

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

February 18, 2005

In Reply Refer To:  
Texas Eastern Transmission, LP  
Docket Nos. RP99-480-015  
RP04-254-000

Texas Eastern Transmission, LP  
P.O. Box 1642  
Houston, Texas 77251-1642

Attention: David A. McCallum  
Director, Rates and Tariffs

Reference: Negotiated Rate Agreement and Withdrawal of Complaint

Ladies and Gentlemen:

1. On January 21, 2005, Texas Eastern Transmission, LP (Texas Eastern) filed tariff sheets<sup>1</sup> in Docket No. RP99-480-015 to reflect a negotiated rate transportation agreement with the City of Hamilton, Ohio (Hamilton). The filing also included a motion by Hamilton to withdraw its complaint in Docket No. RP04-254-000 and to terminate that proceeding, contingent on the Commission's approval of Texas Eastern's negotiated rate filing for service to Hamilton. The Commission accepts the negotiated rate agreement and tariff sheets effective February 20, 2005, subject to condition, and grants Hamilton's motion to withdraw its complaint and terminate the complaint proceeding, in settlement of the complaint proceeding, as discussed below. This action is in the public interest as it facilitates a settlement between the parties that results in a transportation agreement between the parties and the termination of a complaint proceeding pending before the Commission.

2. On April 8, 2004, Hamilton, a former customer of Texas Eastern which is seeking to resume service, filed a complaint pursuant to section 5 of the Natural Gas Act (NGA) alleging that Texas Eastern's rate structure: (1) prohibits the natural formation of market centers; (2) is based upon an overly expansive zone rate structure that would result in Hamilton paying for more transportation than it needs (3) incorporates fuel use charges that restrict a shipper's right to segmentation; and, (4) includes backhaul rates that violate

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<sup>1</sup> Original Sheet Nos. 112 and 113, and Sheet Nos. 114 - 125 to FERC Gas Tariff, Seventh Revised Volume No. 1.

Commission policy. Hamilton requested that the Commission order Texas Eastern to cease and desist from these practices and amend its tariff as necessary. On April 29, 2004, Texas Eastern filed an answer in opposition to Hamilton's complaint.

3. On January 21, 2005, Texas Eastern filed tariff sheets to reflect a negotiated rate agreement with Hamilton. The agreement is for backhaul interruptible transportation pursuant to Rate Schedule IT-1 for 35,000 Dth per day at a usage rate of \$0.03 per Dth. Texas Eastern included a copy of the service agreement, which it stated was for informational purposes, and stated that the service agreement does not deviate from the standard form of service agreement with the exception of several "whereas" clauses which provide the factual background of the agreement. The clauses state that Hamilton desires to obtain and Texas Eastern desires to provide transportation services pursuant to Rate Schedule IT-1; Hamilton and Texas Eastern have agreed upon a negotiated rate, the specific terms of which have been reflected on a tariff sheet to be filed by Texas Eastern; Texas Eastern agrees that the contract path to which the negotiated rate applies qualifies as backhaul transportation; and that Hamilton and Texas Eastern have reached an understanding on matters pending before the Commission in Docket No. RP04-254 and Hamilton agrees to withdraw its pending complaint in that Docket.

4. In addition to the negotiated rate, receipt and delivery points, contract term, and Maximum Daily Quantity, the tariff sheets which Texas Eastern filed to implement the negotiated rate for interruptible transportation service for Hamilton contain several footnotes which reflect the settlement reached between the parties, the terms of which are incorporated into the negotiated rate agreement. Footnote 1 states that effectiveness of the negotiated rate is subject to Commission approval which is reasonably acceptable to Texas Eastern and Hamilton, and subject to Hamilton's withdrawal of its complaint in Docket No. RP04-254, with prejudice. If the Commission's acceptance contains conditions or modification that materially affect the rights and obligations of the parties, the parties will use reasonable efforts to negotiate terms. If no agreement can be reached, the party whose rights and obligations have been affected has the right to terminate the negotiated rate agreement. Footnote 2 provides the term of the agreement (five years but no later than November 1, 2010) and specifies that the parties will make an effort to meet no less than one year before the expiration of the agreement to discuss the possibility of extending the agreement. Footnote 3 provides that the agreement will stay in effect in the event Hamilton initiates a proceeding against Texas Eastern under section 5 of the Natural Act on issues unrelated to Hamilton's complaint in Docket No. RP04-254. This footnote provides several other examples of proceedings which Hamilton may or may not participate in during the period the negotiated rate agreement is in effect. As noted above, the service agreement contains a clause which specifies that the parties agree to the terms reflected on this rate sheet.

5. Public notice of Texas Eastern's filing was issued January 27, 2005, with interventions and protests due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2004)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2004)), all timely filed motions to intervene and any motions 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 adverse comments or protests were filed.

6. Despite its form, the Commission views the instant joint filing of Texas Eastern and Hamilton as an uncontested settlement of the issues pending before the Commission in Docket No. RP04-254-000.<sup>2</sup> Therefore, the Commission will treat the negotiated rate agreement for IT-1 service to Hamilton, the subject tariff sheets, and the motion of Hamilton to withdraw its complaint and terminate the complaint proceeding together as an uncontested settlement pursuant to Rule 602 of the Commission's Rules of Practice and Procedure.<sup>3</sup> However, although Texas Eastern states that it has filed the Rate Schedule IT-1 service agreement with Hamilton for informational purposes because it contains no material deviations, the service agreement contains clauses whereby the parties agree to the conditions set forth on the subject tariff sheets, thus making the tariff sheet conditions part of the negotiated agreement. These conditions are material deviations from the standard form of service agreement of Texas Eastern's tariff and, therefore, must be reviewed by the Commission. However, they do not create a risk of undue discrimination as they do not affect the nature or quality of service, or raise competitive issues. Furthermore, they are part of an overall agreement in settlement of the issues pending in Docket No. RP04-254-000. Accordingly, the service agreement is accepted. Finally, Footnote 1 on Original Sheet No. 112 sets forth options available to the parties should the Commission reject or modify the agreement. Since the Commission is accepting the filings and approving the settlement, the footnote is unnecessary. Texas Eastern is directed to file revised tariff sheets reflecting the deletion of Footnote 1 within fifteen days of the date of this order.

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<sup>2</sup> Since the purpose of the instant filing is to settle a pending complaint proceeding, the parties should have jointly filed a settlement agreement under Rule 602 accompanied by the appropriate tariff sheets and service agreement.

<sup>3</sup> 18 C.F.R. § 385.602 (2004).

7. The Commission finds that Texas Eastern's and Hamilton's joint filing constitutes an uncontested settlement of the issues in the complaint proceeding in Docket No. RP04-254-000 that is fair and reasonable and in the public interest. We approve the settlement, and accept the proposed tariff sheets and negotiated rate agreement effective February 20, 2005, as conditioned. Hamilton's motion to withdraw its complaint in Docket No. RP04-254-000 is granted and the proceeding in that docket is terminated. The Commission's approval of this settlement does not constitute a precedent regarding any principle or issue in this proceeding.

By direction of the Commission.

Magalie R. Salas  
Secretary