

141 FERC ¶ 61,171
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Pine Needle LNG Company, LLC

Docket No. RP13-234-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS
SUBJECT TO REFUND AND CONDITION

(Issued November 29, 2012)

1. On October 31, 2012, Pine Needle LNG Company, LLC (Pine Needle) filed revised tariff records¹ pursuant to section 4 of the Natural Gas Act (NGA)² and to its September 9, 2010 Stipulation and Agreement (Settlement) filed in Docket No. RP10-1284-000. Pine Needle proposes to increase its transportation rates to recover costs associated with capital investments required to alleviate gas quality issues. In addition, Pine Needle proposes to revise the gas quality provision of its General Terms and Conditions of its FERC Gas Tariff with respect to the carbon dioxide limit. The Commission accepts and suspends the proposed transportation rates, subject to refund and conditions, effective December 1, 2012. The Commission accepts the proposed change in gas quality, effective December 1, 2012.

Background

2. On September 9, 2010, Pine Needle filed a Settlement in lieu of its obligation under the settlement of its prior general section 4 rate case, as amended, to file a new section 4 rate case on or before October 31, 2010. On March 30, 2011, the Commission accepted Pine Needle's Settlement.³ Subpart F of the Settlement states:

¹ Pine Needle LNG Company, LLC, FERC NGA Gas Tariff, First Revised Volume No. 1, [Section 1.1, Rate Schedule LNG-1 Rates, 4.0.0](#); [Section 2.1, Rate Schedule LNG-2 Rates, 4.0.0](#); and [Section 3, Quality, 2.0.0](#).

² 15 U.S.C § 717(c) (2006).

³ *Pine Needle LNG Co., LLC*, 134 FERC ¶ 61,253 (2011).

Pine Needle shall have the right to make a limited NGA Section 4 rate filing to seek to recover in its rates all costs associated with capital investment required to alleviate gas quality issues, including but not limited to the purchase of a larger capacity molecular sieve. The limited NGA Section 4 rate filing shall be made effective coincidental with the in-service date of the facilities required to alleviate gas quality issues. If Pine Needle elects to make such a filing, Pine Needle shall reflect in that filing updated balances for gas plant in service and accumulated reserve for depreciation as of the in-service date of the project. The updated balances for gas plant in service and accumulated reserve for depreciation and their associated impact on depreciation expense and pretax return will be the only adjustments to the Settlement Cost of Service allowed in such limited Section 4 rate filing.

3. Subpart G of the Settlement provides that as part of the limited NGA section 4 rate filing, Pine Needle shall revise section 3(c)(vi) of the General Terms and Conditions of its tariff to “change the current carbon dioxide limit of one and one-tenths (1.1) mole percent to two (2.0) mole percent.”

Summary of the Instant Filing

4. Pine Needle filed revised tariff records to recover the costs of the capital investments required to alleviate gas quality issues, including but not limited to, the purchase and installation of a larger capacity molecular sieve. In addition, Pine Needle filed revised tariff records to change the carbon dioxide limit from 1.1 mole percent to 2.0 mole percent. Pine Needle also submitted two pages of workpapers to support its estimated revised plant balance, accumulated depreciation reserve, depreciation expense and pretax return as of December 1, 2012, the in-service date of the molecular sieve.

Notice, Comments and Answer

5. Public notice of the filing was issued on November 1, 2012. Interventions and protests were due as provided in section 154.210 of the Commission’s regulations (18 C.F.R. § 154.210 (2012)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2012)), all timely filed motions to intervene and any unopposed motion 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. On November 13, 2012, North Carolina Utilities Commission (NCUC) submitted a timely notice of intervention, motion to reject, or in the alternative, a protest. On November 20, 2012, Pine Needle filed an answer. The Commission’s Rules of Practice and Procedure do not permit answers to protests unless otherwise ordered by the decisional authority. 18 C.F.R. § 385.213(a)(2) (2012). However, the Commission finds good cause exists and will accept Pine Needle’s answer because it will not delay the proceeding, may assist the Commission in understanding the issues raised, and will

ensure a complete record.

