

122 FERC ¶ 61,097  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

February 5, 2008

In Reply Refer To:  
Tennessee Gas Pipeline Company  
Docket Nos. RP96-312-172 and  
RP96-312-174

Tennessee Gas Pipeline Company  
1001 Louisiana Street  
Houston, TX 77002

Attention: Jay V. Allen  
Senior Counsel

Reference: Order on Compliance Filing and Rehearing

Dear Mr. Allen:

1. On November 13, 2007, Tennessee Gas Pipeline Company (Tennessee) filed amendments to eight Negotiated Rate Letter Agreements. The amendments were filed in compliance with a Commission Letter Order in Docket No. RP96-312-169, dated October 31, 2007 (October 31 Order).<sup>1</sup> The amendments to the Negotiated Rate Letter Agreements are between Tennessee and Boston Gas Company, The Berkshire Gas Company, Connecticut Natural Gas Company, and The Narragansett Electric Company. On November 30, 2007, Tennessee filed a request for rehearing of the October 31 Order. The eight amendments to the Negotiated Rate Letter Agreements are accepted effective November 1, 2007. Acceptance of the amendments renders moot Tennessee's request for rehearing.

2. The October 31 Order accepted eight Negotiated Rate Letter Agreements filed by Tennessee subject to Tennessee making certain modifications to the proposed language. Of importance here, Tennessee was required to remove section 1(a) of the Negotiated Rate Letter Agreements which the Commission deemed to be inappropriate for inclusion in a negotiated rate letter agreement. The Commission determined that section 1(a)

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<sup>1</sup> *Tennessee Gas Pipeline Co.*, 121 FERC ¶ 61,116 (2007).

permits Tennessee to immediately terminate the Negotiated Rate Letter Agreement and/or assess the maximum rate, if the shipper violates any term of either the Negotiated Rate Letter Agreement or the Gas Transportation Agreement. The Commission determined that the subject paragraph appears to give Tennessee a broad right to penalize the shippers for violations of the service agreement unrelated to payment of the negotiated rate. In addition, the October 31 Order required Tennessee to eliminate 1(e) of the negotiated rate letter agreements which reflected a non-rate provision providing for contract demand reduction.

3. On November 13, 2007, Tennessee filed amendments to the eight negotiated rate letter agreements. The amendments, as required by the October 31 Order, removed section 1(a) and section 1(e) of the letter agreements. In addition to the removal of the two sections, Tennessee replaced section 1(a) with the following language:

If Shipper, its assignee(s), or its agent(s) (hereinafter collectively referred to as "Shipper") attempts to apply the negotiated rate contained herein to any points not covered by this agreement or to any volumes in excess of \_\_\_\_\_ Dth per day or the then-applicable MDQ under the service package, Transporter shall have the right, in its sole discretion, to immediately terminate this Negotiated Rate Agreement and/or assess, from the date of such violation of the terms of this Negotiated Rate Agreement, the applicable maximum Tennessee monthly reservation rate for the entire contract quantity and the maximum applicable daily commodity rates on all transactions occurring under this Negotiated Rate Agreement.

Tennessee states that the revised section 1(a) now clearly delineates the rate-related circumstances under which a shipper will lose the benefits of the negotiated rate.

4. Public notice of the compliance filing was issued on November 19, 2007, allowing for protests to be filed on or before November 26, 2007. No protests or adverse comments were filed.

5. On November 30, 2007, Tennessee filed a request for rehearing of the October 31 Order. Tennessee argued that the Commission erred in determining that section 1(a) of the Negotiated Rate Letter Agreements contained non-rate related provisions that should be removed from the Agreements. Tennessee, in its arguments, cited to various unpublished letter orders in which Negotiated Rate Letter Agreements that contained the same section 1(a) language were approved.<sup>2</sup> Tennessee also stated, in an answer filed in one of the earlier proceedings, that the intent of the provision was only to protect

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<sup>2</sup> Rehearing at 3, note 4 (citing *Tennessee Gas Pipeline Co.*, Unpublished Letter Orders in Docket No. RP96-312-127, issued September 16, 2003; Docket No. RP96-312-126, issued October 10, 2003; Docket No. RP96-312-133, issued December 17, 2003; and Docket No. RP96-312-132, issued December 18, 2003.

Tennessee against a shipper misapplying the negotiated rate to points or volumes not authorized by the agreement.

6. Tennessee further states that it has worked with the project shippers to negotiate a revised section 1(a) that clarified the intent of the parties. Tennessee states that it filed the amended language in its November 13 compliance filing. Tennessee explains that the amended language specifically limits termination of the rate to situations in which the shippers attempt to apply the rate to volumes in excess of their contract MDQ or to points not covered by the agreement. Tennessee asserts that, if the Commission were to approve the revised section 1(a) language for use in the amended Negotiated Rate Letter Agreements and in future negotiated rate letter agreements, Tennessee would withdraw its request for rehearing.<sup>3</sup>

7. The revised section 1(a) language of the Negotiated Rate Letter Agreements now clearly defines the specific situations in which Tennessee may charge a rate that is above the negotiated rate contracted for between the parties. Specifically, the language permits Tennessee to charge a rate greater than the negotiated rate if a Shipper attempts to ship volumes of gas in excess of their contract MDQ or to deliver gas to points not covered by the agreement. The Commission finds that these conditions are not unduly discriminatory. The Commission will therefore accept Tennessee's compliance filing and the new section 1(a) language to be effective November 1, 2007, as proposed. In light of Tennessee's stating it would withdraw its request for rehearing if its compliance filing is accepted, we find that the request for rehearing is moot.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

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<sup>3</sup> Rehearing at 5.