

November 20, 2009

By Electronic Filing

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Tennessee Gas Pipeline Company
Docket Nos. RP91-203-076 and RP92-132-064
COMPLIANCE FILING

Dear Ms. Bose:

On April 13, 2009, Tennessee Gas Pipeline Company (Tennessee) submitted an Offer of Settlement in the above-referenced dockets (Settlement). The Settlement was filed to resolve all issues for which the Commission established settlement judge procedures in its November 12, 2008 letter order.¹ The Settlement included an Amendment to Stipulation and Agreement (Amendment) designed to resolve issues regarding Tennessee's over-collected costs under the original Stipulation and Agreement filed with the Commission on May 15, 1995, related to Tennessee's "PCB/HSL Project as defined therein. The Settlement was supported or not opposed by all parties and was approved by the Commission by letter order dated November 4, 2009 ("November 4 letter order"), conditioned on the settling parties revising the standard of review.²

Statement of Nature, Reasons an Basis for Filing

The purpose of this filing is to comply with the Commission's required revision of the standard of review. Specifically, Article III, Section C of the Amendment as filed provided that any modification to the Amendment must satisfy the "public interest" standard of review as set forth in *United Gas Pipe Line Co., v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). In the November 4 letter order, the Commission stated that in light of *Maine Pub. Util. Comm'n v. FERC*, 520 F.3d 464 (D.C. Cir. 2008), it may not accept the standard of review as currently written and conditioned approval of the Settlement on the settling parties revising the standard of review. The Commission further stated that an acceptable substitute provision would be the "most stringent standard permissible under applicable law."

¹ *Tennessee Gas Pipeline Co.*, 125 FERC ¶ 61,164 (2008).

² *Tennessee Gas Pipeline Co.*, 129 FERC ¶ 61,105 (2009).

As a result of the Commission's November 4 letter order, Tennessee drafted a proposed modification to Article III, Section C of the Amendment and circulated it to the active participants in the proceeding. The proposed modification incorporates language consistent with the substitute standard of review language suggested by the Commission. Attached as Appendix A is a redline version of the modification to the Amendment and specifically, Article III, Section C. Tennessee is also submitting as Appendix B a complete copy of the Amendment, as revised and minus the exhibits, with the change to Article III, Section C. Based upon its canvas of the active parties, Tennessee represents that this revision to the Settlement is supported or not opposed by the parties to the proceeding. Accordingly, Tennessee respectfully requests the Commission to promptly accept this revision to the Amendment.

Lastly, Tennessee submits that given that no party has objected to the Commission's required modification, and provided that no party seeks rehearing of the Commission's November 4 letter order, then the Settlement shall become effective as of December 4, 2009. Upon confirming that no requests for rehearing have been filed and no protests or adverse comments have been filed regarding the revised standard of review contained in the Amendment, Tennessee will proceed with refunds provided under the Settlement and the filing of the revised tariff sheets contained in Exhibit A of the Amendment.

Materials Enclosed

Tennessee states that the following items are included in this filing:

- (1) the instant transmittal letter;
- (2) a redline version of the revised Amendment under Appendix A; and
- (3) a complete copy of the Amendment, as revised, under Appendix B.

Service and Correspondence

The undersigned certifies that a copy of this filing has been served electronically pursuant to 18 CFR § 154.208 on Tennessee's customers and affected state regulatory commissions. A paper copy of this filing may only be served if a customer has been granted waiver of electronic service pursuant to 18 CFR Part 390 of the Commission's Regulations. In addition, an electronic copy of this filing is available for public inspection during regular business hours in Tennessee's office at 1001 Louisiana Street, Houston, Texas 77002.

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The names, titles and mailing addresses of the persons to whom correspondence and communications concerning this filing should be directed are as follows:

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(*Persons designated for service in accordance with Rule 203 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 395.203.)

Any questions regarding this filing may be directed to the undersigned at (713) 420-3297.

Respectfully submitted,

TENNESSEE GAS PIPELINE COMPANY

/s/ H. Milton Palmer
H. Milton Palmer
Director, Rates & Regulatory Affairs

Appendix A

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

In the Matter of)	
)	Docket Nos. RP91-203-076
Tennessee Gas Pipeline Company)	RP92-132-064

AMENDMENT TO STIPULATION AND AGREEMENT
(April 13, 2009)
(As Revised November 20, 2009)

Pursuant to Rule 602 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.602, Tennessee Gas Pipeline Company (“Tennessee”) and the participating intervenors hereby submit for approval this Amendment to Stipulation and Agreement (“Amendment”) in the captioned proceedings. This Amendment resolves the issues regarding Tennessee’s over-collected Recoverable Cost/Revenue Account under the Stipulation and Agreement filed with the Commission on May 15, 1995 related to the “PCB/HSL Project” as defined therein for the period beginning February 1, 1992 through the present. This Amendment is supported by all of the active participants in the Settlement Proceedings, including the Commission Staff, and they urge prompt approval of the Amendment, without modification or condition, by the Commission.

