

Commission's directive in Ordering Paragraph 12 of the August 4, 2004 Order, which addresses the lost-and-unaccounted-for gas percentage for the Rocky Top, Gateway and Murray Projects, is pursuant to section 5 of the Natural Gas Act (NGA).⁴ In the alternative, if clarification is denied, it seeks rehearing. We grant East Tennessee's request for clarification, as discussed below.

3. This order benefits the East Tennessee's customers because it provides clarification to ensure an appropriate assignment of costs associated with lost-and-unaccounted-for gas for the Patriot, Rocky Top, Gateway and Murray Projects.

I. Background

4. On November 20, 2002, the Commission issued an order approving East Tennessee's amended application for a certificate of public convenience and necessity to construct, own, and operate certain pipeline expansion facilities known as the Patriot Project.⁵ In that order, the Commission approved incremental maximum lawful recourse rates for Patriot Project expansion shippers, including a 1.51 percent incremental "Fuel and Loss Retention Percentage" for both summer and winter service based on incremental compression horsepower that East Tennessee proposed to install as part of the Patriot Project, as reflected on pro forma tariff rate sheets in its application. The pro forma tariff Sheet No. 4A in East Tennessee's application included a footnote (footnote 5) to the 1.51 percent Patriot Project "Fuel and Loss Percentage" which stated that "Transportation entirely by Backhaul will incur 0% Fuel and Loss Retention Percentage." The Commission directed East Tennessee to file tariff sheets consistent with the pro forma tariff rate sheets reflecting the approved rates not less than 30 days, nor more than 60 days, prior to their proposed effective date.

5. On September 30, 2003, East Tennessee submitted actual tariff sheets⁶ that were duplicates of the pro forma sheets to comply with the Commission's directive, with a proposed effective date of November 1, 2003.

6. In its August 4, 2004 Order, the Commission accepted the tariff sheets filed on September 30, 2003, finding that they were in compliance with the November 20, 2002 Order's directive to file actual tariff sheets consistent with the pro forma tariff sheets of the amended certificate application. However, the Commission found that the effective

⁴ 15 U.S.C. § 717d (2000).

⁵ *East Tennessee Natural Gas Co.*, 101 FERC ¶ 61,188 (2002) (November 20, 2002 Order).

⁶ Twenty-Sixth Revised Sheet No. 4 and Fourth Revised Sheet No. 4A to FERC Gas Tariff, Second Revised Volume No. 1.

date of the tariff sheets must coincide with the in-service date of the facilities, the earliest date being November 21, 2003, and, accordingly, accepted the tariff sheets effective November 21, 2003.

7. In addition, however, in the August 4, 2004 Order, the Commission initiated a proceeding in a new docket, Docket No. RP04-398-000, under section 5 of the NGA to review the retention percentages in East Tennessee's tariff through which it recovers lost-and-unaccounted-for gas. The Commission believed that the percentages for certain expansion projects may improperly exempt shippers from charges for lost-and-unaccounted-for gas. The Commission found that:

In the absence of a showing that Patriot Project shipper gas transported by backhaul will never be lost or unaccounted for, a zero percent lost-and-unaccounted-for gas factor for the Patriot Project backhaul service is contrary to section 284 of the Commission's regulations and thus unjust, unreasonable and unduly discriminatory. Patriot Project shippers should be responsible for any gas lost and unaccounted for the Patriot Project backhaul service. East Tennessee has not demonstrated that providing backhaul service over the Patriot Project facilities will not incur gas losses. Therefore East Tennessee's provision for lost-and-unaccounted-for gas may not be just and reasonable, and may be unjust, unreasonable and unduly discriminatory.⁷

8. The Commission, therefore, directed East Tennessee to either (a) show that backhaul service over the Patriot Project causes East Tennessee to incur no gas losses; or (b) make an alternative proposal for assessing charges for lost-and-unaccounted-for gas for the Patriot Project. In addition, the Commission found that it was not clear what, if any, lost-and-unaccounted-for gas percentage is included in the 1.51 percent Patriot Project Fuel and Loss Retention Percentage. Accordingly, the Commission also directed East Tennessee to separately set forth the fuel percentage and lost-and-unaccounted-for gas percentage in its filing for the Patriot Project. Further, the August 4, 2004 Order noted that it may be also unjust, unreasonable and unduly discriminatory to charge nothing for lost-and-unaccounted-for gas relative to its other expansion project services (Rocky Top, Gateway and Murray). Therefore, the Commission directed East Tennessee to either (a) show that all services over the Rocky Top, Gateway and Murray Projects cause East Tennessee to incur no gas losses; or (b) make an alternative proposal for assessing lost and-unaccounted-for gas charges for these expansion projects. Finally, East Tennessee was directed to separately set forth the fuel percentage and lost-and-

⁷ August 4, 2004 Order at P 10 (*footnote omitted*).

unaccounted-for gas percentage in its filing for the Rocky Top and Murray expansion projects. East Tennessee was directed to submit its compliance filing in Docket No. RP04-398-000 within 30 days of the date of the August 4, 2004 Order.

