

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

August 30, 2006

In Reply Refer To:  
Stingray Pipeline Company, L.L.C.  
Docket No. RP06-452-000

Stingray Pipeline Company, L.L.C.  
1100 Louisiana, Suite 3300  
Houston, TX 77002

Attention: Neal A. Gerstandt  
Vice President, Regulatory Affairs

Reference: Tariff Sheets Implementing  
Interactive Internet Website Agreement

Dear Mr. Gerstandt:

1. On July 31, 2006, Stingray Pipeline Company, L.L.C. (Stingray) filed revised tariff sheets as listed on the Appendix to replace its current *pro forma* License Agreement with a *pro forma* Interactive Internet Website Agreement (Website Agreement) to its FERC Gas Tariff, Third Revised Volume No. 1. Stingray requests an effective date of August 31, 2006. As discussed below, we accept the proposed tariff sheets for filing, subject to conditions, to become effective August 31, 2006, as proposed.

2. Notice of Stingray's filing was issued on August 3, 2006. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2006). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), all timely filed motions to intervene and 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. Indicated Shippers (consisting of Chevron Natural Gas, a Division of Chevron U.S.A. Inc.) filed a protest. Stingray filed an answer to the protest. Under Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 213(a)(2) (2006), answers to protests are not accepted unless otherwise ordered by the decisional

authority. The Commission will accept Stingray's answer because it further clarifies the issues.

3. Stingray proposes to replace its current *pro forma* License Agreement with a more up-to-date and thorough Website Agreement, to be utilized by the new third-party software provider, to conform to and to provide greater consistency and ease of administration with other Enbridge Inc. pipelines. In order to update its website, Stingray proposes to make the following revisions to its Tariff: (1) revise its table of contents and section 15.3 of its General Terms and Conditions (GT&C) to reflect the proposed *pro forma* Website Agreement and (2) add the proposed *pro forma* Website Agreement to its Tariff.

4. In its protest, Indicted Shippers assert, first, that the following underscored language in proposed section 8 of the Website Agreement is inappropriate:

Transporter shall operate its Interactive Internet Website in a prudent manner. Except for the negligence, fraud, or willful misconduct of Transporter, Transporter expressly disclaims liability for loss or damage resulting from SHIPPER's actions or breach of this Agreement, events of force majeure, any defects in computer software, hardware, or programming, or any interruption in or malfunction of electronic communication or transmission. SHIPPER agrees to defend, indemnify and hold harmless Transporter, its affiliates and members and their respective officers, directors, employees and agents, from and against all claims, demands, damages, losses, costs and expenses (including court costs and reasonable attorney's fees) and liabilities of any nature whatsoever (collectively referred to herein as "Liabilities") arising out of any breach of this Agreement by SHIPPER or its authorized persons, or the use of the Interactive Internet Website or the information contained therein by SHIPPER, or its authorized persons, to the extent such Liabilities are not the direct result of the negligence, fraud, or willful misconduct of Transporter. The parties hereto agree that neither party shall be liable to the other party, or its corporate parent, subsidiaries or affiliates or members for any special, punitive, exemplary, indirect or consequential damages (including, without limitation, loss of profits or business interruptions) incurred by said party arising out of or in any manner related to this Agreement, the provision and use of the Interactive Internet Website, or the information contained therein. [Emphasis added.]

Indicated Shippers argue that the above proposed underscored language will shield Stingray from special, punitive, exemplary, indirect or consequential damages (referred to collectively as indirect damages) caused by Stingray's gross negligence.

Indicated Shippers point out that the Commission has stated that it “has allowed pipelines to limit their liability for simple negligence to direct damages, so that they are only liable for indirect, consequential, incidental or punitive damages where there is gross negligence, willful misconduct or bad faith.”<sup>1</sup> Hence, Indicated Shippers assert that, if a pipeline acts in a grossly negligent manner, the pipeline cannot utilize its tariff to shield the pipeline from indirect damages.

5. Indicated Shippers also raise the same issue with section 10.5(b) of the existing Operational Flow Order (OFO) provisions of Stingray’s Tariff that Stingray does not propose to change in this proceeding. Specifically, Indicated Shippers are concerned that the existing OFO exculpatory provision immunizes Stingray from liability unless the service interruption is caused by “gross negligence, or undue discrimination or intentional or willful misconduct” by Stingray. Indicated Shippers assert that the Commission should require Stingray to eliminate the gross negligence standard in the OFO provision and adopt the simple negligence standard which Stingray proposes to adopt in section 8 above of the proposed Website Agreement and which Stingray already incorporates elsewhere in its Tariff in section 19.3 of the GT&C.<sup>2</sup> Indicated Shippers assert that, when reviewing a pipeline’s proposal to revise the service conditions of its tariff, the Commission will consider whether related existing provisions of the tariff comply with Commission policy.<sup>3</sup> Further, with respect to existing section 19.3 of the GT&C, Indicated Shippers assert that the Commission should require Stingray to delete the phrase “including lost gas supply” from that section which currently provides, in pertinent part: “Stingray shall not be liable to any person for the manner in which [Stingray] operates its System or any other adverse consequences . . . except to the extent that such adverse consequences, including lost gas supply, are attributable to Stingray’s negligence or misfeasance.”

6. Indicated Shippers next request that the Commission clarify that the scope of Stingray’s liability for “direct damages” a shipper incurs in responding to a service disruption by Stingray “encompasses the extra expenses and financial harm incurred by a shipper as a direct result of responding to the curtailment,” including the “extra gas and transportation expenses that a shipper incurs due to curtailment.”

