

111 FERC ¶ 61,103
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Tennessee Gas Pipeline Company

Docket No. RP02-114-007

ORDER DENYING REHEARING

(Issued April 19, 2005)

1. On August 9, 2004, the Commission issued an order on rehearing and compliance filing addressing issues concerning Tennessee Gas Pipeline Company's (Tennessee) refund of cashout revenues pursuant to its Volumetric Transition Cost Account (VTCA) mechanism.¹ This order addresses the request for rehearing of the Commission's August 9, 2004 Order filed by the Cities of Clarksville, Springfield, Portland and Waynesboro, Tennessee; the Corinth Public Utilities Commission, Mississippi; the West Tennessee Public Utility District; the Greater Dickson Gas Authority, Tennessee; and the Humphreys County Utility District, Tennessee (the Municipals). For the reasons discussed below, the Municipals' request for rehearing is denied.

Background

2. Tennessee maintained a Volumetric Transition Cost Account mechanism that was designed to recover certain take-or-pay costs. A portion of these take-or-pay costs were classified as volumetric costs and were recovered through a surcharge. The volumetric costs were recovered from Market Area Shippers (76.9 percent) and Supply Area Shippers (23.1 percent). In addition, Tennessee's Load Management Rate Schedules (LMS-MA and LMS-PA) required that net cashout gains that Tennessee owed its customers be credited to the Volumetric Transition Cost Account mechanism in the same manner as take-or-pay costs, that is, 76.9 percent to Market Area Shippers and 23.1 percent to Supply Area Shippers. Tennessee's tariff required that if either the

¹ Tennessee Gas Pipeline Company, 108 FERC ¶ 61,176 (2004).

Market Area or Supply Area surcharge was terminated, Tennessee had to file a plan to refund the net cashout gains to the terminated account.

3. In a December 19, 2002 Order, the Commission rejected Tennessee's refund plan for the remaining \$8 million net cashout balance because the amount was improperly allocated between Market Area and Supply Area Shippers.² On December 24, 2003, the Commission issued an order on compliance filing and rehearing in which the Commission found that all balancing parties under Tennessee's Load Management Rate Schedules who were subject to penalties were eligible for the cashout refunds.³ The Commission also found that since \$2 million in cashout gains were already allocated to the Supply Area Shippers, any allocation of the \$8 million in cashout gains to Supply Area Shippers would constitute an inequitable subsidy by Market Area Shippers.

4. On February 23, 2004, pursuant to the Commission's December 24, 2003 Order, Tennessee submitted a revised refund plan reflecting cashout refunds of approximately \$8 million to Market Area Shippers and Operator Balancing Agreement (OBA) parties. On August 9, 2004, the Commission issued an order on rehearing and compliance filing concerning Tennessee's revised refund proposal.⁴ The Municipals argued that Tennessee's revised refund plan must be rejected because Tennessee failed to distribute refunds to Operator Balancing Agreement point operators that have purchased swing storage service under Tennessee's firm transportation rate schedules for small customers, that is, Rate Schedules FT-G and FT-GS. In its August 9, 2004 Order, the Commission rejected the Municipals' request based on Tennessee's explanation that certain of the Municipals were not eligible for the cashout refunds because they are not subject to the cashout provisions of the LMS-MA Rate Schedule. As Tennessee further explained, the cashout provisions of the rate schedule are only applicable to shippers that have not elected to use firm storage service in conjunction with their firm transportation service to effect load balancing. Because certain of the Municipals had elected to use firm storage service to effect load balancing, they were not subject to cashout penalties and, therefore, were not eligible for the cashout refunds. On September 8, 2004, the Municipals filed a request for rehearing of the August 9, 2004 Order on the issue of which shippers are eligible for the cashout refunds.

² Tennessee Gas Pipeline Company, 101 FERC ¶ 61,303 (2002).

³ Tennessee Gas Pipeline Company, 105 FERC ¶ 61,367 (2003).

⁴ Tennessee Gas Pipeline Company, 108 FERC ¶ 61,176 (2004).

