

126 FERC ¶ 61,216  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

March 11, 2009

In Reply Refer To:  
Tennessee Gas Pipeline Company  
Docket Nos. RP96-312-186 and  
RP96-312-187

Tennessee Gas Pipeline Company  
1001 Louisiana Street  
Houston, TX 77002

Attention: Jay V. Allen,  
Senior Counsel

Reference: Permanent Assignment of a Negotiated Rate Agreement

Dear Mr. Allen:

1. On February 6, 2009, in Docket No. RP96-312-187, Tennessee Gas Pipeline Company (Tennessee) filed a copy of a negotiated gas transportation agreement between Tennessee and the JP Morgan Ventures Energy Corp. (JP Morgan) pursuant to Tennessee's Rate Schedule FT-A (Agreement). The Agreement reflects the permanent assignment to JP Morgan of a negotiated rate agreement between Tennessee and Project Orange Associates, LLC (Project Orange), which was previously approved by the Commission.<sup>1</sup> The Agreement is accepted for filing effective March 15, 2009, as requested.

2. The Agreement replaces the negotiated gas transportation agreement Tennessee filed in Docket No. RP96-312-186 on January 12, 2009. Tennessee states that the original agreement was filed within 30 days of its requested effective date, February 1, 2009 and when approval was not received in time to complete the transaction to be effective February 1, 2009, JP Morgan and Project Orange informed Tennessee that they preferred to rescind the release and create a new release with an effective date of March 15, 2009.

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<sup>1</sup> *Tennessee Gas Pipeline Company*, Docket No. RP96-312-115 (Nov. 20, 2002) (unpublished letter order).

3. Notices of Tennessee's filings in Docket Nos. RP96-312-186 and RP96-312-187 were issued on January 14, 2009 and February 12, 2009, respectively. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2008). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2008), all timely filed 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. The New England LDCs<sup>2</sup> filed comments in Docket No. RP96-312-186. On January 29, 2009, in Docket No. RP96-312-186, Tennessee filed a response to the New England LDCs.

4. The New England LDCs do not oppose the arrangement between Tennessee and JP Morgan. Rather, they oppose Tennessee's representation that all negotiated rate agreements automatically fail to provide right of first refusal (ROFR) protections. The New England LDCs state that the issue of whether a negotiated rate agreement, where all aspects of the rate are identical to those paid by other FT-A shippers qualifies for a ROFR, is currently pending before the Commission in Docket No. RP08-648-000.<sup>3</sup> Accordingly, the New England LDCs request that any Commission action be without prejudice to any action that it will take in Docket No. RP08-648-000.

5. The Commission accepts the Agreement effective March 15, 2009. The New England LDCs' request is moot. On February 13, 2009, in Docket No. RP08-648-000, the Commission denied the request for clarification of the Commission's right of first refusal policy as it applies to negotiated rate agreements and held that the fact a negotiated rate contract requires the shipper to pay the pipeline's maximum FT-A rate, as

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<sup>2</sup> The New England LDCs include: Bay State Gas Company, The Berkshire Gas Company, Connecticut Natural Gas Corporation, Fitchburg Gas and Electric Light Company, City of Holyoke, Massachusetts Gas and Electric Department, Northern Utilities, Inc., NSTAR Gas Company, The Southern Connecticut Gas Company, Westfield Gas & Electric Department, and Yankee Gas Services Company

<sup>3</sup> In Docket No. RP08-648-000, Shell Energy North America (US), L.P., Ocean State Power, Ocean State Power II, and the New England LDCs request clarification of the Commission's right of first refusal policy as it applies to negotiated rate agreements. They assert that, as firm shippers currently paying the maximum tariff rate under long term negotiated rate agreements with Tennessee, they should qualify for the regulatory right of first refusal established by Commission policy.

it may change from time to time, does not entitle the shipper to a regulatory right of first refusal under the Commission's policy and regulations.<sup>4</sup>

By direction of the Commission. Commissioner Kelliher is not participating.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>4</sup> See *Shell Energy North America (US), L.P.*, 126 FERC ¶ 61,120 (2009).