

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 17, 2005

In Reply Refer To:
East Tennessee Natural Gas, LLC
Docket No. RP06-40-000

East Tennessee Natural Gas, LLC
P.O. Box 1642
Houston, TX 77251-1642

Attention: David A. McCallum
Director, Rates and Tariffs

Reference: Non-Conforming Service Agreement

Dear Mr. McCallum:

1. On October 18, 2005, East Tennessee Natural Gas, LLC (East Tennessee) filed a revised tariff sheet,¹ and a non-conforming service agreement with Ariana Energy, LLC (Ariana). The Commission accepts Fourth Revised Sheet No. 394 effective on November 18, 2005, and the service agreement effective on December 1, 2003, as requested.
2. Public notice of East Tennessee's filing was issued on October 21, 2005. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2005)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2005)), all timely filed motions to intervene and any late motions to intervene 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 adverse comments or protests were filed.

¹ Fourth Revised Sheet No. 394 to East Tennessee's FERC Gas Tariff, Third Revised Volume No. 1.

3. East Tennessee states that the agreement deviates from the form of service agreement in its tariff because the provisions in Exhibit A establishing the maximum daily transportation quantity (MDTQ), maximum daily receipt obligation (MDRO) and maximum daily delivery obligation (MDDO) set out four pre-established, non-elective increases in MDTQ, MDRO, and MDDO over the initial 16 months of the primary contract term. East Tennessee states that the provisions were included in the agreement to accommodate Ariana's graduated production increases from 500 Dth per day to 4,500 Dth per day. East Tennessee argues that these provisions are permissible deviations because the non-elective increases in MDTQ, MDRO, and MDDO do not change the conditions under which it provides service, such as minimum pressure obligations or hourly flow requirements. East Tennessee states further that permitting Ariana to accommodate its production with the increases in MDTQ, MDRO, and MDDO does not present a risk of undue discrimination.

4. East Tennessee also states that it recently added section 5.9 of the General Terms and Conditions (GT&C) of its tariff so that it may mutually agree to the same substantive provisions with other similarly-situated shippers that are reflected in the Ariana agreement.² Section 5.9 of East Tennessee's GT&C was effective on September 12, 2005 and limits the amount of time that shippers can request delayed commencement of service under contracts, but it also provides that East Tennessee may accept a shipper's request for service that would commence outside the timelines if it is not unduly discriminatory. East Tennessee states that it is committed to treating similarly-situated shippers in a not unduly discriminatory manner and will offer the same terms to any shipper that is similarly-situated to Ariana.

5. The Commission finds the provisions of the Ariana agreement to be permissible, since they do not present a risk of undue discrimination. Section 5.9 of the GT&C now provides that East Tennessee will accept other shippers' requests for service that would commence outside the timelines set forth therein in a non-discriminatory manner.³ However, we remind East Tennessee that if it chooses to contract with a shipper for service to commence at some time in the future, the capacity must be posted and otherwise be made available on a first-come, first-served basis during the interim period for other shippers as provided for under section 5.8 of the GT&C of its tariff.

² *East Tennessee Natural Gas, LLC*, 112 FERC ¶ 61,261 at P 17 (2005).

³ Since section 5.9 of the GT&C specifically permits East Tennessee to negotiate deviations from the timelines set forth in that section, any such negotiated provision entered into on or after September 12, 2005, will conform to the form of service agreement in the tariff. However, any such agreement would constitute "special details pertaining to a transportation contract" within the meaning of section 284.13(b)(1)(viii) of the Commission's regulations, and thus must be posted on the pipeline's internet web site consistent with that regulation.

Additionally, unless East Tennessee chooses to revise its tariff to award capacity on a net present value basis to the highest bidder under the procedures required in *Gas Transmission Northwest Corporation*,⁴ East Tennessee will have to permit a shipper entering into a long-term service agreement for the interim capacity at the maximum recourse rate to exercise the right of first refusal consistent with section 7 of the GT&C of East Tennessee's tariff (Conversion and Termination of Agreements).⁵

6. East Tennessee requests waiver of the Commission's regulations in order for the Commission to accept the agreement on the proposed effective date. East Tennessee states that when it executed the Ariana agreement it failed to file it as a non-conforming agreement due to administrative oversight. The Commission will grant waiver of the notice requirements in section 154.207 of the Commission's regulations to accept the agreement on the proposed effective date.⁶ However the Commission reminds East Tennessee that it is required to timely file any non-conforming agreements with the Commission.

By direction of the Commission.

Magalie R. Salas,
Secretary.

⁴ 109 FERC ¶ 61,141 (2004).

⁵ See *Gulfstream Natural Gas System, L.L.C.*, 103 FERC ¶ 61,312 at P 16 (2003).

⁶ 18 C.F.R. § 154.207 (2005)