

129 FERC ¶ 61,179  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

November 30, 2009

In Reply Refer To:  
Tennessee Gas Pipeline Company  
Docket No. RP10-59-000

Tennessee Gas Pipeline Company  
1001 Louisiana St.  
Houston, TX 77002

Attention: Jay V. Allen  
Senior Counsel

Reference: Settlement and Non-Conforming Service Agreements

Dear Mr. Allen:

1. On October 19, 2009, Tennessee Gas Pipeline Company (Tennessee) filed: (a) a settlement agreement (Settlement) between Tennessee and the New England LDCs<sup>1</sup> providing for various extensions of and revisions to Rate Schedule FT-A service agreements; (b) the service agreements and related negotiated rate letter agreements supplemented by and necessary to effectuate the Settlement (collectively, Service Agreements);<sup>2</sup> and (c) a revised tariff sheet<sup>3</sup> listing those of the Service Agreements that contain non-conforming provisions. Tennessee requests that the Commission accept and

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<sup>1</sup> The New England LDCs include Bay State Gas Company (Bay State); Connecticut Natural Gas Corporation (CNG); NStar Gas Company (NStar); Northern Utilities, Inc. (Northern); and The Southern Connecticut Gas Company (Southern).

<sup>2</sup> The Service Agreements include contract numbers 41113, 41098, 41099, 46313, 46314, 67380, and 67381.

<sup>3</sup> Fifth Revised Sheet No. 413B.

approve the Service Agreements to become effective in accordance with their respective terms and the tariff sheet to be effective December 1, 2009. Tennessee also requests that the Commission accept and approve the Settlement and related Service Agreements by December 1, 2009. For the reasons discussed below, the Commission accepts and approves the Settlement, Service Agreements, and proposed tariff sheet to be effective December 1, 2009, as requested.

2. On July 21, 2008, in Docket No. RP08-648-000, Shell Energy North America (US), L.P. (Shell) filed a request for clarification of the Commission's right of first refusal policy as it applies to negotiated rate agreements. Shell asserted that, as a firm shipper currently paying the maximum tariff rate under a long term negotiated rate agreement with Tennessee, it should qualify for the regulatory right of first refusal established by section 284.221(d)(2) of the Commission's regulations.<sup>4</sup> The New England LDCs, among others, supported Shell's request for clarification. Tennessee opposed the requests for clarification on the grounds that negotiated rate agreements, absent a contractual provision to the contrary, do not qualify for a regulatory right of first refusal.

3. Under Shell's and the New England LDCs' negotiated rate contracts with Tennessee, the shipper pays the maximum Rate Schedule FT-A rates plus a surcharge for a portion of the term and, for the balance of the term, the maximum FT-A rates without the surcharge. With limited exceptions,<sup>5</sup> these negotiated contracts were in consideration of the shippers agreeing to convert from Tennessee's Rate Schedule NET, a non-open access service provided at incremental rates, and/or Rate Schedule NET-284, a limited open access service provided at incremental rates, to Rate Schedule FT-A, a higher quality open access service.<sup>6</sup>

4. On November 4, 2008, Tennessee issued a notice of the commencement of a non-binding open season for its proposed Northeast Supply Diversification Project (NSD Project). In the notice, Tennessee indicated that it intended to utilize capacity under

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<sup>4</sup> 18 C.F.R. § 284.221(d)(2) (2008).

<sup>5</sup> CNG and Southern acquired their negotiated rate agreements through permanent releases from Shell, who acquired its negotiated rate agreements from shippers who held the capacity under almost identical negotiated rate agreements with Tennessee and were in consideration of that shipper's conversion from Rate Schedule NET-284 to Rate Schedule FT-A.

<sup>6</sup> The maximum FT-A rate was lower than the maximum NET and NET-284 rates, since the latter rates were incremental rates reflecting the costs of facilities Tennessee constructed in order to provide the NET services.

contracts expiring November 2010 to November 2012, including the negotiated contracts of Shell and the New England LDCs, in the NSD Project. Shell and the New England LDCs claimed that, without a right of first refusal, they would be forced to bid on and win capacity in the open season, including unneeded upstream capacity. The New England LDCs also claimed that the indicative rates in the open season notice were three times higher than the rate the shippers now pay for the same capacity rights.

5. On February 13, 2009, the Commission denied the shippers' request for clarification.<sup>7</sup> The Commission found that the shippers were not entitled to a right of first refusal under either the Commission's policies and regulations or Tennessee's tariff. The Commission held that the fact a negotiated rate contract requires the shipper to pay the pipeline's maximum FT-A rate, as it may change from time to time, does not entitle the shipper to a regulatory right of refusal under the Commission's policy and regulations. On March 16, 2009, the New England LDCs filed a Request for Clarification and Rehearing of the Commission's order (Request for Rehearing).

