112 FERC ¶ 61,185
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Texas Eastern Transmission, LP Docket No. RP05-240-001

ORDER DENYING REHEARING

(Issued August 15, 2005)

1. On April 18, 2005, the Commission issued a letter order[1] in this proceeding accepting Texas Eastern Transmission LP's, (Texas Eastern) tariff filing to remove from its tariff provisions that implemented the *CIG/Granite State*[2] policy on discounting. ProLiance Energy, LLC (ProLiance) filed a timely request for rehearing of that letter order. For the reasons discussed below, ProLiance's request for rehearing is denied.

Background

2. On March 21, 2005, in response to the Commission's Second Order on Remand in *Williston Basin Interstate Pipeline Company* (*Williston* Order),[3] Texas Eastern filed to remove from its tariff provisions that implemented the *CIG/Granite State* policy. The *Williston* Order, among other things, vacated the requirement that permitted a shipper to retain a service rate discount through a streamlined request process when it moved gas receipts or deliveries to segmented points or secondary points. In the *Williston* Order, the Commission also stated that it cannot, at this time, satisfy its burden under section 5 of the Natural Gas Act (NGA) to require pipelines to modify their tariffs to incorporate the *CIG/Granite State* policy.

3. ProLiance protested Texas Eastern's filing. The Commission accepted Texas Eastern's March 21, 2005 filing in the April 18, 2005 letter order. The Commission found that Texas Eastern's reference to the *Williston* Order and its reliance on the Commission's determinations in that order constituted sufficient support for its proposed tariff changes. ProLiance has requested rehearing of the April 18, 2005 letter order.

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[1] 111 FERC ¶ 61,060 (2005).

[2] *Colorado Interstate Gas Co.*, 95 FERC ¶ 61,321 (2001); *Granite State Gas Transmission, Inc.*, 96 FERC ¶ 61,273 (2001).

[3] *Williston Basin Interstate Pipeline Co.*, 110 FERC ¶ 61,210 (2005).

Discussion

4. In its request for rehearing, ProLiance argues that the Commission erred by authorizing Texas Eastern to delete tariff provisions related to the *CIG/Granite State* policy without any evidentiary support either that Texas Eastern has been harmed by the Commission's discounting policy, or that the *Williston* Order should apply to Texas Eastern since it is not a reticulated pipeline. ProLiance also asserts that the *Williston* Order does not authorize individual pipelines to remove tariff provisions, but merely authorizes pipelines to file for a determination of whether it is appropriate for a pipeline to remove tariff provisions similar to Williston Basin Interstate Pipeline Company's (Williston Basin) discounting provisions. ProLiance further claims that Texas Eastern has not met its burden under section 4 of the NGA to show that its rates are just and reasonable. For the reasons discussed below, ProLiance's request for rehearing is denied.

5. Contrary to ProLiance's contention, the *Williston* Order did not merely authorize pipelines to file for a Commission determination on whether to remove their discount retention provisions. In *Williston Basin Interstate Pipeline Co. v. FERC*,[4] the United States Court of Appeals for the District of Columbia Circuit held that the Commission had not adequately justified the general policy established in *CIG/Granite State* concerning retention of discounts. The court expressed concern that the *CIG/Granite State* policy would have an adverse effect on the goal of selective discounting. The court observed that the purpose of selective discounting is to increase throughput by allowing price discrimination in favor of demand-elastic customers, but a pipeline is unlikely to increase throughput by selective discounting if shippers can readily transfer capacity at secondary points through resale at a discounted rate. The court stated that "economic theory tells us price discrimination, of which selective discounting is a species, is least practical where arbitrage is possible – that is, where a low-price buyer can resell to a high price buyer. . . . Yet this is precisely what the Commission's policy would appear not only to allow but to encourage." 358 F.3d at 50. Thus, the court's concern focused on the fact that the *CIG/Granite State* policy undermines the benefits of selective discounting. In response to the court's decision, the Commission issued an order on remand seeking comments on the *CIG/Granite State* policy on June 1, 2004.[5]

6. In the *Williston* Order the Commission found, based upon review of the comments received, that the *CIG/Granite State* policy does not provide the anticipated benefits to shippers and may in fact harm captive customers by discouraging pipelines from offering selective discounts to increase throughput and generate more revenue.[6] The pipeline

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[4] 358 F.3d 45 (D.C. Cir. 2004).

