

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 22, 2005

In Reply Refer To:
Texas Eastern Transmission, LP
Docket No. RP06-113-000

Texas Eastern Transmission, LP
P.O. Box 1642
Houston, TX 77251-1642

Attention: David A. McCallum
Director, Rates and Tariffs

Reference: Third Revised Sheet No. 528 to FERC Gas Tariff, Seventh Revised
Volume No. 1

Dear Mr. McCallum:

1. On November 30, 2005, Texas Eastern Transmission, LP (Texas Eastern) filed the referenced tariff sheet to remove the five-year term matching cap from its right of first refusal (ROFR) bidding process. The tariff sheet is accepted effective January 1, 2006, as proposed.

Background

2. On October 31, 2002, the Commission issued its Order on Remand in Docket No. RM98-10-011,¹ in which the Commission addressed the remanded issues in *Interstate Natural Gas Association v. FERC*.² In *INGAA*, the United States Court of Appeals for the District of Columbia Circuit remanded to the Commission certain issues

¹ *Regulation of Short Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, 101 FERC ¶ 61,127 (2002) (Order on Remand).

² 285 F.3d 18 (D.C. Cir. 2002) (*INGAA*).

regarding the Commission's Order No. 637, *et al.*³ In its Order on Remand, the Commission, *inter alia*, eliminated the five-year term matching cap for existing capacity subject to a ROFR. On January 29, 2004, the Commission issued its Order on Rehearing and Clarification,⁴ and affirmed its decision to remove the five-year term matching cap. On October 28, 2005, the D.C. Circuit upheld the Commission's Order on remand.⁵

Details of Filing

3. Texas Eastern states that, now that the D.C. Circuit has upheld the Commission's Order on Remand, it is proposing to remove from section 3.13(B)(7) of the General Terms and Conditions (GT&C) of its tariff the following language: "and the maximum contract term a Customer must match shall not exceed five (5) years," which removes the five-year term matching cap from the ROFR bidding process. Texas Eastern states that it will continue to apply the prior five-year limit to matching bids to any agreement for which the ROFR has already been triggered because notice has been provided.⁶

Notice, Interventions and Comments

4. Public notice of the filing was issued on December 2, 2005. Interventions and protests were due as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (C.F.R. § 385.214 (2005)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Columbia Gas of Pennsylvania, Inc. (CPA) filed comments.

5. CPA states that it has given notice to Texas Eastern that it intends to exercise its ROFR rights with respect to certain pipeline capacity, and is currently in the process of exercising those rights. CPA notes that in Texas Eastern's Transmittal Letter it states that

³ *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs., Regulations Preambles (July 1996-December 2000) ¶ 31,091 (February 9, 2000); *order on reh'g*, Order No. 637-A, FERC Stats. & Regs., Regulations Preambles (July 1996-December 2000) ¶ 31,099 (May 19, 2000); *order on reh'g*, Order No. 637-B, 92 FERC ¶ 61,062 (July 26, 2000); *aff'd in part and remanded in part, Interstate Natural Gas Association of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002); Order on Remand, 101 FERC ¶ 61,127 (2002), *order on reh'g and clarification*, 106 FERC ¶ 61,088 (2004).

⁴ 106 FERC ¶ 61,088 (2004).

⁵ *American Gas Association v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

⁶ Texas Eastern November 30, 2005 Transmittal Letter at 2.

it “will continue to apply the prior five-year limit to matching bids to any agreement for which the ROFR has already been triggered because notice has been provided.”⁷ However, CPA asserts that Texas Eastern’s proposed tariff sheet does not appear to reflect the language from its Transmittal Letter.

6. Accordingly, CPA requests that the Commission require that Texas Eastern’s proposed tariff change expressly provide that (1) the elimination of the five-year term matching cap shall apply only with respect to ROFR notices received by Texas Eastern on or after January 1, 2006; and (2) the five-year term matching cap which currently appears in Texas Eastern’s tariff shall continue to apply with respect to any ROFR notices provided to Texas Eastern by shippers, such as CPA, prior to January 1, 2006.

Discussion

7. The Commission finds that Texas Eastern’s filing is consistent with the Commission’s policy on the elimination of the five-year term matching cap for the ROFR. Accordingly, the Commission will accept the tariff modification to be effective January 1, 2006, as proposed. Additionally, Texas Eastern states that it will continue to apply the prior five-year limit to matching bids to any agreement for which the ROFR has already been triggered. Texas Eastern’s statement adequately protects CPA’s ability to exercise its ROFR rights under the prior five-year limit since CPA states that it provided notice to Texas Eastern that CPA intends to exercise its ROFR rights and is currently in the process of exercising those rights. Because the issue CPA raises only relates to pending ROFR notices, there is no need for permanent tariff language reflecting Texas Eastern’s clarification. Therefore, the Commission declines to require Texas Eastern to modify the proposed tariff language and will accept the revised tariff sheet as proposed.

By direction of the Commission.

Magalie R. Salas,
Secretary.

⁷ *Id.*