

127 FERC ¶ 61,030
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 9, 2009

In Reply Refer To:
Texas Gas Transmission, LLC
Docket No. RP09-448-000

Texas Gas Transmission, LLC
9 Greenway Plaza
Houston, TX 77046

Attention: J. Kyle Stephens
Vice President -- Regulatory Affairs and Rates

Reference: First Revised Sheet No. 2502 to FERC Gas Tariff, Third Revised Volume
No. 1

Dear Mr. Stephens:

1. On March 11, 2009, Texas Gas Transmission, LLC (Texas Gas) filed the First Revised Sheet No. 2502 to reflect changes and modifications applicable to Operational Balancing Agreements (OBA) as defined in section 13.2 of its General Terms & Conditions (GT&C). Texas Gas' tariff sheet is accepted and suspended subject to the conditions set forth herein, effective April 11, 2009.
2. Texas Gas proposes to modify its tariff to allow OBA counterparties and Texas Gas to mutually agree on the method for resolving OBA imbalances, including the ability to use mutually agreed upon market-related price indices or procedures to cash out an imbalance. Texas Gas' tariff states that they will negotiate the method for resolving OBA imbalances on a nondiscriminatory basis. Texas Gas states that currently, under Section 13 of its GT&C, OBA imbalances that are cashed out must be cashed out following the same methodology that applies to customer transportation imbalances. Texas Gas states that at the time Texas Gas' tariff provision was approved, the Commission required Texas Gas to apply the same cash-out mechanisms to both transportation imbalances and OBA imbalances.¹ Texas Gas states that, subsequently,

¹ Citing *Texas Gas Transmission, LLC*, 65 FERC ¶ 61,008, at 61,165 (1993).

the Commission has approved tariff provisions allowing pipelines to implement cash-out mechanisms for OBA imbalances that are different from cash-out mechanisms for transportation imbalances.² Texas Gas states that the OBA revision will enable the OBA party and Texas Gas to negotiate a resolution of individual market solutions related to a specific interconnect and could facilitate the establishment of an OBA at non-pipeline interconnects.

3. Notice of Texas Gas' filing was issued on March 13, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.³ Pursuant to Rule 214,⁴ 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. On March 23, 2009, Tennessee Valley Authority (TVA) filed comments.

4. On March 27, 2009, Texas Gas filed an answer to TVA's comments. Also on March 27, 2009, Texas Gas filed a correction to its answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,⁵ prohibits answers to protests unless otherwise ordered by the decisional authority. We will accept Texas Gas' answer and the correction to its answer because they have provided information that assisted us in our decision-making process.

5. TVA states that it conditionally supports Texas Gas' effort to allow OBA counterparties to negotiate mutually beneficial methodologies for resolving OBA imbalances with Texas Gas. TVA also states that the proposed approach fosters win-win situations that better reflect the value of an OBA. However, TVA requests that Texas Gas make the proposed OBA resolution available to power plants or other large end-users which meet the required standards. TVA asserts that these parties are similarly situated in metering and data sharing capabilities and would equally benefit from an OBA balancing mechanism.

² Citing *Transcontinental Gas Pipe Line Corp.*, 98 FERC ¶ 61,366, at 62,574-75 (2002) (*Transco*).

³ 18 C.F.R. § 154.210 (2008).

⁴ 18 C.F.R. § 385.214 (2008).

⁵ 18 C.F.R. § 385.213(a)(2) (2008).

6. In its answer, Texas Gas states that under TVA's proposal to extend the OBA resolution procedures to power plants and other large end-users, a large end-user could avoid paying transportation charges to the extent gas deliveries are taken in excess of the user's nominated amount. Texas Gas states that it generally offers OBAs only to other pipelines, and that its non-pipeline OBAs are limited to certain wellhead receipts, third-party storage, and processing plants. Texas Gas states that this approach is consistent with the Commission's regulations, which mandate OBAs only at a pipeline's points of interconnection with other interstate or intrastate pipelines.⁶

7. Texas Gas also asserts that TVA's proposal is beyond the scope of Texas Gas' filing. Texas Gas avers that TVA has failed to carry its burden under section 5 of the Natural Gas Act (NGA) to show that Texas Gas' current practice of generally entering into OBAs only at pipeline interconnects is not just and reasonable and that it would be just and reasonable to require Texas Gas to enter into OBAs with power plants and large end-users other than pipelines.

8. The Commission finds TVA's request is beyond the scope of this proceeding in which Texas Gas has proposed to change the methodology by which it resolves OBA imbalances. Texas Gas' filing proposed only to modify the method for resolving OBA imbalances and did not propose to change the type of entities with which it would enter into OBA agreements. TVA has not shown that the Commission's regulations, or Texas Gas' current practice restricting OBA agreements to other pipelines, processing plants and production facilities is unjust and unreasonable.

9. However, the Commission is concerned that Texas Gas' proposal may result in more favorable cash-out provisions to OBA point operators than to transportation shippers. It is not clear why a shipper, such as a power plant or another large end-user, which cannot negotiate an OBA under Texas Gas' tariff, should be subject to different and potentially more restrictive, cash-out provisions than processing plants and production facilities which are permitted to obtain an OBA under Texas Gas' tariff provisions. For example, it is not clear why OBA parties should be able to negotiate cash-out provisions based upon very general, unspecified market price indices when this option is not available to other parties. The Commission directs Texas Gas within 30 days of this order to provide additional support for its proposal to permit different cash-out mechanisms for resolving OBA imbalances and transportation imbalances and to explain how its proposal does not unduly favor OBA parties relative to transportation shippers which lack the ability to enter into OBAs under Texas Gas' tariff.

⁶ 18 C.F.R. § 284.12(b)(2)(i) (2008).

10. It is also not sufficient for Texas Gas to rely upon the Commission's order in *Transco* in order to justify its disparate treatment of shippers. Although *Transco* approved distinctions between OBA shippers and transportation shippers, the Commission's decision in *Transco* relied upon the specific circumstances of that proposal in order to justify the disparate treatment of OBA and non-OBA shippers. *Transco* does not establish that such distinctions are appropriate in every circumstance. Texas Gas must show there is a compelling reason to treat OBA and non-OBA shippers differently on its system. Texas Gas' explanation that the OBA will allow Texas Gas and the OBA party to negotiate a resolution of individual market solutions related to specific interconnects and that the proposal could facilitate OBAs at non-pipeline interconnects is insufficient for this purpose.

11. Based upon a review of the filing, the Commission finds that the proposed tariff sheet has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept the tariff sheet for filing and suspend their effectiveness for the period set forth below, subject to the conditions set forth in this order.

12. The Commission's policy regarding rate suspensions is that tariff 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 that it may be inconsistent with other statutory standards.⁷ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results.⁸ Such circumstances exist here where no party is opposing Texas Gas' proposed changes. Accordingly, the Commission will exercise its discretion to accept and suspend these tariff sheets for the shorter period to become effective April 11, 2009.

The Commission orders:

(A) Texas Gas's First Revised Sheet No. 2502 to FERC Gas Tariff, Third Revised Volume No. 1, is accepted and suspended, subject to the conditions set forth herein, to be effective April 11, 2009.

⁷ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

⁸ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

(B) Texas Gas is directed within 30 days of this order to provide additional support for its proposal to permit different cash-out mechanisms for resolving OBA imbalances and transportation imbalances and to explain how its proposal does not unduly favor OBA parties relative to transportation shippers that lack the ability to enter into OBAs under Texas Gas' tariff.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.