

134 FERC ¶ 61,069
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Eastern Shore Natural Gas Company

Docket No. RP11-1670-000

ORDER ACCEPTING, SUSPENDING, AND REJECTING TARIFF RECORDS
SUBJECT TO REFUND AND CONDITIONS AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued January 31, 2011)

1. On December 30, 2010, Eastern Shore Natural Gas Company (Eastern Shore) filed revised tariff records¹ to reflect a Natural Gas Act (NGA) section 4 general rate increase, to be effective February 1, 2011. For the reasons discussed below, the Commission accepts and suspends certain proposed tariff records as listed in the Appendix, to be effective July 1, 2011, subject to refund and conditions and the outcome of the hearing and settlement judge procedures established herein. The proposed tariff records reflecting elimination of the T-1 Rate Schedule are rejected, as discussed below.

Background

2. Eastern Shore states that this rate case is being filed in compliance with the requirements of Article VIII of the Settlement filed in Docket No. RP07-38-000 which was approved by the Commission in an order dated January 31, 2008.² Article VIII provides that, “Eastern Shore shall make an NGA Section 4 general rate filing to revise its base tariff rates with such rates proposed to be effective on the third anniversary of the first day of the month following the month in which the Settlement is approved by the Commission consistent with Article X hereof.” Eastern Shore states that, if the Commission exercises its authority under section 4(e) of the NGA to suspend the effective date of these revised tariff records, Eastern Shore reserves its right to file a motion at a later date to place the suspended rates into effect.

¹ See Appendix.

² See *Eastern Shore Natural Gas Co.*, 122 FERC ¶ 61,076 (2008).

Details of the Filing

3. Eastern Shore states that the revised rates are based on a cost-of-service of \$34,965,639 which would generate increased revenues of \$6,748,628 over Eastern Shore's revenues under currently effective rates. The filed cost-of-service consists of: operation and maintenance expenses of \$9,563,558; depreciation and amortization expenses of \$5,714,626; taxes other than income taxes of \$1,542,658; state income taxes of \$1,554,490; federal income taxes of \$4,959,939; a return allowance of \$11,780,368; and an IT (Interruptible Transportation) Cost of Service Credit of \$150,000. Eastern Shore explains that the increase in the cost-of-service reflects the annualized effect of increases in operating and maintenance expenses, depreciation expense, taxes other than income taxes, and return on new gas plant facilities for which the necessary certificates have been issued and which will be placed in service prior to the end of the test period. Eastern Shore is proposing an overall rate of return of 11.06 percent, which is based on a capital structure of 36 percent debt and 64 percent equity, with an equity rate of return of 13.50 percent and a debt cost of 6.78 percent. Eastern Shore's proposed cost-of-service is based on a base year ended September 30, 2010 as adjusted for known and measurable changes through the end of the test period on June 30, 2011. Eastern Shore is also proposing to modify its depreciation rates and to establish a negative salvage rate of 0.66 percent.

4. Eastern Shore states that it included revised billing determinants and system throughput to reflect changes in Eastern Shore's contract demand level and throughput levels. Eastern Shore also states that its transportation rates reflect the continuation of the straight-fixed-variable (SFV) method for cost classification and rate design and it has retained a 100 percent load factor methodology for designing interruptible transportation rates.

5. Eastern Shore states that it is proposing to replace its current two zone Dth-mile rate design method with a new zone-gate rate design method that includes two receipt zones and three delivery zones. Eastern Shore also states that the proposed rate design includes the abandonment of its T-1 Rate Schedule³ and the transfer of services currently conducted under that rate schedule to Eastern Shore's FT Rate Schedule. Eastern Shore asserts that this proposal is intended to achieve a result that reasonably matches cost incurrence with cost payment responsibility. Finally, Eastern Shore is proposing an IT

³ Rate Schedule T-1 is a firm transportation service provided by Eastern Shore to Delaware City Refining Company LLC and Delmarva Power and Light Company. T-1 service is a firm service that has a scheduling priority below that of other firm transportation service at primary points but above that of firm transportation service utilizing secondary receipt and delivery points.

Cost of Service credit of \$150,000 in its overall cost of service and proposes to share 50 percent of net IT revenues in excess of the Cost of Service Credit.

