

117 FERC ¶61,249
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Eastern Shore Natural Gas Company

Docket No. RP07-38-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS
SUBJECT TO REFUND AND ESTABLISHING A HEARING

(Issued November 30, 2006)

1. On October 31, 2006, Eastern Shore Natural Gas Company (Eastern Shore) filed revised tariff sheets¹ to reflect a Natural Gas Act (NGA) section 4 general rate increase, to be effective November 1, 2006. The proposed rates will result in an annual increase in transportation revenues of approximately \$5,589,000. The Commission accepts and suspends the tariff sheets listed in footnote No. 1, to be effective May 1, 2007, subject to refund and the outcome of the hearing established herein.

Details of the Filing

2. Eastern Shore states that this rate case was filed pursuant to Article IX of a Commission-approved Settlement filed in Docket No. RP02-34-000 which required Eastern Shore to file a general section 4 rate case with a proposed effective date of November 1, 2006, to revise its base tariff rates.² Article IX stated that, in the event Eastern Shore proposes an increase in its base tariff rates in such filing, it may be filed at any time between September 1, 2006 and November 1, 2006, with Eastern Shore agreeing to up to a full five-month suspension of its effectiveness. Eastern Shore states that, in the event the Commission exercises its authority under section 4(e) of the NGA to suspend the effective date of these revised tariff sheets, Eastern Shore reserves its right to file a motion at a later date to place the suspended rates into effect.

3. Eastern Shore states that the revised rates are based on a cost-of-service of \$26,019,906 which reflects an increase of approximately \$5,589,000 over Eastern Shore's

¹ Eighteenth Revised Sheet No. 4, and Seventeenth Revised Sheet Nos. 5 and 6 to FERC Gas Tariff, Second Revised Volume No. 1.

² See *Eastern Shore Natural Gas Co.*, 101 FERC ¶ 61,011 (2002).

currently effective rates.³ The filed cost-of-service consists of: operation and maintenance expenses of \$6,891,014; depreciation and amortization expense of \$3,546,269; taxes other than income taxes of \$1,008,550; state income taxes of \$1,192,396; federal income taxes of \$4,041,409; and a return allowance of \$9,590,270. Eastern Shore explains that the increase in the cost-of-service reflects the annualized effect of increases in operating and maintenance expenses, depreciation expense, taxes other than income taxes, and return on new gas plant facilities for which the necessary certificates have been issued and which will be placed in service prior to the end of the test period. Eastern Shore is proposing an overall rate of return of 11.72 percent, which is based on a capital structure of 39 percent debt, 61 percent equity, with an equity rate of return of 14.875 percent and a debt cost of 6.730 percent. Eastern Shore's proposed cost-of-service is based on a base year ended June 30, 2006 as adjusted for changes through the end of the test period ending March 31, 2007.

4. Eastern Shore states that it also included revised billing determinants and system throughput level to reflect changes in its contract demand level and throughput level, respectively. Eastern Shore also states that its transportation rates reflect the continuation of the straight-fixed-variable (SFV) method for cost classification and rate design and Eastern Shore has also retained a 100 percent load factor methodology for designing interruptible transportation rates.

5. Pursuant to Article XI, paragraph 5 of the Settlement, Eastern Shore has proposed no change in the currently effective two-zone rate design, including the zone rate differential adopted in the Settlement. Eastern Shore proposes to increase: (1) for Rate Zone One, its reservation charge under Rate Schedules FT and ST from \$8.4567 per Dth to \$11.5544 per Dth, the commodity charge under Rate Schedules FT and ST from \$0.0080 per Dth to \$0.0132 per Dth, and the maximum commodity charge under Rate Schedule IT from \$0.2860 to \$0.3931; and (2) for Rate Zone Two, its reservation charge under Rate Schedules FT and ST from \$16.7635 to \$19.8612 per Dth, the commodity charge under Rate schedules FT and ST from \$0.0152 to \$0.0204 per Dth, and the maximum commodity charge under Rate Schedule IT from \$0.5663 to \$0.6734 per Dth.

