108 FERC ¶ 61,308
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Great Lakes Gas Transmission Limited Partnership Docket No. RP04-188-003

ORDER ON COMPLIANCE

(Issued September 22, 2004)

1. On July 8, 2004, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed revised tariff sheets to comply with the Commission's Order on Rehearing and Compliance, issued on June 23, 2004.[1] In this order, the Commission accepts Great Lakes' proposed tariff sheets to become effective April 1, 2004. This decision benefits customers by balancing a shipper's need to assure a reasonable opportunity to obtain pipeline services with Great Lakes' need to ensure that its shippers are creditworthy.

Background

2. On February 27, 2004, Great Lakes filed revised tariff sheets to modify its creditworthiness provisions and to establish new provisions to govern the termination of a capacity release transaction. Great Lakes asserted that these tariff revisions were necessary to reduce the financial risk caused by non-creditworthy customers, while protecting all shippers from unduly burdensome creditworthiness requirements.

3. On March 31, 2004, the Commission conditionally accepted Great Lakes' proposed filing to modify its creditworthiness provisions as generally complying with the

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[1] *Great Lakes Gas Transmission Limited Partnership*, 107 FERC ¶ 61,309 (2004) (June 23 Order).

Commission's recent decisions and evolving policy pertaining to creditworthiness issues in the industry, subject to certain modifications.[2]

4. On April 30, 2004 Great Lakes filed revised tariff sheets in partial compliance with the March 31 Order. Additionally, on that same date, Great Lakes filed a request for rehearing of certain aspects of the March 31 Order.

5. In the June 23 Order, the Commission granted, in part, and denied, in part, Great Lakes' request for rehearing and conditionally accepted its revised tariff sheets. The Commission directed Great Lakes to file revised tariff sheets setting forth objective criteria for evaluating creditworthiness and to include a provision that would provide non-creditworthy shippers with the opportunity to discover the reasons why they were deemed non-creditworthy.

Compliance Filing

6. In response to the June 23 Order, Great Lakes filed revised tariff sheets in compliance with the directives in that order.[3] Great Lakes modified section 26.1(B)(3) of its General Terms and Conditions (GT&C) to provide objective criteria for evaluating a shipper as part of its creditworthiness review. Great Lakes' tariff now provides, under section 26.1(A) of its GT&C that the determination of a Shipper's creditworthiness will be based upon the shipper's credit/financial history and outlook, along with a comparison of the request for credit to the Shipper's adjusted tangible net worth. Section 26.1(B) provides that a shipper will be deemed creditworthy (on a standalone basis) if: (1) the shipper provides verification that the lower of its senior unsecured debt rating or issuer rating is investment grade or better from each of the major rating agencies (if applicable), including, but not limited to, Moody's, Standard & Poor's, Fitch, and Dominion Bond Rating Service; and (2) the request for credit is less than fifteen percent (15) of the Shipper's tangible net worth, as adjusted; and (3) the shipper's credit/financial history and outlook is determined to be acceptable by Transporter. Such determination shall be based upon Transporters evaluation of:

- shipper's financial statements and auditor's notes, annual report to stakeholders, and annual report to regulators;

[2] *Great Lakes Gas Transmission Limited Partnership,* 106 FERC ¶ 61,336 (2004) (March 31 Order).

[3] First Revised Sheet No. 50R and First Revised Sheet No. 50S to its FERC Gas Tariff, Second Revised Volume No. 1.

- whether shipper has been placed on credit watch and/or whether there has been a change in shipper's credit rating;
- bank and trade references or other information obtained that is relevant to shipper's current and future financial strength and its ability to pay its obligations in a timely manner;
- shipper's payment history to Great Lakes for services provided;
- whether shipper is subject to any proceedings under any laws pertaining to bankruptcy, insolvency, liquidation, or debt reduction procedures; and,
- whether shipper is subject to any recently filed substantial litigation either against the shipper or affecting the shipper's business prospects.

7. Great Lakes also included a new section 26.1(C) in its GT&C to provide that a non-creditworthy shipper may receive, upon request, a written statement from the pipeline explaining the basis for its determination that a shipper is non-creditworthy.

