

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 31, 2005

In Reply Refer To:
Texas Eastern Transmission, LP
Docket No. RP05-524-000

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

Attention: David A. McCallum
Director, Rates and Tariffs

Reference: Revisions to Tariff Provisions Governing Contracting, Creditworthiness,
Discounting and Electronic Communications

Dear Mr. McCallum:

1. On August 1, 2005, Texas Eastern Transmission, LP (Texas Eastern) filed revisions to its tariff provisions governing contracting, creditworthiness, discounting, and electronic communications (see Appendix for list of tariff sheets). The tariff sheets are conditionally accepted effective September 1, 2005, subject to Texas Eastern refiling revised tariff sheets as discussed below.

2. Public notice of Texas Eastern's filing was issued August 4, 2005, with interventions and protests due as provided in section 154.210 of the Commission's regulations (18 C.F.R. section 154.210 (2005)). Pursuant to Rule 214 (18 C.F.R. section 385.214 (2005)), 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. Northeast Energy Associates (Northeast Energy), and National Fuel Gas Distribution Corporation (National Fuel) filed comments on Texas Eastern's proposal. Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., and Philadelphia Gas Works (Con Ed) filed a request for clarification and limited protest. The comments and protest are discussed below. On August 23, 2005, Texas Eastern filed an answer to the comments and protests, which the Commission accepts because Texas Eastern clarifies some of its proposed tariff revisions.

3. Texas Eastern states that its proposal is designed to promote administrative efficiency, to further automate contracting for service and requesting discounts, and to enhance service flexibility. It states that many of the revisions are ministerial in nature, such as eliminating sections in the General Terms and Conditions (GT&C) of its tariff that are outdated, moving text between sections when needed, renumbering sections, defining terms, etc. Also, Texas Eastern is filing numerous tariff revisions that relate to its electronic LINK system for contracting, communications, and operations. Texas Eastern contends that the revisions are designed to permit customers to more efficiently request and contract for services, request and confirm discounts, and otherwise conduct routine business with Texas Eastern.

4. Texas Eastern proposes to amend the creditworthiness provisions of its tariff (section 3.3(B) of the GT&C) to clarify which forms of security are acceptable, and that a standby irrevocable letter of credit as a form of security must be acceptable to Texas Eastern and issued by a financial institution that satisfies Texas Eastern's credit appraisal. Northeast Energy comments that Texas Eastern's proposal regarding the irrevocable letter or credit allows the pipeline broad discretion in determining what is acceptable and requests that the Commission require Texas Eastern to add a provision that it will not unreasonably discriminate in exercising this authority, and a provision specifying that when Texas Eastern rejects a shipper's offer of security Texas Eastern will provide a prompt written explanation for the rejection to the shipper.

5. Texas Eastern responds that it is committed to implementing its entire tariff in a manner that is not unduly discriminatory and that adding such a phrase to this provision is not necessary. Furthermore, Texas Eastern states that section 3.3(A) of the GT&C provides that Texas Eastern will not use any creditworthiness ranking system that will give any preference to its affiliates. Texas Eastern states that Northeast Energy's request for written notification in cases where Texas Eastern rejects a shipper's offer of security is already covered by section 3.3(B) because in those cases, Texas Eastern will promptly reissue a request for security to that shipper, including an explanation of why the initial offer of security was rejected.

6. The Commission accepts Texas Eastern's proposal in part. Texas Eastern must, by law, operate its tariff in a manner that is not unduly discriminatory. It is not necessary to separately state that fact under each provision of the tariff. In its answer, Texas Eastern clarifies that when it has rejected an offer of security it issues another request and this request is in writing pursuant to section 3.3(B)(4). However, that section does not currently provide that the reissued request will contain an explanation of why the shipper's initial offer has been rejected. The Commission directs Texas Eastern to refile to clarify section 3.3(B)(4) to provide that the reissued request will contain such an explanation.

7. In addition, Texas Eastern proposes to clarify that the amount of security required from an existing customer is “equal to the highest three months of activity (based on usage of in-kind and loan agreements and the billed amounts, including cashout amounts, for all other agreements)” for all of the customer’s active service agreements during the previous twelve months. Con Ed questions the definition of the “in-kind” usage element of Texas Eastern’s proposal for calculating the amount of security required. Con Ed states that this element could conceivably include fuel, which is supplied by Texas Eastern’s shippers, and requests clarification that Texas Eastern does not intend to include fuel in the calculation of the amount of security required from its customers

8. Texas Eastern clarifies that section 3.3(B) is intended to address agreements under which Texas Eastern supplies gas and expects the shipper to supply equivalent amounts. Texas Eastern states that the “in-kind agreements” reference in section 3.3(B) does not include fuel in the determination of the amount of security required from its customers. The Commission accepts Texas Eastern’s proposal subject to Texas Eastern refile to reflect its clarification in section 3.3(B).

