

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

East Tennessee Natural Gas, LLC

Docket No. RP97-13-014

ORDER ON REHEARING

(Issued March 8, 2005)

1. On December 22, 2004, East Tennessee Natural Gas, LLC (East Tennessee) requested rehearing of the Commission's November 26, 2004 Order in the captioned docket.¹ As discussed below the Commission will grant the requested rehearing.

Background

2. On October 31, 2003, the Commission accepted East Tennessee's proposed tariff sheet and the negotiated rate agreements with several shippers including Duke Energy Murray, LLC (DENA Murray), subject to conditions, to be effective the later of November 1, 2003, or the in-service-date of the Patriot Project.²

3. The October 31, 2003 Order found that East Tennessee had failed to adequately comply with the requirements established in the Commission's 2003 modification to its negotiated rate policy. In particular, East Tennessee had not adequately identified how the negotiated rate agreements deviated from East Tennessee's form of service agreement or provided adequate explanation and support for the material deviation. Therefore, the Commission accepted the Letter and Service Agreements, subject to East Tennessee

¹ *East Tennessee Natural Gas Co., LLC*, 109 FERC ¶ 61,232 (2004).

² *East Tennessee Natural Gas Co., LLC*, 105 FERC ¶ 61,162 (2003).
On October 10, 2003, in Docket No. CP01-415-000, East Tennessee made a filing requesting approval to place the Patriot Project facilities in service on November 8, 2003.

filing supplemental information that fully complied with the Commission's 2003 Policy Statement.³ Finally, the Commission directed East Tennessee to file a revised tariff sheet that includes the DENA Murray agreement as a non-conforming agreement.

4. On December 1, 2003, East Tennessee filed a tariff sheet, narrative responses, a cross-reference table, and non-conforming letter agreements redlined against the form of service agreement for Rate Schedule FT-A, to comply with the Commission's October 31, 2003 Order. On November 26, 2004, the Commission accepted the proposed tariff sheet and non-conforming Letter Agreements as in compliance with the October 31, 2003 Order, to be effective November 21, 2003, subject to conditions. Of import here, the November 26, 2004 Order found that the DENA Murray agreement contained an impermissible material deviation from the form of service agreement and required that East Tennessee file a revised agreement to delete certain language regarding the portion of the Maximum Daily Transportation Quantity (MDTQ) to which the rate applies. The Commission stated that:

East Tennessee and DENA agreed that DENA, at its sole discretion, may increase the quantities up to a maximum total quantity of 50,000 Dth upon thirty days written notice to East Tennessee. The proposed language permitting increased capacity is a material deviation from the form of service agreement.⁴

5. The Commission found that that East Tennessee had inappropriately proposed to permit DENA to increase its capacity under the agreement, that this was not a permissible deviation, and that such a provision may cause a substantial risk of undue discrimination. The Commission stated that if East Tennessee wanted to guarantee an MDTQ adjustment to its shippers, it should propose a provision in its generally applicable tariff to offer such rights to all shippers. Therefore, November 26, 2004 Order rejected East Tennessee's proposed language and directed East Tennessee to delete this provision from the DENA Murray agreement.

³ *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 (2003).

⁴ 109 FERC at P30.

Request for Rehearing

6. On rehearing, East Tennessee states that the provision of the DENA Murray agreement in question⁵ relates solely to the rate for service under the service agreement between DENA Murray and East Tennessee and that the provision does not permit East Tennessee or DENA Murray to adjust the MDTQ under the Service Agreement as suggested by the November 26, 2004 Order. East Tennessee states that the MDTQ under this Service Agreement was 50,000 Dth per day on the date which the Service Agreement commenced and that it will remain the same for the entire primary term of the agreement. East Tennessee states that the provision in question only permits the quantities subject to the reservation charge to be adjusted, it is not a right to adjust the MDTQ under the service agreement as assumed by the Commission.

⁵Paragraph 1 of the DENA Murray agreement provides:

1. Subject to the satisfaction or waiver of all conditions precedent set forth in the Precedent Agreement, for the primary term of the Service Agreement and the MDQ of 50,000 Dth per day, for natural gas received and redelivered by Transporter for Shipper under the Service Agreement, Transporter agrees to charge Shipper, and Shipper agrees to pay Transporter

- a. a monthly reservation charge of \$2.59 per Dth and a commodity charge of \$0.10 per Dth applicable to:
 - i) 50,000 Dth in May through September of the years 2004 through 2009,
 - ii) 40,000 Dth in May through September of the years 2010 through 2014,
 - iii) 10,000 Dth in the months of October through April for the entire Primary Term.
 - iv) shipper, at its sole discretion, may increase the quantities to which ii and iii are applicable up to a maximum total quantity of 50,000 Dth, upon thirty days written notice to Transporter.
- b. for all gas transported in addition to the quantities stated above, up to the MDQ of 50,000 Dth per day, a monthly reservation charge of \$0.00 per Dth and a commodity charge of \$0.33 per Dth.

7. Specifically, East Tennessee states that the provision would allow DENA Murray to pay the negotiated reservation rate (and related commodity charge) on the entire 50,000 Dth per day on a year around basis, rather than on a seasonal basis. East Tennessee states that regardless of whether DENA Murray exercises this option, its MDTQ under its Service Agreement will always be 50,000 Dth per day and that it will have 50,000 Dth per day of capacity reserved for its use on a year around basis. East Tennessee states that because the provision in question only permits the shipper to adjust the rate to be applied to the entire MDTQ under the service agreement and does not permit an adjustment of the amount of the MDTQ, the Commission should permit this provision to take effect. Therefore, East Tennessee states that since this provision does not affect the terms or conditions of service in any manner or allow an adjustment of the MDTQ the Commission should grant rehearing and accept this provision.

Discussion

8. The Commission finds East Tennessee's argument to be persuasive. The provision of the DENA Murray agreement discussed above does not appear to permit the adjustment of the MDTQ during the term of the contract agreement but rather would permit the adjustment of the rate to be applied to the MDTQ. Moreover, East Tennessee must reserve the entire 50,000 Dth per day for the entire term of the agreement for use by DENA Murray. Accordingly, the Commission will grant rehearing of its November 26, 2004 Order to the extent that it required East Tennessee to delete this provision from its DENA Murray agreement.

The Commission orders:

Rehearing of the November 26, 2004 Order is granted, as discussed in the body of the instant order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.