

132 FERC ¶ 61,176
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 27, 2010

In Reply Refer To:
Texas Eastern Transmission, LP
Docket No. RP10-1011-000

Texas Eastern Transmission, LP
PO Box 1642
Houston, TX 77251

Attention: Janice K. Devers
General Manager, Tariffs and Commercial Development

Reference: Revised *Pro Forma* Service Agreements

Dear Ms. Devers:

1. On July 29, 2010 Texas Eastern Transmission, LP (Texas Eastern) filed revised tariff sections¹ to its FERC Gas Tariff to revise its *pro forma* service agreements. Texas Eastern proposes revisions to (1) standardize the use of whereas clauses, (2) expand the term of duration provisions, (3) allow for cross-referencing to surviving precedent agreement provisions, and (4) make miscellaneous adjustments. Texas Eastern states the revisions are intended to provide greater flexibility, thereby limiting the number of new service agreements that would be considered non-conforming. Hess Corporation (Hess) protests Texas Eastern's revisions to allow for cross-referencing to surviving precedent agreement provisions. The Commission accepts Texas Eastern's revised tariff sections, effective September 1, 2010, as discussed below.

2. Texas Eastern proposes four sets of revisions. Texas Eastern's first proposal is to modify its *pro forma* whereas clause sections so as to allow parties to insert their own introductory language. The revised *pro forma* would clearly limit permissible whereas clauses to those that describe the historical or factual context related to the service agreement, identify or describe related agreements (e.g., precedent agreements), or identify facilities necessary to provide service under the service agreement. Texas

¹ See Appendix A.

Eastern states that whereas clauses would not be an integral part of any service agreement and would not include any binding consideration.

3. Second, Texas Eastern proposes to modify the term provisions of certain *pro forma* agreements.² Instead of only allowing a calendar date for the effective date beginning a contract, the *pro forma* would now allow dates (1) based on the completion of the construction of facilities necessary to provide service, (2) established by a relevant order of the Commission, or (3) defined in a precedent agreement. Also, instead of only allowing a calendar date for the final date of a contract's term, the *pro forma* would now allow or permit contract duration to be stated as a number of years from the effective date.

4. Third, Texas Eastern would modify Section 1 of certain *pro forma* agreements³ to allow for references to surviving precedent agreement credit provisions, if applicable. The new language would read: "The credit requirements applicable to this Agreement are set forth in that certain Precedent Agreement dated _____ between Texas Eastern and Customer related to this Agreement." Texas Eastern states this change is intended to apply if any credit requirements set forth in the precedent agreement will survive the termination of the precedent agreement and also be applicable to the service agreement. Texas Eastern notes that the Commission has generally allowed creditworthiness requirements that were established in connection with precedent agreements to continue during the term of the anchor shippers' term of service. Texas Eastern argues that parties need the flexibility that such a *pro forma* provision would provide in order to facilitate new pipeline expansion projects.

5. Fourth and finally, Texas Eastern proposes miscellaneous modifications to the *pro forma* agreement for Rate Schedule MLS-1. Specifically, it would capitalize terms already defined in the definitions section of its General Terms & Conditions, and revise the signature block so as to be consistent with the rest of its service agreements.

6. Public notice of Texas Eastern's filing was issued on July 29, 2010 with interventions and protests due on or before August 10, 2010. On August 10, 2010, Hess filed a protest and Tennessee Valley Authority (TVA) filed comments in support. Pursuant to Rule 214,⁴ all timely-filed motions to intervene and any motions to intervene out-of-time before the issuance date of this order are granted. Granting late intervention

² *Pro forma* agreements under Rate Schedules CDS, FT-1, SCT, IT-1, LLFT, LLIT, VKFT, VKIT, and MLS-1.

³ *Id.*

⁴ 18 C.F.R. § 385.214 (2010).

at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties.

7. Hess protests Texas Eastern's proposal to provide an option in its *pro forma* agreements to cross-reference, where applicable, to surviving non-conforming credit requirements in a precedent agreement. Hess states it does not oppose allowing the credit requirements from a precedent agreement to survive into the relevant service agreement. However, Hess contends that those service agreements should be considered non-conforming and must be filed publicly, along with the non-conforming credit requirements, with the Commission.

