

April 13, 2009

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

Dear Ms. Bose:

Pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602, Tennessee Gas Pipeline Company ("Tennessee") hereby submits an Offer of Settlement in the above-referenced dockets. Accordingly, Tennessee respectfully requests that a copy of this filing be transmitted to Presiding Administrative Law Judge Carmen A. Cintron ("Administrative Law Judge").

Included herewith for filing is an original and fourteen (14) copies of the following documents:

- (1) Explanatory Statement Concerning Amendment to Stipulation and Agreement;
- (2) Amendment to Stipulation and Agreement (including *pro forma* tariff sheets); and
- (3) Supporting Exhibits A and B.

Copies of the above documents are being served in accordance with Rule 602(d)(1). In addition, in accordance with Rule 602(d)(2), Tennessee notifies all parties and participants in this proceeding that comments on the Offer of Settlement are due by May 4, 2009 and reply comments are due by May 14, 2009 unless otherwise ordered by provided by the Administrative Law Judge.<sup>1</sup>

If you have any questions regarding this filing, please contact the undersigned at 713-420-3496. Thank you for your assistance in this matter.

Respectfully submitted,

TENNESSEE GAS PIPELINE COMPANY

/s/ Melissa G. Freeman

Melissa G. Freeman  
Senior Counsel

Enclosures

cc: All Parties and Participants

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<sup>1</sup> Tennessee contemporaneously herewith in the above-captioned dockets submitted its Motion to Shorten Comment Period and Dispense with Answer Period on its Offer of Settlement to April 23<sup>rd</sup> and April 28<sup>th</sup> for comments and reply comments, respectively.

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

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

**EXPLANATORY STATEMENT CONCERNING  
AMENDMENT TO STIPULATION AND AGREEMENT**

Pursuant to Rule 602 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.602 (2007), Tennessee Gas Pipeline Company (“Tennessee”) hereby submits this Explanatory Statement in support of the concurrently filed Amendment to Stipulation and Agreement (“Settlement”), which is submitted to resolve the issues in this proceeding for which settlement judge procedures (“Settlement Proceedings”) were established by the Commission in its order issued on November 12, 2008.<sup>1</sup> Specifically, this Settlement 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 Settlement is supported by all of the active participants in the Settlement Proceedings, including the Commission Staff, and they urge prompt approval of the Settlement, without modification or condition, by the Commission.

**I. PROCEDURAL HISTORY**

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

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<sup>1</sup> *Tennessee Gas Pipeline Company*, 125 FERC ¶ 61,164 (2008) (“November 12<sup>th</sup> Settlement Conference Order”).

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 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.<sup>2</sup>

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.<sup>3</sup> 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 are 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

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<sup>2</sup> *Tennessee Gas Pipeline Co.*, 73 FERC ¶ 61,222 (1995); *Tennessee Gas Pipeline Co.*, 74 FERC ¶ 61,174 (1996).

<sup>3</sup> 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.

(“June 30<sup>th</sup> Order”).<sup>4</sup> The Commission conditioned its acceptance upon Tennessee meeting with its customers to discuss amending the Stipulation and reporting back to the Commission by October 1, 2008, as Tennessee proposed in its filing.

On October 1, 2008, Tennessee filed a report in compliance with the June 30<sup>th</sup> Order (“Status Report”) wherein it described the status of its discussions with customers. Three parties filed comments in response to Tennessee’s Status Report.<sup>5</sup> 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 in its November 12<sup>th</sup> Settlement Conference Order, the Commission found that Tennessee had complied with the Commission’s June 30<sup>th</sup> Order to meet with its customers, but that sufficient progress had not been made toward settlement.<sup>6</sup> 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.,

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<sup>4</sup> *Tennessee Gas Pipeline Co.*, 123 FERC ¶ 61,318 (June 30, 2008).

<sup>5</sup> 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.

<sup>6</sup> 125 FERC ¶ 61,164.