6. On September 8, 2009, Tennessee and the New England LDCs executed the Settlement. Section 1 of the Settlement describes the parties' agreement regarding various extensions of and revisions to contracts between Tennessee and members of the New England LDCs, including the Service Agreements filed herewith.<sup>8</sup> Certain parties agreed to extend their contracts with Tennessee (ranging from 47 days to 5 years), while others have agreed to let their contracts expire.

7. Section 2 of the Settlement provides that under certain of the Service Agreements, shippers may extend the term of their agreements based on the rate the shipper elects to pay for its service. Specifically, section 2.1 provides that Service Agreements 41113, 41098, and 41099 will be revised to include an extension right consistent with section 2.2. of the Settlement if the shipper notifies Tennessee of its intent to pay a fixed negotiated rate.<sup>9</sup> Section 2.2. provides that Service Agreements 67381 and 67380 and any agreement for which the shipper exercised its option described in section 2.1 shall have its term provisions revised to provide the following in lieu of a contractual or regulatory right of first refusal: (a) the service agreement will extend for an additional 5 years at the fixed negotiated rate; (b) the extension rights shall continue until the

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<sup>7</sup> *Shell Energy North America (US), L.P.*, 126 FERC ¶ 61,120 (2009).

<sup>8</sup> The contracts include the Service Agreements filed herein and contract numbers 41114, 625, 630, 5173, 5083, 1627, 46099, 543, 43779, and 46291.

<sup>9</sup> The negotiated rate is: (a) a fixed Monthly Demand Rate of \$9.8967 and a fixed Daily Commodity Rate of \$0.0069; plus (b) applicable FT-A fuel and loss retention and any applicable FT-A surcharges, as each may change from time to time.

service agreement terminates or Tennessee's Rate Schedule NET-284 is rolled into Rate Schedule FT-A; and (c) if Rate Schedule NET-284 is rolled into Rate Schedule FT-A, the shipper's rate will change to the maximum applicable Rate Schedule FT-A rates and at the end of any extended term during the entirety of which the shipper paid the maximum FT-A rates, shipper's extension rights will be governed by the then-effective terms of Tennessee's tariff consistent with the rights held by maximum rate long term shippers under Rate Schedule FT-A.

8. Section 3 provides, among other things, that Tennessee will file any revised negotiated rate agreements with the Commission and that following execution of the negotiated rate agreements, the New England LDCs shall withdraw their Request for Rehearing filed in Docket No. RP08-648. The New England LDCs also agree not to claim that any of their negotiated rate agreements listed in the Settlement or any similar NET conversion contract possess a right of first refusal or other extension rights beyond those granted in the Settlement.

9. Further, section 3 provides that the New England LDCs will not challenge Tennessee's ability to reserve for future expansions in Tennessee Rate Zones 5 and 6 capacity covered by the negotiated rate agreements listed in the Settlement or NET conversion contracts executed by other shippers. Under section 3, Tennessee agrees that the capacity covered by negotiated rate agreements 41113, 41098, 41099, 67380, and 67381 shall not be reserved pursuant to any provision of Tennessee's tariff for future expansions in Tennessee Rate Zones 5 and 6.

10. Section 4 provides, among other things, that the Settlement resolves the issues raised in Docket No. RP08-648 and that the New England LDCs waive all claims related to the issues raised in Docket No. RP08-648, regardless of whether any third party pursues the rehearing request or otherwise raises issues similar to those addressed in Docket No. RP08-648.

11. On September 15, 2009, the New England LDCs filed to withdraw their Request for Rehearing submitted on March 16, 2009.

12. In Tennessee's transmittal, Tennessee describes each of the filed Service Agreements. Tennessee states that service package no. 41113 is an existing negotiated rate agreement between Tennessee and NStar. Tennessee states that the parties have agreed to extend its term by five years, revise its primary receipt point based on a future election made by NStar, and include the term extension provisions described in section 2 of the Settlement described above.

13. Tennessee states that service package no. 46313 is an existing negotiated rate agreement between Tennessee and Bay State and that the parties have agreed to extend its term by forty-seven days. Tennessee states that service package no. 41098 is an existing negotiated rate agreement between Tennessee and Bay State and that the parties have

agreed to extend its term by five years and include the term extension provisions described in section 2 of the Settlement.

14. Tennessee states that service package no. 41099 is an existing negotiated rate agreement between Tennessee and Northern and that the parties have agreed to extend its term by five years and include the term extension provisions described in section 2 of the Settlement. Tennessee states that service package no. 46314 is an existing negotiated rate agreement between Tennessee and Northern and that the parties have agreed to extend its term by forty-seven days.

