

114 FERC ¶61,153
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

East Tennessee Natural Gas, LLC

Docket Nos. RP05-552-001
RP05-552-002

ORDER ON CLARIFICATION AND COMPLIANCE

(Issued February 16, 2006)

1. On October 11, 2005, East Tennessee Natural Gas, LLC, (East Tennessee) filed a request for clarification, or in the alternative rehearing, of the Commission's September 9, 2005 order in this proceeding.¹ In that Order, the Commission conditionally accepted East Tennessee's filing to revise its tariff provisions governing contracting, creditworthiness, discounting and electronic communications to become effective September 12, 2005. The Commission directed East Tennessee to make several changes to its proposal and to include a provision in its tariff giving shippers the opportunity to earn interest on their posted collateral. As discussed below, East Tennessee's request for clarification is granted, and its rehearing request is dismissed as moot.

2. East Tennessee also submitted a compliance filing as directed in the September 9, 2005 Order. As discussed below, the Commission accepts First Revised Sheet No. 316B effective November 11, 2005, and the other the proposed revised tariff sheets effective September 12, 2005.

I. Background

3. On August 12, 2005, East Tennessee filed revisions to its tariff provisions governing contracting, creditworthiness, discounting, and electronic communications to promote administrative efficiency, to further automate contracting for service and requesting discounts, and to enhance service flexibility. It stated that many of the revisions were ministerial in nature, such as eliminating sections in the General Terms

¹ *East Tennessee Natural Gas, LLC*, 112 FERC ¶ 61,261 (2005) (September 9, 2005 Order).

and Conditions (GT&C) of its tariff that were outdated, moving text between sections when needed, renumbering sections, defining terms, etc. Also, East Tennessee filed numerous tariff revisions that related to its electronic LINK system for contracting, communications, and operations. East Tennessee contended that the revisions were designed to permit customers to more efficiently request and contract for services, request and confirm discounts, and otherwise conduct routine business with East Tennessee.

4. The issues addressed in this order focus on East Tennessee's proposed creditworthiness changes. Section 6.2 of East Tennessee's existing General Terms and Conditions (GT&C) provides that shippers who cannot demonstrate creditworthiness may nevertheless obtain capacity by providing security in the form of a prepayment for service or good and sufficient security as determined by East Tennessee. Section 6.2 requires that the security be in an amount equal to the cost of performing service for a three month period. East Tennessee's current tariff contains no provision permitting shippers who cannot meet the pipeline's creditworthiness requirements to earn interest on their posted collateral.

5. In its August 12, 2005 filing, East Tennessee proposed, among other things, to change its tariff language concerning the amount of security that non-creditworthy shippers must provide in order to obtain service. East Tennessee continued to base the security on the cost of three months of service, but proposed to change how those costs are calculated. Revised section 6.2 requires that existing customers who become non-creditworthy provide security in an amount equal to:

the highest three (3) months of activity (based on usage of in-kind and loan agreements and the billed amounts for all other agreements) for all of Customer's active service agreements during the previous twelve (12) months.

6. Revised section 6.2 similarly requires new firm customers to provide security in an amount equal to the three highest months of reservation charges during a contract year. New interruptible transportation or storage customers would be required to provide security in an amount equal to fifteen days of usage per month for three months, with the interruptible charges calculated on a one hundred percent (100%) load factor basis.

7. On September 9, 2005, the Commission conditionally accepted East Tennessee's tariff filing effective September 12, 2005. The Commission directed East Tennessee to include a provision in its tariff stating that shippers will have the opportunity to earn interest on their posted collateral. The Commission stated that its *Policy Statement on*

*Creditworthiness*² requires a pipeline to provide its shippers with the opportunity to earn interest on collateral either by paying the interest itself, or giving the shipper the option to designate an interest-bearing escrow account to which the pipeline may gain access to payments for services provided, if needed. Additionally, the Commission directed East Tennessee to file to clarify that the definition of “in-kind” usage does not include fuel in the determination of the amount of security required from customers because fuel is supplied by East Tennessee’s shippers. The Commission also ordered East Tennessee to make various changes to its other proposed tariff changes not involving creditworthiness.

