

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

February 15, 2007

In Reply Refer To:  
Tennessee Gas Pipeline Company  
Docket No. RP96-312-157

Tennessee Gas Pipeline Company  
1001 Louisiana Street  
Houston, TX 77002

Attention: Jacques A. Hodges  
Attorney

Reference: Service Agreements and Negotiated Rate Letter Agreements Comprising  
Service Package Nos. 60095, 60925, 60994, 60088 and 60148.

Dear Mr. Hodges:

1. On August 30, 2006, Tennessee Gas Pipeline Company (Tennessee) filed five service agreements dated August 28, 2006, and five related negotiated rate letter agreements under Tennessee's Rate Schedule FT-A, each dated February 3, 2006. The service agreements and related negotiated rate letter agreements, described below, contain identical deviations from the Tennessee's *pro forma* Gas Transportation Agreement for use under Rate Schedule FT-A (form of service agreement). Tennessee states that although it believes such deviations are not material, it filed the agreements to obtain a Commission determination to that effect, and in the interest of full disclosure. Tennessee further states that if the Commission finds that the service agreements contain material deviations, Tennessee requests that the Commission approve the agreements as filed, and Tennessee will file revised tariff sheets listing these contracts as non-conforming in its tariff. As discussed below, the Commission finds that the service agreements and related negotiated rate letter agreements deviate materially from the form of service agreement, but do not present a significant risk of undue discrimination. Therefore, waiver of the Commission's notice provisions is granted,<sup>1</sup> and the service agreements, as well as the related negotiated rate letter agreements, are accepted for filing as non-conforming agreements, such acceptance to be effective, as requested, on each agreement's respective Commencement Date, as described below. This acceptance is

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<sup>1</sup> 18 C.F.R. § 154.207 (2006).

subject to Tennessee filing revised tariff sheets prior to each service agreement's Commencement Date, in accordance with the notice provisions of section 154.210 of the Commission's regulations,<sup>2</sup> which add the service agreement to the list of non-conforming agreements in section XXXVII of Tennessee's tariff.

2. Public notice of the filing was issued on September 5, 2006. Interventions and protests were due as provided in section 154.210 of the Commission's regulations. 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 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. No protests or adverse comments were filed.

3. Each service agreement provides that Tennessee will render firm transportation for a primary term of five-years through offshore facilities to be constructed by Tennessee in the Gulf of Mexico (the Link Project).<sup>3</sup> The Link Project, which Tennessee expects to place in service by the summer of 2007, will connect Tennessee's existing 500 System supply lateral with the Independence Trail deepwater offshore gathering system (Independence Trail) now being constructed in the Gulf by Enterprise Products Partners L.P. The shippers under the service agreements, who will be producing gas in association with Independence Trail, are: (1) Anadarko Petroleum Corporation, whose Maximum Daily Transportation Quantity (MDTQ) is 271,150 Dth (Service Package No. 60095); (2) Devon Energy Production Company, L.P., (Devon), whose MDTQ is 29,400 Dth (Service Package No. 60925); (3) Dominion Exploration and Production Company, Inc., whose MDTQ is 85,300 Dth (Service Package No. 60994); (4) Hydro Gulf of Mexico, L.L.C., whose MDTQ is 52,950 Dth (Service Package No. 60088); and (5) Kerr-McGee Oil and Gas Corporation, whose MDTQ is 61,200 Dth (Service Package No. 60148) (collectively, "the shippers").

4. Each service agreement contains several deviations from the form of service agreement which concern the regulatory authorizations Tennessee is required to obtain from the Commission in order to render service. New section 2.2 permits Tennessee to make the sole determination: (1) whether to receive and continue all such necessary regulatory and non-regulatory authorizations; and (2) whether the facilities over which service will be rendered have been completed to its satisfaction. Tennessee asserts such deviations are reasonable because, unlike normal circumstances under which it executes service agreements, Tennessee cannot provide service under the subject agreements

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<sup>2</sup> 18 C.F.R. § 154.210 (2006).

