

UNITED STATES OF AMERICA 114 FERC ¶61,154
FEDERAL ENERGY REGULATORY COMMISSION

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

Egan Hub Storage, LLC

Docket Nos. RP05-553-002
RP05-553-001

ORDER ON REQUEST FOR CLARIFICATION, OR ALTERNATIVELY
REHEARING, AND COMPLIANCE FILING

(Issued February 16, 2006)

1. On September 9, 2005, the Commission issued an order¹ in this proceeding. The September 9, 2005 Order conditionally accepted a filing by Egan Hub Storage, LLC (Egan Hub) to revise its tariff provisions governing contracting, creditworthiness, discounting and electronic communications. The September 9, 2005 Order required Egan Hub to include a provision in its tariff stating that shippers will have the opportunity to earn interest on their posted collateral. The order also conditioned acceptance of the filing on Egan Hub refiling to clarify that fuel will not be included in the amount of security required from customers. Egan Hub filed a timely request for clarification or, alternatively, rehearing of the September 9, 2005 Order. As discussed below, Egan Hub's request for clarification is granted and its rehearing request is dismissed as moot.

2. In addition, on October 11, 2005, Egan Hub made a filing to comply with the September 9, 2005 Letter Order. As discussed below, the Commission accepts Sub First Revised Sheet No. 108 effective September 12, 2005 and accepts First Revised Sheet No. 108A effective November 11, 2005.

Background

3. On August 12, 2005, Egan Hub filed revisions to its tariff provisions governing contracting, creditworthiness, discounting, and electronic communications to promote

¹ *Egan Hub Storage, LLC*, 112 FERC ¶ 61,260 (2005).

administrative efficiency, automate the process for requesting and contracting for service, ensure its continued compliance with Commission regulations, and increase the service flexibility provided to Egan Hub's customers. The instant clarification/rehearing requests and compliance filing only concern Egan Hub's proposed creditworthiness changes.

4. Section 3.4(h) of Egan Hub'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, a standby irrevocable letter of credit, or a guarantee from another person. Section 3.4(h) requires that the security be in an amount equal to: (1) in the case of firm or secondary firm service, three (3) months or the duration of the Customer's bid or Service Agreement, whichever is shorter, of Reservation Charges at the rate specified in Customer's bid for service or Service Agreement; or (2) in the case of interruptible services, three (3) months or the duration of the Customer's Service Agreement, whichever is shorter, of the Interruptible Charge(s) calculated on a one hundred percent (100 percent) load factor basis, plus the market value of any quantities of gas loaned to the Customer pursuant to Exhibit B of the Hub Services Agreement. Egan Hub's current tariff contains no provisions permitting shippers who cannot meet the pipeline's creditworthiness requirements to earn interest on their posted collateral.

5. In its August 12, 2005 filing, Egan Hub 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. Egan Hub continued to base the security on costs for three months of service, but proposed to change how those costs are calculated. The new provision, which appears in a new section 3.4(b) of Egan Hub's GT&C, 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."

Proposed section 3.4(b) 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 percent) load factor basis.

6. On September 9, 2005, the Commission issued a letter order conditionally accepting Egan Hub's tariff filing effective September 12, 2005. The Commission directed Egan Hub 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 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 Egan Hub 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 Egan Hub’s shippers.

7. On October 11, 2005, Egan Hub submitted both a filing to comply with the September 9, 2005 Order and a request for clarification or rehearing of that order. Egan Hub’s compliance filing includes two revised tariff sheets. In Sub First Revised Sheet No. 108, Egan Hub proposes to modify section 3.4(b) to comply with the Commission’s requirement that it clarify the definition of “in-kind” usage by adding a sentence to section 3.4(b) stating that the “in-kind . . . agreements” referred to in that section do not include fuel reimbursement.³ In First Revised Sheet No. 108A, Egan Hub proposes to add the following paragraph to section 3.4(b):

Security in the form of an advanced deposit shall accrue interest to the benefit of Customer from the date Egan Hub 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 Customer providing security in the form of an advance deposit may deposit such security into an interest-bearing escrow account, established by Customer at Customer’s expense, to which account Egan Hub shall have unrestricted access in the amount of an invoice upon presentment of an invoice for the payment of services provided to Customer.⁴

8. Egan Hub proposes that Sub First Revised Sheet No. 108 concerning the definition of “in-kind” usage be made effective September 12, 2005, as required by the September 9, 2005 Order. Egan Hub proposes that First Revised Sheet No. 108A be made effective prospectively on November 11, 2005 on the ground that the Commission

² *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, FERC Statutes and Regulations ¶ 31,191 at P 22 (2005).

