UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

East Tennessee Natural Gas, LLC	)	Docket No. RP20-980-000

MOTION TO INTERVENE, PROTEST
REQUEST FOR SUSPENSION AND EVIDENTIARY PROCEEDINGS

On June 30, 2020, East Tennessee Natural Gas, LLC ("ETNG"), pursuant to Section 4 of the Natural Gas Act ("NGA") and Part 154 of the regulations of the Federal Energy Regulatory Commission ("FERC" or "Commission"), filed proposed revised tariff records to its FERC Gas Tariff to effectuate changes in the rates applicable to ETNG's transportation and storage services ("Revised Tariff Records"). ETNG has proposed an effective date of August 1, 2020 for the Revised Tariff Records, but indicates that it in the event that the Commission suspends the rate changes set forth in the Revised Tariff Records for the full five-month period, or until January 1, 2021, ETNG intends to file a motion at the end of the suspension period to place the Revised Tariff Records into effect at that time, subject to the proposed implementation section. Pursuant to Rules 212 and 214 of the Commission's Rules of Practice and Procedure,[1] Process Gas Consumers Group ("PGC"), American Forest and Paper Association ("AF&PA"), and Industrial Energy Consumers of America ("IECA") hereby submit this motion to intervene and protest in the above-captioned proceeding.

I. Background

ETNG state that its current rates were established pursuant to the 2019 Stipulation and Agreement ("2019 Rate Settlement") approved by the Commission on October 1, 2019 to resolve an ongoing NGA Section 5 proceeding initiated in the Commission's order accepting ETNG's

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[1] 18 C.F.R. §§ 385.212, 385.214.

FERC Form No. 501-G filed in Docket No. RP19-63-000 and limited NGA Section 4 rate reduction filing in Docket No. RP19-64-000.[2] ETNG states that this rate filing satisfies the requirement of Section 1.3 of the Rate Settlement that ETNG file a general NGA Section 4 rate case no later than June 30, 2020.[3]

II. Motion to Intervene

PGC is a trade association that represents energy-intensive large industrial and manufacturing natural gas consumers who are typically longstanding, significant employers within their respective communities. PGC members own and operate hundreds of manufacturing plants and facilities in virtually every state in the nation and consume natural gas delivered through interstate natural gas pipeline systems throughout the United States. PGC members hold transportation capacity on numerous interstate pipelines. PGC members are firm shippers on ETNG.

IECA is an association of manufacturing companies with $1.1 trillion in annual sales, over 4,200 facilities nationwide, and with more than 1.8 million employees. IECA membership represents a diverse set of industries including: chemicals, plastics, steel, iron ore, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceutical, building products, automotive, independent oil refining, and cement. IECA members are firm shippers on ETNG.

AF&PA serves to advance a sustainable U.S. pulp, paper, packaging, tissue and wood products manufacturing industry through fact-based public policy and marketplace advocacy. AF&PA member companies make products essential for everyday life from renewable and

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[2] Transmittal at 2.

[3] *Id.* (citing *East Tennessee Natural Gas, LLC*, 169 FERC ¶ 61,002 (2019)).

recyclable resources and are committed to continuous improvement through the industry's sustainability initiative – Better Practices, Better Planet 2020. The forest products industry accounts for approximately 4% of the total U.S. manufacturing GDP, manufactures over $200 billion in products annually, and employs approximately 900,000 men and women. The industry meets a payroll of approximately $50 billion annually and is among the top 10 manufacturing sector employers in 45 states. AF&PA member companies own and operate facilities that consume natural gas delivered through the numerous interstate natural gas pipelines, including ETNG. AF&PA member companies are firm shippers on ETNG.[4]

III. Protest

ETNG's filing raises a host of factual issues that warrant investigation in the context of an evidentiary hearing. For example, ETNG has proposed changes to its transportation and liquefied natural gas storage service rates for firm transportation service. Specifically, ETNG's as-filed rate for firm transportation service on its mainline under Rate Schedule FT-1 reflects a 75% rate increase from a charge of $6.663 per dekatherm ("Dth") per day on a 100% load factor basis to a charge of $11.681 per Dth per day on a 100% load factor basis.[5] However, ETNG has not demonstrated that this proposed rate increase is just and reasonable.

ETNG proposes an annual cost of service of $252,722,902 that it claims is the result of increasing costs related to ongoing environmental and reliability expenditures, based on 12-month actuals ended on 2/29/2020 and adjustments through 11/30/2020.[6] ETNG's filed rate base reflects

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[4] For purposes of this filing, the AF&PA, IECA and PGC Members that are shippers and affected parties include Arconic Tennessee LLC, Eastman Chemical Company, Olin Corporation, Resolute Forest Products Company, USG Corporation, and WestRock Company.

[5] *See* Transmittal, Appendix A at 2.

