

122 FERC ¶ 61,164
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 21, 2008

In Reply Refer To:
Tennessee Gas Pipeline Company
Docket No. RP96-312-176

Tennessee Gas Pipeline Company
1001 Louisiana Street
Houston, TX 77002

Attention: Melissa G. Freeman
Senior Counsel

Reference: Gas Transportation Agreement and Negotiated Rate Letter Agreement
Comprising Service Package No. 66756

Dear Ms. Freeman:

1. On January 23, 2008, Tennessee Gas Pipeline Company (Tennessee) filed a gas transportation agreement under Rate Schedule FT-A between Tennessee and EIN Petroleum USA LLC (EIN) dated January 11, 2008, and a related negotiated rate letter agreement, dated December 31, 2007, to implement service for EIN effective January 20, 2008. Tennessee states that the agreements result from the permanent release and assignment of transportation rights on an off-shore lateral to EIN by Dominion Exploration and Production Company, Inc. (Dominion). Tennessee states that the provisions of the transportation agreement with EIN do not deviate materially from Tennessee's FT-A Form of Gas Transportation Agreement, and that EIN's negotiated rate is the same as that which the Commission approved in Dominion's negotiated rate service package. Accordingly, Tennessee requests that the Commission accept the filing and approve the negotiated rate arrangement with EIN to be effective January 20, 2008. The Commission accepts the agreements for filing effective January 20, 2008, subject to Tennessee refiling the gas transportation agreement and the negotiated rate letter agreement within 15 days of the date of issuance of this order in accordance with the discussion that follows.

2. Public notice of the filing was issued on January 28, 2008. Interventions and protests were due as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2007)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are

granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

3. The Commission notes that while the gas transportation agreement as filed by Tennessee in this proceeding does not materially deviate from Tennessee's FT-A Form of Gas Transportation Agreement, paragraph 1(d) of the related negotiated rate letter agreement includes an annual contract demand reduction option of up to 50 percent of the shipper's maximum Transportation Quantity (TQ) for the remaining term of the contract, as permitted by GT&C Article XXVIII, section 5.2 of Tennessee's tariff.¹ That provision constitutes a non-rate provision that should be included in Exhibit B of the gas transportation agreement, instead of the negotiated rate letter agreement.² Tennessee is therefore directed to remove the first two sentences of paragraph 1(d) from the negotiated rate letter agreement and may include comparable language in Exhibit B of the gas transportation agreement.

4. We note, however, that paragraph 1(d) also constitutes a rate provision in that the last sentence of the paragraph states that the negotiated rate will apply to the TQ remaining after the shipper has exercised the contract reduction option. Therefore, to preserve the meaning of paragraph 1(d), Tennessee may revise the paragraph to state that the negotiated rate will apply to the remaining TQ in the event the shipper exercises the contract reduction option under Exhibit B.

5. In addition, we reject paragraph 1(a) of the negotiated rate letter agreement which permits Tennessee to immediately terminate the negotiated rate letter agreement or charge the maximum rate, if the shipper violates any term of either the negotiated rate letter agreement or the transportation agreement. While the terms of paragraph 1(a) of EIN's negotiated rate letter agreement also appeared in Dominion's negotiated rate letter agreement, such language was rejected by the Commission in an intervening proceeding based on the finding that it would create a substantial risk of undue discrimination.³ Therefore, consistent with previous Commission action, we direct Tennessee to remove the language in paragraph 1(a) from EIN's negotiated rate letter agreement when it refiles

¹ See *Tennessee Gas Pipeline Co.*, 97 FERC ¶ 61,225 at p. 62,031 (2001).

² *Tennessee Gas Pipeline Co.*, 121 FERC ¶ 61,116 at P16 (2007), *order on reh'g*, 122 FERC ¶ 61,097(2008). This paragraph also requires the shipper to give Tennessee three months prior notice that it will exercise the reduction option. As provided in Tennessee's GT&C Article XXVIII, section 5.2, of Tennessee's tariff, the prior notice period for a shipper to exercise a contract reduction option may be shorter than the default one-year prior notice period for contracts with a term greater than one year. EIN's gas transportation agreement is for a primary term of five years.

³ *Tennessee Gas Pipeline Co.*, 121 FERC ¶ 61,116 at P15 (2007), *order on reh'g*, 122 FERC ¶ 61,097 (2008).

such agreement. Tennessee may revise the paragraph consistent with the revised language we accepted in the intervening proceeding by letter order dated February 5, 2008.⁴

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁴ *Tennessee Gas Pipeline Co.*, 122 FERC ¶ 61,097 (2008).