UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Texas Eastern Transmission, LP — Docket No. RP04-25-002

ORDER ON COMPLIANCE FILING

(Issued November 23, 2004)

1. This order addresses the compliance filing submitted on December 8, 2003 (December 8, 2003 Compliance Filing) by Texas Eastern Transmission, LP (Texas Eastern), pursuant to a Commission order issued in this proceeding on November 28, 2003 (November 28, 2003 Order).[1] The issue is whether Texas Eastern has provided adequate additional explanation relating to its October 17, 2003, annual Applicable Shrinkage Adjustment (ASA) filing (October 17, 2003 Filing). As discussed below, we will conditionally accept Texas Eastern's filing as in compliance with the Commission's November 28, 2003 Order and will establish conditions on the acceptance of its ASA rates. This order benefits customers by ensuring that gas costs are reasonably allocated between existing and Texas Eastern Incremental Market Expansion Project (TIME Project) shippers to avoid subsidization.

**Background**

2. In its October 17, 2003 Filing, Texas Eastern submitted revised tariff sheets (as supplemented on November 17, 2003) to adjust its ASA percentages and ASA rate surcharges. The October 17, 2003 Filing was Texas Eastern's initial filing for the separate tracking of the TIME Project fuel requirements.

3. Texas Eastern proposed a different method for determining the TIME Project ASA fuel percentage and surcharge rate than it uses for determining the system ASA surcharge rates. Texas Eastern's system ASA surcharge rate is based on the net monetary balance of approximately $16.8 million recorded in the Applicable Shrinkage Deferred Account (Deferred Account) as of August 31, 2003. The balance in the Deferred Account includes a number of items relating to gas requirements on Texas Eastern's system,

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[1] *Texas Eastern Transmission, LP*, 105 FERC ¶ 61,255 (2003).

including, among other things, the cost of purchased gas, the revenues and expenses associated with imbalance cash-outs, and compressor fuel taxes. The system ASA surcharge rate is calculated by dividing Deferred Account balance (as allocated to each service category or rate schedule) by the projected usage charge determinants. On the other hand, Texas Eastern's calculation of its TIME ASA surcharge is based on a separate TIME Project Deferred Account Balance which includes only one item – the cost of gas used for the compressors along the TIME Project transportation path. The TIME ASA surcharge rate is calculated by dividing the TIME Project Deferred account balance by the TIME Project annual design determinants. Texas Eastern's proposed incremental fuel methodology compares actual horsepower used by compressors both with and without the TIME Project in determining how much fuel is used by the TIME Project.

4. The Municipal Defense Group (MDG) and Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Philadelphia Gas Works (collectively, the Companies) protested the October 17, 2003 Filing. The Companies argued that Texas Eastern's use of different ASA calculations might wrongfully force system customers to subsidize the TIME Project.[2] MDG argued that, without adequate justification, Texas Eastern sought to charge system customers an average price of gas ($6.19/Dth) that is approximately 25 percent higher than the price charged to the TIME Project customer ($4.89/Dth). The Companies contended that Texas Eastern should be required to either explain why this is a just and reasonable result, or propose a new methodology for determining the TIME Project surcharge reflecting Texas Eastern's actual annual cash outlays.

5. MDG challenged Texas Eastern's February 2003 gas purchasing decision. MDG stated that the $7.23/Dth price that Texas Eastern paid for gas purchased during February 2003 was particularly high and well above the indices used for Texas Eastern's cashout pricing mechanism for February 2003 (i.e., $6.2745/Dth for cashout proceeds and $5.70/Dth for cashout expenditures) and the $5.93/Dth spot market price used by Texas Eastern to price fuel requirement gas for that month for the TIME Project. MDG asserted that Texas Eastern must provide additional explanation for the price and quantity of gas purchased in February 2003 for system use and the ASA calculation for the TIME Project, and that parties should be given an opportunity to respond to Texas Eastern's explanation on these issues.

[2] As Texas Eastern noted in the October 17, 2003 Filing at 3, the Commission's certificate authorization for the TIME Project required that Texas Eastern use its tracking mechanism to ensure that the actual level of costs associated with the TIME service is allocated to TIME Project customers, so that existing customers do not subsidize the costs resulting from the new incremental service of the TIME Project. *See Texas Eastern Transmission, LP*, 99 FERC ¶ 61,383 (2002).

