FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 23, 2003

In Reply Refer To:
East Tennessee Natural Gas Company
Docket No. RP02-493-003

East Tennessee Natural Gas Company
P.O. Box 1642
Houston, Texas 77251-1642

Attention: David A. McCallum
Director, Rates and Tariffs

Reference: Second Substitute First Revised Third Revised Sheet No. 147
and Original Sheet No. 147.01 to
FERC Gas Tariff, Second Revised Volume No. 1

Dear Mr. McCallum:

1. On February 19, 2003, East Tennessee Natural Gas Company (East Tennessee) submitted the above referenced tariff sheets in compliance with the Commission order issued on February 5, 2003 (the February 5 Order).[1] The Commission accepts the referenced tariff sheets effective October 1, 2002, subject to conditions as detailed below. East Tennessee is directed to file revised tariff sheets within 15 days of the date of this order.

Background

2. In the February 5 Order the Commission conditionally accepted certain tariff sheets, and required East Tennessee to file revised tariff sheets clarifying that the partial day release quantity is calculated as the difference between the Transportation Quantity (TQ) on the Releasing Customer's contract and the amount scheduled by the Releasing Customer, as determined using the standards promulgated by the North American Energy Standards Board (NAESB).

[1] 102 FERC ¶ 61,132 (2003).

Public Notice, Interventions and Protests

3. Public notice of the filing was issued on February 21, 2003, with interventions and protests due on or before March 3, 2003. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2003)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. No protests or adverse comments were filed.

Details of the Instant Filing

4. East Tennessee notes that in the February 5 Order, the Commission rejected certain alternate tariff sheets, explaining that "[I]f either the releasing or replacement shipper flows more than their allocated MDQ during the gas day, they would be responsible for paying the overrun rate . . . for all gas above their MDQ and would also be subject to potential overrun, scheduling or imbalance penalties." Further, East Tennessee notes that the Commission acknowledges it has authorized pipelines to charge twice the interruptible transportation rate for unauthorized overruns during non-critical periods and higher penalties for overruns during critical periods. East Tennessee states that the Commission recognized in the February 5 Order that such overrun charges and penalties are designed to deter shippers from obtaining capacity free of charge in excess of contractual quantities. East Tennessee contends by suggesting that the pipeline is "fully protected" if the shipper actually flows gas above its contract demand, the February 5 Order appears to contemplate that East Tennessee's tariff already contains a mechanism by which releasing and replacement shippers that overrun the contractual TQ in a capacity release situation are charged for the extra transportation and penalized to the extent the overrun occurs during a critical period. East Tennessee asserts that its tariff currently does not contain such a mechanism specific to capacity releases.

5. East Tennessee states that to implement the partial day release quantity definition required by the Commission and consistent with the Commission's stated policy of protecting the pipeline from the unauthorized delivery of total quantities that exceed the TQ on the Releasing Customer's contract, East Tennessee is proposing to incorporate into Section 17.14 of the GT&C overrun charges and penalties that are specifically applicable to the capacity release situation. Shippers who overrun the contractual TQ on the Releasing Customer's contract will be required to pay for the transportation costs associated with that overrun, as well as associated penalties for overruns in times of restricted capacity.

Discussion

6. The Commission finds that East Tennessee's proposed tariff revision to provide that the partial day release quantity is calculated as the difference between the Maximum Daily Transportation Quantity (TQ) on the Releasing Customer's contract and the

amount scheduled by the Releasing Customer prior to the effective time of the release of capacity, complies with the February 5 Order. However, East Tennessee's proposal to implement TQ Overrun Charges and TQ Overrun Penalties is rejected as beyond the scope of compliance with the February 5 Order.

7. In the February 5 Order, the Commission found that East Tennessee was incorrect in contending that it would be required to deliver more than the contract demand in the original contract for partial day releases. If either the releasing or replacement shipper flowed more than their allocated MDQ during the gas day, they would be responsible for paying the overrun rate (interruptible transportation rate) for all gas above their MDQ and would also be subject to potential overrun, scheduling or imbalance penalties. The Commission further noted that "[T]hese are the same provisions that apply to any shipper overrunning its contract demand (regardless of whether it is engaged in a release transaction), and East Tennessee has offered no justification for treating releasing shippers differently in this respect than other shippers." Finally, the Commission found that the pipeline would be "fully protected" if a releasing or replacement shipper exceeded the contractual demand, noting that "[T]he shipper exceeding its MDQ would be responsible for paying the added transportation costs plus any additional overrun, scheduling, or imbalance penalties that result from such action. For example, the Commission has authorized pipelines to charge twice the interruptible transportation rate for unauthorized overruns during non-critical periods and even higher penalties for overruns during critical periods."

8. In the February 5 Order, therefore, the Commission found that that the pipeline's existing provisions regarding contract overruns would protect it against contract overruns in the case of partial day releases, in the same way as these provisions protect the pipeline against contract overruns in all other situations. The Commission stated that the overrun charge for partial day releases should be the same as that applied in other contexts:

> If either the releasing or replacement shipper flows more than their allocated MDQ during the gas day, they would be responsible for paying the overrun rate (interruptible transportation rate) for all gas above their MDQ and would also be subject to potential overrun, scheduling or imbalance penalties. These are the same provisions that apply to any shipper overrunning its contract demand (regardless of whether it is engaged in a release transaction), and East Tennessee has offered no justification for treating releasing shippers differently in this respect than other shippers.[2]

[2] 102 FERC ¶ 61,132 at P 25.

9. The February 5 Order required simply that East Tennessee apply the generally applicable NAESB scheduling standards for all transactions to partial day releases.[3]

10. Section 4.4 of East Tennessee's firm rate schedule, includes a charge for overrun quantities whenever a shipper exceeds its maximum daily contract quantity.[4] The Commission finds that this overrun charge mechanism should be applied to all contract overruns, regardless of whether they result from partial day releases or from other causes. Accordingly, East Tennessee's proposal for new overrun charges or new penalties is unnecessary because East Tennessee's tariff already includes a charge for contract overrun for partial day releases.

11. Consistent with the discussion above, East Tennessee is directed to refile the referenced tariff sheets, removing its proposal to add TQ Overrun Charge and the TQ Overrun Penalty. The referenced tariff sheets are accepted, effective October 1, 2002, subject to this condition. East Tennessee is directed to file revised tariff sheets within 15 days of the date of this order.

By direction of the Commission.

Linda Mitry,
Acting Secretary.

cc: Susan S. Lindberg, Assistant General Counsel
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[3] The reference in the order to the ability of the pipeline to charge twice the interruptible transportation rate for unauthorized overruns during non-critical periods and even higher penalties for overruns during critical periods was simply an example of the type of contract overrun provisions the Commission has approved in Order No. 637 proceedings.

[4] See Tariff Sheet No. 10.