DESCRIPTION OF THE PROCEEDINGS

On May 15, 1995, Tennessee filed with the Commission in the above-captioned dockets a comprehensive settlement agreement (“Stipulation and Agreement” or “Stipulation”) to resolve outstanding issues relating to Tennessee’s recovery through rates charged to its customers of the costs of remediating polychlorinated biphenyl (“PCB”) and other hazardous substance list (“HSL”) contamination at specified locations on its pipeline system. The Stipulation established a PCB/HSL cost recovery mechanism that is to apply throughout the

timing of such tariff filing shall not delay the payment of the first installment of the Interim Refund Amount as required by amended Article IV B 4 d above.

- B. This Amendment represents a negotiated settlement in the public interest with respect to Tennessee's over-collected Recoverable Cost/Revenue Account under the Stipulation related to the PCB/HSL Project. Accordingly, Tennessee assents to the enforcement of the Stipulation and this Amendment in toto as a single, indivisible agreement. Performance required under this Amendment cannot be separated from the performance contained in the original Stipulation. Any attempts to interpret otherwise would be contrary to the intent of the parties involved in the settlement negotiations and this resulting Amendment.
- C. During the term of this Amendment, any modification to this Amendment must satisfy the most stringent standard of review permissible under applicable law.~~“public interest” standard of review as set forth in *United Gas Pipe Line Co., v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).~~

Appendix B

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

In the Matter of)	
)	Docket Nos. RP91-203-076
Tennessee Gas Pipeline Company)	RP92-132-064

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(April 13, 2009)

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duration of Tennessee's federal and state mandated programs to assess and remediate the PCB/HSL contamination ("PCB/HSL Project" or "Project"). The Commission approved the Stipulation by Orders dated November 29, 1995, and February 20, 1996.¹ Except as otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Stipulation.

As provided by the Stipulation, on May 30, 2008, Tennessee filed for an extension of the PCB Adjustment Period established by the Stipulation until June 30, 2010 ("2008 Filing"), to allow for recovery of ongoing remediation costs on its system. Tennessee stated that it has made significant progress to date toward completion of the targeted PCB/HSL Project, but that additional remediation and monitoring efforts will be required for the foreseeable future notwithstanding this progress. Tennessee also acknowledged that the existing cost recovery balance may very well exceed what is needed to complete the Project.² As such, Tennessee indicated its willingness to discuss with its customers the feasibility of amending the Stipulation to provide for an earlier disposition of some portion of the over-collected balance while providing protection should the retained RCRA balance be insufficient in the event more eligible costs than predicted are ultimately incurred to complete the Project. Tennessee proposed to report back to the Commission on the results of any such discussions by October 1, 2008.

On June 30, 2008, the Commission issued an order accepting Tennessee's proposed tariff sheets reflecting a 24-month extension of the PCB Adjustment Period until July 1, 2010 ("June 30th Order").³ The Commission conditioned its acceptance upon Tennessee meeting with its customers to discuss amending the Stipulation and reporting back to the Commission

¹ *Tennessee Gas Pipeline Co.*, 73 FERC ¶ 61,222 (1995); *Tennessee Gas Pipeline Co.*, 74 FERC ¶ 61,174 (1996).

² Stipulation, Article IV (B)(4)(b), p. 17. The Stipulation further provides for the establishment of a Recoverable Cost/Revenue Account ("RCRA") to keep track of the Eligible Costs incurred by Tennessee, the amount collected through the PCB surcharge, third party (insurance) recoveries and any carrying charges on the net balance in the RCRA. The balance in the RCRA is to be calculated after adjusting all cost and revenue amounts to 1992 dollars.

³ *Tennessee Gas Pipeline Co.*, 123 FERC ¶ 61,318 (June 30, 2008).

by October 1, 2008, as Tennessee proposed in its filing.

On October 1, 2008, Tennessee filed a report in compliance with the June 30th Order (“Status Report”) wherein it described the status of its discussions with customers. Three parties filed comments in response to Tennessee’s Status Report.⁴ New Jersey Natural and the Tennessee Customer Group each suggested that the settlement discussions would be enhanced by Tennessee convening a meeting of all parties as opposed to the limited group and individual discussions held by Tennessee to date.

On November 12, 2008, the Commission issued an order wherein it found that Tennessee had complied with the Commission’s June 30th Order to meet with its customers, but that sufficient progress had not been made toward settlement.⁵ In an effort to assist the parties in their settlement efforts, the Commission ordered the appointment of a settlement judge.