6. In response to protests, Texas Eastern acknowledged that it is required to ensure that existing customers do not subsidize incremental service for the TIME Project, and argued that it does so by separately tracking the costs associated with the TIME Project. Texas Eastern contended that, by calculating and resolving the TIME Project fuel differences in the month they occur and using current index price information each month, the TIME Project ASA tracking mechanism ensures the most precise fuel calculation and recovery.

7. In the November 28, 2003 Order, the Commission found that the parties had not had an opportunity to comment on the additional information provided in Texas Eastern's answer to the protests. The Commission further found that Texas Eastern had not adequately explained the differences in the February 2003 price of purchased gas and the prices used for cashouts and for the TIME Project. The Commission stated that Texas Eastern's explanation was too general and not supported by any price comparisons or calculations. The Commission directed Texas Eastern to file further support for the February 2003 gas purchase price and allowed reply comments within 10 days of Texas Eastern's compliance filing.[3] The Commission accepted and suspended the October 17, 2003 Filing, to become effective December 1, 2003, subject to refund, further filings by Texas Eastern, and further action by the Commission as necessary to review additional filings and responsive pleadings.[4]

**December 8, 2003 Compliance Filing**

8. With respect to challenges to the prudence of Texas Eastern's gas purchases in February 2003, Texas Eastern maintains that the $7.23/Dth February 2003 price of purchased gas was the actual purchase price that it paid during February 2003 for that gas. Texas Eastern states that, on February 7, 2003, it accepted three bids offered from non-affiliated potential sellers for approximately 1 Bcf of gas, and began the purchases of gas. Texas Eastern states that Exhibit A to the filing lists the daily price and volume information resulting from the three bids, from which the actual monthly average price of the purchased gas was determined. Exhibit A shows the weighted average of the *Gas Daily* mid-point prices for zone STX between February 7, 2003 and the end of the month to be approximately $7.22/Dth, which, including a nominal supplier margin, results in a total average purchase price for the month of $7.23/Dth, as reflected in the October 17, 2003 Filing.

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[3] November 28, 2003 Order at 16.

[4] November 28, 2003 Order at Ordering Paragraph A.

9. In reply to challenges concerning the differences between the $7.23/Dth actual purchase price of gas for February 2003 and the indices used for cashout pricing (i.e. $6.2745/Dth and $5.70/Dth), Texas Eastern explains that while both the purchased gas price and the actual average cashout price are actual prices paid or comprise actual reported price indices as adjusted to reflect actual imbalance activity, attempting to match the price of purchased gas with the actual average cashout price is not a valid comparison. Texas Eastern argues that the two prices are not comparable in several regards, and for that reason, will rarely, if ever, be identical. Texas Eastern lists a multitude of factors leading to the differences between these two actual prices, including: (1) the published index used and whether it is a daily or weekly index;[5] (2) any geographic differences reflected in the published indices; (3) the period over which the average prices are obtained; and (4) whether the pricing mechanism includes the tiering effect, due to the operation of the cashout mechanism or any prior month adjustments.

10. With respect to challenges to the difference between the $7.23/Dth February 2003 purchase price of gas and the $5.93/Dth spot market price used to price fuel requirement gas for the TIME Project calculations, Texas Eastern states that the TIME Project average fuel price of $5.935/Dth for February 2003 is equal to the cashout index price for that month, which is the monthly average of the weekly *Natural Gas Week* prices over each zone.

11. Texas Eastern also contends that the TIME Project fuel reconciliation methodology is a reasonable means of accounting for the costs attributable to the TIME Project fuel over- or under-recoveries. Texas Eastern states that the proposed methodology is tied to Texas Eastern's Commission-approved imbalance cashout methodology and, like the cashout, is based on current index price information every month. In this manner, Texas Eastern asserts, the TIME Project fuel reconciliation methodology allows for the accounting of TIME Project fuel differences for over- or under-recoveries that occur each month. Texas Eastern states that, rather than using the cashout index price as the basis for the fuel reconciliation on the TIME Project facilities, Texas Eastern could have used the pro-rated actual purchased gas price during the ASA period, as reflected for the current period in the October 17, 2003 Filing. However, Texas Eastern states that it has not historically purchased system gas for operational purposes on a monthly basis, so using the pro rated actual purchased gas price would not provide for the pricing of differences in fuel cost over- or under-recoveries due to the TIME Project on a monthly basis.