Notice of Filing, Interventions and Protests

6. Public notice of Eastern Shore's filing was issued January 3, 2011, with interventions and protests due as provided in section 154.210 of the Commission's regulations.⁴ Pursuant to Rule 214,⁵ all timely filed motions to intervene and any motions to intervene filed out-of-time 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.

7. PECO Energy Company; Pivotal Utility Holdings, d/b/a Elkton Gas (Elkton); Delaware City Refining Company LLC (DCRC); Delmarva Power & Light Company (Delmarva), the Public Service Commission of the State of Delaware, and Easton Utilities Commission (Easton) filed protests.

8. The protesters assert that Eastern Shore has not demonstrated that its proposed rate increase, rate design, elimination of the T-1 Rate Schedule, and IT crediting mechanism are just and reasonable and that technical conferences or a hearing are necessary. The protesters request that the Commission suspend the proposed increase for the maximum five-month period permitted under the NGA and set the filing for a full evidentiary hearing.

9. Specifically, DCRC and Delmarva argue that Eastern Shore has not supported the elimination of Rate Schedule T-1. DCRC argues that it opposes the premature abandonment of its individually certificated transportation service. DCRC urges the Commission to reject the tariff sheets cancelling the T-1 rate and rate schedule and to require Eastern Shore to provide service as required by its certificate until at least the expiration of DCRC's current T-1 transportation agreement on April 30, 2014. DCRC asserts that pursuant to Commission policy a pipeline cannot require individually certificated section 7(c) shippers to convert to open access transportation service under Part 284 of the Commission's regulations and that such abandonment is permitted only after expiration of the shipper's transportation agreement.

10. Delmarva and Easton request that the Commission, consistent with section 154.303(c)(2) of the Commission's regulations,⁶ direct Eastern Shore to remove the costs

⁴ 18 C.F.R. § 154.210 (2010).

⁵ 18 C.F.R. § 385.214 (2010).

⁶ 18 C.F.R. § 154.303(c)(2) (2010).

associated with facilities that are not in service as of the end of the test period. Elkton requests that the Commission fully investigate the roll-in of costs associated with the expansion projects approved in Docket Nos. CP03-80 and CP06-53. Easton argues that, consistent with Commission practice and, in light of Eastern Shore's low IT revenue credit figure, the Commission should summarily reject Eastern Shore's proposal to reduce its existing 90 percent IT revenue credit to firm shippers to a 50 percent credit and set the reasonableness of the projected level of IT service and other cost allocation issues associated with IT service for hearing.

Discussion

11. We believe that Eastern Shore's proposed rate changes raise issues which are best addressed in a hearing. Accordingly, the Commission accepts Eastern Shore's proposed tariff records which modify its base rates for filing and suspends their effectiveness for the period set forth below, to become effective July 1, 2011, subject to refund and conditions and the outcome of hearing and settlement judge procedures established herein. The Commission finds that these proposed tariff records raise issues that require further investigation at a hearing before an Administrative Law Judge. The issues that may be explored at the hearing include, but are not limited to, the following: (1) the appropriateness of the proposed cost allocation and rate design; (2) the level of the overall revenue requirement; (3) the appropriateness of the proposed 13.50 percent return on equity and capital structure; (4) the level of the depreciation rates and the appropriateness of the negative salvage rate; and (5) the change in the crediting of IT revenues.

12. Eastern Shore has not received the required authorization pursuant to section 7(b) of the NGA to abandon its individually certificated T-1 service. Therefore, the Commission rejects Eastern Shore's proposed elimination of the T-1 Rate Schedule from its tariff records. Eastern Shore's tariff records reflecting elimination of the T-1 Rate Schedule listed in the Appendix to this order are rejected. Further, Eastern Shore is directed, within thirty (30) days of the date of this Order, to file revised tariff records to include proposed T-1 rates, including support for the derivation of the T-1 rates.

13. As requested, the Commission directs Eastern Shore to adhere to section 154.303(c)(2) of the Commission's regulations which provides that the pipeline must remove from its rates costs associated with any facility that is not in service, or for which certificate authority is required but has not been granted as of the end of the test period.

14. Easton's request for summary rejection of Eastern Shore's proposal to credit IT revenues is denied. As discussed above, the determination of that issue will be considered in the hearing and settlement procedures established by this order.

