168 FERC ¶ 61,070
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur and Richard Glick.

Viking Gas Transmission Company | Docket Nos. RP19-386-000 RP19-1340-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORD SUBJECT TO REFUND, ACCEPTING TARIFF RECORD, ESTABLISHING HEARING PROCEDURES, AND TERMINATING FERC FORM NO. 501-G PROCEEDING

(Issued July 31, 2019)

1. On June 28, 2019, Viking Gas Transmission Company (Viking) filed, in Docket No. RP19-1340-000, a Natural Gas Act (NGA) section 4 rate case (2019 Rate Case) to fulfill its obligations under the pre-packaged settlement resolving its prior rate proceeding (2014 Settlement).[1] To implement its proposed rate and tariff changes, Viking filed tariff records to be effective August 1, 2019.[2] As discussed below, the Commission accepts and suspends for five months the rate increases reflected in Viking's 2019 Rate Case, subject to refund and the outcome of a hearing, and accepts a tariff record implementing a minor administrative update. The Commission also terminates Viking's FERC Form No. 501-G proceeding in Docket No. RP19-386-000.

I. **Background**

2. Viking states that it provides transportation services from an interconnection with TransCanada Pipeline Company at the Canadian border near Emerson, Manitoba, to an end-point in central Wisconsin, where it interconnects with ANR Pipeline Company. Viking states that it is currently a bidirectional system that was originally designed to

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[1] *See Viking Gas Transmission Co.*, 149 FERC ¶ 61,003 (2014) (Settlement Order).

[2] Viking Gas Transmission Company, FERC NGA Gas Tariff, Viking - FERC Gas Tariff, Tariff, Volume No. 1, 7.0.0 and Part 5.0, Statement of Rates, 34.0.0.

bring western Canadian supplies to upper Midwest markets in North Dakota, Minnesota, Wisconsin, and indirectly, Michigan.[3]

3. On October 1, 2014, the Commission approved a pre-packaged settlement agreement in Docket No. RP14-1185-000, i.e., the 2014 Settlement, which resolved all issues in Viking's prior NGA section 4 rate case and established its currently effective rates.[4] Viking states that the instant filing fulfills a requirement set forth in Article III of the 2014 Settlement requiring Viking to submit new rates to take effect, assuming a five-month suspension period in the instance of a proposed rate increase, no later than January 1, 2020.[5]

4. Order No. 849 required interstate natural gas pipeline companies to file a FERC Form No. 501-G containing an abbreviated cost and revenue study primarily using data in the pipelines' 2017 FERC Form Nos. 2 and 2-A.[6] On December 6, 2018, Viking filed its FERC Form No. 501-G in Docket No. RP19-386-000 and elected Option 3 (statement explaining why no rate adjustment is needed) because the 2014 Settlement required Viking to file a general NGA section 4 rate case with rates to become effective no later than January 1, 2020. Viking's FERC Form No. 501-G indicated that it is a separate income taxpaying entity. Therefore, its FERC Form No. 501-G included a reduced tax allowance reflecting the reduced federal corporate income tax rate mandated by the Tax Cuts and Jobs Act of 2017 (TCJA).[7] Viking's FERC Form No. 501-G showed a Total Estimated Return on Equity (ROE) of 36.0 percent after adjusting for the income tax

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[3] Ex. VGT-0006 at 2-3.

[4] Viking states that its Commission-approved rates, including its currently effective rates, have, since at least as far back as 2002, been established on a "black box" basis, i.e., there is no stipulated cost of service, rate base, or billing determinants identified. Viking notes that the prior rate components submitted here were presented and attested to in Viking's last general NGA section 4 rate case in Docket No. RP14-1214-000, which was subsequently withdrawn, but served as the basis for the approval of Viking's pre-packaged settlement in Docket No. RP14-1185-000. Transmittal at 4.

[5] *Id.* at 1 & n.3 (citing Settlement Order, 149 FERC ¶ 61,003).

[6] *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, Order No. 849, 83 Fed. Reg. 36,672 (July 30, 2018), 164 FERC ¶ 61,031 (2018), *reh'g denied*, Order No. 849-A, 167 FERC ¶ 61,051 (2019).

[7] An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (2017).

reduction.[8] Viking's FERC Form No. 501-G showed an indicated cost-of-service reduction of 4.2 percent. Viking's FERC Form No. 501-G filing was protested, with protestors citing concerns about Viking's ROE and excess accumulated deferred income taxes (ADIT).