Request for Rehearing

5. The Municipals assert that the Commission erred by excluding from cashout refunds the shippers that opt for the automatic load balancing options set forth in the firm transportation schedules for small customers. The Municipals contend that Tennessee has already demonstrated that swing storage customers are subject to the cashout provision of the load management rate schedule and particularly the provision that is used to resolve daily variances. The Municipals submit that in Tennessee's Order No. 637 proceeding, Tennessee proposed a radical change to the cashout option of the load management service rate schedules to include a daily balancing service (Rate Schedule DBS) to resolve daily variances. The Municipals assert that they sought clarification in the Order No. 637 proceeding that swing storage customers would not be subject to the daily balancing service set forth as part of the cashout option in the load management rate schedule. The Municipals contend that Tennessee opposed the clarification on the grounds that swing storage customers had only limited storage rights and thus that these swing storage customers in fact are subject to the daily balancing provisions of the cashout option as well as a related proposed operator balancing agreement transportation service (Rate Schedule OTS) if they exceeded those storage rights on any day.

6. The Municipals also assert that certain shippers have paid a premium by purchasing the option of automatic storage service under the small customer firm transportation rate schedules to help ensure that they will not cause balancing problems on Tennessee. The Municipals contend that the payment of this additional insurance against imbalances should be rewarded and not penalized by excluding swing storage customers from cash-out refunds.

7. The Municipals argue that if the Commission does not grant rehearing then it must require Tennessee to revise its tariff to clarify that small customer firm transportation shippers (Rate Schedules FT-G and FT-GS) that opt for the automatic load balancing service are not subject to any cash-out provision or penalty under the load management rate schedules. The Municipals contend that Tennessee has provided directly inconsistent positions on whether shippers using the small customer firm transportation rate schedules are subject to the cash-out provisions and penalties of these rate schedules. According to the Municipals, first Tennessee argued they are subject to various cashout provisions and penalties of these rate schedules in its Order No. 637 proceeding; and then argue in this proceeding they are not. The Municipals assert that Tennessee cannot have it both ways.

Tennessee's Answer

8. While the Rule 213 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.213 (2004)) prohibits answers in response to a request for rehearing

unless otherwise ordered, the Commission will permit Tennessee's answer because it will lead to a more accurate and complete record in this proceeding.

9. Tennessee argues that the Municipals' argument, that they are subject to the cashout provisions because they are subject to Tennessee's proposed daily balancing service (Rate Schedule DBS), is wholly irrelevant because Tennessee's proposed daily balancing service was never implemented. In any event, Tennessee states that the proposed daily balancing service was designed to provide shippers and balancing parties with an additional opportunity to manage daily variances from scheduled quantities and provide parties with the opportunity to trade daily balances within a swing tolerance. Tennessee asserts that even if the daily balancing service had been implemented, it would have been a separate balancing service unrelated to the cashout of monthly imbalances that are the subject of this proceeding and which the small firm transportation customers that swing on storage do not pay.

10. Tennessee contests the Municipals' claim that they should be a recipient of the cashout refund because they are subject to the operator balancing agreement transportation service. Tennessee asserts that the operator balancing agreement transportation service is unrelated to the cashout of monthly imbalances and the reconciliation of the costs and revenues related to that activity. Tennessee also states that Rate Schedule OTS does not implement a penalty, unlike the cashout mechanism. In contrast, Tennessee submits that the operator balancing agreement transportation service provides compensation to Tennessee for transportation charges on any day when a balancing party takes gas in excess of its scheduled quantity. Tennessee states that its cashout refund at issue in this proceeding is a culmination of the gas transportation imbalances for the year September 2000 to August 2001.⁵ Tennessee states that each month it evaluates the difference between a customer's scheduled quantities and the customer's delivered quantities. Tennessee states that the difference between those two quantities is then cashed out, either positively or negatively, *i.e.*, either Tennessee owes the customer for the value of those units of gas that were scheduled but not taken by the customer, or the customer owes Tennessee for the value of those units of gas that were taken in excess of the quantities scheduled.

⁵ Tennessee notes that the refunds at issue in this case are for the period September 2000 to August 2001 and the operator balancing agreement transportation service had not been implemented on Tennessee's system during that time period.

