

170 FERC ¶ 61,152
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Texas Eastern Transmission, LP

Docket Nos. RP19-343-006
RP19-343-001
RP19-343-000

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued February 25, 2020)

1. On October 28, 2019, pursuant to Rule 602 of the Commission's Regulations,¹ Texas Eastern Transmission, LP (Texas Eastern) filed a Stipulation and Agreement (Settlement) that is intended to resolve all issues in this proceeding involving a Natural Gas Act (NGA) section 4 general rate case filing. We approve the Settlement and direct Texas Eastern to file tariff records consistent with the terms of the Settlement, as discussed below.

I. Background and Proposal

2. On November 30, 2018, Texas Eastern² filed revised tariff records to facilitate changes to the transportation and storage rates for services that Texas Eastern provides under its firm and interruptible rate schedules, and to establish a gathering rate. On December 31, 2018, the Commission accepted and suspended Texas Eastern's revised tariff records to be effective June 1, 2019, subject to refund and the outcome of a hearing.³ On May 28, 2019, the Commission issued an order granting rehearing, in part, and accepting without suspension one tariff record proposing rate decreases that was inadvertently suspended for five months in the Hearing Order, as well as the rates for

¹ 18 C.F.R. § 385.602 (2019).

² Texas Eastern is a 9,071-mile natural gas pipeline system that extends from Texas, Louisiana and the offshore Gulf of Mexico area, through the states of Mississippi, Arkansas, Alabama, Maryland, West Virginia, Missouri, Tennessee, Illinois, Indiana, Kentucky, Ohio, Pennsylvania, and New Jersey, to its principal terminus in the New York City metropolitan area.

³ *Texas Eastern Transmission, LP*, 165 FERC ¶ 61,287 (2018) (Hearing Order).

incremental projects with rate decreases, to be effective January 1, 2019, subject to the Hearing Order.⁴

3. The pertinent provisions of the Settlement are as follows.

4. Article II addresses the Settlement Effective Date and the privileged status of information exchanged during the negotiations.

5. Article III contains the rates and refund provisions. Section 3.2 requires that Texas Eastern file revised tariff records substantively identical to those included in Schedule 3 as soon as reasonably practicable, but no later than 20 days following the Settlement Effective Date to implement the Settlement and that Texas Eastern request the filed tariff records become effective retroactively to June 1, 2019. Section 3.3(A) describes the procedure by which Texas Eastern will provide refunds to each shipper for base rate charges. Section 3.3(B) provides that Texas Eastern shall file an interim Applicable Shrinkage Adjustment (ASA) filing within 60 days of the Settlement Effective Date to update the ASA percentages to align with the rate design agreed to in the Settlement. Section 3.3(C) describes the procedure by which Texas Eastern will provide refunds to each shipper for the tracked costs governed by Sections 15 and 26 of the General Terms and Conditions (GT&C) of Texas Eastern's tariff.

6. Article 4 governs the matters settled. Specifically, section 4.2 establishes that the onshore depreciation rate shall equal 1.92% and the onshore transmission negative salvage rate shall equal 0.30%. Additionally, section 4.12 establishes the parameters for each ASA filing that occurs after the Settlement Effective Date, including revenues that must be included in the calculation of the deferred account, the amount and identification of imbalance resolution amounts, and the components comprising the calculation of the ASA percentages. Section 4.15 requires Texas Eastern to apply a 12.75% return on equity component in the calculation of rates for new Texas Eastern incremental expansion projects.

7. Article V of the Settlement states that there is no moratorium period related to the Settlement and that Texas Eastern shall file an NGA section 4 general rate case no later than June 1, 2022.

8. Section 8.4 states that the standard of review for any changes to the terms of the Settlement shall be the just and reasonable standard.

⁴ *Texas Eastern Transmission, LP*, 167 FERC ¶ 61,177, at PP 20-22 (2019).