II. Proposal

5. In the instant NGA section 4 filing, Viking proposes a general rate increase applicable to its jurisdictional transportation services in order to avoid a revenue deficiency in light of Viking's current and projected cost of operations. Viking states that the proposed rate increase reflects increases in its cost of service and overall billing determinants, for the twelve months ending February 28, 2019, adjusted for known and measurable changes that will become effective prior to November 30, 2019, the end of the test period.[9]

6. Viking proposes rates designed upon a total annual cost of service of $37,497,329 and a total rate base of $71,955,739, which includes new plant that Viking expects to be added and in service by the end of the test period.[10] Viking states that the cost of service reflects an ROE of 15.24 percent[11] and a capital structure of 60.51 percent debt and 39.49 percent equity (which includes 0.12 percent of preferred stock).[12] Viking states that its overall rate of return of 9.22 percent is based upon the capital structure of Viking's debt-issuing parent company, ONEOK, Inc. (ONEOK).[13] Furthermore, Viking proposes changes to its annual depreciation and negative salvage rates originally approved by the Commission in the settlement of Viking's general NGA section 4 proceeding in Docket No. RP02-132-002, and retained in the Commission-approved pre-packaged 2014 Settlement in Docket No. RP14-1185-000.[14] Here, Viking proposes a

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[8] Total Estimated ROE is the ROE as calculated in Viking's FERC Form No. 501-G on page 3, line 26.

[9] Transmittal at 2.

[10] Ex. VGT-0001 at 6.

[11] Viking states that it developed the 15.24 percent ROE from a proxy group of seven companies using the discounted cash flow methodology. *See* Ex. VGT-0009 at 6.

[12] Ex. VGT-0019 at 1.

[13] Ex. VGT-0003 at 7.

[14] Transmittal at 4.

depreciation rate for transmission plant of 2.39 percent[15] and an additional annual accrual rate for negative salvage of 1.10 percent.[16]

7. Viking's filing also reflects the continued use of its current zonal rate design and existing Term Differentiated Rate (TDR) structure. Viking's TDR structure divides Viking's contract portfolio for each zone into three categories with differing rates based on contract length: Category 1 (one day to less than three years); Category 2 (three years to less than five years); and Category 3 (five or more years).[17] During the test period, Viking projects an increase in annual reservation billing determinants of 154,585 dekatherms (Dth), for a total of 6,960,521 Dth (total includes interruptible transportation reservation billing determinants and a small discount adjustment), and a decrease in annual commodity billing determinants of 6,170,663 Dth, for a total of 119,491,090 Dth.[18]

8. Finally, Viking proposes a minor administrative update to the title page of its tariff to reflect the name and contact information of the person to whom communications regarding the tariff should be addressed. Aside from the rate increases and this administrative tariff change, Viking proposes no other tariff revisions in this filing.[19]

III. <u>Notice of Filing, Interventions, and Protests</u>

9. Public notice of Viking's filings in Docket Nos. RP19-386-000 and RP19-1340-000 was issued on December 6, 2018, and June 28, 2019, respectively. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.[20] Pursuant to Rule 214,[21] 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.

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[15] Ex. VGT-0002 at 11.

[16] Ex. VGT-0011 at 7.

[17] Ex. VGT-0005 at 5.

[18] *Id*. at 11 and Ex. VGT-0020 at 1.

[19] Transmittal at 4-5.

[20] 18 C.F.R. § 154.210 (2018).

[21] 18 C.F.R. § 385.214 (2018).

10. On December 18, 2018, Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation (collectively, NSP Companies); WEC Energy Group, Inc., on behalf of its subsidiaries Minnesota Energy Resources Corporation and Wisconsin Gas LLC; CenterPoint Energy Resources Corporation (CenterPoint); and the Michigan Public Service Commission submitted protests or made adverse comments to Viking's FERC Form No. 501-G filing in Docket No. RP19-386-000. On July 10, 2019, Viking Shipper Alliance (Shipper Alliance), CenterPoint, and NSP Companies filed protests in response to Viking's filing in Docket No. RP19-1340-000.

11. All protesting parties contend that Viking's cost of service appears excessive and request additional review of its various components. Specifically, Shipper Alliance argues for further examination of large test period additions included in Viking's various cost-of-service accounts such as Account No. 367 (Mains), Account No. 368 (Compressor Station Equipment), Account No. 392 (Transportation Equipment), and Account No. 861 (Maintenance Supervision and Engineering). Shipper Alliance also protests Viking's proposed depreciation rate and ROE, arguing that Viking lacks reasonable support and justification for these proposals.

12. NSP Companies assert that Viking's proposed cost of service is inconsistent with the cost-of-service reductions indicated in Viking's FERC Form No. 501-G filing. NSP Companies specifically take issue with Viking's accounting treatments of certain cost-of-service components, including those found in Schedule G-6 and Schedule I-5. NSP Companies also protest Viking's proposed removal of the reservation and usage volumes associated with five contracts from the calculation of Viking's billing determinants, and argue that Viking provided no explanation as to the circumstances behind the expiration of these contracts.

