

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

January 31, 2006

In Reply Refer To:  
Tennessee Gas Pipeline Company  
Docket Nos. RP06-157-000  
and RP06-157-001

Tennessee Gas Pipeline Company  
1001 Louisiana  
Houston, TX 77002

Attention: Marguerite N. Woung-Chapman  
General Counsel

Reference: Revision to Penalty Provisions

Dear Mr. Turkington:

1. On December 29, 2005, in Docket No. RP06-157-000, Tennessee Gas Pipeline Company (Tennessee) submitted tariff sheets<sup>1</sup> to change its firm storage penalty for Unauthorized Storage Withdrawals from \$25 per Dth to \$15 per Dth plus the applicable Regional Daily Spot price per Dth applicable during periods when Tennessee has declared a Balancing Alert. On January 3, 2006, in Docket No. RP06-157-001, Tennessee submitted a substitute tariff sheet<sup>2</sup> to correct a typographical error on one of the sheets. The Commission accepts Substitute Sixth Revised Sheet No. 95B and Third Revised Sheet No. 96, effective February 1, 2006, as requested. Sixth Revised Sheet No. 95B is rejected as moot.

2. Pursuant to section 3.4(b) of Rate Schedule FS, Tennessee currently charges a \$25 per Dth penalty when customers withdraw below their minimum Storage Balance prior to March 1 of each calendar year. As set forth in section 3.4(c) of Rate Schedule FS,

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<sup>1</sup> Sixth Revised Sheet No. 95B and Third Revised Sheet No. 96 to FERC Gas Tariff, Fifth Revised Volume No. 1.

<sup>2</sup> Substitute Sixth Revised Sheet No. 95B to FERC Gas Tariff, Fifth Revised Volume No. 1.

Tennessee also charges a \$25 per Dth penalty when the net withdrawals of a shipper's inventory, during the months of November through March, exceed one hundred ten percent of Ratchet II daily levels<sup>3</sup> times the number of days in the month.

3. Tennessee's Operational Flow Order (OFO) tariff provisions address three stages of threats to the system. Action Alerts and Critical Day notices were designed to address low to medium level threats to Tennessee's system, respectively. Balancing Alerts are issued when the operational integrity of the system is more severely threatened. The current \$25 per Dth penalty is charged on unauthorized storage withdrawals when Tennessee calls an Action Alert, Critical Day or Balancing Alert.

4. In the instant filing, Tennessee proposes to change the firm storage penalty to \$15 per Dth plus the applicable Regional Daily Spot price for each Dth when Tennessee has declared a Balancing Alert, for 1) unauthorized withdrawals below a customer's minimum Storage Balance as defined in section 3.4(b) of Rate Schedule FS; and 2) net withdrawals of a shipper's inventory, during the months November through March, which exceed one hundred ten percent (110 percent) of Ratchet II daily levels times the number of days in the month, as set forth in section 3.4(c) of Rate Schedule FS. Tennessee states that it is not proposing to change the penalty applicable during periods when Tennessee issues a Critical Day or an Action Alert.

5. Tennessee states that this limited change is reasonable and necessary given that the current penalty charge may not be sufficient to deter conduct this winter season, when circumstances justify issuance of a Balancing Alert, given the recent increases in natural gas prices along with the decline in available Gulf Coast supplies after the recent hurricanes. Tennessee provides that the increase in unauthorized storage withdrawals would only be applicable where Tennessee's operational integrity is threatened as evidenced by issuance of a Balancing Alert and assessed only on those customers who take actions that may compromise pipeline operations. Tennessee contends that its current fixed penalty of \$25 would not provide a sufficient deterrent to unauthorized storage withdrawals if gas prices were to exceed \$25 because the storage customer is not subject to an index penalty provision in the event of non-compliance. In addition, Tennessee explains that Commission precedent supports the use of index pricing for penalty prices and that its proposed revisions are similar to other proposals recently approved by the Commission. Finally, Tennessee states that it is not proposing to modify its penalty crediting provisions so that any penalty revenues will be credited to shippers

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<sup>3</sup> Section 3.4(a) of Rate Schedule FS defines the Ratchet levels available to shippers electing conditional deliverability entitlements. Specifically, Ratchet II allows for inventory levels to be withdrawn at a rate greater than 0 percent and up to 20 percent of inventory.

who abide by the relevant tariff provisions in Article XXXVIII of its General Terms and Conditions.<sup>4</sup>

6. Notices of the subject filings in Docket Nos. RP06-157-000 and RP06-157-001 were issued on January 5, 2006, and January 10, 2006, respectively. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2005). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2005), all timely 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. East Tennessee Group (ETG), Consolidated Edison Company of New York, Inc. (Con Ed) and Orange and Rockland Utilities, Inc. (O&R) protested Tennessee's filing. On January 19, 2006, Tennessee filed an answer to the protests. Tennessee's answer will be accepted as it has provided information useful in the resolution of the issues raised by the protesters. The parties concerns and Tennessee's answer are discussed below.

