

UNITED STATES OF AMERICA  
 FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;  
 Vicky A. Bailey, and William L. Massey.

Tejas Gas Pipeline Company ) Docket No. PR97-13-000

ORDER REJECTING OPERATING CONDITIONS

(Issued October 20, 1997)

On September 15, 1997, Tejas Gas Pipeline Company (Tejas) filed its "Statement of Operating Conditions for Storage Services" (Operating Statement) 1/ as required of those pipelines providing service pursuant to Section 311 of the Natural Gas Policy Act. 2/ Tejas states that it commenced providing NGPA Section 311 gas storage services on August 15, 1997, at its West Clear Lake Storage Facility in Harris County, Texas, at rates based on comparable services offered at the intrastate level pursuant to Section 284.123(b) of the Commission's regulations. 3/ As discussed below, the Commission rejects Tejas' Operating Statement as unduly discriminatory, and requires Tejas to file a new Operating Statement in conformance with the Commission's regulations.

The Instant Filing

Tejas filed an Operating Statement that addresses firm and interruptible storage services performed at its West Clear Lake Storage Facility located near Houston, Harris County, Texas. 4/ Tejas' Operating Statement provides a description of the firm and interruptible storage services available at its West Clear Lake Storage Facility, the terms and conditions of those services, qualifications and procedures for acquiring service, and other similar provisions. However, several provisions related to

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- 1/ Intrastate pipelines' Operating Statements are similar to interstate pipelines' Rate Schedules and General Terms and Conditions.
- 2/ 15 U.S.C. § 3371.
- 3/ 18 C.F.R. § 284.123(e) (1997).
- 4/ Tejas states that its filing of the Operating Statement is not a concession that the Commission has jurisdiction over Tejas regarding matters relating to the Operating Statement, and reserves the right to challenge the Commission's jurisdiction.

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Section 311 customers' rights to service, the nature of that service, and contract termination are unusual and deserve attention. These provisions are described in more detail below.

Discussion

Intrastate pipelines that wish to participate in the NGPA Section 311 program must abide by the conditions imposed by the Commission, including the requirement to charge just and reasonable rates for comparable services on a not unduly discriminatory or preferential basis. As discussed below, the Commission finds that Tejas' Operating Statement is inconsistent with sections 284.123(b) and (e) of the Commission's regulations. <sup>5/</sup>

Specifically, the Operating Statement discriminates against interstate shippers by according this service a lower priority than comparable intrastate service or Tejas' own use, provides firm service that is not firm because it can be canceled at any time during the term of the contract, allows Tejas the discretion to grant preferential access to capacity in contracting and curtailment, and allows Tejas to contract for service in ways contrary to its Operating Statement without amending its Operating Statement. Thus, as discussed below, Tejas' Operating Statement violates the Commission's NGPA Section 311 Part 284 regulations in several respects.

Subordinate Operating Statement

Tejas' Operating Statement at Article 1.3 provides that the service agreement, not the Operating Statement, controls with regard to terms and conditions of service. The Commission does not require an intrastate pipeline to file service agreements with the Commission. Therefore, as a result of Article 1.3, there is no mechanism to determine if an intrastate pipeline is abiding by the Commission's conditions for Section 311 transportation service. Tejas may individually negotiate the terms and conditions of service with individual customers which may be contrary to the Operating Agreement, and which may compromise other services.

The Commission finds that this provision is inconsistent with Section 284.123(b) and (e), in that Tejas' contract storage services may not be consistent with its Operating Statement. If the contracted storage services are not consistent with the Operating Statement, then there is no nexus between the rates authorized pursuant to Section 284.123(b) for comparable services as defined under the Operating Statement and the actual services performed. If Tejas wishes to provide Section 311 service on

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<sup>5/</sup> 18 C.F.R. § 284.123(b), (e) (1997).

terms other than those in its Operating Statement, it must file to amend that Operating Statement.

#### Available Capacity

Articles 5.1(i) and (iii) of the Operating Statement provide that capacity will be made available under such terms and conditions as may be established by Tejas; or negotiated with its customers. The Commission reminds Tejas that any term or condition that varies from the filed Operating Agreement must be filed with the Commission within 30 days of the agreement pursuant to § 284.123(e).

#### Discriminatory Priority of Service

Tejas' Operating Statement Article 6.1 addresses the priority of firm and interruptible storage services. Tejas states that this priority may be modified at its sole option. The Article continues by providing that firm service will be scheduled on a pro rata basis on a first come/first served basis. Interruptible service will be scheduled as follows: first to maximum rate intrastate service on a first come/first served basis; then to discounted rate intrastate service on a price basis, and first come/first served for services with equal rates; third, to maximum rate Section 311 service; and finally, to discounted rate Section 311 service on a price basis, and first come/first served for services with equal rates. Article 6.2 further provides that the priority queue identified above is subject to modification at Tejas' sole discretion if the priority queue cannot be maintained because of operating conditions.

