

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Texas Eastern Transmission, L.P.

Docket Nos. RP99-480-005
RP99-480-006

ORDER ACCEPTING COMPLIANCE FILING, SUBJECT TO MODIFICATION,
AND DENYING REQUEST FOR REHEARING

(Issued January 29, 2004)

1. In a January 15, 2003 Order accepting a negotiated rate agreement filed by Texas Eastern Transmission LP (Texas Eastern), the Commission required Texas Eastern to either modify its tariff to clarify that it allows differing Maximum Daily Quantity (MDQ) levels to all of its customers, or to remove provisions in the negotiated rate agreement allowing for varying monthly MDQ levels.¹ In response, Texas Eastern filed a compliance filing clarifying that all shippers are eligible to take differing MDQ levels. At the same time, Texas Eastern also filed a Request for Rehearing and Clarification on the January 15 Order.
2. This order accepts Texas Eastern's compliance filing, subject to modification. Additionally, Texas Eastern's request for rehearing is denied. This order makes available to shippers the additional option of varying their MDQ levels on a not unduly discriminatory basis.

I. Background

3. In the January 15 Order the Commission accepted, effective December 1, 2002, Texas Eastern's negotiated rate agreement (Agreement) with Middle Tennessee Natural Gas Utility District (Middle Tennessee) filed on December 16, 2002 in Docket No. RP99-480-003. The Agreement provides for firm transportation service under Texas Eastern's FT-I Rate Schedule and allows Middle Tennessee to take up to 10,000 dth/day

¹ 102 FERC ¶ 61,028 (2003)

between November 1 and March 31, and up to 5,000 dth/day between April 1 and October 31.

4. The January 15 Order conditioned acceptance of the Agreement upon Texas Eastern either removing the differing MDQ levels from the Agreement or, alternatively, modifying the FT-1 Rate Schedule to ensure that a service with seasonally varied contract demands is offered on a generally available basis to all shippers.

II. Request for Rehearing

5. On February 14, 2003 Texas Eastern submitted a Request for Clarification or, Alternatively, Rehearing of the January 15 Order (Request for Rehearing).

6. In its Request for Rehearing, Texas Eastern asked the Commission to find that Texas Eastern's currently effective tariff already authorizes Texas Eastern to offer differing MDQ levels throughout the year, on a mutually agreed basis, and that no revisions to its tariff were required. Texas Eastern argues that the blank spaces found in its FT-1 service agreement are evidence that its tariff contemplates variable MDQ levels since "there is no requirement that the MDQ stated in the service agreement be restricted to a single number."²

7. Additionally, Texas Eastern points out that the Commission has previously accepted its previous filings of contracts containing variable MDQ levels and that Section 3.7(B) of Texas Eastern's FT-1 Rate Schedule contemplates allowing rate schedules with variable MDQ levels. Specifically, Section 3.7(B) of the FT-1 Rate Schedule reads: "Customers with seasonal contracts, i.e., different MDQs for winter and summer, will only be allowed to elect their lower MDQ for participating in the CRP program."³

8. In the alternative, Texas Eastern requests that the Commission accept its compliance filing described below, which proposes tariff language permitting variations in MDQ and treating such variations as a form of discount. Texas Eastern argues that allowing shippers to take advantage of its variable MDQ offerings as a matter of right would allow shippers to cherry pick the usage of the system and would impose obligations on Texas Eastern that are not currently contemplated by its tariff and would not permit Texas Eastern to recover its cost of service.

9. Texas Eastern also asserts the Commission may not require it to offer variable MDQs to shippers on a non-discretionary basis without making a finding that the old rate

² Texas Eastern's Request for Rehearing at 6.

³ As discussed more fully below, the customized reservation platform (CRP) allows customers to elect non-uniform monthly billing of their reservation charges.

is unjust and unreasonable under Section 5 of the NGA.⁴ However, Texas Eastern argues, treating the variable MDQ provision as a rate discount avoids that problem.

