

123 FERC ¶ 61,318
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 30, 2008

In Reply Refer To:
Tennessee Gas Pipeline Company
Docket Nos. RP91-203-075
RP92-132-063

Tennessee Gas Pipeline Company
1001 Louisiana Street
Houston, TX 77002

Attention: Melissa G. Freeman
Senior Counsel

Reference: See Enclosure for List of Tariff Sheets

Dear Ms. Freeman:

1. On May 30, 2008, Tennessee Gas Pipeline Company (Tennessee) filed the referenced tariff sheets, pursuant to a May 15, 1995 Settlement (Settlement),¹ to extend the time to recover the costs of remediating polychlorinated biphenyl (PCB) and other hazardous substance list (HSL) contamination on its system. The referenced tariff sheets reflect a two-year extension of its PCB Adjustment (surcharge) of \$0.00/Dth through June 30, 2010. The Commission accepts the proposed tariff sheets to become effective on July 1, 2008, subject to condition as discussed below.

2. The Settlement resolved issues to establish a PCB/HSL cost recovery mechanism applying to Tennessee's Federal and State mandated programs to assess and remediate PCB/HSL contamination. The Settlement permits Tennessee to recover \$17 million per

¹ The recovery of PCB/HSL remediation costs was established in a contested settlement filed on May 15, 1995 in this docket. The Commission approved the Settlement in *Tennessee Gas Pipeline Co.*, 73 FERC ¶ 61,222 (1995), *reh'g*, 74 FERC ¶ 61,174 (1996). Pursuant to Article XIII of the Settlement, it took effect on the date that the Commission denied rehearing (February 20, 1996), and may continue for a period of up to 15 years from that date.

year of certain defined “eligible costs” related to the PCB/HSL remediation and established a PCB adjustment surcharge to recover eligible costs for the period from July 1, 1995 to June 30, 2000. The Settlement states that the PCB Adjustment Period shall be extended in 24-month increments to eliminate the Recoverable Cost/Revenue Account (RCRA) balance or to reflect additional eligible costs.²

3. On May 31, 2000, Tennessee filed for a 24-month extension of the initial PCB Adjustment Period and for authorization to decrease the PCB surcharge to \$0.00/Dth. Tennessee estimated at that time that it had over-collected up to \$30 million in PCB/HSL remediation costs, but filed to extend the Adjustment Period because the Settlement requires an extension of the PCB adjustment period not just to collect additional costs but also to account for the incurrance of eligible costs yet to be spent. In an order issued June 29, 2000, the Commission approved Tennessee's proposal by extending the PCB remediation recovery period until July 1, 2002, and authorizing the requested reduction of the PCB surcharge.³

4. On May 31, 2002, Tennessee filed tariff sheets to extend for another 24 months, until June 30, 2004, the adjustment period to recover the cost of the PCB/HSL remediation. Tennessee proposed to leave the PCB surcharge at \$0.00 during this second extended period. The Commission approved Tennessee’s proposal by extending the PCB remediation recovery period until June 30, 2004, and leaving the PCB surcharge at \$0.00/Dth.⁴

5. On May 31, 2004, Tennessee filed tariff sheets to extend for another 24 months until June 30, 2006, the adjustment period to recover the cost of the PCB/HSL remediation. Tennessee proposed to leave the PCB surcharge at \$0.00 during this third extended period. The Commission approved Tennessee’s proposal by extending the PCB

² Article IV, Section B.4.b states, in part:

The PCB adjustment shall be extended after the PCB Adjustment Period in 24-month increments as necessary to collect additional costs to eliminate the account balance calculated in accordance with this Article IV or to reflect additional Eligible Costs. Within 120 days of the end of the final 24-Month Period Tennessee shall, if necessary, refund to each shipper subject to this Stipulation an amount necessary to ensure that Tennessee does not recover more than the amounts provided under this Article IV (as limited by Article III E).

³ *Tennessee Gas Pipeline Co.*, 91 FERC ¶ 61,315 (2000).