9. Section 3.11(E)(2) of the GT&C of Texas Eastern’s tariff provides that Texas Eastern will hold an open season for service for a contract term of ninety days or more but less than one year only if the requested service would commence no later than thirty days from the date the open season ends. Texas Eastern now proposes to add section 3.11(A)(3) which provides that Texas Eastern will conduct an open season whenever it receives requests for firm service with a term equal to or greater than ninety days. Con Ed points out that the two subsections seem to conflict, and requests clarification that subsection (E)(2) is not meant to limit Texas Eastern’s obligation to provide an open season under subsection (A)(3), but rather that subsection (E)(2) relates to the timing of the open season held under subsection (A)(3). Con Ed suggests that subsection (E)(2) means that an open season held under subsection (A)(3) for a contract term of ninety days but less than one year will end no earlier than thirty days before the service commencement date proposed by the customer whose request for service triggered the open season.

10. Texas Eastern clarifies that the open season provision under section 3.11(E)(2) does not limit its obligation to conduct an open season under proposed section 3.11(A)(3), and that the two subsections operate in conjunction to provide for the timing of the open season associated with potential future sales of capacity in the manner expressed in Con Ed’s request for clarification.. The Commission accepts Texas Eastern’s proposal subject to Texas Eastern refile to reflect Texas Eastern’s clarification. Section 3.11(E)(2) should be revised to make clear that it specifies the timing of the open season held under section 3.11(A)(3) and does not limit or eliminate Texas Eastern’s obligation to hold an open season under section 3.11(A)(3).

11. Texas Eastern proposes to revise subsection 3.11(D) of the GT&C to provide that in an open season, if the pipeline is not able to approve the winning bidder's request for service, the capacity will be awarded to the party submitting the next highest bid. Con Ed protests this proposal and requests that it be modified. Con Ed states that the tariff provides that all bids are binding until the open season is over, *i.e.*, until after capacity has been awarded. It asserts that a party with the second highest bid would have reason to believe that the open season is over when the winning bid has been announced, and then would go on to contract for capacity with another provider to satisfy its needs. Con Ed argues that, if Texas Eastern's proposal is not modified, a party with the second highest bid in the example above could conceivably be awarded (and be bound to take) capacity on Texas Eastern for which it no longer has a use. Con Ed suggests that Texas Eastern's proposal be modified to state that when Texas Eastern is unable to award the capacity to the winning bidder, it will award the capacity to the second highest bidder subject to the concurrence of that party to the award.

12. Texas Eastern agrees with Con Ed that clarification of section 3.11(D) may be appropriate, but states that it must have some assurance that the party submitting the next highest bid will notify Texas Eastern in a timely fashion. Texas Eastern suggests an alternative revision to provide that the capacity will be awarded to the party submitting the next highest bid "unless, within one (1) business day of notification of the award of capacity, such party provides Texas Eastern with written notification that it rejects such award."

13. The Commission accepts Texas Eastern's proposal, as proposed to be modified, and directs Texas Eastern to file a revised tariff sheet that includes its suggested additional phrase. This will permit the party submitting the next highest bid to reject the award of capacity if it has made other arrangements and no longer needs the capacity while at the same time providing Texas Eastern with prompt notice so that it may award the capacity to what will then be the next highest bidder.

14. Texas Eastern proposes to add new subsection 3.14(O) to its GT&C to govern permanent capacity releases on its system. Northeast Energy states that while it does not object to Texas Eastern's proposal, Northeast Energy believes the proposal is incomplete and must contain a provision addressing how a releasing shipper can be relieved of its obligations under the capacity when it has made a permanent release. In support of its position, Northeast Energy cites Transcontinental Gas Pipe Line Corporation's tariff which lists the conditions under which the releasing party can be relieved of its liability under its service agreement for the released capacity.

15. Texas Eastern states in its answer that Northeast Energy's concern is addressed by currently effective section 3.14(G)(2) which specifies that where there is a permanent release of capacity Texas Eastern will agree to discharge the shipper of liability on a prospective basis. The Commission concurs with Texas Eastern and finds that no further revision to Texas Eastern's proposal is necessary.

16. Subsection 3.14(O) provides that Texas Eastern "may refuse to allow a permanent capacity release if it has a reasonable basis to conclude that it will not be financially indifferent to the release." National Fuel, while stating that it does not object to the overall purpose of Texas Eastern's proposed tariff changes, comments that the "financially indifferent" language is proposed without any guidance as to how that standard will be applied. National Fuel requests that the Commission require Texas Eastern to delineate parameters within which it will operate the "financially indifferent" provision. National Fuel suggests that Texas Eastern should explain the circumstances under which it would consider itself not financially indifferent to a permanent release and the analytical processes it would undertake to reach such a conclusion.

17. Texas Eastern answers that the Commission should reject National Fuel's attempt to revive an issue that has already been addressed and rejected by the Commission. Texas Eastern asserts that the Commission addressed the issue of financial indifference in capacity release transactions in a previous Texas Eastern filing, as well as more recently in a Northwest Pipeline Corporation case.¹

18. The Commission denies National Fuel's request for revision of Texas Eastern's proposal. In the *Northwest* case the Commission addressed the issue of a pipeline refusing to allow a permanent capacity release "if it has a reasonable basis to conclude that it will not be financially indifferent to the release." The Commission stated that the financial indifference of the pipeline in capacity release is a reasonable factor to consider in deciding whether to permit permanent capacity release. The Commission also stated that the pipeline must have flexibility in this regard and does not have to set out in its tariff every extenuating circumstance or condition that would lead the pipeline to determine that it will not be financially indifferent to the release transaction. The same reasoning applies in the instant proceeding, and the Commission declines to require Texas Eastern to revise its proposal.