15. While we are setting the rate issues discussed above for trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before the

hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁷ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding, otherwise the Chief Judge will select a judge for this purpose.⁸ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

16. Based upon review of the filing, the Commission finds that the proposed revised tariff records have not been shown to be just and reasonable, and may be unjust, unreasonable and unduly discriminatory or otherwise unlawful. Accordingly, the Commission shall accept and suspend the effectiveness of the proposed tariff records as listed in the Appendix for the period set forth below, subject to the conditions set forth in this Order.

17. The Commission's policy regarding rates is that rate 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 inconsistent with other statutory standards.⁹ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.¹⁰ Such circumstances do not exist here. Therefore, the Commission shall exercise its discretion to suspend the proposed tariff records as listed in the Appendix, to be effective July 1, 2011, subject to refund and the conditions set forth in the body of this Order and the ordering paragraphs below.

⁷ 18 C.F.R. § 385.603 (2010).

⁸ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of the date of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov/legal/adr/avail-judge.asp).

⁹ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

¹⁰ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

The Commission orders:

(A) The tariff records as listed in the Appendix are accepted and suspended, to be effective July 1, 2011, subject to refund and conditions and the outcome of the hearing and settlement judge procedures established in this proceeding.

(B) Eastern Shore's proposed tariff records reflecting elimination of Rate Schedule T-1 are rejected as listed in the Appendix to this Order.

(C) Eastern Shore is directed, within thirty (30) days of the date of this order, to file revised tariff records reflecting proposed T-1 rates for T-1 service to be effective July 1, 2011.

(D) Eastern Shore is directed, consistent with section 154.303(c)(2) of the Commission's regulations, to remove from its rates costs associated with any facility that is not in service, or for which certificate authority is required but has not been granted as of the end of the test period.

(E) Pursuant to the Commission's authority under the Natural Gas Act, particularly sections 4, 5, 8, and 15 thereof, a public hearing is to be held in Docket No. RP11-1670-000 concerning the lawfulness of Eastern Shore's proposed rates. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (F) and (G) below.

(F) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this Order.

(G) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(H) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within

fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Eastern Shore Natural Gas Company Third Revised Volume No. 1 FERC NGA Gas Tariff

Tariff Records Accepted and Suspended, Effective July 1, 2011, Subject to Refund and Conditions

Sheet No. 4, Part 284 Currently Effective Rates-FT/ST, 0.0.2
Sheet No. 5, Part 284 Currently Effective Rates-IT, 0.0.2
Sheet No. 6, Part 284 Currently Effective Rates-Matrix, 0.0.2
Sheet No. 223, GTC Section 37: Interruptible Revenue Sharing, 0.0.2

Tariff Records Rejected

Sheet No. 1, Table of Contents, 0.0.2
Sheet No. 21, Rate Schedule FT, Continued, 0.0.2
Sheet No. 43, Rate Schedule T-1 - Cancelled, 0.0.1
Sheet No. 44, Rate Schedule T-1, Continued - Cancelled, 0.0.1
Sheet No. 45, Rate Schedule T-1, Continued - Cancelled, 0.0.1
Sheet No. 46, Rate Schedule T-1, Continued - Cancelled, 0.0.1
Sheet No. 159, GTC Section 21: Nominations & Scheduling of Trans Svc, Cont, 0.0.2
Sheet No. 290, Form of Service Agreement, T-1 - Cancelled, 0.0.1
Sheet No. 291, Form of Service Agreement, T-1, Continued - Cancelled, 0.0.1
Sheet No. 292, Form of Service Agreement, T-1, Continued - Cancelled, 0.0.1
Sheet No. 293, Form of Service Agreement, T-1, Continued - Cancelled, 0.0.1
Sheet No. 294, Form of Service Agreement, T-1, Continued - Cancelled, 0.0.1
Sheet No. 295, Form of Service Agreement, T-1, Continued - Cancelled, 0.0.1
Sheet No. 296, Form of Service Agreement, T-1, Continued - Cancelled, 0.0.1
Sheet No. 297, Form of Service Agreement, T-1, Continued - Cancelled, 0.0.1
Sheet No. 298, Form of Service Agreement, T-1, Continued - Cancelled, 0.0.1
Sheet No. 299, Form of Service Agreement, T-1, Continued - Cancelled, 0.0.1