11. Finally, Tennessee contests the Municipals' alternative request to require Tennessee to modify its tariff to clarify the FT-G and FT-GS shippers who opt for automatic load balancing are not subject to the cashout provisions and penalties of its LMS Rate Schedules. Tennessee states that because a party is subject to the load management rate schedules does not necessarily mean that the party is subject to a cashout refund. Tennessee states that small firm transportation customers are subject to the load management rate schedules because they swing on storage and their accounts are debited or credited from their storage accounts. Tennessee states that it does not cashout their imbalances. Tennessee asserts that the Municipals' argument, that small firm transportation customers should be removed from the cashout and penalty provisions if they do not receive a share of the cashout refund, is erroneous because the load management rate schedules are made up of many provisions that are necessary for balancing gas on Tennessee's system; they do not pertain only to cashout and penalty provisions.

Discussion

12. We will deny rehearing. section 5 of Tennessee's Rate Schedule LMS-MA is entitled Imbalance Resolution Option election and reads as follows:

Balancing Party shall be subject to the "Cash Out Option" established in Section 7 of this Rate Schedule unless Balancing Party, excluding a supply aggregator under Rate Schedule SA, elects instead the "Storage Swing Option" established in Section 8 of this Rate Schedule. Balancing Party must make such election (or may change an election currently in effect) by notifying Transporter 5 business days prior to the beginning of a calendar month. Elections shall remain in effect throughout the month, and continue on a month to month basis unless changed by a Balancing Party.
(Emphasis added).

13. Section 7 of Tennessee's Rate Schedule LMS-MA is entitled "Cash Out Option." The introductory paragraph of that section states that "Balancing Parties that do not elect Storage Swing Option service under Section 8(d) of this Rate Schedule shall be subject to Daily Variance charges and Monthly Imbalance Cash Out requirements in accordance with the provisions of this Section." (Emphasis added). As Tennessee has explained, the Municipals are not eligible for the cash out refunds in this proceeding because they were not subject to the cashout of imbalances under the LMS-MA Rate Schedule. They elected to use swing storage for balancing purposes. As Tennessee has also explained, the Municipals argument that they should be eligible for cashout refunds because they were subject to Rate Schedules DBS and OTS is erroneous because Rate Schedule DBS never took effect and Rate Schedule OTS concerns transportation charges imposed on gas in excess of scheduled quantities and not the cash out of imbalances. Further, the fact

that the Municipals remained in balance because of their use of the swing storage option is irrelevant to whether they should be eligible for cashout refunds. As the Commission stated in the August 9, 2004 Order, the Commission's goal in this proceeding was to ensure that "the cashout refunds are distributed to the sources of the cashout revenues, that is, the balancing parties, shippers, and any other entities in the Market Area who were subject to Tennessee's cashout mechanism."⁶ Because the Municipals were not subject to the cashout mechanism, they would not be a source of cashout proceeds if they had been out of balance. Indeed, the use of the swing storage option was designed to enable the shipper to avoid cashouts. Finally, there appears to be no financial incentive for Tennessee to withhold refunds from the Municipals because the cashout revenues are to be distributed only to eligible shippers; Tennessee retains nothing. Accordingly, the Municipals request for rehearing is denied.

14. The Commission also denies the Municipals request to revise Tennessee's tariff to exclude FT-G or FT-GS customers who opt for automatic load balancing from the cashout provisions or penalties of the LMS rate schedules. As shown above, the tariff is clear that if a customer opts for swing storage, it is not subject to the imbalance cashout requirements. Accordingly, no change is required relative to the cashout provisions, including cashout penalties. However, the tariff's exclusion for the shippers who opt for the automatic load balancing service is limited to the cashout provisions; it does not preclude application of other LMS non-cashout penalties or charges, if applicable.

The Commission orders:

The Municipals' request for rehearing of the Commission's August 9, 2004 Order in this proceeding is denied.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

⁶ Tennessee Gas Pipeline Company, 108 FERC ¶ 61,176 at P 14 (2004).