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 for Stay,<sup>7</sup> 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 26<sup>th</sup> Order”).<sup>8</sup>

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 Settlement is the product of those settlement conferences.

## **II. TERMS OF THE SETTLEMENT**

In order to resolve and settle the issues in this proceeding, the attached Settlement provides the following:<sup>9</sup>

Article I provides that the Settlement is intended to modify the underlying Stipulation only as expressly provided by the terms of the Settlement and that the Stipulation otherwise will remain in full force and effect.

Article II provides that Article IV of the Stipulation is modified to provide for interim refunds (hereinafter, “Interim Refunds”) to shippers of \$156.6 million (“Interim Refund Amount”) which reflects Tennessee’s representation of the balance in the Recoverable Cost/Revenue Account as of December 31, 2008, plus estimated carrying charges at an annual

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<sup>7</sup> 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.

<sup>8</sup> *Tennessee Gas Pipeline Company*, 125 FERC ¶ 61,232 (2008) (“November 26<sup>th</sup> Order”).

<sup>9</sup> This section is for explanatory purposes. While this section accurately describes the terms of the Settlement, if a dispute arises regarding any matter related to the interpretation of the Settlement, the terms of the Settlement shall control over this Explanatory Statement.

interest rate of 10 percent through June 30, 2009, net of \$10 million to be retained by Tennessee for the customers' share of additional Eligible Costs ("Retained Amount").

The Interim Refund Amount is to be paid in quarterly installments over a three year period amortized at an annual interest rate of 8 percent with the first of the quarterly payments to be made on July 1, 2009. The subsequent quarterly payments will be made on the first business day of each calendar quarter thereafter over a three year period. The first six quarterly installments will be fixed at \$9.60 million, and the last six quarterly installments will be fixed at \$20.06 million to maintain an annual interest rate on the balance at 8 percent throughout the three year period. To the extent the effective date of the Settlement is later than June 10, 2009, the first quarterly installment will be paid with interest no earlier than July 1, 2009 and no later than 20 days after the effective date of the Settlement. Subsequent quarterly installments will only be impacted to the extent the effective date is delayed beyond the date the installment would otherwise be due in which case a similar adjustment will be made to the amount and timing of payment.

The Interim Refund Amount is to be allocated to shippers pro rata based on surcharge collections during the PCB Adjustment Period as provided by the Stipulation and further detailed in Exhibit B to the Settlement. Tennessee will make Interim Refunds by wire transfer to the individual shippers specified on Exhibit B unless the parties agree otherwise or the wire transfer information has not been provided to Tennessee in which event, Tennessee will issue the Interim Refunds at the parties' last known mailing address.

The Settlement provides that the Interim Refund Amount and the remaining balance of the Recoverable Cost/Revenue Account shall be accounted for through the Recoverable Cost/Revenue Account. Additionally, 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 the Stipulation at any time and from time to time during the term of the Stipulation. In the event Tennessee makes Interim Refunds early, Tennessee is entitled to re-determine the Interim Refund Amount in accordance with the Settlement. In addition, Tennessee shall be entitled to make Interim Refunds earlier than otherwise required to all shippers whose allocated share of the Interim Refund Amount does not exceed \$10,000. Such early 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.

The Settlement further provides the manner in which Tennessee shall handle the incurrence or recognition of additional Eligible Costs for which the shippers' share exceeds the \$10 million which has been retained.<sup>10</sup> Specifically, such additional customer share of Eligible Costs shall first be netted against any remaining balance in the Interim Refund Amount in equal amounts over the remaining quarterly installments. To the extent the remaining balance of the Interim Refund Amount is insufficient, Tennessee shall reinstate the PCB adjustment as provided under the Stipulation.

The Settlement provides for the underlying Stipulation to be modified to reflect that effective July 1, 2009, the carrying charges under the Stipulation shall be computed by using the greater of (1) an annual interest rate of 8%; or (2) the then-applicable FERC-prescribed interest rate for pipeline refunds. The 8% annual interest rate replaces the currently existing 10% annual interest rate under the Stipulation.