⁴ *Tennessee Gas Pipeline Co.*, 99 FERC ¶ 61,375 (2002).

remediation recovery period until June 30, 2006, and leaving the PCB surcharge at \$0.00/Dth.⁵

6. On May 31, 2006, Tennessee filed tariff sheets to extend for another 24 months until June 30, 2008 the adjustment period to recover the cost of the PCB/HSL remediation. Tennessee proposed to leave the PCB surcharge at \$0.00 during this third extended period. The Commission approved Tennessee's proposal by extending the PCB remediation recovery period until June 30, 2008, and leaving the PCB surcharge at \$0.00/Dth.⁶

7. Tennessee has now filed tariff sheets to extend for another 24 months, through June 30, 2010, the adjustment period to recover the cost of the PCB/HSL remediation. Tennessee proposes to leave the PCB surcharge at \$0.00/Dth during this fifth extended period.

8. Tennessee states that it had spent approximately \$229 million⁷ in eligible costs as of the end of 2007. Tennessee notes that 65 compressor stations were targeted for PCB clean-up under the PCB/HSL Project, and it has completed on-facility remediation for all of these. Also, Tennessee states that it has completed the requisite remediation of 16 of these facilities, which were also targeted as potentially having off-facility issues. Tennessee states that remaining work under the PCB/HSL Project includes groundwater monitoring at nine (9) stations and post-remediation monitoring at four (4) sites. Tennessee states that it is uncertain when this will be completed, and notes that depending on the results, it could also be required to evaluate the effectiveness of the remediation and/or to conduct additional work, which could result in significant costs and delays in the PCB/HSL Project's completion.

9. Tennessee states Environmental Protection Agency (EPA) approval remains outstanding at several sites. Tennessee states that, while it believes EPA approval will ultimately be received, the timing is uncertain, and Tennessee states that the EPA has indicated that it may revise the current regulations regarding PCBs resulting in more stringent cleanup requirements. Tennessee states that such revisions, if applicable, could have a significant impact on the PCB/HSL Project's cost and schedule.

10. In light of these outstanding issues, Tennessee states that it cannot reliably predict when it can expect to complete the PCB/HSL Project. Because the groundwater and post-remediation monitoring requirements are anticipated to continue into the foreseeable future, Tennessee estimates that it may need to spend approximately an additional

⁵ *Tennessee Gas Pipeline Co.*, 107 FERC ¶ 61,332 (2004).

⁶ *Tennessee Gas Pipeline Co.*, 115 FERC ¶ 61,389 (2006).

⁷ All amounts stated in this order are "in current unadjusted dollars."

\$10 million, noting that it is possible, particularly if the EPA modifies its regulations or if additional remediation is required based on results of post-remediation monitoring, that expenditures will exceed that amount.

11. Through year 2007, the RCRA indicated a pre-collection credit of approximately \$148 million (in 1992 dollars), and of the \$10 million that is estimated to be needed to complete the project, the customers' share of that amount (under the percentage recovery tiers of the Settlement) is approximately \$7 million which will be applied to the pre-collected amount as of the end of year 2007. Tennessee states that based on these estimates it may have over-collected by as much as \$141.7 million. Despite the level of pre-collected dollars currently reflected in the RCRA balance, Tennessee believes that there exists too much uncertainty as to the level of costs ultimately required to complete the remaining remediation efforts and to obtain final approval from the relevant regulatory agencies to determine the final level of any over-collections or potential refunds based on these estimates at this time.

12. Tennessee states that its customers will be compensated for any pre-collected or over-collected funds by the Settlement provision⁸ requiring that Tennessee pay interest at a minimum of 10 percent, which is in excess of the current FERC interest rate. Tennessee states that the Commission recognized in the June 28, 2002 Order that the Settlement requires that the PCB Adjustment Period be extended in twenty-four month increments to eliminate the RCRA balance or to reflect additional eligible costs, and based on its current projections, Tennessee will be incurring costs for the Project for at least two more years.