<sup>3</sup> Approved in Docket No. CP05-100-000 under Tennessee's blanket authority.

without constructing the facilities and obtaining the necessary authorizations. Similarly, Tennessee modified section 9.1 to emphasize its exclusive right to determine whether it will accept the terms of all necessary regulatory approvals and authorizations.<sup>4</sup>

5. Section 2.2 further states that Tennessee will provide two written notices to the shipper by which Tennessee will establish the Commencement Date of its obligation to provide transportation (*i.e.*, the beginning of the agreement's primary term as described in section 12.1). One notice will identify the date on which Tennessee will be ready to begin service. The other notice will identify the date when production first flows through Meter No. 012677 at the connection between Tennessee's facilities and Independence Trail. The Commencement Date will occur six months (except in the case of the Devon agreement, three months) after the later of the dates identified in the notices, but in no event prior to October 1, 2006. Tennessee asserts such deviations are reasonable because they (1) describe how and when Tennessee will notify the shippers that construction has been completed, and (2) offer shippers the flexibility of an interim period to achieve full production prior to the Commencement Date of firm service under the agreements.

6. Section 12.1 of each service agreement deviates from the form of service agreement by establishing its Commencement Date rather than its effective date as the beginning date of the primary term.<sup>5</sup> Consistent with section 12.1, the shipper's payment obligations under section 6.1, and its warranty obligations under section 11.1(a) begin on the agreement's Commencement Date rather than its effective date.

7. Tennessee requests waiver of the Commission's notice requirements so that acceptance of each service agreement can be effective on its Commencement Date rather than on its Effective Date.

8. Under each negotiated rate letter agreement, Tennessee will be paid a monthly reservation rate of \$0.3042 per Dth and a daily commodity rate of \$0.02 per Dth for deliveries to all then existing Zone L delivery meters in service as of June 22, 2005. Both rates are inclusive of surcharges. In addition, Tennessee will retain fuel and lost and unaccounted for in-kind percentages of 1.01 percent between November and March, and 0.95 percent between April and October of each year. Further, receipts and/or deliveries to points other than those listed in the letter agreement will result in the shipper being assessed the maximum reservation rate for the primary path divided by the number of days in the month for the entire transportation quantity on the days of such deliveries and the maximum daily commodity rates under Rate Schedule FT-A as well as applicable

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<sup>4</sup> Tennessee notes a related deviation in Article IV clarifying that it will construct, install, own, and operate the required facilities.

<sup>5</sup> The effective date of the agreement is the date on which it is fully executed by the parties.

fuel and loss charges. Finally, unauthorized overrun deliveries on any one day during the term of the applicable service package shall be subject to Tennessee's maximum daily FT-A commodity rate as well as applicable fuel and loss charges and surcharges.

9. The Commission's regulations require that pipelines include in their tariff a form of service agreement, and file any contract that deviates materially from it.<sup>6</sup> The filing of non-conforming service agreements enables the Commission and other interested parties to review the contract to determine whether such deviations comply with the requirements of the Natural Gas Act, including the requirement that pipelines not engage in undue discrimination.

10. In *Columbia Gas Transmission Corp. (Columbia)*, the Commission found that any difference in the language between the negotiated agreement and the *pro forma* service agreements affecting the substantive rights of the parties constitutes a material deviation.<sup>7</sup> However, not all material deviations are impermissible. If the Commission finds that such deviation does not constitute a substantial risk of undue discrimination the Commission may permit the deviation.<sup>8</sup>

11. Consistent with *Columbia* and Commission action on similar filings by Tennessee,<sup>9</sup> the Commission finds that the firm service agreements deviate materially from Tennessee's form of service agreement but do not present a substantial risk of undue discrimination. Such deviations simply reflect the circumstances under which the contracts were executed. It is reasonable for section 2.2 to define the Commencement Date of the parties' obligations by reference to the later of the date production flows from Independence Trail or the date Tennessee is ready to begin service. Tennessee cannot provide service until it completes construction of the Link Project and obtains the requisite regulatory authorizations, and the parties cannot undertake their service obligations under the agreements until gas begins to flow to the Link Project from Independence Trail. Moreover, the delayed Commencement Date provided in section 2.2

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<sup>6</sup> 18 C.F.R §§ 154.1(d) and 154.110 (2006). In its policy statement issued July 25, 2003, the Commission held that a material deviation includes any provision in a service agreement that is not in the approved language of the Form of Service Agreement and: (1) goes beyond filling-in-the-blank spaces with the appropriate information allowed by the tariff; or (2) affects the substantive rights of the parties. *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 at P 27 (2003) (2003 Policy Statement).

<sup>7</sup> *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 at 62,002 (2001).

<sup>8</sup> *Id.* at 62,004.

