

135 FERC ¶ 61, 099
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Stingray Pipeline Company, L.L.C.

Docket No. RP11-1957-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS
SUBJECT TO REFUND AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued April 29, 2011)

1. On March 31, 2011, Stingray Pipeline Company, L.L.C. (Stingray) filed tariff records¹ pursuant to section 4 of the Natural Gas Act (NGA) to increase its maximum tariff rates, propose a transportation quantity adjustment mechanism, and to eliminate the current rate cap on its existing event surcharge mechanism. Stingray proposes a May 1, 2011 effective date. For the reasons discussed below, the Commission accepts the proposed tariff records listed in the Appendix and suspends them to be effective October 1, 2011, subject to refund and the outcome of hearing and settlement judge procedures established herein.

Background

2. Stingray operates a 36-inch diameter, dual-phase pipeline that stretches approximately 100 miles from its origination at the compressor complex on its West Cameron Block 509 platform to the terminus onshore Louisiana, where it interconnects with three interstate pipelines, and one intrastate pipeline. Stingray's system also consists of offshore laterals that gather unprocessed gas produced from High Island, West Cameron, East Cameron, Vermilion and Garden Banks blocks in the Gulf of Mexico. Stingray offers two firm transportation services pursuant to Rate Schedules FTS and FTS-2, interruptible transportation, as well as, park and loan service. Presently, all of the services provided by Stingray have either been commodity-rate only firm service under

¹ See Appendix.

Rate Schedule FTS-2 or interruptible service under its interruptible transportation Rate Schedule IT. Stingray's current rates were established through a settlement approved in Docket No. RP08-436-000.²

Details of the Filing

3. Stingray proposes to increase its maximum recourse Rate Schedule FTS reservation rate from \$4.4895 per dekatherm (Dth) of maximum daily quantity per month to \$25.68 per Dth of maximum daily quantity per month, and to increase its maximum recourse Rate Schedule FTS-2, Rate Schedule ITS, Rate Schedule PAL, and all applicable overrun rates from \$0.15 per Dth transported to \$0.8447 per Dth transported.

4. Stingray argues that the proposed rate increases are necessary due to significant and continuing declines in throughput of over 30 percent since the beginning of 2010, significant increases in costs, the need to recover large negative salvage costs, and recognition of a more realistic remaining useful life for Stingray in light of existing circumstances.

5. Stingray bases its rates on a total adjusted cost of service of \$38,069,371.³ Stingray states that its cost of service includes \$24,411,176 of operating and maintenance expenses, \$5,185,221 of depreciation expenses, \$5,648,764 of negative salvage expenses, a return on rate base of \$3,216,140, and federal income, state income, and other taxes of \$1,310,040, \$59,354, and \$115,000, respectively.

6. Stingray states that its proposed cost of plant includes four adjustments to its base period cost of plant: (1) an increase of \$3,822,220 to reflect additions to compression, transmission, and other plant; (2) an adjustment of \$4,514,775 to reflect the removal of broken and irreparable compression facilities; (3) the removal of \$7,797,336 from rate base associated with asset retirement costs; and (4) a reduction of \$1,209,428 to Account 107 for the transfer of work orders expected to be completed by the end of the test period from construction work in progress to gas plant in service.

² See *Stingray Pipeline Company, L.L.C.*, 127 FERC ¶ 61,308 (2009) (2009 Settlement).

³ The instant filing uses base period data taken from Stingray's books and records for the 12 months of actual experience ending January 31, 2011, as adjusted for changes that are known and measurable, and which will become effective by the end of a test period ending October 31, 2011.

