

137 FERC ¶ 61,009
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

October 4, 2011

In Reply Refer To:
Enterprise TE Products Pipeline
Company LLC
Docket Nos. IS10-203-000
IS10-203-005

Daniel J. Poynor, Esq,
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036

Dear Mr. Poynor:

1. On August 8, 2011, you filed a Settlement Agreement in the above-referenced docket on behalf of Enterprise TE Products Pipeline Company LLC (Enterprise TEPPCO) and the parties to the above-captioned dockets.¹ On August 18, 2011, Staff filed Initial Comments expressing no opposition to the certification and approval of the Settlement Agreement as a fair resolution of the issues in dispute. No other comments were received. On August 29, 2011, the Presiding Settlement Judge certified the Settlement to the Commission as uncontested.

2. In the Settlement, the Parties agreed on the following terms:

Section 1. This section states that the Parties shall submit the Agreement to the Commission as an Offer of Settlement pursuant to Rule 602. The section further provides that the Agreement will not be final until approved by the Commission without modification or conditions in a final order that is no longer subject to rehearing or judicial review (Final FERC Approval). The section further provides that the Parties shall support or not oppose the Offer of Settlement and shall not file, or encourage or assist in the filing of, comments opposing the Offer of Settlement.

¹ On August 26, 2011, the parties submitted a joint motion to correct a typographical error in the Offer of Settlement submitted on August 8, 2011. Hereinafter the corrected Offer of Settlement is referred to as the “Settlement” or “Agreement.”

Section 2. This section provides that the term of the Agreement shall be five (5) years from the effective date of the new tariff described in Section 3.

Section 3. This section provides that within five (5) business days of Final FERC Approval, Enterprise TEPPCO shall file both a tariff (Settlement Tariff) containing reference to a new propane inventory policy and the new propane inventory policy with the Commission. The section notes that the new propane inventory policy agreed to by the Parties is included with the Agreement at Appendix A (Settlement Inventory Policy) and that the agreed upon language to be included in the Settlement Tariff is contained in Appendix B. The section further sets forth when the Settlement Tariff will take effect and the obligations and rights of the Shipper-Related Parties with respect to challenges to the Settlement Tariff and Settlement Inventory Policy.

Section 4. This section states that within thirty (30) days after the Settlement Tariff described in Section 3 takes effect, Enterprise TEPPCO shall recalculate all excess inventory charges for the period May 14, 2010 through September 30, 2010 using the terms of the Settlement Inventory Policy. The section further provides that for any shipper who paid Enterprise TEPPCO in excess of such recalculated excess inventory charges, Enterprise TEPPCO shall credit such excess against any future excess inventory charges for that shipper that are incurred during the twelve (12) months after the effective date of the Settlement Inventory Policy.

Section 5. This section states that is the Parties' intention to settle with prejudice all aspects of the dispute that is currently pending in Docket No. IS10-203-000, including all subdockets. The section further provides that the Shipper-Related Parties that filed protests in this proceeding shall file a Conditional Notice of Withdrawal of Protests (Notice) pursuant to Rule 216 and 18 C.F.R. § 343.3(d) (submitted as Appendix C of the Agreement) that provides that upon (a) issuance of Final FERC Approval as provided in Section 1, (b) Enterprise TEPPCO filing with the Commission the Settlement Tariff and the Settlement Inventory Policy as provided in Section 3 and Appendices A and B of the Agreement, and (c) Enterprise TEPPCO providing written certification to the Commission that it has recalculated the excess inventory charges as provided in Section 4, the Notice shall become effective and the protests filed by Shipper-Related Parties in Docket No. IS10-203-000 will be withdrawn as set out in the Notice.

Section 6. This section states that during the term of the Settlement, so long as Enterprise TEPPCO maintains the Settlement Inventory Policy and implements it in the manner agreed to by the Parties, each Shipper-Related Party shall not file a protest or complaint, or support the filing by another party of a protest or complaint, challenging any matters agreed upon in the Agreement. The section provides, however, that each Shipper-Related Party reserves the right to file a protest, complaint or other challenge during the term of the Agreement on the basis that Enterprise TEPPCO's implementation

or operation of the Settlement Inventory Policy is unjust, unreasonable, discriminatory, preferential and/or otherwise unlawful. The section further provides that any protest or complaint that may be filed after the expiration of the term of the Settlement by a Shipper-Related Party shall not challenge any actions of Enterprise TEPPCO in conformity with the Agreement that occurred during any period covered by the Agreement or seek damages or any other form of relief relating to the Settlement Inventory Policy for any time period in which it was in effect during the term of the Agreement. The section also makes clear that during the term of this Agreement, Enterprise TEPPCO shall maintain and abide by the Settlement Inventory Policy, subject only to limited modification pursuant to Sections 7 and 8.

Section 7. This section establishes conditions for potential changes to the Settlement Inventory Policy related to the Finger Lakes Destination.

Section 8. This section governs how any potential new destinations that are not currently operational are to be treated under the Settlement Inventory Policy.

Section 9. This section provides that the Agreement shall be governed by and construed in accordance with federal law to the extent applicable and otherwise in accordance with the laws of the State of Texas.

Section 10. This section makes clear that the Parties understand the Agreement and are signing voluntarily of their own accord.

Section 11. This section states that the Agreement shall be binding on and inure to the benefit of the representatives, heirs, executors, administrators, devisees, successors, assigns, and legal representatives of all Parties hereto, as well as their respective officers, directors, partners, principals, and employees, and that by signing the Agreement, the Parties each represent that they have full authority to bind themselves, their heirs, executors, administrators, devisees, successors, assigns, and legal representatives.

Section 12. This section provides that the Settlement may not be altered or amended except by an agreement in writing signed by all the Parties thereto.

Section 13. This section provides that once approved by the FERC, the standard of review for any modifications to the Agreement by the FERC acting *sua sponte*, the Parties acting unanimously, or third parties shall be the ordinary just and reasonable standard (not the “most stringent” or “public interest” standard). The standard of review for any modification of the Agreement at the request of one or more but less than all Parties shall be the most stringent standard permissible under applicable law. After the termination of this Agreement, the ordinary just and reasonable standard shall apply to all matters covered by this Agreement. Any modifications to the Settlement Inventory Policy must be filed with the Commission. Nothing in the Settlement is meant to limit

the Commission's authority to approve uncontested settlements under 18 C.F.R. § 385.602(g)(3).

Section 14. This section makes clear that the Parties agree that the Agreement constitutes the full, final, and complete settlement of the terms described therein, and supersedes all other written or oral exchanges, arrangements or negotiations between them concerning the subject matter of the Settlement, and that there are no representations, agreements, arrangements, or understandings, oral or written, concerning the subject matter of the Settlement that are not fully expressed and incorporated therein.

Section 15. This section clarifies that the Settlement is not an admission of liability on the part of any Party and does not represent any agreement among the Parties as to any regulatory or legal principles, nor do the Parties intend for the Agreement to have any precedential effect for Enterprise TEPPCO beyond the term of the Agreement or for any other pipeline.

Section 16. This section states that the Agreement may be executed in several counterparts, each of which shall be an original and each of which shall constitute but one and the same instrument.

Section 17. This section lists the appendices to the Agreement.

3. The Commission finds that the Settlement appears to be fair and reasonable in the public interest and it is hereby approved. The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.
4. This letter terminates Docket Nos. IS10-203-000 and IS10-203-005.

By direction of the Commission. Commission Spitzer is not participating.

Kimberly D. Bose,
Secretary.

cc: All Parties