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[5] The February gas purchase price is obtained, per the contractual agreement with the seller of the gas, from daily prices posted by *Gas Daily*, while the cashout index price (and the actual average cashout prices derived therein) is obtained from weekly prices posted by *Natural Gas Week*.

**Responsive Pleadings**

12. On December 18, 2003, Vectren Energy Delivery of Ohio, Inc. and Southern Indiana Gas and Electric Company (collectively, Vectren) jointly filed a motion to intervene, and the Companies filed reply comments.

13. While there were no comments on Texas Eastern's further explanation of the February 2003 gas prices, the Companies maintain that Texas Eastern has not supported the differences in its ASA surcharge rate methodologies used for system and TIME shippers. The Companies state that Texas Eastern accurately represent that its proposed methodology for calculating the TIME ASA is based on the cashout index price for the month. The Companies reference Texas Eastern's October 17, 2003 filing at Attachment III, Schedule B, page 2 in explaining that in arriving at the TIME Project Deferred Account balance, Texas Eastern (1) compares the amount of fuel provided by the TIME Project with the amount of fuel used on behalf of that project; and then (2) multiplies the difference (TIME Fuel Deficiency) by the spot market price in order to determine the monthly dollar balance in the TIME Project Deferred Account. However, the Companies argue that Texas Eastern never asserts that it actually paid these spot market prices to purchase gas to offset the TIME Fuel Deficiency, and therefore, the methodology for calculating the TIME Project ASA is not based on cash outlays.

14. The Companies argue that the Commission-approved ASA methodology is entirely different. They state that, as demonstrated by the October 17, 2003 Filing, Attachment II, Schedule B, the system ASA account balance is a cash balance, which takes into account the following items: (1) net cashout proceeds/expenditures; (2) cost of purchases; (3) cost of gas loss; (4) compressor fuel tax; (5) under-recovery of prior year; (5) transfer of 90 percent excess IT; and (6) net fuel deferral – TIME Project. They argue that the total change in gas volumes for the year was 2,709,896 Dth and the dollar amount in the ASA account prior to Time Project Adjustment was $17,075,366. Thus, according to the Companies, the average price charged to the system customers was $6.30/Dth based on Texas Eastern's cash expenditures.

15. On the other hand, the Companies argue that Attachment III, Schedule B, shows a TIME Fuel Deficiency of 55,122 Dth, for which Texas Eastern proposes to charge the TIME customers $269,711. This equates to $4.89/Dth. According to the Companies, Texas Eastern is proposing to charge the TIME customers $1.41/Dth less than it is charging the system customers.

16. The Companies assert that the Commission could find that, since the TIME Project is incrementally priced, it should not participate in allocations of a number of items used to calculate the system ASA, e.g., surpluses from the cashout accounts and excess IT revenues. However, they argue that TIME Project customers should reimburse Texas Eastern for its cash outlays for gas offsetting the TIME Fuel Deficiency. If they do

not, then, according to the Companies, the system customers will be subsidizing the TIME Project. The Companies state that the October 17, 2003 Filing demonstrates that Texas Eastern actually paid $9,862,717 for the 1,592,861 Dth of gas purchases, which equates to $6.25/Dth. They further state that the October 17, 2003 Filing shows that Texas Eastern is collecting a Compressor Fuel Tax from its system customers through the ASA mechanism. If subsidization is to be avoided, the Companies argue that the TIME Project should be required to pay $6.25 (based upon Texas Eastern's actual purchase price for gas) for each Dth it is deficient, plus the Compressor Fuel Tax applicable to the 343,903 Dth of fuel Texas Eastern has allocated to that project.