7. Stingray states that its total operation and maintenance expense increased from \$18,089,055 for the base period to \$24,111,176 as adjusted. According to Stingray, major adjustments include an increase in Account 928 of \$2,500,000 to reflect the first year of the three-year amortization of \$7,500,000 for the costs of outside services associated with regulatory matters and an increase to Account 924 for \$3,808,041 associated with premiums for various new and existing insurance policies.
8. Stingray proposes a depreciation rate of 1.64 percent for its transmission plant and a rate of 1.85 percent for negative salvage. In addition, Stingray proposes to continue the use of its existing depreciation rate of 4.5 percent for intangible plant, a 20.0 percent rate for computer software, and 4.5 percent for the rest of its general plant. Stingray states that both the proposed depreciation rate for transmission plant and the rate for negative salvage are calculated using a depreciable life for Stingray of ten years. Stingray projects a net depreciable transmission plant balance at the end of the test period of \$50,072,584. Based upon a remaining life of ten years, Stingray explains that the annual depreciation expense equals \$5,007,258.
9. Stingray's negative salvage study concludes that the total negative salvage cost for the offshore pipeline assets is \$68,421,128 and the total negative salvage cost for the onshore pipeline assets is \$4,224,969, resulting in a \$72,646,097 total negative net salvage cost estimate. Stingray states that the net negative salvage cost of \$56,487,636 for the Stingray facilities was calculated by subtracting the \$16,158,461 of negative salvage already collected from shippers from the total negative salvage of \$72,646,097. Stingray explains that it used a ten-year remaining useful life, which results in a negative salvage rate of 1.85 percent applied to Stingray's total transmission depreciable plant balance.
10. Stingray calculates its proposed rates using an adjusted throughput of 87,828,033 Dth, which it states is a reduction of 46,526,704 Dth from the 134,354,737 Dth base period throughput. Several of Stingray's base period adjustments take into account what it states will be significantly lower throughput during the periods the rates approved in this proceeding will be in effect. One adjustment proposes to decrease Stingray's base period throughput by a projected 31.45 percent⁴ as a reasonable measure of the potential future decline to be experienced through the end of the test period. A second adjustment further decreases its base period throughput by 5.02 percent to adjust for the average annual amount of throughput disrupted by hurricane outages during the last ten years.

⁴ According to Stingray, 31.45 percent represents its actual decline in throughput for the period January 2010 to January 2011.

11. Stingray proposes an overall rate of return of 11.35 percent. This return is based on Stingray's proposed capital structure of 40 percent long-term debt and 60 percent common equity, and a proposed long-term debt cost of 6.91 percent and common equity of 14.31 percent. Stingray argues the proposed return on equity is consistent with the fact that Stingray has high commercial, operational and financial risks as compared to the risks of the proxy group used to calculate the cost of capital input values. Stingray determined the weighted cost of capital by selecting a proxy group of seven companies, performing a discounted cash flow analysis to estimate an appropriate rate of return on equity, calculating a hypothetical cost of debt for Stingray using the debt cost data from the proxy companies, and calculating a hypothetical capital structure for Stingray based on the capital structures data of the proxy companies.

12. Stingray also proposes to eliminate the current rate cap on its Event Surcharge mechanism (ESM). The parties to the 2009 Settlement agreed to the inclusion of the ESM in Stingray's tariff. The ESM is intended to track and recover from all of its shippers, through means of a surcharge, Stingray's capital and related operation and maintenance expenditures actually incurred as a result of hurricanes or other storms that affect its system. There is currently a \$0.02 per Dth cap on Stingray's ESM. Stingray argues that the purpose and intent of the ESM is to provide Stingray adequate cash flow to make necessary repairs for damages caused by hurricanes or other storms. Stingray asserts the \$0.02 per Dth rate cap is hindering that purpose by preventing the recovery of costs associated with Hurricanes Rita and Ike during the contemplated 36-month amortization period, and is likely to prevent collection of future eligible costs over the 36-month period. Stingray contends that removal of the rate cap will permit Stingray to collect its eligible costs associated with storm damage more quickly and provide it with some potential for revenue stability.