13. Tennessee states that it is prepared to discuss with its customers the feasibility of amending the Settlement to provide for disposition of some portion of the pre-collected or over-collected costs while providing protection should the retained RCRA balance be insufficient in the event more eligible costs than are predicted are ultimately incurred to complete the PCB/HSL Project. Tennessee proposes to report back to the Commission on the results of any such discussions by October 1, 2008. Tennessee notes that the Commission found in its previous orders that, if the PCB Adjustment Period and PCB surcharge were terminated, thus triggering a refund obligation, the Settlement would fail to provide for the reestablishment of these mechanisms in the event that more eligible costs are ultimately incurred.

14. Public notice of Tennessee's filing was issued on June 3, 2008. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2007)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2007)), all timely filed motions to intervene and any motions to intervene out-of-time before the

⁸ Article IV, Section C.1.c.

issuance date of this order are granted. National Fuel Gas Distribution Corporation (Distribution) filed a protest, the PSEG Companies⁹ filed a protest and request for technical conference, and New England Local Distribution Companies (New England LDCs)¹⁰ and National Grid Gas Delivery Companies (National Grid Companies)¹¹ filed comments in support with requests for conditions. Tennessee filed a motion for leave to answer and answer in response.

15. Distribution protests Tennessee's filing and asserts that it is neither reasonable nor in the public interest for Tennessee to continue to hold approximately \$141.7 million more than its "best estimate" of the funds it will need to complete the PCB/HSL Project. Distribution states that Tennessee should be ordered to refund to its pre-paid PCB surcharge customers such funds in excess of its "best estimates." Distribution also states that this is a reasonable and workable solution that will allow Tennessee to continue its remediation work per the Settlement and protect the public interest.

16. Distribution states that, while it is encouraged by Tennessee's acknowledgement of the need for a refund, Tennessee's proposal does not go far enough. Distribution urges the Commission to condition approval of the requested extension on an amendment of the Settlement with appropriate refund language, and to identify the amount of over-collected costs to be returned to Tennessee's customers. Distribution asserts that without such a condition, Tennessee has no motivation for meaningful negotiation of the refund amendment. Likewise, the PSEG Companies state that it is abundantly clear that a significant refund should be provided to customers at this time. The PSEG Companies assert that Tennessee's willingness to meet with its customers to discuss amending the Settlement is commendable; however, the PSEG Companies believe a more formal procedure must be established by the Commission to assure that a refund mechanism is promptly established. Therefore, the PSEG Companies urge the Commission to establish a technical conference with specific instructions to the parties that the outcome should be the refund of the bulk of the monies.

⁹ The PSEG Companies are Public Service Electric and Gas Company and PSEG Energy Resources & Trade, LLC.

¹⁰ The New England Local Distribution Companies include: Bay State Gas Company, The Berkshire Gas Company, Connecticut Natural Gas Corporation, Fitchburg Gas and Electric Light Company, City of Holyoke, Massachusetts Gas and Electric Department, Northern Utilities, Inc., NSTAR Gas Company, The Southern Connecticut Gas Company and Yankee Gas Services Company.

¹¹ The National Grid Gas Delivery Companies include: The Brooklyn Union Gas Company, KeySpan Gas East Corporation, Boston Gas Company, Colonial Gas Company, Essex Gas Company, EnergyNorth Natural Gas, Inc., Niagara Mohawk Power Corporation and The Narragansett Electric Company.

17. Distribution states that the Commission should specify the amount to be refunded to customers in its order. Distribution suggests taking Tennessee's offered best estimate of \$141.7 million of over-collections, then taking into consideration the uncertainty as to the level of costs ultimately required, Distribution states that Tennessee's \$7 million estimate of remaining costs should be approximately tripled so that \$120 million of the over-collected costs can be returned to Tennessee's customers while Tennessee retains a cushion in the event eligible costs are incurred going forward.

