

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 30, 2004

In Reply Refer To:
Tennessee Gas Pipeline Company
Docket No. RP04-349-000

Tennessee Gas Pipeline Company
Nine E Greenway Plaza
Houston, TX 77046

Attention: Jacques A. Hodges
Attorney

Reference: Fourth Revised Sheet No. 306 to FERC Gas Tariff,
Fifth Revised Volume No. 1

Ladies and Gentlemen:

1. On June 29, 2004, Tennessee Gas Pipeline Company (Tennessee) filed the referenced tariff sheet to amend Article II, section 2, of Tennessee's General Terms and Conditions (GT&C). Tennessee's proposed tariff modification would permit a Shipper, at production meters, to agree to hold Tennessee harmless from any damages relating to Tennessee's delivery of natural gas that does not conform to the gas quality specifications of its tariff. Based on the discussion below, the Commission accepts and suspends the effectiveness of the referenced tariff sheet until a date set by a subsequent order, and directs Tennessee to file revised tariff language clarifying its proposal within 15 days of the date of this order. The parties will have 15 days from the date of its filing to comment on Tennessee's revised proposal.

Details of the Filing

2. Tennessee proposes to include the following tariff language in Article II, section 2 of its GT&C:

Nothing in this Article II shall prevent Shipper from waiving any of its rights under this section 2 or agreeing to indemnify, defend, and hold Transporter harmless from any damage relating to Transporter's delivery of natural gas to production meters incidental to its provisions of service to Shipper.

3. Tennessee states that this tariff provision is necessary because it receives many requests from production meter operators for gas deliveries that, if delivered to the production meter operators at their locations on Tennessee's system, would not conform with one or more of the gas quality specifications of Article II, section 1 of Tennessee's GT&C.¹ Tennessee states that there are parts of its offshore system where Tennessee is operationally capable of delivering gas that is high in liquid content without causing damage to its system or impairing its operations. Further, the requesting parties have expressed no reservations about receiving gas that does not meet the specifications of Tennessee's tariff and are willing to assume the risk and responsibility associated with such gas.

4. Currently, Article II, section 2 of Tennessee's GT&C allows any shipper to refuse delivery of gas that fails to meet the quality specifications set forth in Article II, section 1 or accept non-conforming gas and remedy the quality deficiency itself and seek reimbursement from Tennessee for these processing expenses. However, Article II, section 2 does not provide for waiver of Tennessee's liability for any damage to the production meter operator's facilities that may result from the non-conforming gas, even though such production meter operator specifically requested delivery of the non-conforming gas. Thus, Tennessee states it is reluctant to honor requests to enter into long term agreements to deliver non-conforming quality gas that may cause damage to the operator's facilities if the liability for such deliveries rest solely upon Tennessee. Therefore, Tennessee states that the proposed tariff language will allow for the delivery of non-quality gas if: 1) a shipper desires to receive gas that does not conform to quality specifications; 2) the shipper is willing to assume the responsibilities associated with receipt of such non-conforming gas; 3) if the shipper is willing to indemnify Tennessee against any liability; and, 4) Tennessee determines that the delivery of such non-conforming gas will impair neither its facilities nor operations. Tennessee emphasizes that the delivery of non-conforming gas is completely at the shipper's option and that unless otherwise specifically requested by this shipper, Tennessee will deliver only gas that conforms to the gas quality specifications of its tariff.

Notice, Interventions and Protests

5. Public notice of the instant filing was issued on July 8, 2004, with interventions and protests due on or before July 12, 2004. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

¹ Article II, section 1 sets forth the heating value of gas delivered by Tennessee and that the gas will be free from objectionable matter.

6. New England Local Distribution Companies (New England LDCs) protested the filing and Consolidated Edison Company of New York, Inc. (Con Edison) and Orange and Rockland Utilities, Inc. (O&R) filed a request for clarification. Indicated Shippers, Columbia Gas of Ohio, Inc. and Columbia Gas of Pennsylvania, Inc. (Columbia distribution companies) filed comments to the filing. The Tennessee Municipal Group² and the Chattanooga Gas Company (Chattanooga) filed late interventions and comments. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2003)), all timely motions to intervene are granted and any motions to intervene out-of-time are granted as of the date of this order. The parties concerns are discussed below.

7. Indicated Shippers requests that the Commission require Tennessee to modify its proposed tariff revision to limit the scope of the waiver and indemnity language to production meters as described by Tennessee in its transmittal letter. Indicated Shippers point out that Tennessee's tariff does not contain a definition of production meters, thus shippers will not know whether their particular meter is subject to the waiver/indemnity provision. Con Edison, O&R, Chattanooga and the Columbia distribution companies request that the Commission clarify that the proposed tariff language be limited to the production area behind process points and will not serve as precedent for an analogous tariff amendment affecting the market area. Chattanooga also requests clarification regarding the specific circumstances under which the proposed indemnification may occur, asserting that the proposed tariff language appears to insulate Tennessee from any subsequent injury to downstream customers, whether or not resulting from non-conforming gas.