10. If the Commission does not accept either of those requests, that Texas Eastern asks that the Commission clarify that it may treat its variable MDQ contracts as negotiated rate agreements.

11. Finally, Texas Eastern argues that the use of differing MDQ levels is consistent with the Commission's policy of promoting efficient use of the nation's natural gas pipeline system in that it allows Texas Eastern to take unused capacity and make it available to shippers on a non-discriminatory basis.

III. Compliance Filing

12. Also on February 14, 2003 Texas Eastern submitted a compliance filing (Compliance Filing) modifying its tariff to clarify that shippers may enter into service agreements with differing MDQ levels and making conforming changes in its FT-1, CDS, SCT, LLFT and VKFT Rate Schedules.

13. Specifically, the revised tariff language adds to Section 2.2 of each Rate Schedule language clarifying that a shipper's MDQ is uniform throughout the contract year unless Texas Eastern and the shipper agree to differing MDQ levels pursuant to Section 28, Discount Terms, of the General Terms and Conditions of the tariff. The revised tariff sheets also state that any differing MDQ levels, as well as the duration of those differing MDQ levels, must be set forth in the executed service agreement.

14. Texas Eastern also proposes to modify Section 28 of its General Terms and Conditions. As revised, that section would state that Texas Eastern and the shipper may agree to differing MDQ levels and that such differing MDQ levels will be treated as a discount for all purposes of Texas Eastern's tariff. Finally, Section 28 would provide that Texas Eastern will apply the same non-discrimination criteria used to grant a rate discount to all shippers requesting differing MDQ levels.

IV. Public Notice and Protests

15. Public notice of Texas Eastern's filing was issued on February 20, 2003. Timely protests were filed by New England Local Distribution Co., Municipal Defense Group, Consolidated Edison Co. of New York Inc., Orange and Rockland Utilities Inc., and Keyspan Delivery Companies (Collectively, Protesters). Texas Eastern subsequently filed an answer in response to the various protests on March 13, 2003.

⁴ 15 U.S.C. § 717c (2002).

16. Although Rule 213(a) of the Commission's Rules of Practice and Procedure⁵ does not allow for answers to protests, the Commission will grant waiver of this Rule and permit the answer of Texas Eastern as it provides information that aids the Commission in resolving issues raised by the filing.

17. Pursuant to Rule 214,⁶ Keyspan's motion to intervene and is granted.

18. Protesters uniformly objected to Texas Eastern's proposal to treat service agreements with differing MDQs as rate discounts. Protesters were concerned that this would entitle Texas Eastern to seek a discount adjustment in its next rate case and instead contend that the appropriate rate treatment for agreements with non-uniform MDQ levels can and should be taken up in Texas Eastern's next rate case and not in the context of this negotiated rate proceeding.

19. In addition, Municipal Defense Group also argues that Texas Eastern's tariff should provide only for seasonal variations in MDQ and suggests that Texas Eastern's Compliance Filing, as it is currently written, would allow for a shipper to request multiple changes in MDQ levels without regard to season.

IV. Discussion

20. The Commission denies Texas Eastern's request for rehearing and accepts Texas Eastern's Compliance Filing, subject to modification as discussed below.

A. Rehearing

21. Texas Eastern's tariff, as it currently exists, does not give it the authority to vary the MDQ levels of its shippers throughout the year. Despite Texas Eastern's assertions to the contrary, Section 3.7(B) in the FT-1 Rate Schedule,⁷ of its tariff does not give Texas Eastern the right to offer this service. Section 3.7 of Texas Eastern's tariff gives firm shippers the option of having their reservation charges billed on an other than uniform basis. This option is called the "customized reservation platform" or CRP. The CRP does not provide for a monthly variation in contract demand. It only provides for a monthly variation in the billing of the reservation charges. Section 3.7(B) does state that "customers with seasonal contracts, i.e., different MDQs for winter and summer, will only be allowed to elect the lower MDQ for participating in the CRP program." This language suggests that Texas Eastern offers seasonal MDQs elsewhere in its tariff.