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<sup>10</sup> It is Tennessee's opinion that the shippers' share of the Eligible Costs during the remaining term of the Stipulation will be adequately funded by the Retained Amount. In the unlikely event the Retained Amount is ultimately determined to be insufficient, the Settlement provides the manner in which a shortfall will be recovered.

Finally, the Settlement clarifies the language in the Stipulation to reflect that the Stipulation's term shall continue as long as (1) Tennessee is incurring Eligible Costs; or (2) cost recovery or the payment of refunds, including Interim Refunds, is incomplete.

Article III specifies the impact of the Commission's order approving the Settlement and the date upon which the Settlement becomes effective and binding. Article III also provides for the filing of the revised tariff sheets included as Exhibit A to the Settlement. Additionally, Article III of the Settlement specifies the clear and indisputable intent of the parties to enter into an Amendment to the Stipulation which is indivisible from the performance under the Stipulation and the applicable burden of proof for any changes to the Settlement during the term of the Stipulation.

### **III. SUPPORT FOR THE AMENDMENT**

The Settlement represents an across-the-board compromise among the conflicting positions of Tennessee and its customers related to the underlying Stipulation and the parties' rights and obligations thereunder. Tennessee submits that this Settlement strikes an appropriate balance among these competing interests.

### **IV. INFORMATION TO BE PROVIDED WITH SETTLEMENT AGREEMENTS**

By order issued October 23, 2003, the Chief Administrative Law Judge requires that the following five questions be answered as part of every Explanatory Statement that is submitted in support of a proposed settlement agreement. The questions, and Tennessee's responses, are as follows:

- A. What are the issues underlying the settlement and what are the major implications?**

The primary issue underlying the Settlement is Tennessee's over-collection of the Recoverable Cost/Revenue Account under the terms of the underlying Stipulation. Because Tennessee is currently incurring Eligible Costs under the Stipulation and anticipates incurring such costs for the foreseeable future, the Stipulation remains in effect. Although Tennessee reduced the PCB surcharge to \$0.00 effective July 1, 2000, and has maintained it at that level to date, the Recoverable Cost/Revenue Account has outpaced Tennessee's incurrence of Eligible Costs under the Stipulation, resulting in an over-collected balance. Accordingly, at the request of Tennessee's customers and as required by the Commission's November 12<sup>th</sup> Settlement Conference Order, Tennessee and its customers undertook negotiations which resulted in this Settlement. Tennessee submits that the Settlement addresses the concerns raised by its customers with regard to Tennessee's over-collection of the Recoverable Cost/Revenue Account.

**B. Whether any of the issues raise policy implications?**

Tennessee does not believe that the Settlement presents any policy implications for the Commission.

**C. Whether other pending cases may be affected?**

This Settlement is tailored to address the specific issues in this proceeding, and it is the product of negotiation between Tennessee and its customers who were active participants in the Settlement Proceedings. Thus, the Settlement only addresses the specific issues contemplated by its terms and does not affect any pending cases.

**D. Whether the settlement involves issues of first impression, or if there are any previous reversals on the issues involved?**

Tennessee does not believe that the Settlement raises any issues of first impression nor is Tennessee aware of any reversals on the issues involved in the Settlement.

**E. Whether the proceeding is subject to the just and reasonable standard or whether there is Mobile-Sierra language?**

As identified in the Settlement, changes to the Settlement during the Term of the Stipulation will be subject to the Mobile-Sierra “public interest” standard.

**V. CONCLUSION**

WHEREFORE, for all the foregoing reasons, Tennessee respectfully requests that the Commission accept the Settlement without condition or modification.

Respectfully submitted,

TENNESSEE GAS PIPELINE COMPANY

/s/ Melissa G. Freeman

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