18. The National Grid Companies and the New England LDCs filed comments supporting Tennessee's request. However, both requested that the Commission condition its acceptance of Tennessee's filing by directing Tennessee to meet with its customers, as soon as reasonably possible, to discuss and develop a workable solution that will allow for a disposition of some or all of RCRA over-collections.

19. Distribution made similar requests for refunds in Tennessee's four previous PCB Adjustment Period filing proceedings. The Commission, in its orders in those proceedings, denied Distribution's requests to require refunds of over-collections at that time as inconsistent with the terms of the Settlement.¹² The Commission held that there is no provision in the Settlement that would allow termination of the PCB Adjustment Period (and thus the PCB surcharge), which is required under the Settlement in order to trigger a refund obligation, and yet allow re-establishment of these mechanisms in the event that more eligible costs than are predicated are ultimately incurred.¹³

20. Thus, the Commission held that the Settlement provides for extensions in 24 month increments to permit Tennessee to recover eligible costs and does not provide for interim refund of pre-collected or over-collected costs, as once again requested by Distribution, New England LDCs, and NiSource.¹⁴

21. The Settlement provides that beginning July 1, 1995, Tennessee shall compute carrying charges on the PCB/HSL recoverable costs/revenues account. Interest is computed based on the higher rate of 10 percent or the applicable FERC-prescribed interest rate (currently at 5.3 percent). Thus, the Commission has held, customers are compensated for the time value of any pre-collected or over-collected funds.¹⁵ Finally, the Settlement includes a refund mechanism (Article IV, section B.4.b) specifying

¹² *E.g.*, *Tennessee Gas Pipeline Co.*, 107 FERC ¶ 61,332, at 62,089 (2004).

¹³ *Id.*

¹⁴ *Id.* ("The settlement provides for extensions in 24 month increments to permit Tennessee to recover eligible costs and does not provide for interim refund of precollected costs as requested . . ."). *See also, supra* note 2.

¹⁵ *Id.*

procedures for the refund of any over-collections within 120 days of the end of the final extension period to ensure that Tennessee does not recover more than the amounts provided for under the Settlement.

22. Accordingly, consistent with the Commission's prior orders, the Commission accepts the proposed tariff sheets reflecting a 24-month extension for PCB remediation recovery through June 30, 2008. Distribution's, New England LDCs', and NiSource's requests to require refunds at this time are denied as inconsistent with the terms of the Settlement. However, this acceptance is conditioned upon Tennessee meeting with its customers to discuss amending the Settlement, as stated in Tennessee's filing, and reporting back to the Commission by October 1, 2008. We applaud Tennessee's willingness to work with its customers to come to a mutually agreeable solution for the vast over-collection sums, while safeguarding Tennessee's ability to complete its PCB/HSL remediation.

23. Further, we reject PSEG Companies' request for a technical conference as unnecessary in light of our rejection of its request for refunds.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

Enclosure

Tennessee Gas Pipeline Company
Docket Nos. RP91-203-075 and RP92-132-063

Tariff Sheets Effective July 1, 2008

FERC Gas Tariff, Fifth Revised Volume No. 1

Thirty-Sixth Revised Sheet No. 20
Thirty-Eighth Revised Sheet No. 21A
Forty-Fourth Revised Sheet No. 22
Fifteenth Revised Sheet No. 22.01
Thirty-Eighth Revised Sheet No. 22A
Twenty-Sixth Revised Sheet No. 23
Sixteenth Revised Sheet No. 23B
Eleventh Revised Sheet No. 23D
Seventeenth Revised Sheet No. 23F
Fourteenth Revised Sheet No. 23G
Ninth Revised Sheet No. 25A
Twenty-Ninth Revised Sheet No. 26
Forty-First Revised Sheet No. 26B
Seventeenth Revised Sheet No. 27
Twelfth Revised Sheet No. 407
Fifth Revised Sheet No. 408

FERC Gas Tariff, Original Volume No. 2

Fiftieth Revised Sheet No. 5