8. The New England LDCs, the Columbia distribution companies, the Municipal Group, Con Edison and O&R are concerned that Tennessee's agreement to accept non-conforming gas could have an adverse impact on downstream markets. If another party agrees to indemnify Tennessee from liability for the delivery of non-conforming gas, the parties claim that Tennessee may argue that its customers are required to seek redress from the entity that agreed to indemnify Tennessee. Con Edison and O&R contend that the proposed tariff amendment appears to contemplate a situation in which Shipper A requests delivery of non-conforming gas and such deliveries have an adverse impact on Shipper B's facilities. While Con Edison and O&R ask Tennessee to clarify whether Tennessee's intent is to permit the tariff amendment to be used in this fashion, the New England LDCs claim that the tariff proposal should be rejected.

² The Municipal Group is comprised of: 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.

9. The New England LDCs also state that Tennessee has not demonstrated that it needs this tariff revision to accomplish its objectives. It observes that Tennessee's tariff already permits a production area meter operator to waive the gas quality specifications and receive non-conforming gas. It asserts that if Tennessee's sole concern is with potential liability for damages to the facilities of the production meter operator's facilities, Tennessee should address that concern by contract with the meter operator in a manner that impacts only Tennessee and the meter operator.

10. Indicated Shippers contend that the proposed tariff language should permit shippers to waive specific quality requirements, i.e., heating value, objectionable odors, dust, and/or other solid or liquid matter, rather than requiring shippers to grant Tennessee a generic waiver of all of the quality requirements of Article II, section 1. Further, Indicated Shippers claim that the proposed language, as worded, allows the shipper to waive "any" damages relating to the delivery of natural gas, rather than the damages caused by the failure of the delivered gas to meet the quality specifications that the shipper has waived.

Tennessee's Answer

11. On July 21, 2004, Tennessee filed an answer to the parties protest and comments. While the Commission's Rules of Practice and Procedure, (18 C.F.R. § 385.213(a)(2) (2003)), generally prohibit answers to protests, the Commission will accept the answer to provide a better understanding of the issues in this proceeding.

12. In its answer, Tennessee responded to New England LDC's protest, explaining that Tennessee's proposed tariff change deals specifically with the delivery to production meter operators receiving or accepting non-conforming gas from Tennessee upon request. It states that the proposed tariff language does not address or propose that Tennessee accept or receive non-conforming gas from the production meter operators. Tennessee further states that it "does not intend to compromise the integrity of the gas delivered to downstream customers."³ Accordingly, it states that, if it determines that delivery of non-conforming gas will adversely affect another shipper, Tennessee will deny the request.

13. In response to comments of Columbia Distribution Companies, Chattanooga and Con Edison, Tennessee clarifies that the proposed tariff language will not alter Tennessee's liability to a downstream shipper or a non-requesting shipper for damage to that shipper's facilities due to delivery of non-conforming gas. Tennessee also questions

³ Tennessee Answer at 5.

New England LDC's proposal that Tennessee should enter into a contract with the production meter operators to address the liability issue rather than modify the tariff. Tennessee states that it is its understanding that Commission policy runs counter to Tennessee entering into a private contract that may contradict the provisions of the tariff.

14. Tennessee responds to Indicated Shippers' comments requesting definition of production meters by clarifying that the proposed tariff language would only apply to production meter operators. Tennessee continues to explain "production meters are generally located in the supply area upstream of a processing facility on Tennessee's pipeline system."⁴ Further, Tennessee clarifies that the proposed indemnity provisions will only apply "to those meters on Tennessee's system located in the supply area as defined in Article I, section 21 of the GT&C."⁵

15. Finally, Tennessee clarifies that the proposed tariff language is not designed to indemnify it from "any damages associated with the delivery of non-conforming gas;" rather, it states, the proposed tariff language would "provide production meter operators with the right to indemnify Tennessee against liability for damages to the production meter operator's *facilities* caused by the delivery of non-conforming gas."⁶ Tennessee also clarifies that the proposed tariff provision does permit a shipper to waive specific quality specifications, rather than a generic waiver of all quality specifications. It states that its intention is to provide the production meter operator the ability to waive one or more gas quality specifications depending on the specific liquids and other objectionable matter that are in the pipeline.⁷

Discussion

16. The Commission finds that Tennessee's answer may adequately respond to the concerns raised by the parties in this proceeding. However, the Commission wishes to hear from the parties to this proceeding as to whether Tennessee's answer adequately

⁴ Id.

⁵ Id. Definition 20 of Article I, section 21 of the GT&C, as reflected in Fourth Revised Sheet No. 304 to its FERC Tariff, Fifth Revised Volume No. 1, defines "supply area" as follows:

The term "supply area" shall mean those points on Transporters [sic] system that are upstream of Station 47, 542, or 834 in Transporter's 100, 500, or 800 line, respectively.

⁶ Tennessee Answer at 7.

⁷ Tennessee Answer at 7.

responds to their concerns. Therefore, the Commission accepts and suspends the effectiveness of the referenced tariff sheet until a date set by a subsequent order to allow the parties to comment on the revised tariff provisions. Within 15 days of the date of this order, Tennessee must file with the Commission a revised tariff proposal incorporating all of the clarifications Tennessee offered in its answer. The parties will then have 15 days to respond to Tennessee's revised tariff filing. After all the comments have been received, the Commission will issue an order on Tennessee's revised tariff filing.

By direction of the Commission.

Linda Mitry,
Acting Secretary.