

154 FERC ¶ 61,277
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Tallgrass Interstate Gas Transmission, LLC

Docket No. RP16-137-004

ORDER ON REHEARING AND MOTION

(Issued March 31, 2016)

1. On December 30, 2015, the Tallgrass Shippers Group (TIGT Shippers)¹ and the City of Hastings, Nebraska, (Hastings) jointly filed for rehearing of the November Order that accepted and suspended Tallgrass Interstate Gas Transmission, LLC's (Tallgrass) proposed tariff records, subject to refund and the outcome of a hearing.² Separately, on December 30, 2015, Hastings filed a motion, or in the alternative request for rehearing, requesting that certain *pro forma* tariff records be removed from the hearing and set for technical conference. As explained below, the Commission denies TIGT Shippers and Hastings' rehearing requests, grants in part Hastings' motion to remove certain *pro forma* tariff records from the hearing, and requests further comment in order to assess the need for a technical conference.

I. TIGT Shippers and Hastings' Jointly Filed Rehearing

2. On rehearing, TIGT Shippers and Hastings assert that the Commission erred by setting for hearing Tallgrass' proposed surcharge to recover one time integrity costs.

¹ TIGT Shippers Group includes City of Alma, American Foods Group - Gibbon Packing, Bridgeport Ethanol, City of Central City, Nebraska Corn Processing, LLC, Prairie Horizon Agri Energy, Sterling Ethanol, Village of Stuart, Trenton Agri Products, U.S. Energy Services, Valero Renewable Fuels Company, LLC, Western Plains Energy, LLP, City of Wisner and Yuma Ethanol.

² *Tallgrass Interstate Gas Transmission, LLC*, 153 FERC ¶ 61,258 (2015) (November 30 Order).

TIGT Shippers and Hastings argue that the Commission should have rejected the proposal as inconsistent with the *Modernization Cost Recovery Policy Statement*.³

3. The Commission denies TIGT Shippers and Hastings' rehearing request.⁴ The decision whether to set an issue for hearing is a procedural matter within the Commission's discretion.⁵ The November 30 Order determined that the issues related to the proposed surcharge raised issues that could best be addressed at hearing.⁶ At hearing, TIGT Shippers may continue to litigate issues related to the surcharge, including the issues raised in their protest and rehearing in this proceeding.

II. Hastings' Motion

4. In its motion for a technical conference, Hastings asserts that a technical conference would provide the most efficient forum for reviewing the *pro forma* tariff records identified by Tallgrass as being included in Appendix B. Hastings states that at the time of its initial comments, it did not fully appreciate the complexity of the proposed changes, and, upon further review, has concluded that a technical conference would be appropriate. On January 14, 2016, both Tallgrass and TIGT Shippers filed comments supporting Hastings' motion.

5. The Commission grants, in part, and denies, in part, Hastings' motion to remove certain *pro forma* tariff records from the hearing. The Commission will not remove from the hearing *pro forma* tariff records related to Tallgrass' proposed charge at delivery points lacking electronic flow measurement equipment (non-EFM delivery points). The Commission has substantial discretion to adopt the procedures it deems appropriate for

³ *Cost Recovery Mechanisms for Modernization of Natural Gas Facilities*, 151 FERC ¶ 61,047 (2015) (*Modernization Cost Recovery Policy Statement*).

⁴ On January 14, 2016, Tallgrass filed an answer to TIGT Shippers' rehearing request. Section 713(d) of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.713(d) (2015)), prohibits answers to requests for rehearing. Accordingly, we reject Tallgrass' answer.

⁵ *Trailblazer Pipeline Co. LLC*, 144 FERC ¶ 61,252, at P 6 (2013) (*Trailblazer*); *Iroquois Gas Transmission System, L.P.*, 80 FERC ¶ 61,199, at 61,799 (1997) (citing *Stowers Oil and Gas Co.*, 27 FERC ¶ 61,001 (1984) (*Stowers*)).

⁶ November 30 Order, 153 FERC ¶ 61,258 at P 20.

addressing a particular issue.⁷ This proposed charge at non-EFM delivery points is a rate issue involving Tallgrass' ability to recover its costs. Thus, the Commission concludes that this charge is appropriately addressed at the hearing alongside the other rate issues.⁸

6. The Commission will remove from the hearing other issues related to the *pro forma* tariff records. The Commission frequently considers issues related to terms and conditions of service separately from the rate matters set for hearing procedures.⁹ Removing the *pro forma* tariff records from the hearing is actively supported by the pipeline and certain shipper parties, which represent that a hearing will delay resolution of these issues.¹⁰ No party opposes the removal from hearing.

7. Although the Commission is removing these issues from the hearing, the Commission is not convinced that a technical conference is necessary. No protest filed prior to the November 30 Order raised any objections to this aspect of Tallgrass' proposal.¹¹ Moreover, neither Hastings nor TIGT Shippers have raised any substantive

⁷ *E.g. Trailblazer*, 144 FERC ¶ 61,252 at P 6 (citations omitted); *Stowers*, 27 FERC ¶ 61,001. Hastings also states that the Commission failed to address a proposal for a technical conference in Tallgrass' November 19, 2015 answer to shipper protests. Commission regulations do not permit answers to protests unless otherwise ordered by the decisional authority. 18 C.F.R. § 385.213(a)(2). Because the Commission did not accept Tallgrass' answer, it is not part of the record and there was no requirement for the November 30 Order to address the arguments contained therein. Regarding those documents in the record, although a technical conference was referenced in Tallgrass' pre-filed testimony (*see* Exhibit No. TIG-207 at 59), the technical conference was not requested or mentioned in the pipeline's transmittal letter.