13. In addition, Stingray proposes to include a transportation quantity adjustment mechanism in its tariff. Stingray states that this will help to manage significant throughput changes more efficiently, while still protecting shippers in case additional quantities of gas are unexpectedly connected and delivered to the pipeline. According to Stingray, the transportation quantity adjustment mechanism annually adjusts the Stingray tariff rates if its annual throughput, converted to full rate equivalent quantities,⁵ varies up or down by more than 10 percent of the annual quantities used in this proceeding to

⁵ Stingray explains that "full rate equivalent quantities" means the conversion of any quantities transported by Stingray at a discount rate below the maximum tariff rate to a lower quantity amount that generates the same amount of revenue at the tariff rate, e.g., for 500,000 Dth of gas transported at a discount rate equal to one-half of the tariff rate, the full rate equivalent quantities will equal 250,000 Dth.

design Stingray's tariff rates. Stingray asserts that this tariff mechanism, including an annual true-up adjustment, will ensure that Stingray's tariff rates reflect the actual quantities transported by Stingray each year and, given the uncertainty of those quantities, will ensure both that Stingray is compensated for its costs if its annual throughput continues to decline, and that Stingray does not over-recover revenue if its annual throughput increases for some unexpected reason. Stingray further asserts that it will also eliminate the administrative burdens on all parties and the Commission of frequently recurring rate cases that will otherwise be necessary if Stingray is to remain economically viable.

Notice, Interventions and Protests

14. Public notice of the filing was issued on April 1, 2011. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁶ Pursuant to Rule 214,⁷ all timely filed unopposed motions to intervene and any unopposed 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 this proceeding or place additional burdens on existing parties. Protests were filed by BHP Billiton (BHPB), Hunt Oil Company (Hunt), the Indicated Shippers (Indicated Shippers)⁸, LLOG Exploration Company, L.L.C. (LLOG), and Tana Exploration Company, LLC (Tana). On April 22, 2011, Stingray filed an answer opposing the motions to intervene of the Process Gas Consumers Group (PGC) and the American Forest & Paper Association (AFPA) and a motion to answer the protests.⁹

15. Stingray opposes the motions to intervene of PGC and AFPA on the grounds that neither organization has met the standard for intervention pursuant to Rule 214, which Stingray asserts requires that a movant provide sufficient detail to show an interest that may be directly affected by the outcome of the proceeding or that the movant's participation is in the public interest. Stingray further claims that in the case of

⁶ 18 C.F.R. § 154.210 (2010).

⁷ 18 C.F.R. § 385.214 (2010).

⁸ In this proceeding, the Indicated Shippers are Anadarko Energy Services Company, Apache Corporation, and Chevron U.S.A. Inc.

⁹ Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.213 (a)(2) (2010), prohibits answers to protests or answers unless otherwise permitted by the decisional authority. We will accept the answer as it aids in the disposition of the issues raised by the protest.

membership organizations seeking to intervene in case-specific proceedings on behalf of the alleged interests of their members, the organization must identify the members in question by name and describe their interest in the proceeding.¹⁰ Stingray asserts that both PGC and AFPA have failed to meet any of these requirements and have only alleged that they have certain unspecified members who consume gas delivered through pipelines served by the Stingray system. According to Stingray, none of the cited downstream pipelines transport gas on its system and, to its knowledge, neither its transportation costs nor its terms of service impact the transportation rates or terms of service of any of those pipelines. Stingray also claims that neither PGC nor the AFPA alleged that its members acquire gas sources on Stingray, are shippers on Stingray, or otherwise are directly affected by the terms rates and conditions for transportation on Stingray's system.¹¹ Stingray concludes that both movants have failed to show an indirect interest in the instant proceeding, much less a direct interest.¹²

16. Stingray also argues that PGC and AFPA have failed to support with any factual evidence or other specifics the claim that their participation is in the public interest. Stingray claims that the motions indicate the membership organizations' only real interest is a desire to shape generic Commission policy, which it argues is not an adequate ground for intervention in a case-specific proceeding.¹³ For all these reasons,¹⁴ Stingray requests that the Commission deny the motions to intervene of PGC and AFPA. However, if the Commission grants PGC and AFPA intervention, Stingray requests the Commission to, at a minimum, require them to identify the specific members directly interested in the proceeding because these members should be subject to the discovery applicable to any party in the proceeding.

¹⁰ Stingray Answer Opposing Motions to Intervene at 3 (*citing American Electric Power Services Corporation*, 120 FERC ¶ 61,052, at P 12 (2007))(AEP).

