

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

East Tennessee Natural Gas, LLC

Docket Nos. RP97-13-020
and RP97-13-021

ORDER ON COMPLIANCE FILING
AND NEGOTIATED RATE FILING

(Issued August 16, 2005)

1. On July 18, 2005, in Docket No. RP97-13-020, East Tennessee Natural Gas, LLC (East Tennessee) filed a Revised Letter Agreement with Sequent Energy Management, L.P. (Sequent), as successor to NUI Energy Brokers, Inc. (NUI), in compliance with the Commission's June 16, 2005 order (June 16 Order).¹ On July 18, 2005, East Tennessee filed under section 4 of the Natural Gas Act (NGA) a revised tariff sheet² to reflect the change from NUI to Sequent on its list of non-conforming agreements, and a revised letter agreement and superseding service agreement with Sequent. East Tennessee seeks an effective date of November 21, 2003, for the Revised Letter Agreement and an effective date of May 1, 2005, for the revised tariff sheet and superseding service agreement. The Commission accepts East Tennessee's proposed tariff sheet and superceding service agreement effective May 1, 2005, and its Revised Letter Agreement effective November 21, 2003, subject to the conditions discussed below.

Background

2. In an October 31, 2003 "Order Accepting Tariff Sheets Subject to Conditions" (October 31, 2003 Order),³ the Commission accepted East Tennessee's proposed tariff sheet and the negotiated rate agreements with NUI, Public Service Company of North Carolina (PSNC), NJR Energy Services Company (NJR), Carolina Power & Light Company (CP&L), and Duke Energy

¹ East Tennessee Natural Gas, LLC, 111 FERC ¶ 61,404 (2005).

² Third Revised Sheet No. 394 to East Tennessee's FERC Gas Tariff, Third Revised Volume No. 1.

³ East Tennessee Natural Gas Co., 105 FERC ¶ 61,162 (2003).

Murray, LLC (DENA Murray), subject to conditions, effective the later of November 1, 2003, or the in-service-date of the Patriot Project.⁴ Each negotiated rate agreement was made up of a non-conforming service agreement and a supplemental letter agreement (Letter and Service Agreement). The October 31, 2003 Order found that East Tennessee had failed to adequately comply with the requirements established in the Commission's 2003 modification to its negotiated rate policy concerning the filing of service agreements with deviations from the pipeline's form of service agreement.⁵ The 2003 Policy Statement required the pipeline to use the form of service agreement as the starting point in drafting any negotiated rate agreement, clearly delineate differences from the form of service agreement and provide a narrative regarding the differences.⁶ However, the Commission stated that the agreements were entered into before the issuance of the Commission's 2003 Policy Statement. Therefore, the Commission stated that it would not reject East Tennessee's filing. Instead, the October 31, 2003 Order accepted the Letter and Service Agreements, subject to East Tennessee's filing supplemental information that fully complies with the Commission's 2003 Policy Statement, including a narrative identifying, explaining and supporting all material deviations.

3. On December 1, 2003, East Tennessee filed with the Commission a revised tariff sheet, letter agreements and other information in compliance with the Commission's October 31, 2003 Order. In a November 26, 2004 order (November 26 Order), the Commission accepted the December 1, 2003 filing with conditions, and directed East Tennessee to revise and refile three of the letter agreements.⁷ The letter agreement with NUI (Original Letter Agreement) was one of the three letter agreements to be refilled.⁸ Of relevance here, the Commission

⁴ On October 10, 2003, in Docket No. CP01-415-000, East Tennessee made a filing requesting approval to place the Patriot Project facilities in service on November 8, 2003.

⁵ *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 (2003) (2003 Policy Statement).

⁶ *East Tennessee Natural Gas Co.*, 105 FERC ¶ 61,162 at P 12-14 (2003).

⁷ *East Tennessee Natural Gas Co.*, 109 FERC ¶ 61,232 (2004).

