

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 21, 2004

In Reply Refer To:
Maritimes & Northeast Pipeline, LLC
Docket No. RP04-476-000

Maritimes & Northeast Pipeline, LLC
890 Winter Street, Suite 300
Waltham, Massachusetts 02451

Attention: Joseph F. McHugh
Director, Rates and Regulatory Affairs

Reference: Revised Tariff Sheets

Dear Mr. McHugh:

1. On August 20, 2004, Maritimes & Northeast Pipeline, LLC (Maritimes) filed revised tariff sheets listed in the Appendix proposing to streamline and improve its customer interface and information disclosure procedures to facilitate compliance with Commission policies, including, but not limited to, the additional posting requirements for Transmission Providers as required by Order No. 2004, *et seq.*¹ One party filed a limited protest, to which Maritimes filed an answer. The details of these pleadings are discussed below. The proposed tariff sheets are accepted, subject to conditions, effective September 22, 2004 as requested.

2. Public notice of the filing was issued on August 30, 2004. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2004)). Pursuant to Rule 214, 18 C.F.R. § 385.214, all timely 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

¹ *Standards of Conduct for Transmission Providers*, Order No. 2004, 68 Fed. Reg. 69,134 (Dec. 11, 2003), FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, 107 FERC ¶ 61,032 (2003), *order on reh'g*, Order No. 2004-B, 108 FERC ¶ 61,118 (2004).

will not disrupt this proceeding or place additional burdens on existing parties. A limited protest was filed by the KeySpan Delivery Companies (KeySpan).² The details of this limited protest, and Maritimes' answer to it, are discussed below.

3. Along with certain other pipelines operated by Duke Energy Gas Transmission (Duke Energy), Maritimes proposes to incorporate substantive provisions from the currently-effective Form of Service Agreement for the LINK System into Section 2 (Electronic Communications) of the General Terms and Conditions (GT&C) of its tariff.³ Maritimes asserts that this change is necessary in order for such provisions to be applicable to those parties with a Valid Service Agreement⁴ who will no longer be required to execute a Form of Service Agreement for the LINK System (LINK System Agreement). Additionally, Maritimes proposes to modify Section 2 of its GT&C to facilitate implementation of standardized procedures related to the LINK System for all of the Duke-operated companies. The proposed changes relate to the procedures for obtaining access to the LINK System and are designed to: (1) streamline and improve those procedures by reducing the number of entities that will be required to execute a LINK System Agreement; (2) simplify Maritimes' record-keeping process by reducing the number of documents exchanged between Maritimes and any new entity requesting access to the LINK System; (3) improve LINK System security by enabling a LINK System Subscriber to control the assignment and maintenance of USERIDs and passwords for its authorized users; and (4) enhance Maritimes' ability to monitor agency relationships involving its customers and third parties performing certain functions in the LINK System on behalf of such customers. Maritimes also claims that the proposed changes represent an enhancement to Maritimes' internal control structure and procedures consistent with the requirements of the Sarbanes-Oxley Act of 2002, 18 U.S.C. 1514A.

² The KeySpan Delivery Companies include Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York; KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island; and Boston Gas Company, Colonial Gas Company, EnergyNorth Natural Gas, Inc., and Essex Gas Company

³ According to Duke Energy, the LINK System is a computer system that provides its pipelines' customers with real-time pipeline and storage information. Duke Energy states that this online customer interface allows its users to access a wide range of information, including customer activities, informational postings, and pipeline capacities.

⁴ Maritimes states that as defined in Section 2.1(a) of its GT&C, a Valid Service Agreement includes a currently effective service agreement pursuant to any of Maritimes' rate schedules and/or a capacity release umbrella agreement.

4. KeySpan asserts that Maritimes' proposed liability and indemnification provisions (Sections 2.4(c) and 2.7(b), respectively) unreasonably assign liability to users of Maritimes' LINK system even in situations where the unauthorized use would arise from Maritimes' acts. KeySpan contends that, based on Commission precedent,⁵ the Commission should order Maritimes to modify its tariff to provide that LINK users are not responsible or required to indemnify Maritimes for any unauthorized usage that results from Maritimes' actions or its negligence or willful misconduct. Further, based on Commission precedent,⁶ KeySpan also argues that the Commission should require Maritimes to revise its indemnification provisions to exempt LINK System users from liability for consequential, incidental, punitive or special damages, unless the liability arises from the user's gross negligence or misconduct.

5. Finally, KeySpan states that as a condition of accessing the LINK System, Maritimes is proposing to require users to execute a variety of forms, all of which are apparently subject to modification by Maritimes at any time, and none of which are included with Maritimes' filing. KeySpan states that while it does not object to providing Maritimes with reasonable information, KeySpan reserves the right to withhold irrelevant or unnecessary information that may be requested by Maritimes.

6. In its answer, Maritimes proposed revised tariff language after discussions with KeySpan. In response to their concerns, Maritimes proposes revised tariff language which specifies that Maritimes will bear liability in situations that are within Maritimes' control and where Maritimes could have exercised due diligence to prevent a consequential outcome. Maritimes also clarifies that LINK System Subscribers will be liable for the unauthorized use of the LINK System unless the "use" of the system is the result of Maritimes' negligence or willful misconduct. Lastly, Maritimes states that it understands KeySpan's interest in withholding irrelevant and unnecessary information and confirms that the information requested on the forms is administrative information required for the purpose of setting up the appropriate accounts.

⁵ Citing *Natural Gas Pipeline Co. of America*, 39 FERC ¶ 61,153 at 61,599 (1987) (Pipeline not permitted to seek indemnification for acts that are contrary to its tariff); *See also, Transcontinental Gas Pipe Line Corp.*, 65 FERC ¶ 61,354 at 62,876 (1993); *Transcontinental Gas Pipe Line Corp.*, 96 FERC ¶ 61,352 at 62,324 (2001) (Pipeline not permitted to require indemnification for damages resulting from its own negligence or willful misconduct).

⁶ Citing *Guardian Pipeline, LLC*, 101 FERC ¶ 61,107 at P 18 (2002); *ANR Pipeline Co.*, 100 FERC ¶ 61,132 at P 13 (2002).

7. As modified in Maritimes' answer, the Commission finds that the proposed tariff changes are just and reasonable. The Commission will therefore accept the proposed tariff sheets, effective September 22, 2004, subject to Maritimes filing within ten days of the date of this order, revised tariff sheets containing the revised tariff language that it proposed in its answer.

By direction of the Commission.

Magalie R. Salas
Secretary

cc: All Parties
Public File

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APPENDIX

**Maritimes & Northeast Pipeline, LLC
FERC Gas Tariff, First Revised Volume No. 1**

**Accepted Subject to Conditions
Effective September 22, 2004:**

First Revised Sheet No. 211
Second Revised Sheet No. 212
Second Revised Sheet No. 213
First Revised Sheet No. 214
Original Sheet No. 214A
Original Sheet No. 214B
Original Sheet No. 214C
Second Revised Sheet No. 480
Second Revised Sheet No. 481
Second Revised Sheet No. 482
Second Revised Sheet No. 483
Second Revised Sheet No. 484
First Revised Sheet No. 485