[5] *Williston Basin Interstate Pipeline Co.,* 107 FERC ¶ 61,229 (2004).

[6] *Williston Basin Interstate Pipeline Co.,* 110 FERC ¶ 61,210 at P 24 (2005).

commenters in the Williston Basin proceeding presented evidence and arguments that showed that the *CIG/Granite State* policy discourages selective discounting. The Commission explained that the *CIG/Granite State* policy enables a shipper to transfer an operationally based discount to another point where the pipeline does not need to discount to attract throughput, with the result that the operational benefits of granting the discount are lost. Further, the Commission explained that the *CIG/Granite State* policy could discourage discounting because under that policy, a discount provided to obtain additional throughput at competitive points could be transferred to other less competitive points. Therefore, the Commission vacated the Commission's existing policy governing the portability of shipper rate discounts and provided that other pipelines whose tariffs implemented the *CIG/Granite State* policy could file, pursuant to NGA section 4, to remove their tariff provisions implementing the *CIG/Granite State* policy.[7]

7. The Commission has sufficient evidence on record in the *Williston Basin* proceeding that the *CIG/Granite State* policy discourages selective discounting. On the other hand, ProLiance fails to present any factual evidence that Texas Eastern's tariff provision implementing the *CIG/Granite State* policy has benefited its shippers or substantially contributed to competition in the secondary market. For example, ProLiance does not state that it ever filed a request with Texas Eastern to retain a discount pursuant to Texas Eastern's tariff provision implementing the *CIG/Granite State* policy. Nor does ProLiance provide any example of a transaction that Texas Eastern's tariff language made possible which would not have occurred absent that tariff provision. In a recent order on rehearing of the *Williston* Order, the Commission has affirmed its ruling vacating the *CIG/Granite State* policy and allowing pipelines to remove their tariff provisions implementing the *CIG/Granite State* policy.[8] Accordingly, the Commission affirms its finding in the April 18, 2005 letter order that Texas Eastern's reference to the *Williston* Order satisfies the need to explain the reason for its proposed changes to remove tariff provision implementing the *CIG/Granite State* policy from its tariff under section 4 of the NGA.

8. ProLiance also suggests that the *Williston* Order should not apply to Texas Eastern since it is not a reticulated pipeline. We disagree. As stated in the recent order on rehearing in the *Williston Basin* proceeding, the court's decision remanding this proceeding to the Commission concerned not only the application of the *CIG/Granite State* policy to reticulated systems, but also the broader issue of the adverse effect of the policy on all pipelines' ability to use selective discounting to obtain additional throughput. The court was concerned that allowing automatic shifting of discounts on straight line systems could limit a pipeline's incentive to offer selective discounts at points where competition mandates discounts, if shippers can readily move that discount

[7] *Id.* at P 25.

[8] *Williston Basin Interstate Pipeline Co.*, 112 FERC ¶ 61,038 (2005).

to a secondary point. 358 F.3d at 50. The June 1, 2004 Order on remand in the *Williston Basin* proceeding made it clear that the Commission was seeking comments on the general policy established in *CIG/Granite State*. In the recent order on rehearing of the *Williston* Order, the Commission found that ProLiance's suggestion that the Commission should have only addressed the application of the *CIG/Granite State* policy to reticulated pipeline systems and left for another day the application of the policy to long-line pipeline systems was without merit.[9] The Commission's denial of ProLiance's request for rehearing in this order is consistent with that finding.

The Commission orders:

ProLiance's request for rehearing is denied as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

[9] *Id.* at P 25-26.