⁸ The other two contracts were with PSNC and DENA Murray. The Commission accepted PSNC's revised agreement for filing on April 21, 2005 in a letter order issued in this docket. East Tennessee requested clarification or rehearing of the November 26 Order in regard to revising the DENA Murray letter agreement. The Commission granted rehearing on March 8, 2005.

required East Tennessee to eliminate a material deviation in paragraph 1 of the NUI letter agreement that allowed NUI to turn back up to 25,000 Dth per day of the 50,000 Dth per day maximum daily transportation quantity (MDTQ) at the end of the primary term or modify its tariff and form of service agreement to offer this type of provision to all of its customers. The Commission also rejected a provision in paragraph 11 of the NUI letter agreement that would allow NUI to enter into an Operational Balancing Agreement and directed East Tennessee to remove the provision from the letter agreement or modify its tariff to offer such rights to all of its shippers rather than the limited types of entities to which East Tennessee now offers such rights.

4. On May 17, 2005, East Tennessee made a compliance filing pursuant to the November 26 Order, in which it tendered a Revised Letter Agreement with Sequent, as well as a revised tariff sheet reflecting that Sequent, as successor to NUI, is the name of the party receiving the service in this transaction. The Revised Letter Agreement deleted the two provisions which the November 26 Order had required East Tennessee to delete. However, East Tennessee negotiated other changes to the service agreement which the November 26 Order had not required. The June 16 Order rejected the May 17 Filing on the grounds that it made changes to the agreement not required by the November 26 Order. It directed East Tennessee to file any additional changes to the agreement separately pursuant to section 4 of the NGA.

Instant Filings

5. In its compliance filing in Docket No. RP97-13-020, East Tennessee submits the Revised Letter Agreement which it states contains the two changes required by the November 26 Order. Specifically, East Tennessee states the Revised Letter Agreement deletes the portion of paragraph 1 that afforded Sequent an opportunity to turn back a portion of its MDTQ, and deletes paragraph 11 of the Original Letter Agreement. East Tennessee states that contemporaneously with the compliance filing it is making a filing for separate section 4 approval for the revised rate applicable to this transaction.

6. In its section 4 filing in Docket No. RP97-13-021, East Tennessee submits the Revised Letter Agreement and seeks approval of the revised negotiated rate for this transaction and, to the extent necessary, the other changes to the Original Letter Agreement that were necessary in renegotiating the transaction with Sequent. East Tennessee states that the Revised Letter Agreement now applies to service under two service agreements (Contract Nos. 410205 and 410206), each commencing May 1, 2005 with one terminating before the other, in order to approximate the result that would have been possible with the turnback provision disapproved by the November 26 Order. East Tennessee states that it has also

agreed to different rates, tied to different delivery points, to accommodate a request by Sequent to reposition services with their affiliate, Chattanooga Gas Company, and to reflect the change in consideration caused by having to revise the Original Letter Agreement in accordance with the November 26 Order. East Tennessee further states that there are minor, miscellaneous modifications throughout that are necessary to identify revised agreements. Other than these changes, East Tennessee maintains that the Revised Letter Agreement is the same agreement approved with conditions in the November 26 Order.

7. East Tennessee also filed a superseding service agreement (Contract No. 410205) which it states does not contain any provisions that were not already approved by the November 26 Order for the Original Service Agreement.⁹ Since it has superseded the service agreement with Sequent that was approved in the November 26 Order, East Tennessee states it is filing Third Revised Sheet No. 394, which is a revised list of non-conforming agreements that lists the Superseding Service Agreement in the place of the Original Service Agreement, to reflect that Sequent, as successor to NUI, is the name of the party receiving service in this transaction.

8. East Tennessee proposes an effective date for the Revised Letter Agreement of November 21, 2003, and an effective date for the superseding service agreement and tariff sheet of May 1, 2005. East Tennessee requests that the Commission grant waiver of the notice requirement contained in section 154.207¹⁰ of the Commission's regulations and any other required waivers necessary to accept the Revised Letter Agreement and make effective the superseding service agreement and tariff sheet on the proposed dates.

Notice and Comments

9. Notice of East Tennessee's compliance filing was issued on July 21, 2005, with protests due on or before August 2, 2005. East Tennessee Group (ETG) filed a protest on August 1, 2005.