8. On October 11, 2005, East Tennessee submitted both a filing to comply with the September 9, 2005 Order and a request for clarification or rehearing of that order. East Tennessee’s compliance filing includes the revised tariff sheets listed in the Appendix to this order. In order to comply with the directives concerning creditworthiness, East Tennessee proposes in Sub Original Sheet No. 316A, to modify section 6.2 to clarify the definition of “in-kind” usage by adding a sentence to section 6.2 stating that the “in-kind . . . agreements” referred to in that section do not include fuel reimbursement.³ In First Revised Sheet No. 316B, East Tennessee proposes to add the following paragraph to section 6.2:

Security in the form of an advance deposit shall accrue interest to the benefit of Customer from the date East Tennessee receives such deposit. Interest on such advance deposits shall be calculated monthly at the most recently established 91-day Treasury bill auction rate, as published in The Wall Street Journal. Alternatively, a Shipper providing security in the form of an advance deposit may deposit such security into an interest-bearing escrow account, established by Shipper at Shipper’s expense, to which account Transporter shall have unrestricted access in the amount of an invoice upon presentment of an invoice for the payment of services provided to Shipper.⁴

The remaining tariff sheets include the changes required by the September 9, 2005 Order in East Tennessee’s proposals not involving creditworthiness.

9. East Tennessee proposes that First Revised Sheet No. 316B be made effective prospectively on November 11, 2005 on the ground that the Commission was acting under section 5 of the Natural Gas Act (NGA) when it required East Tennessee to revise its tariff to permit shippers to earn interest on collateral. East Tennessee proposes that

² *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, FERC Stats. & Regs. ¶ 31,191 at P10 (2005).

³ Sub Original Sheet No. 316A.

⁴ First Revised Sheet No. 316B.

Sub Original Sheet No. 316A concerning the definition of “in-kind” usage, as well as the other tariff sheets in the compliance filing, be made effective September 12, 2005, as required by the September 9, 2005 Order.

10. In its request for clarification or rehearing, East Tennessee requests that the Commission clarify that the September 9, 2005 Order did not require that the tariff provision permitting shippers to earn interest on collateral be made effective retroactively on September 12, 2005. East Tennessee points out that the September 9, 2005 order accepted the tariff sheets in its August 12 filing to be effective September 12, 2005 and thus, without clarification, could be interpreted as establishing a September 12 effective date for the tariff sheet implementing the Commission's directive concerning interest. East Tennessee also asserts that the paragraph of the September 12 Order requiring East Tennessee to revise its tariff to permit shippers to earn interest on collateral only cited the Commission's *Policy Statement on Creditworthiness* as the basis for its action. Accordingly, East Tennessee asks that the Commission clarify that it is acting pursuant to NGA section 5 in requiring this tariff revision, and therefore, its tariff sheet implementing the revision must be made effective on a prospective basis as of East Tennessee's proposed November 11, 2005 effective date or a subsequent date specified by the Commission in the order accepting the tariff sheet. To the extent the Commission does not grant the requested clarification, East Tennessee requests rehearing of the September 9, 2005 Order.

11. Notice of East Tennessee's compliance filing was issued on October 14, 2005, providing for the filing of protests by October 24, 2005 in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.211 (2005). No adverse comments or protests were filed.

II. Discussion

12. The Commission grants East Tennessee's request for clarification. Accordingly, the Commission will accept the tariff sheets included in East Tennessee's compliance filing on its proposed effective dates.

13. East Tennessee's existing tariff requires non-creditworthy shippers to provide security in an amount equal to the costs for three months of service without providing for the shipper to receive interest on their prepayments. Pursuant to NGA section 4, East Tennessee's proposed revised tariff language modifying the method of calculating the costs for three months of service used to determine the level of security to be provided, but did not propose any change concerning interest. Therefore, when the Commission required East Tennessee to revise its tariff to permit shippers to earn interest on collateral, the Commission went beyond East Tennessee's section 4 proposal to require a modification of the existing tariff not proposed by East Tennessee. The Commission

agrees that, in these circumstances, it must proceed under NGA section 5 to impose this change, and therefore, the change must be made effective prospectively.⁵

14. Here, East Tennessee has proposed that its First Revised Sheet No. 316B implementing the Commission's section 5 directive be made effective on November 11, 2005, the thirty-first day after East Tennessee filed that tariff sheet. Since the tariff sheet complies with the Commission's requirement that East Tennessee permit shippers to earn interest on collateral, the Commission accepts that tariff sheet on the prospective effective date proposed by East Tennessee. Having granted East Tennessee's requested clarification, the Commission dismisses its rehearing request as moot.