II. Comments and Certification

9. Initial comments in support of the Settlement were filed by Commission Trial Staff (Trial Staff); East Tennessee Group;⁵ Peoples Natural Gas Company LLC and Peoples Gas Company LLC (jointly); Texas Eastern Transmission, LP; the Indicated Shippers;⁶ and the Texas Eastern Customer Group (TECG).⁷ One party, Kestrel Acquisition, LLC (Kestrel) filed initial comments opposing the settlement. On November 20, 2019, Trial Staff submitted an unopposed motion to extend the deadline for reply comments. On November 21, 2019, the Presiding Judge granted the unopposed motion. The following nine parties filed reply comments rebutting Kestrel's claims: (1) New Jersey Natural Gas Company and NJR Energy Services Company (jointly); (2) TECG; (3) Dominion Energy Transmission, Inc.; (4) Total Gas & Power North America, Inc.; (5) New England Local Distribution Companies;⁸ (6) EQT Energy, LLC

⁵ Appalachian Natural Gas Distribution Co., Athens Utilities Bd., Bridgeport Utilities, Cookeville Gas Dep't, Elk River Public Utility Dist., Etowah Utilities Gas Dep't, Fayetteville Public Utilities, Gallatin Natural Gas Sys., Harriman Utility Bd., Hawkins County Gas Utility Dist., Jamestown Gas Sys., Jefferson-Cocke County Utility Dist., Knoxville Utilities Bd., Lenoir City Utilities Bd., Lewisburg Gas Dep't, Livingston Gas Dep't, Loudon Utility Gas Dep't, Madisonville Gas Sys., Marion Natural Gas Sys., Middle Tennessee Natural Gas Utility Dist., Mt. Pleasant Gas Sys., Oak Ridge Utility Dist., Powell Clinch Utility Dist., Rockwood Water & Gas, Sevier County Utility Dist., Sweetwater Utilities Bd., and Unicoi County Gas Utility Dist.

⁶ The Indicated Shippers include the following: BP Energy Company, Chevron U.S.A. Inc., ConocoPhillips Company, Direct Energy Business Marketing, LLC, ExxonMobil Gas & Power Marketing Company, and Shell Energy North America (US), LP.

⁷ The Texas Eastern Customer Group includes the following: Atmos Energy Corporation, CenterPoint Energy Resources Corporation, Consolidated Edison Company of New York, Inc. and Orange & Rockland Utilities, Inc., Delmarva Power and Light Company, Elizabethtown Gas Company, Entergy Services, LLC on behalf of Entergy Arkansas, LLC, Entergy Louisiana, LLC, Entergy Mississippi, LLC, and Entergy Texas, Inc., Exelon Corporation, The Municipal Defense Group, National Fuel Gas Distribution Corporation, The National Grid Gas Delivery Companies, PECO Energy Company, Philadelphia Gas Works, Piedmont Natural Gas Company, Inc., PSEG Energy Resources & Trade LLC, UGI Utilities Inc., and Southern Indiana Gas and Electric Company, Inc., and Vectren Energy Delivery of Ohio, Inc.

⁸ The New England Local Distribution Companies include: Bay State Gas Company d/b/a Columbia Gas of Massachusetts; City of Norwich, Connecticut, Board of

and Tenaska Marketing Ventures (jointly); (7) the Indicated Shippers; (8) Texas Eastern; and (9) Trial Staff. On December 19, 2019, Kestrel withdrew its comments in opposition.