⁵ 18 C.F.R. § 385.213(a) (2003).

⁶ 18 C.F.R. § 385.214 (2003).

⁷ Identical tariff provisions are contained in Section 3.7(B) of Rate Schedule CDS, Section 3.8(B) of Rate Schedule SCT, and Section 3.6(B) of Rate Schedule LLFT.

However, in fact, there is no other provision in Texas Eastern's tariff that actually provides for varying monthly MDQs or sets forth conditions under which such varying monthly MDQs are offered.

22. Texas Eastern's argument that its form of service agreement blanks should be read to allow more than one MDQ level is also unpersuasive. A mere blank in a form of service agreement cannot be interpreted as offering a service option such as varying MDQs. This is particularly the case since Texas Eastern states that, in fact, it is not willing to offer such service in all circumstances, and proposes to include certain conditions in its tariff compliance filing. This demonstrates the need for the offering of varying MDQ levels to be included in the tariff. Therefore the Commission denies rehearing on this issue.

23. With respect to Texas Eastern's concerns regarding Section 5 of the NGA, the Commission is not ordering Texas Eastern to offer varying monthly MDQ levels to its customers. The Commission has only held that if Texas Eastern desires to offer such an option, it must do so through a generally applicable tariff provision setting forth the conditions under which it will offer this option.

B. Compliance Filing

24. The Commission will accept Texas Eastern's compliance filing, subject to modification. First, Texas Eastern proposes to include in Section 2.2 in its various rate schedules, stating "Pipeline may, but shall not be obligated to, agree to certain differing levels in customer's MDQs." The Commission recognizes that Texas Eastern states that it cannot offer this option as a matter of right to all customers. However, the Commission is concerned that Texas Eastern not arbitrarily offer this option to some customers but not others. Accordingly, the Commission requires Texas Eastern to modify this language to state that it "may, on a not unduly discriminatory basis, agree"

25. Second, the Commission agrees with Protesters that Texas Eastern's treatment of variable MDQ levels as a "discount" is improper. In Texas Eastern Transmission, LP, 102 FERC ¶ 61,262 (2003), Texas Eastern argued that contracts for less than the full quantity of gas available under a given service agreement should be treated as a discounted transaction. This argument was expressly denied by the Commission. Instead, we stated that "a discounted agreement is different from a service agreement in which the shipper reduces its level of service in certain months."⁸ Further, if a "shipper agrees to pay the maximum rate for the full amount of service that it obtains under the contract, then that shipper is a maximum rate shipper."⁹

⁸ Texas Eastern Transmission, LP., 102 FERC ¶ 61,262 at P 18 (2003).

⁹ Id.

26. In fact, Texas Eastern itself agrees with this proposition in its March 13, 2003 answer, in which it states that it "does not intend to influence the treatment of contracts with differing MDQs in future [rate] proceedings."¹⁰ The mere fact that a shipper may have varying contract demands does not entitle Texas Eastern to treat that contract as a discounted agreement if it is paying the maximum rate.

27. We direct Texas Eastern to remove all language relating to the treatment of differing MDQ levels as a "discount." Specifically, Texas Eastern should remove all language relating to variable MDQ levels from Section 28 of its General Terms and Conditions tariff, as well as make conforming changes to its various rate schedules.

28. Finally, the Municipal Defense Group requests that Texas Eastern's proposal be modified to only permit season variations in MDQ. However, Texas Eastern proposes to offer varying MDQ levels throughout the year. Since Texas Eastern's proposal offers customers additional flexibility we reject Municipal Defense Group's protest.

The Commission orders:

Texas Eastern must modify its tariff as specified above and submit a compliance filing within 30 days

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

¹⁰ Answer at 1.