

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Texas Gas Transmission, LLC

Docket No. RP03-544-002

ORDER ON REHEARING

(Issued October 28, 2003)

1. On July 31, 2003 in a Director Letter Order (the July 31 letter order), the Commission accepted new tariff language proposed by Texas Gas Transmission Corporation (Texas Gas) that explicitly provides for Texas Gas to collect from its customers any energy, value added, sales or use tax, or similar tax levied on customers by the federal government, any state government, or any political subdivision of a state. On August 11, 2003, ProLiance Energy, LLC (ProLiance) filed a request for rehearing of the July 31 letter order. As discussed below, the Commission will deny ProLiance's request for rehearing.

Background

2. Each of Texas Gas's rate schedules contains the following provision entitled Reimbursement of Fees and Taxes:

Customer shall reimburse Texas Gas for all fees, if any, required by the Commission or any regulatory body related to service provided under this Rate Schedule, including filing, reporting, and application fees. Provided, however, Texas Gas may waive filing fees for Customer on a non-discriminatory basis in the event of an administrative error.

3. Texas Gas proposed to revise Section 36 of its FERC Gas Tariff to provide as follows:

Customer shall pay to Transporter any applicable energy, value added, sales or use tax, or similar tax, and any penalty and interest imposed on the Customer by the federal government, any state, or by any political subdivision of a state, which amount Transporter is obligated by law to collect and remit. Payment shall be at the applicable rate prescribed by law. If Customer is exempt from the obligation to pay such taxes, Customer shall provide Transporter with documentation establishing that exemption.

4. Texas Gas stated it filed this proposal to clarify that it possesses the authority to bill taxes, levies, and other charges imposed on customers by regulatory authorities where Texas Gas is required by law to collect such amounts from customers and remit these amounts to the respective agencies or authorities. Texas Gas stated that this clarification was needed because the Commonwealth of Kentucky had enacted a law by which Texas Gas is required to collect sales and use tax on service charges for the distribution, transmission or transportation of natural gas for use in Kentucky, excluding residential customers. The July 31 letter order accepted Texas Gas's proposed tariff language effective July 7, 2003, but inadvertently failed to address certain comments ProLiance had filed on July, 15, 2003, in response to the tariff filing.

5. On August 4, 2003 Texas Gas filed revised tariff sheets, including the same tariff language the Commission accepted in the July 31 letter order, but reflecting Texas Gas's name change from "Texas Gas Transmission Corporation" to "Texas Gas Transmission, LLC." On August 11, 2003, ProLiance requested rehearing of the July 31 letter order, and protested the August 4, 2003 filing, raising the same issues it had raised in its comments filed on July 15, 2003. On September 3, 2003, the Commission conditionally accepted the revised tariff sheets,¹ subject to Commission action on ProLiance's request for rehearing.

ProLiance's Comments, Protest and Request for Rehearing

6. In its July 15, 2003 comments, ProLiance asserts that the new tax law in Kentucky that went into effect on June 1, 2003 may not have been contemplated by customers of Texas Gas in their initial determination regarding the execution of contract rights with Texas Gas. ProLiance explains that it is not necessarily suggesting that Texas Gas be ultimately responsible for the payment of such taxes, but ProLiance questions whether or not such taxes fall under the spectrum of the "cost of doing business," or whether such tax levies should be automatically passed through to the customers.

7. In its protest to the August 4 filing, ProLiance repeats its July 15, 2003 comments, and additionally states that Texas Gas has essentially asked for a tax tracker, and argues that the Commission rejected a similar attempt to institute a tax tracker in Mississippi River Transmission Corporation (MRT).² ProLiance contends that Texas Gas's request is similar to MRT's in that it is unusually broad, and provides that Texas Gas shall receive reimbursement from its customers for any taxes imposed on Texas Gas, or which Texas Gas is required to collect by any governmental or regulatory body in relation to providing service to its customers.

¹ 104 FERC ¶ 61,238 (2003) (the September 3 order).

² 72 FERC ¶ 61,320 (1995).

8. On rehearing, ProLiance incorporates the above arguments and adds that such an all-encompassing tax tracker provision may go beyond reasonable rate provisions. Moreover, ProLiance contends, any information relating to an automatic tracking adjustment should be subject to Commission review.

Discussion

9. In its original filing, Texas Gas stated that in each of its rate schedules, there is a provision which allows Texas Gas to seek reimbursement from its customers for all fees charged by the Commission, or any other regulatory body, related to services provided by Texas Gas to those customers. Further, Texas Gas asserted that while it believed it had the authority to be reimbursed for the collection of fees and taxes, it proposed the subject tariff language to state this right more clearly and to provide its customers with the opportunity to provide documentation that they were exempt from such taxes.

10. The Commission finds that Texas Gas's new tariff provision is more than a clarification of its existing rate schedule language as Texas Gas asserts, and in fact, extends well beyond what the existing provision allows. While the existing provision is entitled "Reimbursement of Fees and Taxes," the Commission notes that the language within the provision does not mention taxes at all, but focuses on fees, such as filing fees. Moreover, the existing provision refers to Federal or other regulatory bodies, not to "the federal government, any state government, or any political subdivision of a state" as explicitly set forth in the new tariff language.

11. Nevertheless, the Commission finds that Texas Gas's new tariff language is consistent with language approved in other pipelines' tariffs,³ and that ProLiance's citation of MRT is not on point. MRT was seeking to modify its Fuel Use and Loss Adjustment provision to recover sales and use taxes levied against the pipeline itself -- not its end-users. That is not the case with Texas Gas. The revised tariff language only authorizes Texas Gas to collect taxes "imposed on the customer" by the taxing authority, which amounts Texas Gas is obligated to collect from the customer and remit to the taxing authority. Thus, unlike MRT's proposal, the revised tariff language does not authorize Texas Gas to track taxes imposed on it. This is illustrated by the particular tax which Texas Gas states triggered its filing. The Commonwealth of Kentucky is not taxing Texas Gas, but rather industrial end-users within Kentucky. Texas Gas will function merely as a tax-collection agent for the Commonwealth of Kentucky. The Commission also notes that no industrial end-users within Kentucky protested Texas Gas's proposed tariff language to collect a sales tax that is being levied against them by the state.

³ The July 31 letter order cited ANR (GT&C Section 18.2), CMS Trunkline (GT&C Section 16.5) and El Paso (GT&C Section 17.1).

12. With regard to ProLiance's concerns that the new tariff provision constitutes an "automatic rate adjustment," the Commission finds that the collection of a sales tax and its remittance to the local state government should have no impact at all on Texas Gas's cost of service. The Commission finds that fees and taxes imposed on pipeline customers collected by Texas Gas or any jurisdictional pipeline shall not be considered as either revenues or costs in establishing the pipeline's general rates.⁴

The Commission orders:

ProLiance's request for rehearing is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁴ The pipeline should separately account for such taxes in Account 241, Tax Collections Payable, until the amounts collected are transmitted to the appropriate tax authority.