On November 17, 2008, Tennessee filed its “Motion of Tennessee Gas Pipeline Company for Stay of Settlement Judge Procedures” requesting the Commission to stay the appointment of a settlement judge in light of the dramatic changes to the economic environment in which Tennessee was willing to informally pursue discussions with its customers as to the feasibility of amending the Stipulation in favor of the status quo under the Stipulation (“Motion for Stay”).

On November 20, 2008, the Chief Administrative Law Judge, Curtis L. Wagner, Jr., issued an “Order of Chief Judge Holding Appointment of Settlement Judge in Abeyance Pending Commission Action on Motion to Stay Settlement Judge Procedures.” Subsequently, on November 26, 2008, in response to the opposition of several parties to Tennessee’s Motion

⁴ Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (collectively “ConEd”), New Jersey Natural Gas Company (“New Jersey Natural”) and the Tennessee Customer Group filed comments.

⁵ *Tennessee Gas Pipeline Co.*, 125 FERC ¶ 61,164 (November 12, 2008).

for Stay,⁶ the Commission issued an order denying Tennessee's request for stay and directing the Chief Administrative Law Judge to appoint a settlement judge to convene a settlement conference as soon as practicable ("November 26th Order").⁷

Following the December 4, 2008 appointment of Judge Carmen A. Cintron as the settlement judge in the proceeding, Tennessee and its customers participated in settlement conferences convened by Judge Cintron in Washington, D.C. on December 15, 2008, February 2, 2009, and February 18, 2009. This Amendment is the product of those settlement conferences.

I. Effect on Stipulation and Agreement

Unless specifically provided herein, this Amendment shall have no effect on the Stipulation, which shall remain in full force and effect in all other respects.

II. Amendment to Stipulation

Article IV B of the Stipulation shall be amended to provide for interim refunds (hereinafter, "Interim Refunds"). Such Interim Refunds shall be established and controlled by the addition of the following paragraphs to Article IV B 4 and the revised tariff sheets attached as Exhibit A to this Amendment. In the event of a conflict between the revised tariff sheets and the Stipulation as amended, the Stipulation will control.

- c. Tennessee shall make Interim Refunds to shippers of \$156.6 million, plus interest as described in paragraph d below. ("Interim Refund Amount"). The Interim Refund Amount is based on Tennessee's representation of the balance in the Recoverable Cost/Revenue Account established pursuant to Article IV C 1 as of December 31, 2008, plus estimated carrying charges at an annual interest rate of 10 percent through June 30,

⁶ National Fuel Gas Distribution Corporation and The Dominion LDCs filed answers opposing Tennessee's Motion on the basis that settlement discussions should be continued with the aid of a Settlement Judge.

2009, net of \$10 million to be retained (“Retained Amount”) to apply to the shippers’ share of additional Eligible Costs.

- d. The Interim Refund Amount shall be paid to shippers in quarterly installments over a three year period amortized at an annual interest rate of 8 percent. The first quarterly installment shall be made on July 1, 2009, with subsequent installments paid on the first business day of each calendar quarter thereafter over a three year period (“Interim Refund Period”). The first six quarterly installments shall be fixed at \$9.60 million each, with the balance amortized in six equal quarterly installments such that the annual interest rate on the balance is maintained at 8 percent throughout the three year period, resulting in quarterly installments of \$20.06 million for each of the final six quarters. To the extent the Amendment Effective Date as defined in Article III below is later than June 10, 2009; the first quarterly installment shall be made no earlier than July 1, 2009 and no later than 20 days after the Amendment Effective date with interest at an annual rate of 8 percent from July 1, 2009 to the date of payment. A delayed Amendment Effective date shall have no impact on the timing or amount of subsequent installments provided the Amendment Effective Date precedes the due date of the subsequent installment(s). Any such past due quarterly installment(s) shall also be made no later than 20 days after the Amendment Effective Date with interest at an annual rate of 8 percent to the date of payment.
- e. The Interim Refund Amount will be allocated to shippers pro rata based on surcharge collections during the PCB Adjustment Period consistent with Article IV B 4 b of the Stipulation as detailed on the attached Exhibit B to the Amendment. A shipper that contributed to such surcharge collections shall be entitled to receive its pro rata share of

⁷ *Tennessee Gas Pipeline Company*, 125 FERC ¶ 61,232 (2008) (“November 26th Order”).

amounts refunded without regard to the current level of service shipper may have under contract with Tennessee or whether shipper remains a customer on the Tennessee system. Tennessee shall remit the Interim Refund Amount via wire transfer in the amounts and to the individual shippers specified on the attached Exhibit B unless otherwise mutually agreed. In the event a shipper has not provided wire transfer information to Tennessee, Tennessee shall issue shipper's refund at its last known mailing address.