¹¹ *Id.*

¹² *Id.* (*citing Columbia Gas Transmission Corp.*, 106 FERC ¶ 61,312, at P 2 (2004) (denying intervention)).

¹³ Stingray Answer Opposing Motions to Intervene at 3-4 (*citing Kansas-Nebraska Natural Gas Company, Inc.*, 21 FERC ¶ 61,781(1982) (holding that a petitioner seeking to intervene must demonstrate a direct interest, and not merely the desire to shape precedent)).

¹⁴ *See* Stingray Answer Opposing Motions to Intervene at 2-4.

17. On April 27, 2011, PGC and AFPA filed a joint answer to Stingray's answer (Joint Answer).¹⁵ They assert that the Commission's order clarifying *AEP*¹⁶ held that the Commission's general intervention policy had not changed, "reinforced the importance of membership organizations' participation in the adjudicatory process," and concluded that "membership organizations are free to continue to pursue their concerns as they have in the past."¹⁷ PGC and AFPA thus conclude that the Commission does not require membership organizations to identify its members by name but may continue to intervene as they have done prior to *AEP*.

18. PGC and AFPA assert that they have a clear and direct interest in this proceeding because they represent members who are consumers on downstream pipelines that interconnect with Stingray. The parties note specifically that Stingray interconnects with three interstate pipelines - ANR Pipeline Company, Natural Gas Pipeline Company of America, and Tennessee Gas Pipeline Company (collectively the Interconnecting Pipelines). They claim that those members may be directly affected by the outcome in this proceeding because the gas that flows on Stingray is subjected to Stingray's rates and terms prior to its delivery to the Interconnecting Pipelines. The parties assert that the price of gas on the Interconnecting Pipelines must necessarily be affected by Stingray's transportation costs, and thus consumers of gas on the Interconnecting Pipelines will pay more for gas sourced from Stingray as a result of Stingray's proposed rate increase.

19. PGC and AFPA also reassert that their participation in this proceeding is in the public interest because of their concern for broader policy implications that may arise in individual proceedings. PGC and AFPA further assert that their interests are not represented by any other party to this proceeding because they are the only entities representing the interests of industrial consumers.

20. Pursuant to Rule 214 of our regulations, requests to intervene by membership organizations, as with any motion to intervene, must demonstrate that the movant has an interest that may be directly affected by the outcome of the proceeding.¹⁸ In the instant proceeding, PGC and AFPA have stated in their pleadings that they represent the interest of members who are consumers on the Interconnecting Pipelines directly downstream of

¹⁵ As with Stingray's answer, we will accept PGC's and AFPA's Joint Answer because it aids in the disposition of the issues raised herein.

¹⁶ 120 FERC ¶ 61, 265 (2007) (*AEP* Clarification Order).

¹⁷ Joint Answer at 6 (*citing AEP* Clarification Order at P 12).

¹⁸ *AEP* at P 10.

Stingray's system and that those members may be affected by the outcome of this proceeding. Accordingly, the Commission finds that PGC and AFPA have shown a sufficient interest to be granted party status in this proceeding. PGC's and AFPA's motions to intervene are timely and granting those motions will neither delay the proceeding nor prejudice any party thereto. Accordingly, the motions by PGC and AFPA to intervene as parties in this proceeding are granted.

21. As to the issues raised in the protest, the parties object generally to the size of Stingray's rate increase and to the significant proposed revisions to Stingray's tariff. Hunt, LLOG, Tana, and Indicated Shippers object to various aspects of Stingray's proposal that they assert have not been shown to be just and reasonable. They contend there are many elements of Stingray's proposed rate increase that must be examined by the Commission including, but not limited to, Stingray's (a) calculation of its depreciation and negative salvage rates based upon a truncated useful life estimate of ten years; (b) proposed base and test period throughput calculations; and (c) proposed capital structure, rate of return on equity, and cost of long-term debt underlying its proposed overall rate of return.

22. In addition, BHPB, Hunt, LLOG, and Tana argue the Commission must reject Stingray's proposed elimination of the rate cap on its ESM. They believe the current rate cap, agreed upon as part of the 2009 Settlement, should not be eliminated while retaining all of the other components of the negotiated ESM. They argue the current ESM provides Stingray with the opportunity in future NGA section 4 or section 5 rate filings to include all eligible costs not reimbursed through collection of the event surcharge in its cost of service used to calculate its base rates.