15. In the September 9, 2005 Order, the Commission also required East Tennessee to make various changes to tariff language included in its section 4 proposal, including clarifying the definitions of in-kind usage. The Commission finds that East Tennessee has satisfactorily complied with those directives of the September 9, 2005 Order. East Tennessee states that it agrees that its compliance with these other aspects of the Commission's order may be made effective as of the September 12, 2005 effective date specified in the September 9, 2005 Order. The Commission therefore accepts the other tariff sheets listed in the Appendix effective September 12, 2005.

16. Additionally, the Commission will require East Tennessee to make further revisions to section 6.2 of its GT&C. East Tennessee's tariff does not currently provide that a reissued request for security will contain an explanation of why the shipper's initial offer has been rejected. Consistent with *Texas Eastern, Algonquin* and with the

⁵ *Transcontinental Gas Pipe Line Corp.* (Transco), 642 F.2d 1335, 1345 (D.C. Cir. 1980); *Sea Robin Pipeline Co. v. FERC*, 795 F.2d 182, 186 (D.C. Cir. 1986); *ANR Pipeline Co. v. FERC*, 771 F.2d 507, 513 (D.C. Cir. 1985); *Tennessee Gas Pipeline Co. v. FERC*, 860 F.2d 446, 453-456 (D.C. Cir. 1988); *East Tennessee Natural Gas Co. v. FERC*, 863 F.2d 932, 942-3 (D.C. Cir. 1988); *Public Service Commission of New York v. FERC*, 866 F.2d 487, 491-492 (D.C. Cir. 1989); *Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1577-1579 (D.C. Cir. 1993). The court has held that NGA section 4's retroactivity power may extend to changes in an existing tariff provision required in order to avoid an interaction between the existing provision and a proposed change that creates an unjust and unreasonable result under existing Commission policy. See *East Tennessee Natural Gas Co. v. FERC*, 863 F.2d 932, 944 (D.C. Cir. 1988). However, that holding does not apply here. East Tennessee's existing tariff's lack of a provision for interest is unjust and unreasonable, without regard to East Tennessee's instant section 4 proposal. Thus, the need to change the existing provision is not created by an interaction with the section 4 proposal.

Commission's *Policy Statement on Creditworthiness Issues*,⁶ the Commission directs East Tennessee to refile to provide that the reissued request will contain such an explanation.

The Commission orders:

(A) East Tennessee's request for clarification is granted as discussed in the body of this order and its request for rehearing is dismissed as moot.

(B) East Tennessee's October 11, 2005 compliance filing is accepted as in compliance with the September Order to become effective on September 12, 2005, and November 11, 2005, as reflected in the Appendix.

(C) East Tennessee is directed to make a compliance filing within 30 days of this order consistent with the discussion above.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁶ *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, FERC Stats. & Regs. ¶ 31,191 at P10 (2005) (*Policy Statement*) and *Algonquin Gas Transmission, LLC* 112 FERC ¶ 61,262 (2005) (*Algonquin*); *Texas Eastern Transmission, LP*, 112 FERC ¶ 61,325 (2005) (*Texas Eastern*).

Appendix

Tariff Sheets Effective September 12, 2005

Sub First Revised Sheet No. 104

Second Revised Sheet No. 162

Sub First Revised Sheet No. 313

Sub First Revised Sheet No. 315

Sub Original Sheet No. 315A

Sub Original Sheet 316 A

Sub Original Sheet No. 316 B

Tariff Sheet Effective November 11, 2005

First Revised Sheet No. 316B