- f. Both the Interim Refund Amount and the remaining balance of the Recoverable Cost/Revenue Account shall be accounted for through the Recoverable Cost/Revenue Account. At any time and from time to time during the term of the Stipulation, Tennessee may, without penalty, refund all or any portion of the Interim Refund Amount and/or the remaining balance of the Recoverable Cost/Revenue Account to all shippers subject to this Stipulation, and Tennessee shall be entitled to re-determine the Interim Refund Amount consistent with Article IV B 4 d. Moreover, Tennessee shall be entitled to make Interim Refunds earlier than otherwise required to all shippers whose allocated share of the Interim Refund Amount as specified on the attached Exhibit B does not exceed \$10,000. The early distribution of such Interim Refunds shall have no adverse impact on the allocation to other shippers of the remaining Interim Refund Amount or their respective shares of any Additional Eligible Costs as defined in paragraph g below.
- g. If at any time during the Interim Refund Period Tennessee incurs or is required to recognize in its financial statements, in accordance with Generally Accepted Accounting Principles, Eligible Costs and the customers' share of the Eligible Costs will exceed the Retained Amount of the Recoverable Cost/Revenue Account

("Additional Eligible Costs"), such additional customers' share of Eligible Costs shall first be netted against any remaining Interim Refund Amount balance in equal amounts over the remaining quarterly installments on a pro rata basis to the individual shippers specified on the attached Exhibit B to this Amendment; provided, however, that such amounts withheld from the Interim Refund Amount shall reflect only the share of Additional Eligible Costs properly allocable to shippers still receiving quarterly installments from the Interim Refund Amount. In no event shall the Interim Refund Amount be reduced hereunder to reflect any share of Additional Eligible Costs as a result of the early distribution of Interim Refunds pursuant to the above paragraph f. Should the remaining balance of the Interim Refund Amount be insufficient to fully offset the Additional Eligible Costs, Tennessee shall reinstate the PCB adjustment in a manner consistent with Article IV B of the Stipulation as necessary to provide for recovery of the Additional Eligible Costs.

Article IV C 1 c of the Stipulation shall be superseded hereby:

- c. All carrying charges shall be computed by using the greater of (1) an annual interest rate of 10% for the period ending on June 30, 2009 and 8% thereafter; or (2) the then-applicable FERC-prescribed interest rate for pipeline refunds. Carrying charges shall be compounded quarterly and shall reflect adjustments for tax normalization viz.:

The applicable annual carrying charge rate specified in this Article IV C 1 c shall be converted to a monthly carrying charge rate and such monthly rate shall be multiplied by the prior month's ending balance of the Recoverable Cost/Revenue Account adjusted for any applicable deferred income taxes recorded consistent with the provisions set forth below.

All income tax timing differences which are the result of differences between the period in which expense or revenue enters into the determination of taxable income and the period in which the expense or revenue enters into the determination of pre-tax book income shall be normalized.

Article XIII B of the Stipulation shall be superseded hereby:

B. This Stipulation shall terminate fifteen (15) calendar years following the Effective Date; provided that the term shall be automatically extended if, at the end of such term, Tennessee is incurring Eligible Costs, or an extension of the term is necessary to complete cost recovery or refunds, including the payment of Interim Refunds, pursuant to Article IV B 4, as amended, or an extension of the term is necessary to effectuate the results of any pending litigation pursuant to the provisions of Article VIII.

III. Effective Date of Amendment, Non-Severability and Standard of Review

A. This Amendment shall become effective and binding on the date that the Commission's order approving this Amendment without modification becomes final ("Amendment Effective Date"). A Commission order becomes final on the last date for filing a request for rehearing when no such request has been filed or, if any requests for rehearing are filed, on the date of the Commission order denying all requests for rehearing. Tennessee shall file the revised tariff sheets in Exhibit A to this Amendment within thirty (30) days after the Amendment Effective Date; provided however, the

timing of such tariff filing shall not delay the payment of the first installment of the Interim Refund Amount as required by amended Article IV B 4 d above.

- B. This Amendment represents a negotiated settlement in the public interest with respect to Tennessee's over-collected Recoverable Cost/Revenue Account under the Stipulation related to the PCB/HSL Project. Accordingly, Tennessee assents to the enforcement of the Stipulation and this Amendment in toto as a single, indivisible agreement. Performance required under this Amendment cannot be separated from the performance contained in the original Stipulation. Any attempts to interpret otherwise would be contrary to the intent of the parties involved in the settlement negotiations and this resulting Amendment.
- C. During the term of this Amendment, any modification to this Amendment must satisfy the most stringent standard of review permissible under applicable law.