[6] *See* Exhibit No. ET-0014, Statement P – Connolly Testimony at 1, lines 8-12.

total gas plant in service of approximately $1.387 billion, with total accumulated depreciation of approximately $515 million, for a total utility plant of approximately $872 million. Factoring in regulatory assets, liabilities, working capital and Accumulated Deferred Income Taxes ("ADIT") results in a proposed rate base amount of approximately $874 million, compared ETNG's Limited Section 4 filing rate base amount of approximately $802 million.[7]

In addition, ETNG proposes to earn a rate of return on equity ("ROE") of at least 14.65%[8], far in excess of 12% ROE benchmark used by the Commission in the Form 501-G proceedings. Furthermore, ETNG's proposes a capital structure of 65.23% equity and 34.77% debt while the nearest capital structure of any company in its proposed proxy group is only 53.78% equity and 46.22% debt.[9] Thus, the Commission should set for hearing the appropriate ROE and capital structure to be used in setting ETNG's rates.

Moreover, ETNG's filing raises a number of factual issues concerning its treatment of ADIT and excess ADIT ("EDIT") resulting from changes in the corporate income tax rate in 2018. According to ETNG's witnesses, ETNG was owned by a Master Limited Partnership ("MLP") on October 11, 2018 when it filed its FERC Form 501-G. Pursuant to Order No. 849, its owner also removed the income tax allowance and excess ADIT balance from ETNG's cost of service and filed a limited Section 4 with a 1% rate reduction effective December 1, 2018.[10] FERC initiated a Section 5 proceeding and the parties reached a settlement providing for a further 3% rate reduction effective January 1, 2019, which the Commission approved.[11] ETNG indicates that it did not have

[7] Transmittal at 2.

[8] *See* Exhibit No. ET-0040, Statement P, Moul Testimony at 4, lines 21-22.

[9] See Exhibit No. ET-0031, Statement P, Haag Testimony at 102, lines 9-13, 16-21.

[10] *See* Exhibit No. ET-0014, Statement P, Connolly Testimony ("Connolly Testimony") at 11, lines 2-13.

[11] *Id.* at 12, lines 3-5.

an income tax allowance in its rates under the limited Section 4 rates which became effective December 1, 2018 (due to the elimination of its ADIT and excess ADIT because of its MLP ownership), but that a little over two weeks later, on December 17, 2018, ETNG's parent company engaged in a transaction that resulted in ETNG becoming wholly-owned by C-Corporations. Thus, ETNG now proposes to reflect federal and state income tax allowances retroactively for ratemaking purposes, and seeks to establish an ADIT accumulation for ADIT for the period from December 18, 2018 through the end of the test period of November 30, 2020, while simultaneously proposing to establish a regulatory asset equal to such ADIT accumulation, to offset the uncollected ADIT for the same period.[12] ETNG is also proposing to recover the regulatory asset over the remaining life of its mainline transmission assets though a South Georgia adjustment.[13] ETNG has not demonstrated that its treatment of EDIT and retroactive accumulation of ADIT for ratemaking purposes is just and reasonable, and does not violate the rule against retroactive ratemaking, thus, the Commission should set this issue for hearing.

ETNG proposes changes to other tariff provisions, including: (1) revised fuel and loss retention percentages, (2) the establishment of a new fuel tracker mechanism in General Terms and Conditions ("GT&C") Section 25 to provide for annual filings to adjust the fuel and loss retention percentages and to refund or collect any over- or under-recoveries of fuel usage and lost and unaccounted for gas, (3) changes to Rate Schedules LMS-MA Market Area Load Management Service and LMS-PA Pooling Area Load Management Service to allow for annual recovery of due pipeline cash-out amounts, (4) removal of interruptible transportation ("IT") revenue crediting in Rate Schedule IT-L Interruptible Lateral Transportation Service (replaced by allocation of costs

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[12] Transmittal Letter at 7.

[13] *Id.*

to IT-L), and (4) removing language in GT&C Section 25 regarding the Transportation Cost Rate Adjustment related to Account 858 revenues and credits, which ETNG indicates is expiring.[14] These tariff proposals raise material factual issues that require investigation in the context of an evidentiary hearing in order to evaluate the justness and reasonableness of these proposals.

The filing also reflects other rate changes, including the (i) rolled-in rate treatment for four previously incrementally-priced projects, (ii) an increase in the incremental recourse rates for two projects for which ETNG is maintaining incremental rate treatment, (iii) a decrease in the incremental recourse rates for the other two projects for which ETNG is maintaining incremental rate treatment, and (iv) a decrease in the Jewell Ridge recourse rates for services under its firm and interruptible rate schedules.[15] These rate changes need to be evaluated for consistency with FERC rate design and cost allocation policies regarding rate treatment of incremental projects.

[14] Transmittal at 7-8.

[15] *See* Connolly Testimony at 20, line 22 to 21, line 6.

IV. Conclusion

For these reasons, AF&PA, PGC and IECA request that the Commission suspend the proposed rates for the maximum suspension period, subject to refund and the outcome of evidentiary proceedings.

Respectfully submitted,

/s/ Andrea J. Chambers
Andrea J. Chambers
Jonathan Wright
Covington & Burling LLP
One CityCenter
850 10th St. NW
Washington, DC 20001
Telephone: (202) 662-5170
Email: achambers@cov.com

Attorneys for PGC, AF&PA and IECA

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a copy of the foregoing document to be served upon each person designated on the Service List for this docket compiled by the Secretary in accordance with the Commission's Rules of Practice and Procedure.

Dated at Washington, DC, this 13th day of July 2020.

/s/ Andrea J. Chambers
Andrea J. Chambers