15. Tennessee states that service package no. 67381 is an existing negotiated rate agreement between Tennessee and CNG and that the parties have agreed to extend its term by five years, shift the delivery receipt point of the agreement from Mendon to Bloomfield effective April 1, 2011, and include the term extension provisions described in section 2 of the Settlement. Tennessee states that service package no. 67380 is an existing negotiated rate agreement between Tennessee and Southern and that the parties have agreed to extend its term by five years, increase the TQ to 9000 Dth/d, shift the primary delivery point from Mendon to Bridgeport (6000 Dth/d) and Easton (3000 Dth/d) effective April 1, 2011, and include the term extension provisions described in section 2 of the Settlement.

16. Tennessee states that to effectuate the term extensions set forth in the Settlement and negotiated rate agreements, Tennessee revised the term provision (section 12.1) of the FT-A service agreement of each qualified shipper. Tennessee states that the revised term section notes that the term may extend, subject to the rate-related election referenced in the applicable negotiated rate letter agreement or Settlement. Tennessee states that while the revised term provision in each FT-A service agreement is clearly non-conforming, it does not unduly discriminate against any other shippers on Tennessee's system. Tennessee states that the term extension provisions offer the alternative options of allowing the term to remain unchanged from the underlying agreement or to extend the term in exchange for paying an increased rate. Tennessee states that it and the shippers would have the right to effectuate the same election under Article III, section 10.4.3 of the GT&C,<sup>10</sup> but have instead consolidated the extensions into a single agreement for Commission approval.

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<sup>10</sup> Under this section of Tennessee's tariff, prior to the expiration of the term of a gas transportation agreement, Tennessee and shipper may mutually agree to renegotiate the terms of their agreement in exchange for shipper's agreement to extend the use of at least part of its existing service under a restructured agreement. Tennessee's tariff requires that such restructured agreement be negotiated on a case-by case basis in a not unduly discriminatory manner.

17. Tennessee states that other than the aforementioned deviations, the filed negotiated rate agreements conform in all material respects with Tennessee's pro forma transportation agreement. Therefore, Tennessee requests that the Commission approve the non-conforming service agreements provisions as acceptable deviations from Tennessee's pro forma transportation agreement.

18. Notice of Tennessee's filing was issued on October 21, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2009), 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 this proceeding or place additional burdens on existing parties. No adverse comments or protests were filed and the New England LDCs filed comment in support of Tennessee's filing.

19. The Commission finds that the Settlement is fair, reasonable, and in the public interest. As described above, in February 2009, the Commission held that the New England LDCs negotiated rate agreements with Tennessee did not entitle the New England LDCs to a right of first refusal. The Commission held that the fact a negotiated rate contract requires the shipper to pay the pipeline's maximum FT-A rate, as it may change from time to time, does not entitle the shipper to a regulatory right of refusal under the Commission's policy and regulations. The New England LDCs sought rehearing of the Commission's order.

20. Subsequently, Tennessee and the New England LDCs entered into discussions regarding the extension of these and other gas transportation agreement between Tennessee and the members of the New England LDCs. In accordance with Tennessee's tariff, Tennessee and the New England LDCs agreed to renegotiate the terms of their agreements in exchange for shippers agreeing to extend the use of at least part of their existing service under a restructured agreement, and the parties agreed to memorialize those terms in the Settlement and filed Service Agreements. No parties opposed Tennessee's filing.

21. We find that the Settlement reasonably resolves the issues raised in Docket No. RP08-648. Under the Settlement, shippers with negotiated rate agreements that were the result of NET and NET-284 conversions have been given the option to extend their agreements at a fixed negotiated rate, in lieu of a contractual or regulatory right of first refusal, and in the event Rate Schedule NET-284 is later rolled into Rate Schedule FT-A, eligible shippers' rates will change from the fixed negotiated rate to the maximum FT-A rates and be eligible for a right of first refusal. The Settlement is therefore approved, to become effective as proposed. The Commission's approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

22. The Commission also accepts and approves the filed Service Agreements and the proposed Fifth Revised Sheet No. 413B to be effective December 1, 2009, as requested. Certain of Tennessee's filed Service Agreements contain material deviations from the pro forma agreement found in Tennessee's tariff. However, not all material deviations are impermissible. If the Commission finds that the deviations do not constitute a substantial risk of undue discrimination, the Commission may permit such deviations. Such is the case here. As discussed above, the non-conforming provisions resolve the right of first refusal-related issues that arose in Docket No. RP08-648 with respect to New England LDCs who converted to Rate Schedule FT-A open access service. Further, the deviation will not affect the quality of service to other Tennessee shippers and as stated above, no party has opposed Tennessee's filing. Therefore, the non-conforming agreements are accepted.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.