### **Discussion**

7. The Commission finds that the proposed change in the penalty for unauthorized storage withdrawals applicable when Tennessee has declared a Balancing Alert is reasonable and accepts the tariff sheets as set forth above. Tennessee's tariff provides that unauthorized storage withdrawals occur without penalty unless Tennessee calls an OFO. Tennessee's proposal here will only change the penalty for unauthorized storage withdrawals when a Balancing Alert is in effect. The OFO provisions in Tennessee's tariff are in effect to protect the operational integrity of the pipeline and penalties are not assessed unless the pipeline's operational integrity is threatened. Penalties are assessed only on those shippers who take actions that may compromise pipeline operations, and penalty revenues are credited to shippers which abide by the relevant tariff provisions. Tennessee's current penalty during Balancing Alerts is capped at a level that may no longer act as a deterrent for actions that might threaten the operational integrity of pipeline operations. Penalties should provide an economic disincentive to shippers that might take actions which could threaten the operational integrity of the pipeline in the absence of such penalties. For a penalty to be effective, it must be at a level sufficient to make its incurrence economically undesirable when compared with other choices. The Commission has recently approved similar provisions on other pipelines as just and

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<sup>4</sup> Article XXXVIII sets forth how Tennessee will credit any penalty revenues back to the eligible parties.

reasonable levels for penalties.<sup>5</sup> The Commission, therefore, accepts Tennessee's proposal as a reasonable action to preserve the operational integrity of its pipeline system.

8. Con Ed and O&R contend that not every Balancing Alert issued by Tennessee will mean that Tennessee has determined that unauthorized storage withdrawals would be detrimental throughout its system. Therefore, Con Ed and O&R request clarification that for every Balancing Alert, Tennessee will provide sufficient specificity as to its application. ETG, Con Ed and O&R also request that Tennessee be required to give specific notice to those customers that would be subject to penalties for Unauthorized Storage Withdrawals.

9. Tennessee in its answer confirms Con Ed and O&R's requested clarification that Tennessee will set out in each Balancing Alert where specifically on its system the penalty for unauthorized storage withdrawals will be imposed.<sup>6</sup> In response to ETG, Con Ed and O&R's request that proper notice be given to shippers prior to incurring an unauthorized storage penalty, Tennessee states that: 1) a shipper exceeding its authorized withdrawals is not automatically subject to any penalty if the withdrawals are authorized by Tennessee; 2) section 3.4(b) of Rate Schedule FS provides that unauthorized storage withdrawals occur without penalty unless Tennessee calls an OFO; and 3) section 2.3 of Article VIII provides that Tennessee will notify each OFO Recipient by PASSKEY, Internet E-mail and/or EDI/EDM and also by telephone. In light of Tennessee's Answer and the tariff provisions governing OFO's, the Commission believes that the parties concerns that Balancing Alerts provide sufficient specificity as to its application and that notice be given to those customers affected by the Balancing Alert are satisfied.

10. Con Ed and O&R also contend that Tennessee's tariff does not clearly specify how far in advance notice would be provided to storage customers to whom the proposed penalty rates would potentially apply. Con Ed and O&R request that Tennessee give seventy-two hours notice prior to issuance of a Balancing Alert to enable a storage customer sufficient time to modify its withdrawal plans. Contrary to Con Ed and O&R's

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<sup>5</sup>See, *Transcontinental Gas Pipe Line Corp.*, 113 FERC ¶ 61, 224 (2005); *Columbia Gas Transmission Co.*, 113 FERC ¶ 61,204 (2005); *Columbia Gas Corp.*, 113 FERC ¶ 61,191(2005); *Viking Gas Transmission Co.*, 112 FERC ¶ 61,098 (2005); *Midwestern Gas Transmission Co.*, 112 FERC ¶ 61,345 (2005); *Texas Eastern Transmission, LP*, 113 FERC ¶ 61,145 (2005).