II. Notice of Filing and Interventions

9. Notice of the initiation of a proceeding under section 5 of the NGA by the August 4, 2004 Order was issued on August 6, 2004, in Docket No. RP04-398-000, noting that “the Commission [would] issue a notice pertaining to East Tennessee’s filing and persons having an interest in the proceeding [would] be allowed to intervene in accordance with the Commission’s regulations.” (August 6, 2004 Notice).

10. On September 3, 2004, East Tennessee filed Third Revised Tariff Sheet No. 21 reflecting 0.6 percent lost-and-unaccounted-for gas retention percentages for all four of its expansion projects. East Tennessee claims that its submittal is in compliance with the August 4, 2004 Order and requests that the sheet be accepted to become effective prospectively as of the date specified by the Commission in the order accepting the compliance filing without refund or condition. Notice of East Tennessee’s September 3, 2004 compliance filing was issued on September 10, 2004, with protests to be filed in accordance with section 154.210 of the Commission’s regulations, 18 C.F.R. § 154.210 (2004). No protests were filed.

11. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

III. Discussion

A. Request for Clarification

12. East Tennessee seeks clarification that the compliance tariff sheet it filed on September 3, 2004, will be effective prospectively as of the date specified by the Commission in the order accepting the compliance filing without refund or condition. East Tennessee notes that Ordering Paragraph (A) of the August 4, 2004 Order established an effective date of November 21, 2003, for the tariff sheets accepted by that order. Without the requested clarification, East Tennessee states that Ordering Paragraph (A) could arguably establish an effective date for East Tennessee’s section 5 compliance filing at issue here that is nine months prior to the actual filing of the compliance tariff sheet, making the Commission-directed revisions retroactively effective. If the Commission denies its request for clarification, East Tennessee seeks rehearing on the basis that the Commission erred by requiring an effective date that is prior to the filing of the compliance tariff sheet, thereby making any revisions to the tariff sheet relating to lost-and-unaccounted-for gas retroactively effective.

13. In addition, East Tennessee seeks clarification that the Commission is reviewing the lost-and-unaccounted-for gas percentages for East Tennessee's Rocky Top, Gateway, and Murray Projects pursuant to section 5 of the NGA. East Tennessee asserts that this clarification is necessary because, although the August 6, 2004 Notice suggests that the Commission is reviewing the Rocky Top, Gateway, and Murray projects pursuant to section 5 of the NGA, Paragraph 12 of the August 4, 2004 Order fails to indicate the authority under which the Commission is reviewing those expansion projects. In the alternative, if the Commission does not grant the clarification concerning Paragraph 12 of the August 4, 2004 Order, East Tennessee seeks rehearing on the basis that the Commission erred by failing to specify the authority by which it is acting.

14. We grant East Tennessee's requests for clarification. The compliance tariff sheet reflecting East Tennessee's proposed 0.6 percent lost-and-unaccounted-for percentage rates for its Patriot, Rocky Top, Gateway and Murray Projects is being accepted effective prospectively as of the date of this order. Furthermore, our action in Paragraph 12 of the August 4, 2004 Order directing East Tennessee to address the lost-and-unaccounted-for gas percentages for East Tennessee's Rocky Top, Gateway, and Murray Projects is pursuant to section 5 of the NGA. The Commission's action, being under section 5 of the NGA, will become effective prospectively from the date of this order finding the 0.6 percent lost-and-unaccounted-for gas retention percentage to be just and reasonable. Accordingly, we will accept the tariff sheet reflecting the rate change prospectively effective as of the date of this order.

B. Compliance Filing

15. On September 3, 2004, in accordance with the August 4, 2004 Order, East Tennessee filed Third Revised Tariff Sheet No. 21 for inclusion in its FERC Gas Tariff, Third Revised Volume No. 1, reflecting lost-and-unaccounted-for gas percentages for four East Tennessee expansion projects: Patriot Project, Rocky Top Project, Gateway Project and Murray Project. East Tennessee proposes to assess the system lost-and-unaccounted-for gas percentage of 0.6 percent for each of the four expansion projects.

16. In the absence of a showing that its lost-and-unaccounted-for gas related to these projects is zero, the Commission finds that the existing zero percentages are unjust and unreasonable. Further, the Commission finds that East Tennessee's proposal to assess its existing, system-wide lost-and-unaccounted-for gas percentage of 0.6 percent for lost-and-unaccounted-for gas for its expansion projects is just and reasonable. Accordingly, the proposed tariff sheet is accepted in satisfactory compliance with the August 4, 2004 Order, to be effective prospectively as of the date of this order.

The Commission orders:

(A) The requests for clarification are granted.

(B) Third Revised Tariff Sheet No. 21 to East Tennessee's FERC Gas Tariff, Third Revised Volume No. 1, is accepted, effective as of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.