The Commission does not understand how Tejas will allocate firm priority on both a first-come and a pro rata basis. As for the interruptible priority method, Tejas is discriminating between classes of customers (intrastate transportation v. Section 311 transportation). Further, by providing that Tejas may modify the priority of service at its sole discretion, Article 6.2 essentially makes the priority set out in Article 6.1 meaningless. Articles 6.1 and 6.2 are contrary to Section 284.8 and 284.9 of the Commission's regulations in that they relegate Section 311 transportation to a subordinate position, and thus violate the requirement that the intrastate pipeline offer Section 311 transportation on a not unduly-discriminatory basis. 6/ Tejas states that the rates its charges are for

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6/ See Transok, Inc., 54 FERC ¶ 61,229 at 61,673 (1991).  
The Commission stated in Order Nos. 436, et al.

[A]n intrastate pipeline need not offer firm  
section 311 service and may limit overall capacity  
(continued...)

comparable services offered in the intrastate market. However, the Operating Statement shows that the Section 311 service is not comparable to intrastate service.

#### Termination of Service

The Operating Statement reserves the right to Tejas to terminate service agreements under several non-shipper related conditions. Article 7.5 provides that Tejas, upon 30 days notice, may terminate a contract if it determines that the service is uneconomical. No standards or criteria are provided as to how Tejas will make this determination. There is nothing to prevent Tejas from terminating a contract simply because another shipper offered better terms than an existing customer.

Section 11 of the General Terms and Conditions provides that Tejas may, but is not required to, terminate intrastate storage services on the same date Tejas terminates all Section 311 storage services. Section 311 services may terminate either as of the date provided in the service agreements, or a date of Tejas' choosing. Section 12(c) of the General Terms and Conditions provides that Tejas shall have the right to cancel a storage agreement on not less than 10 days notice if any government or regulatory authority takes any action that Tejas deems to be unduly or overly burdensome.

The effect of these three provisions is to essentially make all storage agreements day-to-day agreements, regardless of the nature or stated term of service. The Commission cannot require Section 311 pipelines to offer firm services. Nor does an intrastate pipeline have to provide Section 311 transportation service. However, if an intrastate pipeline decides to offer Section 311 service, it must abide by the Commission's conditions. In retaining its right to terminate the Section 311 services at virtually any date of its own choosing, Tejas transforms its firm service into an interruptible service for which a monthly reservation charge may not be assessed. There is no commitment on the part of Tejas to provide firm service for any specified period of time, as it reserves to itself the sole

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6/(...continued)

that it makes available for firm section 311 contracts. However, to the extent an intrastate pipeline does make capacity available for such service, it must do so without discrimination between its interstate and intrastate service. ...The Commission wants to make clear that once an intrastate pipeline brings firm interstate shippers on its system, it cannot then subordinate or bump this service because of new intrastate service.

right to terminate the contract at any date of its choosing. In addition, as with the priority of service issue, section 311 service may be terminated under standards that are not comparable to intrastate services. Thus the Section 311 service is not comparable to intrastate service.

#### Comparable Service

Tejas states that it has elected to establish maximum rates for Section 311 storage services under section 284.123(b)(1)(ii) of the Commission's regulations. Under this provision of the regulations, intrastate pipelines may use the rate in one of its effective rate schedules filed with the state which the intrastate determines covers "comparable to service under this Subpart."

The description of Section 311 storage service reflected in Tejas' Operating Statement reveals that it is not a service comparable to its other storage services. The Operating Statement discriminates against interstate shippers by according this service a lower priority than comparable intrastate service or Tejas' own use, provides firm service that is not firm because it can be canceled at any time during the term of the contract, allows Tejas the discretion to grant preferential access to capacity in contracting and curtailment, and allows Tejas to contract for service in ways contrary to its Operating Statement without amending its Operating Statement. If Tejas' elects to base its rates on comparable services under Section 284.123(b)(1)(ii) it must file an Operating Statement comparable to its intrastate services. Otherwise, if Tejas decides to continue to offer Section 311 service, it must file pursuant to section 284.123(b)(1)(i) of the regulations to base its rates on its cost of service.

#### Conclusion

The Commission rejects Tejas' Operating Statement because it does not comply with the Commission's regulations and policies on non-discriminatory transportation. If Tejas desires to transport gas under NGPA Section 311, it must provide the service consistent with Sections 284.123(b) and (e) of the Commission's regulations. Tejas must either file an Operating Statement consistent with the Commission's regulations and Transok within 15 days of the Commission order, or cease providing service under Section 311. In addition, to review the rates assessed since August 15, 1997, the Commission directs Tejas to supply a copy of its rate filing to the Railroad Commission in Docket No. 8630, a list of all Section 311 customers from August 15, 1997 to date at the West Clear Lake Storage Facility, the rates charged interstate customers, and a copy of all the service agreements with these interstate and intrastate customers. This material must be filed within 15 days of the Commission order.

The Commission orders:

(A) Tejas' Operating Statement, as proposed in the instant filing, is rejected.

(B) Within 15 days of the date of this order, Tejas must file with the Commission a copy of the rate filing it filed with the Texas Railroad Commission in Docket No. 8630, a list of all Section 311 customers from August 15, 1997 to date at the West Clear Lake Storage Facility, the rates charged interstate and intrastate customers, and a copy of all the service agreements with these interstate customers.

By the Commission.

( S E A L )



Lois D. Cashell,  
Secretary.