6. NCUC states that although the September 9, 2010 Settlement gives Pine Needle the right to seek to recover the costs, Pine Needle still has the obligation to support any change in rates, terms and conditions of service with substantial evidence.⁴ NCUC notes that the only support for the filing provided by Pine Needle is a two page appendix setting out the cost of service impacts. NCUC argues that Pine Needle does not explain: (1) what gas quality issues it was facing; (2) what equipment was installed to alleviate those issues; or (3) whether the new equipment is the least cost or best method to address the issues. NCUC argues that the lack of any evidence as to the gas quality issues that led to the installation of the new facilities, the actions taken to address those issues, or a description of the molecular sieve which resulted in the increased rates, requires the Commission to reject the filing without prejudice.⁵ In the alternative, NCUC protests the filing on the grounds that Pine Needle has not met its evidentiary burden to demonstrate that the rates it proposes are just and reasonable. In this respect, NCUC argues that the lack of any evidence as to any gas quality issues or to the actions taken to address those gas quality issues compels a finding that Pine Needle has failed to meet its burden of proof.

7. In its answer, Pine Needle states that NCUC's motion and alternative protest are without merit and should be dismissed. Pine Needle argues that its limited section 4 rate filing is consistent with the terms of the Settlement. In addition, Pine Needle explains that during the negotiation of the Settlement, it responded to extensive discovery requests from NCUC and its customers. Finally, Pine Needle argues that the motion is inconsistent with NCUC's commitment not to oppose the Settlement.

Discussion

Carbon Dioxide Limit

8. As noted above, Pine Needle proposed to change the carbon dioxide limit from 1.1 mole percent to 2.0 mole percent. Pine Needle's proposed change is consistent with the

⁴ NCUC cites 18 C.F.R. § 154.301(c) (2012) ("A natural gas company filing for a change in rates or charges must be prepared to go forward at a hearing and sustain, solely on the material submitted with its filing, the burden of proving that the proposed changes are just and reasonable."). NCUC Filing at 3.

⁵ NCUC cites *United Gas Pipe Line Co. v. FERC*, 707 F.2d 1507, 1511-12 (D.C. Cir. 1983) (agency may reject a filing "that patently is either deficient in form or a substantive nullity") (quoting *Municipal Light Bds. v. FERC*, 450 F.2d 1341, 1345 (D.C. Cir. 1971)). NCUC Filing at 4.

terms of the September 9, 2010 Settlement and has not been protested. Accordingly, the Commission accepts the revised tariff records proposing a change in gas quality, effective December 1, 2012.

Transportation Costs Related to Gas Quality Issues

9. As noted above, Pine Needle also filed revised tariff records to increase its transportation rates to recover the costs of the capital investments required to alleviate gas quality issues, including but not limited to, the purchase and installation of a larger capacity molecular sieve. The Commission finds that the Settlement permits Pine Needle to recover the costs of equipment needed to alleviate its gas quality issues. Therefore, to the extent that NCUC is arguing that the equipment was unneeded and should not have been installed, the Commission rejects NCUC's argument. However, the Commission concurs with NCUC that Pine Needle has not fully supported its filing in this proceeding with respect to the increase in its transportation rates. Although Pine Needle may have provided information to support the costs of this equipment during the negotiations which resulted in the September 9, 2010 Settlement, such support was not included in Pine Needle's Filing in this proceeding. Therefore, the Commission directs Pine Needle to make a compliance filing to fully support its proposed rate increases, with all workpapers and explanations, within 30 days of the date of this order.

10. Based upon a review of the filing, the Commission finds that Pine Needle's proposed tariff records, as to the transportation rate increase related capital investments to alleviate gas quality issues, have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission accepts and suspends the proposed tariff records, subject to refund and conditions, effective December 1, 2012. The Commission accepts and suspends the proposed transportation rates, subject to refund and conditions, effective December 1, 2012.

11. 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 that it may be inconsistent with other statutory standards. *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension). 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. *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (minimum suspension). The Commission finds that such circumstances exist here where Pine Needle is filing pursuant to the provisions of the September 9, 2010 Settlement.

The Commission orders:

(A) Pine Needle's FERC NGA Gas Tariff, First Revised Volume No. 1, Section 3, Quality, 2.0.0 is accepted for filing, effective December 1, 2012, as more fully discussed above.

(B) Pine Needle's FERC NGA Gas Tariff, First Revised Volume No. 1, Section 1.1, Rate Schedule LNG-1 Rates, 4.0.0 and Section 2.1, Rate Schedule LNG-2 Rates, 4.0.0 are accepted and suspended, subject to refund effective December 1, 2012, as more fully discussed above.

(C) Pine Needle is directed to make a compliance filing to fully support its proposed rate increases, with workpapers and explanations, within 30 days of the date of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.