

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Tennessee Gas Pipeline Company

Docket No. RP96-312-150

ORDER ACCEPTING AND SUSPENDING NEGOTIATED  
RATE SERVICE ARRANGEMENT SUBJECT TO CONDITIONS

(Issued October 14, 2005)

1. On September 16, 2005, Tennessee Gas Pipeline Company (Tennessee) filed a negotiated rate service arrangement, including an FT-A Service Agreement and a Negotiated Rate Agreement, between Tennessee and Coral Energy Resources, L.P. (Coral). Tennessee requests that the Commission grant all necessary waivers of its regulations, and issue an order accepting and approving the arrangement to be effective October 15, 2005. The Commission accepts and suspends the negotiated rate service arrangement, to be effective October 15, 2005, subject to refund, and subject to conditions as discussed below.

**Background**

2. In an order issued on August 2, 2002, the Commission accepted for filing a negotiated rate service arrangement between Tennessee and Orchard Gas Corporation (Orchard).<sup>1</sup> As part of that arrangement, Orchard converted from service under Tennessee's Rate Schedule NET-284 to regular Part 284 service under Tennessee's Rate Schedule FT-A. Orchard's negotiated rate agreement with Tennessee required it to pay a reservation rate that included a surcharge in addition to the maximum FT-A reservation rate through July 31, 2007. In addition, if Orchard failed to transport certain minimum volumes during a period ending January 31, 2006, it would be required to pay an additional amount in excess of the maximum FT-A usage charge.

3. Tennessee states in its transmittal letter for the instant filing that Orchard permanently released its capacity to Coral on September 1, 2005, pursuant to the capacity release provisions of Tennessee's tariff. In the instant filing, Tennessee is submitting

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<sup>1</sup> *Tennessee Gas Pipeline Company*, 100 FERC ¶ 61,151 (2002) (the August 2, 2002 Order).

(1) an FT-A Gas Transportation Agreement with Coral and (2) a negotiated rate letter agreement with Coral dated September 16, 2005 to reflect the permanent assignment of Orchard's FT-A Transportation service and negotiated rate agreement to Coral effective October 15, 2005.

4. Tennessee asserts that the filed FT-A Service Agreement contains no deviations from Tennessee's *pro forma* FT-A Service Agreement.<sup>2</sup> The service agreement provides: (1) that service shall be rendered under Service Package No. 49637 under Tennessee's FT-A Rate Schedule; (2) that the term of service shall begin on October 15, 2005, and shall remain in effect, unless modified, until October 31, 2012; (3) that the receipt point shall be Meter No. 012181, and the delivery points shall be Meter Nos. 020751 and 020578; and, (4) that the total Transportation Quantity (TQ) shall be 25,000 Dth per day. The negotiated rate letter agreement states that "Orchard successfully posted its release request in accordance with applicable procedures as provided in Tennessee's FERC Gas Tariff." The letter agreement further states that Orchard "requested to permanently assign all rights and obligations" under its service agreement to Coral and "Tennessee is agreeable to such permanent assignment." The negotiated rate letter agreement then provides that Coral will pay a negotiated rate that requires it to pay the same amounts in excess of the maximum FT-A reservation and usage charges as Orchard would have been required to pay over the same periods.

5. Tennessee requests that the Commission grant all necessary waivers of its regulations in order to accept the negotiated rate agreement effective October 15, 2005.

### **Public Notice, Interventions and Protests**

6. Public notice of the filing was issued on September 21, 2005, with interventions and protests due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 385.210 (2005)). Pursuant to Rule 214 (18 C.F.R. § 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. No adverse comments or protests were filed.

### **Discussion**

7. The Commission accepts and suspends the FT-A service agreement and the negotiated rate letter agreement, to be effective October 15, 2005, subject to refund, and subject to the conditions discussed below.

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<sup>2</sup> Tennessee's September 16, 2005 filing at n.1.