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<sup>1</sup> Citing *Gulf States Transmission Corp.*, 114 FERC ¶ 61,006, at P5 (2006); *Entegra Gas Pipeline Inc.*, 114 FERC ¶ 61,326, at P14, 17 (2006); *Empire State Pipeline*, 116 FERC ¶ 61,074, at P171 (2006).

<sup>2</sup> Citing FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 182.

<sup>3</sup> Citing *East Tennessee Natural Gas Co.*, 114 FERC ¶ 61,153, at P13 (2006).

7. Finally, Indicated Shippers protest section 12 of the proposed Website Agreement that would allow Stingray to modify or terminate the Interactive Internet Website at any time as long as such modification or termination is not prohibited by the Commission's regulations. Indicated Shippers are concerned that Stingray is adopting language in section 12 of the Agreement to allow Stingray to degrade or even terminate its Website without any reason and without first obtaining Commission authorization and requests that the Commission reject such language. Indicated Shippers states that Stingray's tariff requires that the Website provide many vital functions, such as the timely disclosure of information, and that the elimination of these interactive features "would impose big burdens on shippers."

8. In its answer, Stingray responds to Indicated Shippers' protest to the language of section 8 of the Website Agreement which Indicated Shippers claim unjustly shields Stingray from indirect damages. Stingray explains that such language is customary in the context of commercial agreements and that the language is substantively similar in form and content to other "electronic bulletin board" *pro forma* agreements approved by the Commission. Stingray cites two letter orders issued by delegated authority as evidence of similar Commission-approved website agreement liability provisions.<sup>4</sup>

9. Stingray also asserts in its answer that Indicated Shippers have totally mischaracterized proposed section 12 of the Website Agreement. Stingray asserts that this clause prohibits a degradation or termination of the Website Agreement when prohibited by the Commission's regulations, whether or not unilateral.

10. Stingray also argues that the other issues raised by Indicated Shippers are outside the scope of this proceeding and that the requests associated with such issues are also procedurally improper.

11. The Commission finds that, with the exceptions discussed below, Stingray's proposed *pro forma* Website Agreement is just and reasonable and consistent with Commission policy and regulations.

12. First, regarding the protested language of section 8 of the proposed Website Agreement, the Commission agrees with Indicated Shippers that Commission policy as evidenced in the cited cases, *supra* note 1, requires that the pipeline be liable for indirect damages for the pipeline's gross negligence, willful misconduct, or bad faith.

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<sup>4</sup> Citing *Trunkline Gas Company, LLC*, Docket No. RP04-33-3-000 (July 16, 2004) (unpublished letter order); *Panhandle Eastern Pipe Line Company, LLC*, Docket No. RP04-321-000 (June 18, 2004) (unpublished letter order).

Orders issued through delegated authority, like the orders Stingray cites in its answer, cannot be cited as precedent and, in any event, the cited orders did not address the subject issues and merely accepted tariff sheets for filing purposes. Accordingly, acceptance of the instant Website Agreement is subject to Stingray filing to revise section 8 to incorporate that liability standard within 15 days of this order.

13. At this time, however, we will not direct Stingray to revise section 10.5(b) as Indicated Shippers' request. While a revision to section 10.5(b) would appear to be consistent with our ruling regarding section 8 of the proposed Website Agreement, we wish to provide Stingray with a further opportunity to address this issue. We direct Stingray to file within 15 days of this order either to explain why section 10.5(b) should not be revised as requested, or to revise section 10.5(b) to provide for liability for indirect damages for the pipeline's gross negligence, willful misconduct, or bad faith, as directed above with respect to section 8 of the proposed *pro forma* Website Agreement.

14. We reject Indicated Shippers' request to require a modification of section 19.3 of the GT&C as beyond the scope of the issues raised by the instant filing.

15. We also reject Indicated Shippers' request that the Commission clarify the scope of direct damages. The Commission has expressed the view that the distinction between direct and indirect damages is for the courts to resolve<sup>5</sup> and recently declined to limit the scope of direct damages.<sup>6</sup>

16. Finally, regarding section 12 of the proposed Website Agreement, while we agree with Stingray that the language of the proposal would not permit it to unilaterally terminate its website, as that would violate Commission regulation section 284.13, 18 C.F.R. § 284.13 (2006), we find that the language should be clarified and revised to include reference to its tariff. Accordingly, Stingray is directed to refile within 15 days of this order to revise section 12 as provided in the following underscored language to state that modification or termination of its website are authorized so long as they are “not prohibited by or inconsistent with the regulations of the Federal Energy Regulatory Commission or Transporter's FERC gas tariff. Any such modification or termination of its website is to be filed with and is subject to review by the Federal Energy Regulatory Commission.”

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<sup>5</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 110 FERC ¶ 61,164, at P 35 (2005).

<sup>6</sup> *Entegra Gas Pipeline Inc.*, 114 FERC ¶ 61,326, at P65 (2006).

17. Accordingly, the Commission will accept the proposed tariff sheets and permit them to take effect on August 31, 2006, subject to the conditions of this order, and subject to further Commission action.

By direction of the Commission.

Magalie R. Salas,  
Secretary.

**Stingray Pipeline Company, L.L.C.  
Third Revised Volume No. 1**

Tariff Sheets Conditionally Accepted  
Effective August 31, 2006

Tenth Revised Sheet No. 2  
Fifth Revised Sheet No. 143  
Second Revised Sheet No. 306  
First Revised Sheet No. 307  
First Revised Sheet No. 308  
Fourth Revised Sheet No. 309  
First Revised Sheet No. 310  
Second Revised Sheet No. 311  
Second Revised Sheet No. 312  
Original Sheet No. 312A