23. Stingray answers that it provided detailed testimony in its filing concerning how the cap on the surcharge undermines the purpose of this mechanism.¹⁹ Stingray contends that assuring cost recovery through the Event Surcharge is critical to its decision whether and when to incur system repair costs in the event of significant damage from a severe storm event outside of its control. According to Stingray, the cap on its existing surcharge must be lifted in order to permit the mechanism to operate as intended, particularly in light of its declining throughput levels. Stingray states, given its experience with the cost recovery period necessitated by the existing mechanism's cap, which is exacerbated by Stingray's declining volumes, it is appropriate to propose this change at least for consideration at a hearing.

24. Hunt, LLOG, and Tana also request the Commission to reject the proposed transportation quantity adjustment mechanism. They argue the proposed mechanism

¹⁹ See Stingray Answer at 14.

would impose unilateral rate increases on Stingray's shippers without providing those shippers an opportunity to review and oppose such increases prior to their implementation. The protesters conclude that the proper procedural vehicle for Stingray to modify its rates based on future changes on its system is a general NGA section 4 rate filing.

25. In its answer, Stingray contends that the Commission should deny the requests to reject its proposed transportation quantity adjustment mechanism. Stingray contends that the transportation quantity adjustment mechanism strikes a fair balance that is protective of the rights of shippers and Stingray as it will give Stingray the right to file to collect the adjustments provided by the mechanism, if the filing is the result of an actual qualifying experience, and in each case the filing must be fully supported by Stingray and ultimately approved by the Commission.²⁰ Stingray also argues that the mechanism is not a tracker but rather is triggered by an unplanned event, namely a certain change in throughput either up or down, and that, as proposed, the transportation quantity adjustment mechanism cannot impact its rates prior to April 2012, which provides the parties ample time to discuss and evaluate the mechanism prior to its actual implementation.

26. Indicated Shippers request the Commission to summarily reject Stingray's proposed negative adjustments to its base period throughput and to require Stingray to submit new proposed rates reflecting actual base period throughput. Indicated Shippers contend summary rejection of Stingray's throughput adjustments is appropriate because they do not reflect "known and measurable" changes that will become effective within the adjustment period in this case, and thus violate section 154.303 of the Commission's regulations.²¹ Indicated Shippers request the Commission to direct Stingray to remove these speculative adjustments to throughput and submit new proposed rates prior to moving them into effect at the end of the suspension period.

27. Stingray responds that contrary to Indicated Shippers' position, there is no legal basis to summarily reject its throughput adjustments. Stingray specifically, asserts that because all of Stingray's shippers pay only a commodity-based rate, Stingray reasonably derived its billing determinants on a test period projection of its commodity throughput. According to Stingray, this approach reasonably recognizes the dramatic declines in

²⁰ Id. at 9-10.

²¹ *Citing* 18 C.F.R. § 154.303(a)(1) and § 154.303(a)(4) (2011), requiring that "the base period consists of 12 consecutive months of the most recently available actual experience," which may be "adjusted for changes in revenues and costs which are known and measurable with reasonable accuracy at the time of the filing and which will become effective within the adjustment period."

throughput Stingray actually experienced on its system. Stingray points to the testimony of Witnesses Petzold and Merrit that details the declines in throughput experience by Stingray, as well as the reasons why such declines were indicative of a normal test year.²²

Discussion

28. The rates and tariff changes proposed by Stingray's instant filing have not been shown to be just and reasonable. The Commission finds the instant filing raises issues requiring further investigation. Accordingly, the Commission will establish a hearing concerning whether Stingray's proposed rates and tariff changes are just and reasonable. Issues that may be explored at the hearing include, but are not limited to, the following: (1) the proposed cost of service; (2) the level of Stingray's rates, billing determinants and revenue requirement; (3) the appropriateness of the proposed 14.31 percent return on equity, capital structure and overall rate of return; (4) the negative salvage value; (5) the proposed depreciation rates; (6) the proposed removal of the ESM rate cap; and, (7) the proposed transportation quantity adjustment mechanism.