19. Finally, Texas Eastern proposes to add subsection 3.17 to its GT&C which would permit Texas Eastern and a shipper to mutually agree to an extension of the term of the service agreement prior to the expiration of the agreement and prior to posting the

¹ Citing, *Texas Eastern Transmission Corp.*, 82 FERC ¶ 61,118, *order on reh'g and clarification*, 83 FERC ¶ 61,446 (1998); *Northwest Pipeline Corp.*, 111 FERC ¶ 61,231 at P 23-25 (2005) (*Northwest*).

capacity under Texas Eastern's right-of-first-refusal provisions. Northeast Energy comments that this provision would permit Texas Eastern to extend contracts at discounted rates without posting and bidding. Northeast Energy requests that Texas Eastern be required to clarify its proposal to state that the provision will only apply to extension of contracts at non-discounted rates.

20. Texas Eastern asserts that the Commission has previously approved similar provisions in pipeline tariffs,² and that Northeast Energy has cited no cases where the Commission has restricted Part 284 contract extensions to non-discounted rate contracts. Texas Eastern states that its proposal should be approved as filed.

21. As Texas Eastern points out, the Commission has previously approved contract extension provisions to non-discounted contracts as the Commission's policies do not prohibit the extension of capacity rights during the current term of the contract.³ The purpose of right-of-first-refusal provisions is to protect the existing customer.⁴ The Commission assumes that the contract rate for the extension with a non-affiliate reflects the highest value the pipeline can obtain for the capacity.⁵ The Commission accepts Texas Eastern's proposal as filed.

22. The Commission conditionally accepts Texas Eastern's revised tariff sheets effective September 1, 2005, and directs Texas Eastern to file revised tariff sheets consistent with the discussion above within thirty days from the date of this order.

By direction of the Commission.

Magalie R. Salas,
Secretary.

² Citing *Iroquois Gas Transmission System L.P.*, Docket No. RP05-155-000, Letter Order (Feb. 9, 2005); *Transcontinental Gas Pipe Line Corp.*, 87 FERC ¶ 61,109, order granting clarification, 88 FERC ¶ 61,155, *reh'g denied*, 88 FERC ¶ 61,295 (1999).

³ *Northern Natural Gas Co.*, 111 FERC ¶ 61,379 at 62,627 (2005).

⁴ *Id.*

⁵ *Id.*

APPENDIX

Texas Eastern Transmission, LP

Tariff Sheets Conditionally Accepted Effective September 1, 2005

Seventh Revised Volume No. 1

Third Revised Sheet No. 502
Fourth Revised Sheet No. 508
Second Revised Sheet No. 509
Original Sheet No. 509A
Fourth Revised Sheet No. 510
Fourth Revised Sheet No. 512
First Revised Sheet No. 512A
First Revised Sheet No. 512B
Second Revised Sheet No. 513
First Revised Sheet No. 514
First Revised Sheet No. 515
First Revised Sheet No. 516
Original Sheet No. 516A
First Revised Sheet No. 517
Second Revised Sheet No. 518
First Revised Sheet No. 519
First Revised Sheet No. 520
First Revised Sheet No. 521
First Revised Sheet No. 521A
Original Sheet No. 521B
Second Revised Sheet No. 527
Second Revised Sheet No. 528
Fourth Revised Sheet No. 529
Third Revised Sheet No. 537
First Revised Sheet No. 538
Original Sheet No. 538A
Second Revised Sheet No. 539
Second Revised Sheet No. 539A
Third Revised Sheet No. 543
Second Revised Sheet No. 553
Second Revised Sheet No. 586
Second Revised Sheet No. 608
Second Revised Sheet No. 610
First Revised Sheet No. 611

First Revised Sheet No. 613
Fifth Revised Sheet No. 644
Second Revised Sheet No. 644A
First Revised Sheet No. 801
Second Revised Sheet No. 802
Second Revised Sheet No. 803
First Revised Sheet No. 815
Second Revised Sheet No. 816
Second Revised Sheet No. 817
First Revised Sheet No. 830
Second Revised Sheet No. 831
Second Revised Sheet No. 832
First Revised Sheet No. 862
Second Revised Sheet No. 863
Second Revised Sheet No. 864
First Revised Sheet No. 877
Second Revised Sheet No. 878
Second Revised Sheet No. 879
First Revised Sheet No. 890A
Third Revised Sheet No. 890B
Second Revised Sheet No. 890D
First Revised Sheet No. 890F
First Revised Sheet No. 890G
First Revised Sheet No. 946
Second Revised Sheet No. 947
First Revised Sheet No. 959
Second Revised Sheet No. 960
Second Revised Sheet No. 1081
Second Revised Sheet No. 1082