10. Notice of East Tennessee's filing in Docket No RP97-13-021 was issued on July 21, 2005. Interventions and protests were due as provided in § 154.210 of the

⁹ East Tennessee did not file the second superseding agreement (Contract No. 410206) with Sequent, stating that this agreement does not contain any deviations from the Form of Service Agreement for Rate Schedule FT-A and therefore does not have to be filed with the Commission.

¹⁰ 18 C.F.R. § 154.207 (2005).

Commission's regulations.¹¹ Pursuant to Rule 214 (18 C.F.R. § 385.214), all timely filed motions to intervene and the 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 this proceeding or place additional burdens on existing parties. East Tennessee Group (ETG) filed a protest on August 1, 2005. East Tennessee filed answers to ETG's protests in both proceedings on August 11, 2005.¹²

11. ETG protests East Tennessee's compliance filing because it contains changes other than the changes required by the November 26 Order. Alternatively, if the filing is considered on the merits, ETG requests that the Commission reject the filing for the same reasons it has set forth in its protest in Docket No. RP97-13-021.

12. In Docket No. RP97-13-021, ETG protests the filed Revised Letter Agreement and the two related FT-A service agreements, one of which ETG states was not included in the compliance filing, on the grounds that they are inconsistent with East Tennessee's tariff, prior Commission orders in these proceedings, and the Commission's 2003 Policy Statement. ETG states that under the arrangements with Sequent, its total maximum daily delivery obligation (MDDO) and total maximum daily receipt obligation (MDRO) will each exceed Sequent's 50,000 Dth/day MDTQ by 25,000 Dth/day. ETG contends this is inconsistent with East Tennessee's tariff,¹³ which provides that shippers' primary receipt and delivery point capacity may not exceed their MDTQ, and poses a risk of undue discrimination against its members, and would result in a degradation of the quality of service currently provided to them.

13. In its answer in Docket No. RP97-13-021, East Tennessee describes the provision for Sequent to have primary receipt and delivery point capacity that exceeds its MDTQ by 25,000 Dth/day as the "Storage Provision" of the firm transportation contracts with Sequent. The 25,000 Dth/day of excess primary receipt and delivery point capacity is made up of Sequent's primary receipt and delivery point rights at the Saltville storage field. East Tennessee states that the

¹¹ 18 C.F.R. § 154.210 (2005).

¹² Rule 213(a) (2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept East Tennessee's answers because they have provided information that assisted us in our decision-making process.

¹³ *Citing* Original Sheet No. 102.

purpose of the provision is to permit Sequent to receive and deliver gas at the Saltville storage field up to its full MDTQ on any given day. East Tennessee states that the provision recognizes the unique operational characteristics of storage service at a high deliverability salt-dome storage facility, such as Saltville, where a shipper may need to transport its entire MDTQ in one direction for a particular day, either for injection or withdrawal, and then move its entire MDTQ in the other direction in a relatively short period of time. East Tennessee also argues that the Commission should dismiss ETG's protest because the Original Service Agreement contained the storage provision in Exhibit A of that agreement, and the November 26 Order accepted the Original Service agreement without modification or conditions. East Tennessee also argues that ETG should not be allowed to raise the storage provision issue at this time, since ETG was aware of the provision but did not raise the issue in its protest of East Tennessee's December 1, 2003 compliance filing in this proceeding. East Tennessee claims that the storage provision does not degrade service to any shipper and is not unduly discriminatory since it arises from the unique operational characteristics of storage service at a high deliverability salt-dome storage facility.

Discussion

14. The Commission accepts the Revised Letter Agreement with Sequent and the superceding service agreement subject to condition. The Commission finds that the Revised Letter Agreement deletes the portion of paragraph 1 of the original agreement that afforded Sequent an MDQ reduction right and deletes paragraph 11 of the original letter Agreement as required by the Commission's November 26 and June 16 Orders.