<sup>9</sup> See, e.g., *Tennessee Gas Pipeline Co.*, 112 FERC ¶ 61,259 (2005); and *Tennessee Gas Pipeline Co.*, 96 FERC ¶ 61,191 (2001).

gives shippers the economic flexibility to use Tennessee's interruptible transportation service on the Link Project while they ramp up to the full production capability that corresponds to their respective MDTQs under the firm service agreements.<sup>10</sup>

12. Regarding our acceptance of the negotiated rate letter agreements filed herein, Tennessee is advised that future filings which include a separately drafted negotiated rate letter agreement must conform to the Commission's modification of its negotiated rate policy in its 2003 Policy Statement.

13. In the 2003 Policy Statement, the Commission noted that its experience with negotiated rate filings had shown that the filings on occasion lacked the information necessary for the Commission's staff and the pipelines' shippers to analyze the negotiated agreement. The Commission noted that where pipelines had filed service agreements with material deviations, the deviations had often not been clearly identified, requiring the Commission to carefully compare the negotiated rate agreement with the form of service agreement in order to determine how the two may differ.<sup>11</sup>

14. The Commission stated that on some occasions, parties have drafted the entire service agreement independently of the form of service agreement in the tariff. As a result, provisions may be worded differently from similar provisions in the form of service agreement, but it is not immediately apparent whether the parties intended the provisions to be substantively different.<sup>12</sup> "These circumstances hinder the Commission's ability to assess whether the transaction is unduly discriminatory as well as the assessment of the transaction by shippers attempting to determine if they are similarly situated to the shipper in the negotiated transaction."<sup>13</sup>

15. In order to provide greater transparency and to assist the Commission and interested parties in analyzing negotiated rate transactions, the Commission determined that the form of service agreement must be used as a starting point in drafting any

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<sup>10</sup> Tennessee states that the shippers will also have service agreements and related discount rate letter agreements on the Link Project under Tennessee's Rate Schedules IT (Interruptible Transportation) and PTR (transportation of Plant Thermal Reduction volumes). Tennessee states that it included these IT and PTR agreements with the shippers in its filing in the interest of full disclosure even though none of these agreements have been executed and they will not deviate from the *pro forma* versions of these agreements in its tariff. Since these agreements are submitted for informational purposes only, the Commission has not reviewed them and no Commission action on them is required at this time. However, the directions given below regarding the form of service agreements required to comply with the 2003 Policy Statement applies to these agreements as well.

<sup>11</sup> 2003 Policy Statement at P 31.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

negotiated rate contract.<sup>14</sup> The Commission required that a pipeline filing a contract proposing material changes from its form of service agreement must clearly delineate differences between its negotiated contractual terms and that of its form of service agreement in redline/strikeout.<sup>15</sup> In addition, the pipeline must provide “a detailed narrative outlining the terms of its negotiated contract, the manner in which such terms differ from its form of service agreement, the effect of such terms on the rights of the parties, and why such deviation does not present a risk of undue discrimination.”<sup>16</sup>

16. Here, Tennessee asserts that the service agreements contain terms and conditions that differ from the form of service agreement in its tariff. It includes in its filings copies of the service agreements along with redlined versions of the service agreements highlighting the differences from the form of service agreement. Each agreement, however, does not consist of a single document; instead, it is made up of a non-conforming service agreement together with a negotiated rate letter agreement that contains non-rate provisions which duplicate the substance, but not the exact language of terms in the service agreement. For example, section 4 in the negotiated rate letter agreement gives Tennessee sole determination over receipt of authorizations and satisfactory completion of the Link Project, a provision that Tennessee identified as a material deviation in Article IX of the service agreement. While the Commission has permitted the pipeline to include negotiated rate provisions to be included in a separate rate agreement, the Commission has held that such a rate document should only include provisions related to the rate. All provisions controlling the non-rate rights and obligations of the parties should be in the service agreement itself. This avoids potential conflicts between the service agreement and the rate document.<sup>17</sup>

17. Therefore, Tennessee is advised that future filings of this nature must be consistent with the 2003 Policy Statement and *East Tennessee* with respect to identification of all materially deviating non-rate terms in both the negotiated rate letter agreement and the service agreement that comprise a service package.

By direction of the Commission.

Magalie R. Salas,  
Secretary.

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<sup>14</sup> 2003 Policy Statement at P 33.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *East Tennessee Natural Gas Co.*, 107 FERC ¶ 61,197, at P 18-21 (2004) (*East Tennessee*).