8. Hess disputes the relevance of Texas Eastern's claim that the Commission has previously accepted similar non-conforming provisions in service agreements. Hess cites the example of *Egan Hub*,⁵ in which the Commission accepted a non-conforming precedent agreement's credit provisions, but ordered the pipeline to publicly disclose and file the non-conforming terms. As a result, the Commission and other shippers were able to review both the non-conforming service agreement and the non-tariff credit requirements to determine if they were unduly discriminatory or preferential. Hess argues that Texas Eastern's proposal is not sufficient, because Texas Eastern would merely state that it is incorporating a precedent agreement's credit requirements without publicly disclosing what those credit requirements are. Full disclosure is necessary, Hess argues, in order for "the Commission and all parties to assure themselves that the subject provisions do not result in any undue discrimination."⁶

9. We will accept the tariff sections as filed. While we agree that section 4(c) of the Natural Gas Act (NGA)⁷ requires full disclosure of contractual terms and prices in order to ensure that a pipeline's contracting practices are not unduly discriminatory,⁸ the Commission's regulations provide for sufficient disclosure and Commission policy permits special credit provisions for expansion shippers.

10. Texas Eastern will be obligated to provide public disclosure of any surviving precedent agreement's non-conforming credit provisions because we find they are special

⁵ *Egan Hub Storage, LLC*, 127 FERC ¶ 61,002 (2009) (*Egan Hub*).

⁶ *Egan Hub*, 127 FERC ¶ 61,002 at P 6, *quoted in* Hess Protest at 5.

⁷ 15 U.S.C. § 717(c) (2006).

⁸ *See Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,001-004 (2001); *Southern Star Central Gas Pipeline, Inc.*, 125 FERC ¶ 61,082 (2008), *cited in Egan Hub*, 127 FERC ¶ 61,002 at P 5.

details which must be posted on the pipeline's website pursuant to sections 284.13(b)(1)(viii) and 284.13(b)(2)(iv) of the Commission's regulations.⁹ These posting obligations will provide Hess and other customers with the opportunity to review the respective non-conforming credit provisions and identify any concerns with those provisions. *Egan Hub* is distinguishable because it concerned Egan Hub's filing of non-conforming service agreements that referenced the credit provisions of precedent agreements, but with no tariff authorization to do so. Here, because Texas Eastern has proposed to modify its tariff's *pro forma* service agreements to provide a blank for these references, these are special details that are to be posted and, therefore, the underlying precedent agreement need not be filed in order to provide notice of the credit provisions thereof, unlike in *Egan Hub*.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁹ 18 C.F.R. §§ 284.13(b)(1)(viii) and 284.13(b)(2)(iv) (2010).

Appendix A

Texas Eastern Transmission, LP.

Texas Eastern Database 1
FERC Gas Tariff
Eighth Revised Volume No. 1

Tariff Sections Accepted Effective September 1, 2010

- 1., CDS Service Agreement, 1.0.0
- 2., FT-1 Service Agreement, 1.0.0
- 3., SCT Service Agreement, 1.0.0
- 4., IT-1 Service Agreement, 1.0.0
- 5., LLFT Service Agreement, 1.0.0
- 6., LLIT Service Agreement, 1.0.0
- 7., VKFT Service Agreement, 1.0.0
- 8., VKIT Service Agreement, 1.0.0
- 9., MLS-1 Service Agreement, 1.0.0
- 10., TABS-1 Service Agreement, 1.0.0
- 11., TABS-2 Service Agreement, 1.0.0
- 12., MBA Service Agreement, 1.0.0
- 13., PAL Service Agreement, 1.0.0
- 14., SS-1 Service Agreement, 1.0.0
- 15., FSS Service Agreement, 1.0.0
- 16., ISS-1 Service Agreement, 1.0.0
- 17., FTS Service Agreement, 1.0.0
- 18., FTS-2 Service Agreement, 1.0.0
- 19., FTS-4 Service Agreement, 1.0.0
- 20., FTS-5 Service Agreement, 1.0.0
- 21., FTS-7 Service Agreement, 1.0.0
- 22., FTS-8 Service Agreement, 1.0.0
- 23., SS Service Agreement, 1.0.0