8. In its filing Tennessee has requested that the Commission grant all waivers of its regulations necessary to accept its filing, but Tennessee has not specified which regulations it seeks to have waived. Section 284.8(h)(1) of the Commission's regulations provides that the rate for a capacity release "may not exceed the maximum rate." Section 11.1(d) of the General Terms and Conditions of Tennessee's tariff contains the same requirement. From the information contained in the instant filing, it is not clear if waiver of section 284.8(h)(1) would be necessary in order to accept the negotiated rate letter agreement between Tennessee and Coral. Aside from the statement in the negotiated rate agreement that Orchard "successfully posted its release request in accordance with applicable procedures as provided in Tennessee's FERC Gas Tariff," Tennessee's filing contains no indication how the release from Orchard to Coral was effectuated. The Commission is thus not certain whether: (1) Orchard's capacity release posting required the replacement shipper to pay the full negotiated rate Orchard was then paying, including the surcharges in excess of the FT-A maximum rate, or (2) Orchard's capacity release posting only required the replacement shipper to pay up to the maximum FT-A rate and Coral subsequently entered into an independent agreement with Tennessee to pay the instant negotiated rate. If the first, then waiver of section 284.8(h)(1) is arguably required. If the second, then waiver would likely not be required.

9. Accordingly, the Commission directs that Tennessee provide a description of the capacity release transaction between Orchard and Coral, including whether the release was prearranged. Tennessee is also directed to submit (1) the full text of any postings of Orchard's capacity release, including any requests for bids and (2) all terms and conditions agreed to by Coral in order to obtain the release. Tennessee must also state whether it believes waiver of section 284.8(h)(1) is necessary and, if it desires such a waiver, it must state the reasons why such a waiver would be justified.

10. The Commission also notes that in its transmittal letter, Tennessee states that "Appendix A fully discloses the essential conditions involved in the negotiated rate transactions, including a specification of all consideration." However, the instant filing does not contain an "Appendix A," but does have an "Amendment A." Amendment A purports to set forth the essential elements of the negotiated rate agreement between Tennessee and Orchard, and yet the Commission notes it was not submitted with Tennessee's July 1, 2002 filing, which the Commission accepted in the August 2, 2002 Order. It is not clear how certain elements in the negotiated rate agreement between Tennessee and Orchard are relevant to the agreement between Tennessee and Coral. For instance, Amendment A states that "Replacement Shipper [is] to pay maximum Iroquois RTS-1 demand and commodity rates and fuel for Zone 1 (Waddington to Wright)." Tennessee is directed to explain the relevance of Amendment A to the instant filing, how this part of the negotiated rate formula works, and the significance, if any, of Iroquois' RTS-1 Rate Schedule to the agreement between Tennessee and Coral.

11. Based upon a review of this filing, the Commission finds that the proposed FT-A service agreement and negotiated rate letter agreement have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission accepts Tennessee's FT-A service agreement and negotiated rate letter agreement for filing and suspends their effectiveness for the period set forth below, subject to the conditions of this order.

12. The Commission's policy regarding suspensions is that filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards.<sup>3</sup> It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.<sup>4</sup> Such circumstances do exist here. Accordingly, the Commission shall accept and suspend the effectiveness of the FT-A service agreement and negotiated rate letter agreement for the minimum period, subject to refund and to compliance with the conditions of this order, and subject to further Commission action.

The Commission orders:

The Commission accepts and suspends the FT-A service agreement and the negotiated rate letter agreement, to be effective October 15, 2005, subject to refund, and subject to Tennessee filing within 10 days of the date of this order additional information and explanations consistent with the discussion above.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>3</sup> See *Great Lakes Gas Transmission Co.*, 12 FERC & 61,293 (1980) (five-month suspension).

<sup>4</sup> See *Valley Gas Transmission, Inc.*, 12 FERC & 61,197 (1980) (one-day suspension).