Notice of Filing, Interventions and Protests

6. Public notice of Eastern Shore's filing was issued November 2, 2006, with interventions and protests due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2006)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2006)), all timely filed motions to intervene and any motions to intervene out-of-time

³ The currently effective rates were set forth in the August 2, 2002 Settlement. See *Eastern Shore Natural Gas Co.*, 101 FERC ¶ 61,011 (2002)

filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

7. Delmarva Power & Light Company (Delmarva), PECO Energy Company (PECO), and Easton Utilities Commission (Easton) filed timely protests. Premcor Refining Group Inc. (Premcor) filed a timely motion to intervene, with protest-style comments.

8. All of the protesters state that Eastern Shore has not justified the increase in its proposed transportation rates, and question the proposed 14.875 percent return on equity. The protesters request that the Commission implement its policy to suspend the proposed increase for the maximum five month period permitted under the NGA where the Commission believes that the filing may be unjust, unreasonable, or inconsistent with other statutory standards. Several protesters make reference to the Commission's October 19, 2006 decision in *Kern River Gas Transmission Company*, Opinion No. 486,⁴ in which the Commission adopted an 11.2 percent return on equity for that pipeline. The protesters state that Eastern Shore's rate increase is excessive and that Eastern Shore has not demonstrated that its rate increase proposal is just and reasonable. Accordingly, the protesters state that the Commission should reject Eastern Shore's proposed effective date and suspend the proposed rate increase for the full five month period, subject to refund, from the date of its order.

9. Easton requests that the Commission summarily reject Eastern Shore's proposal to roll-in costs associated with the facilities certificated and constructed pursuant to the Commission's orders in Docket No. CP03-80. Easton notes that the Commission denied Eastern Shore's request for pre-approval of rolled-in rate treatment of the facilities, stating that Eastern Shore would bear the burden of proof in a rate case that the facility costs can be rolled into system-wide rates without resulting in subsidization by existing customers.⁵ Easton asserts that Eastern Shore did not file sufficient evidence in support of its rolled-in proposal.

Discussion

10. The Commission finds that the instant filing raises issues that need to be investigated further. Accordingly, the Commission will establish a hearing to explore issues including, but not limited to, the following: (1) appropriateness of the proposed cost allocation and rate design; (2) the level of the overall revenue requirement; (3) the level of depreciation rates; (4) the appropriateness of the proposed capital structure;

⁴ 117 FERC ¶ 61,077 (2006).

⁵ *Eastern Shore Natural Gas Co.*, 111 FERC ¶ 61,479 (2005).

(5) the appropriateness of the proposed 14.875 percent equity rate of return; and (6) the rolling-in proposal of costs of facilities constructed pursuant to certificate authorization in Docket No. CP03-80.

Suspension

11. Based upon review of the filing, the Commission finds that the proposed transportation rates have not been shown to be just and reasonable, and may be unjust, unreasonable and unduly discriminatory or otherwise unlawful. Accordingly, the Commission shall accept and suspend the effectiveness of the proposed transportation rates for the period set forth below, subject to the conditions set forth in this order.

12. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards. *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension). It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension). Such circumstances do not exist here. Therefore, the Commission shall exercise its discretion to suspend the proposed tariff sheets listed in footnote No. 1, to be effective May 1, 2007, subject to refund and the outcome of the hearing established herein.

The Commission orders:

(A) The tariff sheets listed in footnote No. 1 are accepted and suspended, to be effective May 1, 2007, upon motion by Eastern Shore, subject to refund and the outcome of the hearing established herein.

(B) Pursuant to the Commission's authority under the Natural Gas Act, particularly sections 4, 5, 8, and 15, and the Commission's rules and regulations, a public hearing is to be held in Docket No. RP07-38-000 concerning Eastern Shore's filing.

(C) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304 (2006), must convene a prehearing conference in this proceeding to be held within twenty (20) days after issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The prehearing conference shall be held for the purpose of clarification of the positions of the

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participants and establishment by the presiding judge of any procedural dates necessary for the hearing. The presiding administrative law judge is authorized to conduct further proceedings in accordance with this order and the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.