15. In addition, East Tennessee has separately filed changes, beyond those directed by the Commission, and seeks approval of those changes in a separate filing pursuant to section 4 of the NGA. However, our review of these additional changes indicates that the Revised Letter Agreement and superceding service agreement contain a material deviation from East Tennessee's tariff. Specifically, section (f) of the Revised Letter Agreement amends the primary points of receipt and delivery effective with the Superceding Service Agreements. As pointed out by ETG, the aggregate MDRO and aggregate MDDO exceed by 25,000 Dth/day the MDTQ of the superceding contracts. This 25,000 Dth/day of receipt/delivery point capacity in excess of the contract MDTQ is reflected in Exhibit A to the superceding service agreement filed in this proceeding.¹⁴

¹⁴ Exhibit A states that the aggregate MDRO and aggregate MDDO cannot exceed the contractual MDTQ.

16. These provisions are inconsistent with section 3 of Rate Schedule FT-A of East Tennessee's tariff that states that the sum of the MDROs specified at all of the Shipper's Primary Receipt Point(s) must equal the MDTQ stated in the FT-A Agreement and the sum of the MDDOs specified at all of the Shipper's Primary Delivery Point(s) must equal the MDTQ stated in the FT-A Agreement. The Commission finds that a special provision in a shipper's contract that allows it to designate primary receipt and delivery points in excess of the amounts permitted by the tariff is a term and condition of service different from that provided in the tariff and would result in Sequent obtaining a higher quality of service than other shippers.¹⁵

17. East Tennessee states that the provision for Sequent to have excess primary point rights arises from the unique operational characteristics of storage service at a high deliverability salt-dome storage facility. The Commission recognizes that there may be circumstances where East Tennessee wishes to offer shippers primary point rights in excess of their MDTQ, and the Commission has no policy prohibiting pipelines from offering such additional primary point rights.¹⁶ However, if East Tennessee wishes to offer such contractual provisions, it must file a generally applicable tariff provision setting forth the not unduly discriminatory conditions under which East Tennessee will do so.

18. East Tennessee also argues that the Commission should accept the storage provision because the Original Service Agreement contained the storage provision and the November 26 Order accepted the Original Service agreement without modification of conditions. We disagree. The October 31, 2003 Order accepted the Letter and Service Agreements, subject to East Tennessee's filing supplemental information that fully complies with the Commission's 2003 Policy Statement, including a narrative identifying, explaining and supporting all material deviations. Tennessee's December 1, 2003 compliance filing failed to mention the storage provision and did not state that it is a material deviation as required by the October 31, 2003 Order. Thus, the Commission acted on the filing without being aware of the material deviation.

19. Therefore, the Commission orders that East Tennessee either (1) remove the provisions in the Revised Letter Agreement and superceding contract

¹⁵ See *ANR Pipeline Co.*, 97 FERC ¶ 61,222 (2001) (rejecting a provision in a contract allowing for a change to a primary point outside the procedures set forth in the tariff).

¹⁶ See Order No. 637-A at page 31,594.

permitting Sequent's MDDO and MDRO to exceed its MDTQ or (2) file a generally applicable tariff provision proposing the non-discriminatory conditions pursuant to which it proposes to offer such provisions.

20. Finally, we accept the revised tariff sheet¹⁷ that reflects the change from NUI to Sequent on its list of non-conforming agreements.

The Commission orders:

(A) Third Revised Sheet No. 394 to East Tennessee's FERC Gas Tariff, Third Revised Volume No. 1 is accepted effective May 1, 2005.

(B) The revised letter agreement is accepted effective on November 21, 2003, subject to the conditions discussed in the body of this order.

(C) The superceding service agreement (contract No. 41205) filed in the instant filing is accepted effective on May 1, 2005, subject to the conditions discussed in the body of this order.

(D) Within 30 days of the date of this order, East Tennessee must either file a revised letter agreement and superceding service agreement removing the provision permitting Sequent's MDDO and MDRO to exceed it MDTQ or file a generally applicable tariff provision to offer such provisions.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹⁷ Third Revised Sheet No. 394 to East Tennessee's FERC Gas Tariff, Third Revised Volume No. 1.