<sup>6</sup> Sections 2.2 and 2.3 of Article VIII of its GT&C provides that any OFO, including Balancing Alerts, be as localized as possible, directed first to OFO recipients causing the problem necessitating the OFO or transporting gas in the affected area, and second to those OFO recipients transporting gas in the area of the system where action is required to correct the problem.

claim, section 5.1 of Article VIII of Tennessee's GT&C clearly states that notice will be issued a minimum of eight hours prior to the issuance of a Balancing Alert. Tennessee's tariff also provides for advance notice prior to Action Alerts or Critical Days being issued on its system.<sup>7</sup> Con Ed and O&R have made no showing why Tennessee's current tariff provision governing OFO notices is unjust and unreasonable. Therefore, Con Ed and O&R's request that Tennessee's tariff be revised to include a 72 hour notice period is denied.

11. ETG further contends that a shipper could become liable for the increased penalties even if its withdrawals did not exceed its Storage Balance, albeit at a pace faster than Tennessee permits. ETG states that it has long found even the existing penalty levels for this particular conduct unwarranted and unjustifiable and that at the newly proposed higher levels, these penalties will present an ever greater injustice. ETG further contends that if Tennessee views this type of excess withdrawals as a serious concern, it could simply monitor a shipper's withdrawals and decline to schedule any that would exceed the tariff levels.

12. ETG's claim that storage penalties should not apply to a shipper's withdrawal of its own storage gas goes beyond the issues raised by the instant filing, which proposes an change in the existing firm unauthorized storage withdrawal penalty. In any event, the protest ignores the fact that withdrawals in excess of authorized quantities may pose harm to Tennessee's system and to other shippers. In such circumstances, it is reasonable to require shippers on a pipeline to refrain from harmful conduct. Further, shippers should not rely on a pipeline to continuously monitor their behavior, especially during periods of system stress when the pipeline should be focusing on restoring the system to normal operation. Additionally, since Tennessee's storage fields are all jointly owned with other partners, withdrawals in excess of the monthly limit may cause the operator to not allow Tennessee to withdraw its gas for the rest of the month and result in Tennessee not being able to meet its firm obligations. The Commission believes it is entirely appropriate to penalize shippers who are in violation of a pipeline's tariff during critical periods as provided by its tariff. Accordingly, this aspect of ETG's protest is without merit.

13. ETG objects to the change in penalties to reflect the cost of spot gas. ETG states that Tennessee's reasoning for increasing the penalty by adding the cost of spot gas, *i.e.* that the shipper will make an economically rational decision to choose the \$25 penalty, does not apply to a shipper's withdrawal of its own storage gas (presumably meaning that the shipper is withdrawing too fast but within its own storage balances). ETG adds that

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<sup>7</sup> Section 3.1 of Article VIII provides that notice is given 48 hours prior to issuance of an Action Alert and section 4.3 of Article VIII provides that notice is given no later than 10:00 p.m. to be effective by 9:00 a.m. when a Critical Day is issued.

none of the Commission precedents cited at page 3 of the filing involved such penalties. ETG's objection is without merit. The use of the spot gas prices insures that the penalty for withdrawing gas too fast is high enough to deter such unauthorized withdrawals during critical periods.

14. ETG also contends that there is no justification for penalizing shippers for withdrawing their own storage gas, *i.e.*, within their storage balance. ETG claims that Tennessee's alternative rationale for changed penalties, *i.e.*, the decline in Gulf Coast supplies resulting from hurricanes, also fails. It asserts that this rationale does not apply to circumstances in which all the shipper has done is withdraw its own storage gas (again, presumably just too fast). The decrease in supplies due to hurricanes is one reason why a shipper might want to withdraw its own gas supplies faster than authorized. If it does so during a critical period, it deserves a penalty.

15. Lastly, in response to ETG's assertion, Tennessee notes in its answer, that by Commission order<sup>8</sup> ETG shippers behind Operational Balancing Agreements that are individually subject to paying penalties are eligible for penalty crediting to the extent they were non-offenders.

By direction of the Commission.

Magalie R. Salas,  
Secretary.

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<sup>8</sup> *Tennessee Gas Pipeline Co.*, 108 FERC ¶ 61,177 (2004).