

155 FERC ¶ 61,241
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 3, 2016

In Reply Refer To:
Texas Eastern Transmission, LP
Docket No. RP16-942-000

Texas Eastern Transmission, LP
5400 Westheimer Court
Houston, TX 77056-5310

Attention: Janice K. Devers, General Manager
Tariffs and Commercial Development

Dear Ms. Devers:

1. On May 11, 2016, Texas Eastern Transmission, LP (Texas Eastern) filed a request for waiver of the collection and crediting of operational flow order (OFO) penalties incurred by Texas Eastern customers during the period from April 29, 2016 through May 10, 2016. For good cause shown, and for the reasons discussed below, the Commission grants the request for waiver.
2. Texas Eastern states that it declared a *force majeure* on its system on April 29, 2016. Texas Eastern further states that subsequent to the *force majeure* declaration, it issued two OFOs, one on April 29, 2016 and the other on April 30, 2016, in order to maintain the operational integrity of its system. Texas Eastern states that each of the OFOs remained in effect until 3:30 pm on May 10, 2016.
3. Texas Eastern asserts that in response to the OFOs aggregate customer behavior resulted in pipeline operations that were sufficiently balanced during the OFO period, even though certain customers did not completely adhere to the OFOs.¹ According to Texas Eastern, because of the aggregate customer behavior in compliance with the OFOs,

¹ Texas Eastern states those customers are subject to a penalty pursuant to section 4.3(A)(6)(b) of the GT&C of its tariff.

there was no impairment of primary firm transportation service on its system. Therefore, because the level of OFO compliance was sufficient to address the operational issues on its system, and the minor amount of non-compliance with the OFO did not impair Texas Eastern's ability to operate its system or to require any further restrictions on primary firm service, Texas Eastern seeks to waive the OFO penalties incurred by the non-compliant shippers.²

4. Moreover, Texas Eastern states it has discretion, pursuant to the terms of its tariff, to waive OFO penalties on a not unduly discriminatory basis,³ and that it is only required to credit penalty revenues, net of costs, to the extent that it has collected the penalty revenues. Texas Eastern states it has not yet collected penalty revenues for the OFO violations. Therefore, because it was able to maintain the operational integrity of its system, Texas Eastern proposes that the Commission allow it to waive the collection and crediting of those penalties incurred during the instant OFO period.

5. Public notice of the filing was issued on May 12, 2016. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁴ Pursuant to Rule 214,⁵ 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. No party filed a protest or adverse comments.

6. The Commission finds that Texas Eastern has supported its request for waiver of the OFO penalty provisions contained in the GT&C of its tariff. As Texas Eastern points out, the aggregate level of compliance during the OFO period was sufficient to address the situation on the Texas Eastern system, which was not impaired by the minor amount of non-compliance by the offending shippers. Further, Texas Eastern's tariff gives it discretion to waive such penalties on a not unduly discriminatory basis. Here,

² Texas Eastern states that section 4.3(A)(6)(b) of the GT&C of its tariff provides for an OFO violation penalty that is three times the daily Gas Daily posting for the day on which the deviation occurred for the high "Common" price for the geographical region, as defined in section 8.5(A) of the GT&C, in which the deviation occurred, multiplied by the quantity by which the customer or point operator deviated from the requirements of the OFO.

³ [Texas Eastern Transmission, LP, FERC Gas Tariff, GT&C Section 20.](#)

⁴ 18 C.F.R. § 154.210 (2015).

⁵ 18 C.F.R. § 385.214 (2015).

Texas Eastern is proposing to waive all OFO penalties for the subject OFO period and there is nothing to indicate that such waiver is in any way discriminatory. Moreover, no party has opposed the request to waive the OFO penalties. For good cause shown, the Commission grants the requested waiver. Texas Eastern's request is consistent with a previous Commission determination to waive the collection and crediting of penalties.⁶

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁶ See *El Paso Natural Gas Co.*, 136 FERC ¶ 61,219 (2011).