29. We deny Indicated Shippers' request to summarily reject Stingray's proposed throughput adjustments because they do not comply with applicable Commission regulations. According to the sworn testimony of Stingray's witness Stephen L. Merrit, Stingray's throughput declined approximately 31.45 percent during 2010.²³ Mr. Merritt's testimony is supported by exhibits showing actual throughput on Stingray by contract, and projects future volume reductions based on the percentage that Stingray's volumes declined in 2010. According to Mr. Merrit, the decline in throughput is due to recent changes in the Gulf of Mexico, including the fact that development of supply sources in the Gulf of Mexico has declined due to the discovery of alternative onshore shale natural gas supplies. Mr. Merrit also testifies that there is no reasonable expectation that new reserves will connect to Stingray's system to offset the anticipated throughput supplies. Accordingly, we find that Stingray has made a *prima facie* case for the level of throughput reductions that it will experience during the time period as issue in this case. Any challenges to that evidence can be addressed at the evidentiary hearing established in this order.

30. We also deny BHPB's and Hunt's request to reject the proposed elimination of the ESM rate cap. BHPB and Hunt contend that although Stingray agreed two years ago to cap the Event Surcharge at \$0.02 per Dth, Stingray now seeks to eliminate the cap because it cannot collect eligible costs from recent hurricanes quickly enough. The

²² See Stingray Answer at 7.

²³ See Exhibit No. SPC-74 at 8-9.

protesters assert that the Commission must reject Stingray's attempts to eliminate the cap because Stingray's tariff provides for the collection of unrecovered costs in later years.²⁴ According to the protesters, the settlement into which Stingray entered with its shippers in Docket No. RP08-436-000 already provides the appropriate and agreed upon mechanism with respect to any eligible costs that remain as of the filing of Stingray's next general rate case. They argue that Stingray has not shown the existence of any extraordinary circumstances that would merit eliminating the existing cap on the ESM and thereby changing the manner in which Stingray would recover future unrecovered eligible costs pursuant to Section 36.6(b).

31. The Commission finds that Stingray has raised a *prima facie* case for its argument that the cap on the Event Surcharge should be eliminated to allow Stingray to recover eligible costs in a timelier manner. Stingray Witness Bradley C. Petzold testifies that the cap has prevented Stingray from collecting all of Stingray's costs associated with Hurricanes Rita and Ike during the contemplated 36-month amortization period. Witness Petzold estimates that the cap will extend, by approximately three years, the collection of Stingray's eligible costs associated with Hurricanes Rita and Ike. Mr. Petzold also claims that the cap is likely to prevent collection of future eligible costs over the 36-month period when and if damage from another storm occurs. According to Mr. Petzold, the operation of the current \$0.02/Dth cap undermines the purpose and intent of the ESM, which is to provide Stingray the cash flow to make necessary repairs.

32. Stingray's assertions that it must eliminate the cap to timely recover eligible storm event related costs and the protesters' responses that such elimination of the cap is unsupported and unnecessary because the timing and method for such recovery is already provided for in Stingray's tariff, raise questions of fact that will best be addressed in the evidentiary hearing. Accordingly, the requests to summarily reject Stingray's proposal to eliminate the cap are denied.

33. We further deny the requests of Hunt, LLOG, and Tana to summarily reject the proposed transportation quantity adjustment mechanism. According to Stingray, the transportation quantity adjustment mechanism would annually adjust Stingray's tariff rates if its annual throughput, converted to full rate equivalent quantities,²⁵ varies up or

²⁴ See, e.g., Hunt's Protest at 4-5 (*citing* section 36.6(b) of Stingray's tariff).

