158 FERC ¶ 61,070
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

January 27, 2017

In Reply Refer To:
Texas Eastern Transmission, LP
Docket No. RP17-313-000

Janice K. Devers, General Manager,
Tariffs and Commercial Development
Texas Eastern Transmission, LP
P.O. Box 1642
Houston, TX 77251-1642

Dear Ms. Devers:

1. On December 30, 2016, Texas Eastern Transmission, LP (Texas Eastern) filed revised tariff records[1] setting forth an amended non-conforming agreement with EQT Energy, LLC (EQT Energy) (Contract No. 910900). Texas Eastern states the EQT Energy agreement revises and supersedes an existing non-conforming agreement that was accepted in Docket No. RP12-655-000 (2012 Agreement).[2] As discussed more fully below, waiver of the Commission's notice requirements is granted, and the revised tariff records are accepted, effective January 1, 2017, subject to conditions.

2. Public notice of the filing was issued on January 5, 2017. Interventions and protests were due as provided by section 154.210 (18 C.F.R. § 154.210 (2016)). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2016), all timely motions to intervene and any unopposed motions to intervene out-of-time filed before the date of this order are granted.

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[1] Texas Eastern Transmission, LP, FERC NGA Gas Tariff, Texas Eastern Database 1, 3.18, Materially Non-Conforming Agreements, 40.0.0 and 9., EQT Energy - contract 910900, 1.0.0.

[2] *Texas Eastern Transmission, LP*, Docket No. RP12-655-000 (May 22, 2012) (unpublished letter order). According to Texas Eastern, the 2012 Agreement was amended on February 27, 2013 to reflect an extension in the term of the 2012 Agreement.

Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No adverse comments or protests were filed.

3. The Commission has stated that if a pipeline and a shipper enter into a contract that materially deviates from the pipeline's form of service agreement, the Commission's regulations require the pipeline to file the contract containing the material deviations with the Commission.[3] In *Columbia Gas Transmission Corp.*, the Commission clarified that a material deviation is any provision in a service agreement that: (a) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff and (b) affects the substantive rights of the parties.[4] The Commission prohibits negotiated terms and conditions of service that result in a shipper receiving a different quality of service than that offered to other shippers under the pipeline's generally applicable tariff or that affect the quality of service received by others.[5] However, not all material deviations are impermissible. As the Commission explained in *Columbia Gas*,[6] provisions that materially deviate from the corresponding *pro forma* agreement fall into two general categories: (a) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers and (b) provisions the Commission can permit without a substantial risk of undue discrimination.

4. As noted above, the Commission accepted the 2012 Agreement as permissible even though it contained a non-conforming provision wherein Texas Eastern waived its right to terminate the agreement during the first three years following the primary term of the agreement. Texas Eastern seeks approval of a similar non-conforming provision in the instant filing. Specifically, the amended agreement contains a term beginning on January 1, 2017, with a termination date of October 31, 2019. The proposed amended agreement provides EQT Energy with the sole right to terminate the agreement effective October 31, 2018 if it gives one year's written notice, i.e., on or before October 31, 2017. Texas Eastern states that this provision continues to reflect the unique circumstances that justified approval of the similar provision in the 2012 agreement. Texas Eastern states that the original provision reflected EQT Energy's Marcellus Shale development

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[3] 18 C.F.R. §§ 154.1(d) and 154.112(b) (2016).

[4] *Columbia Gas Trans. Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001) (*Columbia Gas*).

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

[6] *E.g.*, *Columbia Gas*, 97 FERC at 62,003-62,004; *Equitrans, L.P.*, 130 FERC ¶ 61,024, at P 5 (2010).

schedule until new infrastructure is placed into service while providing Texas Eastern with significant incremental revenue on a discrete portion of its system.

5. In the instant filing, Texas Eastern continues to assert that the provision "will allow EQT Energy to continue developing its Marcellus Shale acreage by tailoring its pipeline transportation needs to provide a market for that production as the production comes on line."[7] However, the non-conforming provision makes no reference to production levels or operational conditions but instead provides EQT Energy with an unconditional right to terminate the agreement one year early. The sole right to terminate an agreement is a valuable right that other customers on Texas Eastern's system do not have and may desire. While Texas Eastern states that it would be willing to offer such a provision to any customer that is similarly situated, it does not appear that Texas Eastern's tariff provides for it to negotiate early termination. Thus, there is a risk of undue discrimination. For these reasons, we find the provision to be an impermissible material deviation from Texas Eastern's *pro forma* service agreement. Texas Eastern is directed to file, within 15 days of the issuance of this order, to either remove the provision from the agreement or to modify its tariff to allow for negotiation of early termination, but only under limited, specific circumstances. The tariff provision could be similar to provisions in certain pipeline tariffs that provide for MDQ reductions in limited circumstances such as load loss, plant closure, state unbundling, etc.[8]

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[7] Transmittal Letter at 2.

[8] *See, e.g.,* sections 6.32.1 through 6.32.5 of the General Terms and Conditions of ANR Pipeline Company’s Tariff.