10. On January 13, 2020, the Presiding Judge certified the Settlement as uncontested.⁹ In the Certification Order, the Presiding Judge recommended that the Commission make one modification to the Settlement. Specifically, the Presiding Judge noted that:

Section 4.12(C) states that no party may file certain protests or complaints until after the effective date of the tariff records filed in the ASA filing contemplated in [s]ection 3.3(C)... [T]he reference to [s]ection 3.3(C) appears to be a typographical error: [s]ection 3.3(B) requires Texas Eastern to make the Interim ASA filing; [s]ection 3.3(C) addresses Tracked Costs. Accordingly, '[s]ection 3.3(C)' at the end of [s]ection 4.12(C) should be changed to '[s]ection 3.3(B).'¹⁰

11. On January 24, 2020, Texas Eastern submitted a comment clarifying that the reference to section 3.3(C) is not a typographical error and that the modification proposed in the Certification Order would be material.¹¹ Texas Eastern explains that tracked costs include ASA costs. Texas Eastern states that section 3.3(B) and 3.3(C) both reference ASA filings that will occur following the Settlement Effective Date. Thus, Texas Eastern asserts that section 4.12(C)'s reference to section 3.3(C) accurately reflects the intent of the parties.¹²

Public Utilities; Connecticut Natural Gas Corporation; Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities; Middleborough Gas and Electric Department; Northern Utilities, Inc.; NSTAR Gas Company d/b/a Eversource; The Southern Connecticut Gas Company; Yankee Gas Services Company d/b/a Eversource.

⁹ *Texas Eastern Transmission, LP*, 170 FERC ¶ 63,003 (2020) (Certification Order).

¹⁰ *Id.* PP 24-25.

¹¹ Texas Eastern January 24, 2020 Comment at 3.

¹² Texas Eastern states that it is authorized to represent that the Indicated Shippers, TECG, and Commission Trial Staff agree that the Settlement does not contain a typographical error and should not be modified as recommended in the Certification Order. *Id.* at 4-5.

12. Texas Eastern states that section 3.3(C) refers to the timing and procedure for refunds for tracked costs. Specifically, Texas Eastern asserts that the refunds for tracked costs “will be applied by rate schedule for each such Tracked Cost pursuant to Sections 15 and 26, as applicable, of the [GT&C] of Texas Eastern’s Tariff.”¹³ Texas Eastern states that Section 15.6 of the GT&C of its tariff sets out the requirements for and timing of Texas Eastern’s annual ASA filing. Texas Eastern states that while the interim ASA filing referenced in section 3.3(B) of the Settlement must occur within 60 days following the Settlement Effective Date, Texas Eastern states that it will file the GT&C Section 15.6 annual ASA filing in October of each calendar year to be effective on December 1 of each calendar year. According to Texas Eastern, the parties contemplated that the interim ASA filing would occur prior to the Section 15.6 annual ASA filing. Thus, Texas Eastern asserts that a change of the reference in section 4.12(C) of the Settlement from “section 3.3(C)” to “section 3.3(B)” would substantively impact the date agreed to by the parties whereby any party may file a protest or complaint concerning Texas Eastern’s current imbalance resolution process. Accordingly, Texas Eastern argues that this change would not be ministerial and would alter the substance of the uncontested terms of the Settlement.¹⁴

13. Texas Eastern requests that the Commission accept the Settlement, as filed and without condition or modification, including without the modification recommended by the Presiding Judge in the Certification Order.¹⁵

III. Discussion

14. Pursuant to the terms of the Settlement, we find that all issues set for hearing are resolved. The Settlement is uncontested and appears to be fair and reasonable and in the public interest and is hereby approved.

15. In addition, we agree with Texas Eastern’s January 24, 2020 comment and find that the Settlement captures the intent of the parties as drafted and, thus, we approve it without modification. The Commission’s approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. Texas Eastern is directed to make a compliance filing with revised tariff records in

¹³ *Id.* at 4.

¹⁴ *Id.*

¹⁵ *Id.* at 5.

eTariff format,¹⁶ consistent with the terms of the Settlement. This order terminates Docket Nos. RP19-343-000, RP19-343-001, and RP19-343-006.

The Commission orders:

(A) Texas Eastern's Settlement is hereby approved, as discussed in the body of this order.

(B) Texas Eastern shall file actual tariff records in eTariff format as required by Order No. 714¹⁷ consistent with the terms of the Settlement.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁶ See *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008).

¹⁷ *Id.*