²⁵ Stingray explains that "full rate equivalent quantities" means the conversion of any quantities transported by Stingray at a discount rate below the maximum tariff rate to a lower quantity amount that generates the same amount of revenue at the tariff rate, e.g., for 500,000 Dth of gas transported at a discount rate equal to one-half of the tariff rate, the full rate equivalent quantities will equal 250,000 Dth.

down by more than 10 percent of the annual quantities used in this proceeding to design Stingray's tariff rates. Stingray asserts that this tariff mechanism, including an annual true-up adjustment, will ensure that Stingray's tariff rates reflect the actual quantities transported by Stingray each year and, given the uncertainty of those quantities, will ensure both that Stingray is compensated for its costs if its annual throughput continues to decline, and that Stingray does not over-recover revenue if its annual throughput increases for some unexpected reason.

34. The proponents of summary rejection argue the proposed mechanism would impose unilateral rate increases on Stingray's shippers without providing them the right to review and oppose such increases prior to their implementation. They contend that the proper vehicle to propose such changes is through an NGA general section 4 rate filing. On the other hand, Stingray contends that the transportation quantity adjustment mechanism strikes a fair balance that is protective of the rights of shippers and Stingray because it gives Stingray the right to file to collect the adjustments provided by the mechanism, if the filing is the result of throughput rising or falling by more than 10 percent and in each case the filing must be fully supported by Stingray and ultimately approved by the Commission.

35. The Commission finds that Stingray has made a *prima facie* case that declines in throughput are to be expected on its system. Thus, while the Commission's general policy is not to permit a mechanism of this sort because a pipeline should change its general system rates in a general section 4 rate case where all rate factors will be reviewed, Stingray has made a threshold showing that it is in a unique situation that its proposal is specifically designed to address. Accordingly, while Stingray has a high burden to justify its proposed departure from Commission policy, we will not summarily reject this mechanism at this time and will set it for hearing and settlement judge procedures.²⁶

36. While the Commission sets these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before commencement of hearing procedures. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure. If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose. The settlement judge shall report to the Chief Judge and the Commission, within 30 days of the date of the settlement judge's

²⁶ See *Enbridge Offshore Pipelines (UTOS) LLC*, 133 FERC ¶ 61,106, at P 28 (2010) (denying request to summarily reject a proposal for a similar mechanism); see also *Canyon Creek Compression Co.*, 99 FERC ¶ 61,351, at P 14-16 (2002).

appointment, concerning the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

Suspension

37. Based upon review of the filing, the Commission finds that the proposed tariff records have not been shown to be just and reasonable, and may be unjust, unreasonable and unduly discriminatory or otherwise unlawful. Accordingly, the Commission will accept and suspend the effectiveness of the proposed tariff records for the period set forth below, subject to the conditions set forth in this order.

38. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards.²⁷ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.²⁸ Such circumstances do not exist here. Therefore, the Commission shall exercise its discretion to suspend the proposed tariff records listed in the Appendix, to be effective October 1, 2011, subject to refund and the outcome of the hearing established herein.²⁹

The Commission orders:

(A) The tariff records listed in the Appendix are accepted and suspended, to be effective October 1, 2011, upon motion by Stingray, subject to refund and the outcome of the hearing established herein.

(B) The timely motions of PGC and AFPA to intervene as parties to this proceeding are granted.

²⁷ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

²⁸ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

²⁹ Stingray is on notice that it will be at risk for any lost revenues due to a reduction in rates pursuant to its proposed transportation quantity adjustment mechanism.

(C) Pursuant to the Commission's authority under the Natural Gas Act, particularly sections 4, 5, 8, and 15, and the Commission's rules and regulations, a public hearing is to be held in Docket No. RP11-1957-000 concerning Stingray's filing. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in the ordering paragraphs below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(E) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Stingray Pipeline Company, L.L.C.

*Tariff Records Accepted and Suspended
to be Effective October 1, 2011, Subject to Refund*

FERC NGA Gas Tariff
Fourth Revised Volume No. 1

Sheet No. 2, Table of Contents, 1.0.0

Sheet No. 5, Currently Effective Rates, 1.0.0

Sheet No. 212, 36. Limited Section 4 Event Surcharge, 1.0.0

Sheet No. 215, 38. Transportation Quantity Adjustment Mechanism, 0.0.0

Sheet No. 216, 38. Transportation Quantity Adjustment Mechanism, 0.0.0