## Procedural Issues

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

## Discussion

### February 2003 System Price

18. We will conditionally accept Texas Eastern's December 8, 2003 Compliance Filing. As an initial matter, we find that Texas Eastern provided adequate explanation for the February 2003 price of purchased gas, as summarized in paragraph 8 above. We further accept Texas Eastern's explanations (in paragraphs 9 and 10 above) as to why its purchase price was above the indices used for both its cashout pricing mechanism and the spot price for the fuel requirement for the TIME Project.[6]

### TIME Project Methodology

19. For the reasons discussed below, we will direct Texas Eastern to file additional information regarding its calculation of the TIME Project ASA surcharge, and condition acceptance of its ASA rates on the outcome of the hearing proceedings in Docket No. RP03-542-000 regarding incremental pricing issues, and to the review of the additional explanation as directed herein. We first note that the Companies continue to object to Texas Eastern's use of the cashout index price rather than the actual purchase price of gas. The Companies maintain that TIME Project customers should reimburse Texas Eastern for its cash outlays for gas to avoid subsidization. However, as seen on Attachment II Schedule B of the October 17, 2003 Filing, Texas Eastern did not purchase

[6] We note that MDG, who had protested the February 2003 gas purchase and requested an opportunity to comment on Texas Eastern's additional explanation on that issue, filed no reply comments in this case.

gas every month for system use; in fact, there were only two months (October 2002 and February 2003) during the 12- month ASA surcharge deferral period that Texas Eastern actually purchased gas. Therefore, Texas Eastern could not have used the actual gas purchase price for most of the months during the surcharge deferral period. Additionally, because gas prices can vary significantly from month to month, the Companies proposed use of an annual average gas purchase price does not reflect the cost of fuel used on behalf of the TIME project each month. Conversely, the proposed use of the monthly spot market price better reflects the actual price of fuel on behalf of the TIME Project and is (and should always be) readily available each month. It is also already used by Texas Eastern as a starting point to price gas imbalances on its system and to determine cashout proceeds and expenditures. The cashout proceeds and expenditures in turn are major components of Texas Eastern's system ASA determination. Thus, it would not be consistent, as suggested by the Companies, to base the cost of gas for the TIME Project only on occasional gas purchases, while basing major components of the system ASA on spot market prices.

20. The Companies also contend that the average cost of fuel assessed to system shippers (i.e., $6.30/Dth) is higher than that assessed to the TIME Project (i.e., $4.89/Dth), and that this would result in a subsidy of the TIME project by system shippers. However, the Companies' comparison is not valid because it does not use comparable volumes to arrive at the average cost. If the monetary balance in the system deferred ASA account of $16,805,655 (Attachment II, Schedule B line 32) is divided by the deficient fuel volumes for system customers of 4,254,922 Dth (Attachment II, Schedule C, Line 24), the average cost for system shippers is $3.95.[7] When the same calculation is made for the TIME shipper, the average price is $4.89 (i.e., TIME Project costs of $269,711 divided by 55,122 Dth). Thus, the average cost of deficient volumes of system shippers was less than that for the TIME shipper.

21. The Companies further assert that the TIME ASA surcharge rate determination should include a number of items used to calculate the system ASA surcharge rate that are shown on Attachment II, Schedule B of Texas Eastern's October 17, 2003 filing, such as gas losses and compressor fuel taxes. Texas Eastern has not addressed this issue in any of its filings in this proceeding. Therefore, we direct Texas Eastern to explain, within 15 days of the date of this order, why it would not be appropriate to include allocations of each of the cost elements used in determining its system ASA surcharge rate (as shown on Attachment II, Schedule B of Texas Eastern's October 17, 2003 filing) in the determination of the TIME Project ASA surcharge rate.

[7] *See* Texas Eastern's Answer at 7-9, filed in Docket No. RP04-25-000 on November 12, 2003.

22. Finally, Texas Eastern's incremental pricing proposal includes, among other things, the horsepower ratio methodology that is part of the methodology set for hearing in Docket No. RP03-542-000.[8] Accordingly, Texas Eastern's revised tariff sheets filed in this docket are conditionally accepted subject to the outcome of that proceeding.

The Commission orders:

(A) Texas Eastern's December 8, 2004 compliance filing is conditionally accepted as in compliance with the November 28, 2003 Order, as discussed in the body of this order.

(B) Texas Eastern's ASA rates are accepted subject to the outcome of the proceeding in Docket No. RP03-542-000, as discussed above, and to the review of the additional explanation as directed herein.

(C) Texas Eastern is directed to file an explanation to support its proposed exclusion of the cost elements used in determining its system ASA from the TIME Project ASA within 15 days of the date of this order.

By the Commission.

( S E A L )

Linda Mitry,
Deputy Secretary.

[8] *Texas Eastern Transmission, LP*, 104 FERC ¶ 61,180 (2003).