

144 FERC ¶ 61,064
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 26, 2013

In Reply Refer To:
Natural Gas Pipeline Company of America LLC
Docket No. RP13-1000-000

Natural Gas Pipeline Company of America LLC
3250 Lacey Road, Suite 700
Downers Grove, IL 60515-7918

Attention: Kevin L. Palmer
Manager, Regulatory

Dear Mr. Palmer:

1. On June 26, 2013, Natural Gas Pipeline Company of America LLC (Natural) filed a new non-conforming discount Rate Schedule FTS agreement (Contract No. 141783) with Green Valley Chemical Corporation (Green Valley) and tariff records¹ to reflect that agreement. Natural requests waiver of the Commission's regulations to permit the proposed tariff records to become effective July 1, 2013. The Commission grants waiver of the thirty-day notice period and accepts the non-conforming agreement and revised tariff records referenced in the footnote no. 1 to be effective July 1, 2013, subject to conditions.

2. Natural states that the purpose of this filing is to (1) include the new non-conforming Agreement with Green Valley in Natural's tariff in Original Volume No. 1-A, Part 3.1 as a tariff record; (2) revise Natural's list of Non-Conforming Agreements at Part 6.50 to add the new non-conforming Agreement and remove the expiring negotiated rate agreement; and (3) remove the expiring agreement from Natural's tariff reference of negotiated rate transactions at Part 4.90.

¹ Natural Gas Pipeline Company of America LLC, FERC NGA Gas Tariff, FERC Gas Tariff, [Part 4.90, Statement of Negotiated Rate Transactions - Green Valley, 1.0.0, Part 6.50, General Terms and Conditions - Sections 50, 50.1 thru 50.10, 10.0.0, and Part 3.1, Contract No. 141783, 2.0.0.](#)

3. Natural states that in accordance with section 154.112(b) of the Commission's regulations, Natural is filing the Agreement with the Commission because the Agreement contains provisions that differ from the *pro forma* service agreement in Natural's Tariff. Such provisions, which address the shipper's right to suspend or terminate service under specified circumstances, were incorporated into the Agreement at Green Valley's request and are identical to those included in Green Valley's expiring FTS Agreement previously approved by the Commission.

4. Natural states that the Agreement (Exhibit D) contains the following specific provisions that are not in the *pro forma* service agreement, as set forth in Article 1.10, Plant Shutdown. Subsection (A) addresses shipper's right to terminate the Agreement in the event of a permanent shutdown of the Green Valley Plant in Union City, Iowa. Subsection (B) sets forth the provisions applicable in the event of a temporary plant shutdown, including shipper's right to elect rate relief from applicable reservation charges under the Agreement as provided therein. Article 1.10 (C), Alternate Delivery Point Change Option, addresses shipper's right to change its primary delivery point under the Agreement, if the provisions in Article 1.10 (A) and Article 1.10 (B) are not approved for any reason.

5. Natural states that it included these provisions in the Agreement at Green Valley's request, subject to any applicable FERC filing and approval requirements. Green Valley manufactures anhydrous ammonia for the fertilizer industry at its facility in Creston, Iowa. Natural states low product prices and volatile natural gas prices have posed problems for Green Valley, a relatively small end-user, for many years. Natural has worked with Green Valley to meet its natural gas feedstock needs and the plant shutdown provision was tailored to meet Green Valley's specific and unique concerns.

6. Natural asserts that while these provisions contained in the Agreement may deviate from the applicable *pro forma* service agreement in Natural's tariff, the provisions should be accepted as permissible deviations, as they do not present a substantial risk of discrimination, given that such provisions are unique to Green Valley.

7. Natural also points out that the Commission has previously accepted, in previous contracts between Natural and Green Valley, these same provisions, involving termination rights due to plant shutdowns, as permissible deviations.² The instant filing thus represents a continuation of these previously accepted provisions in the new Agreement between the parties. Therefore, Natural maintains these provisions should be accepted as permissible deviations under section 154.112(b) of the Commission's

² *Natural Gas Pipeline Co. of America LLC*, Docket No. RP10-909-000 (July 26, 2010) (delegated letter order); *Natural Gas Pipeline Co. of America LLC*, Docket No. RP07-467-000 (June 29, 2007) (delegated letter order).

regulations, and the tariff records made effective July 1, 2013, consistent with the effective date of the Agreement.

8. Public notice of the filing was issued on June 27, 2013. 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 motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late interventions at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

9. If a pipeline and a shipper enter into a contract that materially deviates from the pipeline's form of service agreement, the Commission's regulations require the pipeline to file the contract containing the material deviations with the Commission.³ In *Columbia*, the Commission clarified that a material deviation is any provision in a service agreement that: (a) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (b) affects the substantive rights of the parties.⁴ The Commission prohibits negotiated terms and conditions of service that result in a shipper receiving a different quality of service than that offered other shippers under the pipeline's generally applicable tariff or that affect the quality of service received by others.⁵ However, not all material deviations are impermissible. As the Commission explained in *Columbia*,⁶ provisions that materially deviate from the corresponding *pro forma* agreement fall into two general categories: (a) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (b) provisions the Commission can permit without a substantial risk of undue discrimination.⁷

10. The Commission has held that provisions in service agreements that permit a shipper to terminate the contract early are valuable rights, which present too much potential for undue discrimination unless they are offered in the pipeline's tariff pursuant to generally applicable conditions.⁸ Accordingly, the non-conforming provisions

³ 18 C.F.R. § 154.1(d) (2012); 18 C.F.R. § 154.112(b) (2012).

⁴ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001) (*Columbia*).

⁵ *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113, at P 28 (2010).

⁶ *Columbia*, 97 FERC at 62,003-04.

⁷ *Equitrans, L.P.*, 130 FERC ¶ 61,024, at P 5 (2010).

⁸ *Steckman Ridge, LP*, 131 FERC ¶ 61,026 (2010).

addressing the shipper's rights to suspend or terminate service in the event of a permanent or temporary plant shutdown (Article 1.10(A) and (B)) present a substantial risk of undue discrimination among shippers and therefore constitute an impermissible material deviation from Natural's form of service agreement. Therefore, the Commission accepts the contract and the associated tariff records, subject to Natural, within 30 days of the issuance of this order, either eliminating the provisions of the contract that offer Green Valley termination rights due to a plant shut down or revising its tariff to offer such a provision to similarly situated shippers.

By direction of the Commission.

Kimberly D. Bose,
Secretary.