Public Notice and Interventions

8. Public notice of Great Lakes' compliance filing was issued on July 14, 2004. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.[4] Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, all timely motions to intervene and all motions to intervene out of time filed before the issuance of this order are granted.[5] Granting late intervention will not disrupt the proceeding or place additional burdens on existing parties. Consumers Energy Company (CECo) filed comments alleging that Great Lakes did not fully comply with the June 23 Order.

Comments

9. CECo states that notwithstanding the fact that Great Lakes has revised its tariff to specify the objective factors that it will consider in making its creditworthiness determination, its proposal does not explain the process by which Great Lakes will conduct its review. Moreover, CECo contends that the creditworthiness review process continues to be subjective because Great Lakes' three-step test does not allow either of the first two objective tests to work independent of the third test, which CECo argues is subjective because Great Lakes' tariff does not provide information specifying how the

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[4] 18 C.F.R. § 154.210 (2004).

[5] 18 C.F.R. § 385.214 (2004).

determination is made. CECo contends that unless the subjectivity of the third test is made objective, the first two tests must be allowed to operate independently of the third. CECo states that this can be done merely by replacing the term "and" at the end of the first two tests with the term "or."

Discussion

10. The Commission finds that Great Lakes has complied with the June 23 Order by: (1) specifying objective criteria that it will use in assessing a shipper's creditworthiness; and (2) including a provision that will allow non-creditworthy shippers to receive, upon request, a written explanation of the basis for the Great Lakes' non-creditworthy determination. Accordingly, Great Lakes' revised tariff sheets are accepted to become effective April 1, 2004.

11. CECo's protest is rejected. The only issue presented by any compliance filing is whether the pipeline has complied with the Commission's order. CECo does not question whether Great Lakes has complied with the Commission's order to specify the objective factors to be considered in assessing a shipper's creditworthiness. Rather, CECo is challenging the Commission's finding in the June 23 Order that Great Lakes is entitled to consider objective criteria relating to a shipper's creditworthiness even if the shipper passes the first two tests (debt rating and percentage of net worth). Thus, we find that CECo's protest is beyond the scope of this compliance filing.[6]

12. Moreover, even if assuming *arguendo* that CECo's protest does lie, the Commission clearly addressed CECo's position in the June 23 Order. As we found in the June 23 Order, our requirement that a pipeline use objective criteria does not impose restrictions on its ability to evaluate all factors relevant to a shipper's creditworthiness.[7] As stated in *Tennessee*, the Commission has not imposed restrictions on a pipeline's flexibility to evaluate a shipper's creditworthiness, but instead, has only required that a pipeline set forth in its tariff the minimum standards that it will use to evaluate a shipper's creditworthiness, as Great Lakes has done.[8] While a pipeline must base its determination on objective criteria, and to include such criteria in its tariff, the pipeline still retains the discretion to determine a shipper's creditworthiness on a case-by-case basis and to consider the uniqueness of each shipper's circumstances. As such, the

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[6] Such an argument should have been raised as a rehearing to the June 23 Order.

[7] June 23 Order at P 11.

[8] *Tennessee Gas Pipeline Co*., 103 FERC ¶ 61,275 at P 40-41 (2003) (*Tennessee*).

Commission's requirement for objective standards does not interfere with a pipeline's right to exercise its business judgment in evaluating a shipper's creditworthiness.

13. Thus, as we found in the June 23 Order, the first two tests (debt rating and percentage of net worth) need not necessarily be independent of the third test (objective evaluation of other credit factors.) Simply because a shipper passes the first two tests, Great Lakes can still use other objective criteria to evaluate the shipper's creditworthiness. As the Commission found in *Tennessee*,[9] the requirement that the pipeline provide a written explanation of the basis of its determination provides the shipper with sufficient ability to challenge Great Lakes' creditworthiness determination.

The Commission orders:

Great Lakes' revised tariff sheets are hereby accepted, effective April 1, 2004, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

[9] *Tennessee Gas Pipeline Co.*, 102 FERC ¶ 61,075 at P 46 (2003), aff'd, 103 FERC ¶ 61,275 at P 43 & 45.