schedule.⁶ Easton states that the Commission approved Eastern Shore's proposal to implement Rate Schedule OPT \leq 90 service subject to Eastern Shore filing to clarify the definition of peak months in Exhibits A and B so that the definition of peak months in the service agreement matched the definition in the rate schedule.⁷

7. Easton suggests that the Commission should require Eastern Shore to either: (1) remove the non-conforming provisions from Exhibits A and B of the subject agreement, or (2) revise its tariff to provide shippers with an option to select a calendar-year period in which service may be declined in lieu of or in addition to the existing seasonal option.⁸

III. Commission Determination

8. A material deviation is any provision in a service agreement that goes beyond filling in the blank spaces with the appropriate information allowed by the tariff, and affects the substantive rights of the parties.⁹ As Easton notes, the Commission prohibits negotiated terms and conditions of service that result in a shipper receiving a different quality of service than that offered other shippers under the pipeline's generally applicable tariff or that affect the quality of service received by others.¹⁰ Provisions that materially deviate from the corresponding *pro forma* agreement fall into two general categories: provisions the Commission must prohibit because they present a significant

⁶ See Eastern Shore, Response to Easton Utilities Commission's Comments, Docket No. RP14-1173, at 5 (filed August 25, 2014).

⁷ Easton Comments at 3. The Commission accepted Eastern Shore's clarifying tariff language by letter order dated October 1, 2014. *Eastern Shore Natural Gas Co.*, Docket No. RP14-1173-001 (Oct. 1, 2014) (delegated letter order).

⁸ Easton Comments at 5, citing *Eastern Shore Natural Gas Co.*, 148 FERC ¶ 61,170, at P 16 (2014).

⁹ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001).

¹⁰ *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113, at P 28 (2010).

potential for undue discrimination among shippers, and provisions the Commission can permit without a substantial risk of undue discrimination.¹¹

9. Based on our review of Eastern Shore's proposed non-conforming agreement with Calpine and the differences between Eastern Shore's *pro forma* OPT \leq 90 FTSA and the Calpine OPT \leq 90 FTSA, we find that Eastern Shore has not demonstrated that the proposed revisions to the definition of peak months in Exhibits A and B of the Calpine OPT \leq 90 FTSA are just and reasonable. The Commission has held that the ability to obtain seasonal service is a valuable right, which must be offered to all shippers pursuant to not unduly discriminatory conditions.¹² The ability to obtain a seasonal service that is even slightly different from the seasonal service offered to other shippers is a valuable right because it allows the shipper to benefit from the reduced charges of the standard seasonal service, while obtaining greater control or flexibility over shipper curtailment risks. Therefore, to permit such a service for Calpine alone constitutes a substantial risk of undue discrimination.

10. With the exception of the peak month definition discussion above, the Commission finds that the other non-conforming provisions identified by Eastern Shore are permissible because they do not present a substantial risk of undue discrimination. The Commission will thus accept the tariff records subject to Eastern Shore making a compliance filing within 30 days of the date of this order. In order to bring the instant filing into compliance, Eastern Shore must either: (1) remove the proposed non-conforming language from Exhibits A and B of the Calpine OPT \leq 90 FTSA, or (2) file to revise the definition of peak months within its tariff to allow all shippers the option of choosing between the varying definitions of peak months presented in this filing.

The Commission orders:

(A) The tariff records reflected in the Appendix are accepted to be effective November 30, 2015, subject to the conditions discussed in the body of this order.

¹¹ *Equitrans, L.P.*, 130 FERC ¶ 61,024, at P 5 (2010).

¹² *E.g.*, *Granite State Gas Transmission Inc.*, 112 FERC ¶ 61,201, at P 4 (2005); *Ruby Pipeline, L.L.C.*, 138 FERC ¶ 61,220, at P 6 (2012); *Carolina Gas Transmission Corp.*, 143 FERC ¶ 61,081, at P 7 (2013); *Guardian Pipeline, L.L.C.*, 150 FERC ¶ 61,060 (2015).

(B) Eastern Shore is required, within 30 days of the issuance of this order, to revise the instant contract or its tariff, consistent with the discussion in this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Eastern Shore Natural Gas Company
FERC NGA Gas Tariff
Third Revised Volume No. 1

Accepted Effective November 30, 2015, Subject to Conditions

[Sheet No. 395, FORM OF SERVICE AGREEMENT, 0.0.0](#)
[Sheet No. 396, FORM OF SERVICE AGREEMENT, 0.0.0](#)
[Sheet No. 397, FORM OF SERVICE AGREEMENT, 0.0.0](#)
[Sheet No. 398, FORM OF SERVICE AGREEMENT, 0.0.0](#)
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