³ Sub First Revised Sheet No. 108.

⁴ First Revised Sheet No. 108A.

was acting under section 5 of the Natural Gas Act (NGA) when it required Egan Hub to revise its tariff to permit shippers to earn interest on collateral.

9. In its request for clarification or rehearing, Egan Hub 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. Egan Hub 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, 2005 effective date for the tariff sheet implementing the Commission's directive concerning interest. Egan Hub also points out that the paragraph of the September 9, 2005 Order requiring Egan Hub 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, Egan Hub 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 Egan Hub'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, Egan Hub requests rehearing of the September 9, 2005 Order.

10. Notice of Egan Hub's compliance filing was issued on October 12, 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.

Discussion

11. The Commission grants Egan Hub's request for clarification. Accordingly, the Commission will accept the two tariff sheets included in Egan Hub's compliance filing with the proposed effective dates.

12. Egan Hub's existing tariff requires non-creditworthy shippers to provide security in an amount equal to the charges for three months of service without providing for the shipper to receive interest on their prepayments. Pursuant to NGA section 4, Egan Hub proposed revised tariff language modifying the method of calculating the charges 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 Egan Hub to revise its tariff to permit shippers to earn interest on collateral, the Commission went beyond Egan Hub's section 4 proposal to require a modification of the existing tariff not proposed by Egan Hub. 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

13. Here, Egan Hub has proposed that its First Revised Sheet No. 108A implementing the Commission's section 5 directive be made effective on November 11, 2005, the thirty-first day after Egan Hub filed that tariff sheet. Since the tariff sheet complies with the Commission's requirement that Egan Hub permit shippers to earn interest on collateral, the Commission accepts that tariff sheet on the prospective effective date proposed by Egan Hub. Having granted Egan Hub's requested clarification, the Commission dismisses its rehearing request as moot.

14. In the September 9, 2005 Order the Commission also required Egan Hub to clarify one aspect of its section 4 proposal concerning the definition of in-kind usage. The Commission finds that Egan Hub has satisfactorily complied with the directives of the September 9, 2005 Order concerning the definition of in-kind usage. Egan Hub states that it agrees that its compliance with this aspect of the Commission's order may be made effective as of the September 12, 2005 date specified in the September 9, 2005 Order. The Commission therefore, accepts Sub First Revised Sheet No. 108 effective September 12, 2005.

15. Finally, the Commission will require Egan Hub to make further revisions to section 3.4 of its GT&C. Egan Hub'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 Commission's *Policy*

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. Egan Hub's existing tariff's lack of a provision for interest is unjust and unreasonable, without regard to Egan Hub's instant section 4 proposal. Thus, the need to change the existing provision is not created by an interaction with the section 4 proposal.

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Statement on Creditworthiness Issues,⁶ the Commission directs Egan Hub to refile to provide that the reissued request will contain such an explanation.

The Commission orders:

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

(B) Egan Hub's October 11, 2005 compliance filing is accepted as in compliance with the September 9, 2005 Order. Sub First Revised Sheet No. 108 is accepted effective September 12, 2005 and First Revised Sheet No. 108A is accepted effective November 11, 2005.

(C) Egan Hub is direct to file a revised tariff sheet clarifying section 3.4 of its GT&C as discussed in the body of this order.

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*), *Algonquin Gas Transmission, LLC* 112 FERC ¶ 61,262 (2005) (*Algonquin*), and *Texas Eastern Transmission LP*, 112 FERC ¶ 61,325 (2005) (*Texas Eastern*).