⁸ Tallgrass claims that where electronic flow measurement equipment is absent, Tallgrass incurs costs related to the use of storage gas in order to "balance unexpected variations" in actual gas flows. Tallgrass October 30, 2015 Transmittal at 6.

⁹ *E.g. Florida Gas Transmission Co., LLC.*, 149 FERC ¶ 61,188, at PP 10, 14 (2014); *Trailblazer Pipeline Co. LLC*, 144 FERC ¶ 61,084 (2013).

¹⁰ Hastings Motion at 3; TIGT Shipper Answer to Hastings Motion at 2-3; Tallgrass Answer to Hastings Motion at 1.

¹¹ The Commission notes that neither Hastings nor TIGT Shippers raised any concerns related to the *pro forma* tariff records in their protests following Tallgrass' October 30 filing. Those protests that addressed the *pro forma* tariff records only raised objections to the proposed charge at non-EFM delivery points. *E.g.* Atmos Energy

concerns regarding these proposals in their subsequent filings. The Commission expects parties to raise issues in a timely manner and to plead with greater specificity. In the absence of any controversy, the Commission typically denies requests for technical conference.

8. However, this proceeding presents unusual circumstances. Defects in Tallgrass' October 30, 2015 filing obscured the contents of the *pro forma* tariff records. Commission regulations require the pipeline's transmittal letter to include a summary of the proposed tariff changes, the need for the change, and the legal justification for the proposal.¹² Contrary to these requirements, Tallgrass' transmittal failed to describe the substantive changes proposed in the *pro forma* tariff records.¹³ Thus, neither the parties nor the Commission received adequate information regarding the proposed changes contained within the *pro forma* tariff records. In addition, Tallgrass' transmittal letter represented that the *pro forma* tariff records were contained within an Appendix B; however no such Appendix B was filed with the Commission.¹⁴ It appears as though the *pro forma* records may have been included in Exhibit No. TIG-234,¹⁵ but this was buried deeply in Tallgrass' filing and the location of the *pro forma* records was not apparent from the transmittal letter. As a result, any entity seeking further information related to

Corporation Protest at 3. However, as discussed above, this is a rate issue appropriately addressed at hearing.

¹² 18 C.F.R. § 154.7 (2015).

¹³ Tallgrass' transmittal letter only specifically described the charge at electronic flow measurement equipment. Tallgrass October 30 Transmittal at 6. Tallgrass' transmittal letter failed to specifically identify the remaining substantive changes proposed in the *pro forma* tariff records, such as modifications to its gas quality specifications. Rather, Tallgrass merely referred to the changes as being made "to reflect industry best practices, better organize the tariff for efficiency and for user friendliness, and harmonize provisions with the other Tallgrass Energy Pipelines and the industry at large." *Id.* The Commission admonishes Tallgrass to comply with Commission regulations. *See* 18 C.F.R. § 154.7. The Commission further emphasizes that similar deficiencies in the transmittal letter could lead to the rejection of subsequent filings. *E.g., Mars Oil Pipeline Co.*, 150 FERC ¶ 61,148, at n.7 (2015) (stating that "[f]ailure to provide an adequate explanation in the transmittal letter may result in the rejection of the pipeline's filing as patently deficient").

¹⁴ Specifically, Appendix B does not appear in the Commission's e-library system.

¹⁵ Hastings Motion at 2.

the *pro forma* tariff records needed to sift through hundreds of exhibits submitted with Tallgrass' pre-filed testimony. Given these unusual circumstances, the Commission will direct Tallgrass to file additional information to explain the contents of the *pro forma* tariff records and the Commission will provide shippers an additional opportunity to comment.

9. Accordingly, within 14 days of the issuance of this order, Tallgrass must file a corrected transmittal letter that complies with Commission regulations.¹⁶ Among other information, the corrected transmittal must include a summary of the proposed changes contained within the *pro forma* tariff records, explain the need for the changes, incorporate citations to any part of Tallgrass' pre-filed testimony discussing the *pro forma* tariff records, and provide the legal justification for the changes. The corrected transmittal must provide an Appendix containing a redlined version of the *pro forma* tariff records that clearly identifies any proposed changes to Tallgrass' existing tariff.¹⁷ Because the charge at non-EFM delivery points remains at hearing, Tallgrass should not address this issue in its corrected transmittal.

10. Within 28 days of the issuance of this order, parties may file supplemental comments addressing issues raised by the *pro forma* tariff records other than the proposed charge at non-EFM delivery points. These supplemental comments must include all relevant support for the party's position. The supplemental comments should also explain whether the party believes a technical conference is necessary, and, if so, the party must identify the specific issues justifying a technical conference.

11. Finally, in the alternative to its motion for technical conference, Hastings also requested rehearing. All issues raised by Hastings' rehearing, including its request that the Commission hold a technical conference to address the proposed charge at non-EFM delivery points, are addressed by the discussion above. Accordingly, rehearing is denied.

¹⁶ 18 C.F.R. § 154.7.

¹⁷ It appears that such a redlined version is included in the 1,151 page Exhibit No. TIG-234. Hastings Motion at 2. However, in order to avoid possible confusion given the voluminous record, the Commission seeks confirmation from Tallgrass regarding the changes proposed in the *pro forma* tariff records.

The Commission orders:

(A) Rehearing is denied for the reasons discussed above.

(B) The Commission grants, in part, and denies, in part, Hastings' motion to remove certain *pro forma* tariff records from the hearing.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.