13. Shipper Alliance and NSP Companies take issue with Viking's test period addition of $1.6 million for a spare compressor, and the corporate overhead charges directly assigned and allocated to Viking from its parent, ONEOK. Shipper Alliance and NSP Companies also note that Viking began amortization of Viking's TCJA regulatory liability without reducing rates to reflect that amortization. Shipper Alliance asserts that by doing this, Viking is amortizing the regulatory liability to itself, increasing its net income in conflict with the instructions to Account No. 254 set forth in 18 C.F.R. Part 201.[22] NSP Companies assert that allowing Viking to begin amortizing its large

[22] Shipper Alliance Protest at 4 & n.4 (citing 18 C.F.R. pt. 201 (Account No. 254C) (2019) requiring that, "[i]f it is later determined that the amounts recorded in this account will not be returned to customers through rates or refunds, such amounts shall be credited to Account [No.] 421, Miscellaneous Nonoperating [I]ncome, or Account [No.] 434, Extraordinary Income, as appropriate, in the year such determination is made.").

balance of excess ADIT prior to establishing new rates that reflect such amortization would harm the pipeline's customers by causing customers to face a higher rate base in any future rate case due to the earlier amortization. NSP Companies further argue that customers would never be able to recover the excess ADIT amortization that occurred before the effective date of new rates set through this NGA section 4 proceeding.

14. Generally, the protesting parties request that the Commission set all rate-related matters in the instant proceeding for evidentiary hearing to examine the justness and reasonableness of Viking's proposed rates and accept and suspend the rate filing for the maximum five-month period permitted by the NGA.

IV. Discussion

15. Viking's 2019 Rate Case filing raises many issues that warrant further investigation. The Commission finds that there are material issues of fact in dispute concerning, among other things, cost of service, rate of return, depreciation and negative salvage rates, cost allocation, and rate design. Accordingly, the Commission will establish a hearing before an Administrative Law Judge to explore the issues arising from the filing, including, but not limited to, those summarized above and set forth in the protests.

16. Accordingly, the Commission accepts and suspends for five months, subject to refund, Viking's tariff record reflecting rate increases for its services, so that the proposed changes may be reviewed at hearing. The Commission, however, accepts Viking's tariff record reflecting administrative changes to the title page of its tariff record because changes to the name and contact information of the person to whom communications regarding the tariff should be addressed are merely ministerial and not substantive.

A. Hearing Process

17. Viking must adhere to section 154.303(c)(2) of the Commission's regulations, which provides at the end of the test period, the pipeline must remove from its rates costs associated with any facility that is not in service or for which certificate authority is required but has not been granted.[23]

B. Suspension

18. Based upon review of the filing, the Commission finds that Viking's proposed rate increases have not been shown to be just and reasonable, and may be unjust, unreasonable, and unduly discriminatory or otherwise unlawful. Accordingly, the Commission shall accept for filing and suspend Viking's proposed Statement of Rates

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[23] 18 C.F.R. § 154.303(c)(2) (2018).

tariff record for five months, to be effective January 1, 2020, subject to refund and the outcome of the hearing ordered herein.

19. The Commission's policy regarding suspension is that tariff filings generally should be suspended for the maximum period permitted by statute where a preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards.[24] 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.[25] Such circumstances do not exist here, except for the tariff record containing only ministerial changes. Therefore, the Commission will suspend for the maximum period of five months the proposed tariff record that implements the rate increases listed herein, to be effective January 1, 2020, subject to refund and the outcome of the hearing ordered herein.

C. FERC Form No. 501-G

20. Order No. 849 required all interstate natural gas companies with cost-based stated rates to file the FERC Form No. 501-G.[26] Because Viking has now filed a rate case under NGA section 4, the justness and reasonableness of its rates can be investigated in that proceeding. Therefore, the Commission terminates Viking's FERC Form No. 501-G proceeding in Docket No. RP19-386-000.

The Commission orders:

(A) The tariff record reflecting rate increases (Part 5.0, Statement of Rates, 34.0.0) is accepted and suspended, to be effective upon motion on January 1, 2020, subject to refund and the outcome of the hearing established herein, as discussed in the body of this order.

(B) The title page tariff record (Tariff, Volume No. 1, 7.0.0) is accepted, effective August 1, 2019, as discussed in the body of this order.

(C) Upon its motion to place suspended rates into effect, Viking must remove from those rates the cost of facilities not placed in service before the end of the test period.

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

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

[26] Order No. 849, 164 FERC ¶ 61,031 at P 30.

(D) The captioned FERC Form No. 501-G proceeding in Docket No. RP19-386-000 is terminated, as discussed in the body of this order.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the NGA, particularly sections 4, 5, 8, 9, and 15 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the NGA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of Viking's proposed tariff records, as discussed in the body of this order.

(F) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304 (2018), must convene a prehearing conference in this proceeding to be held within twenty (20) days after issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The prehearing conference shall be held for the purpose of clarifying the positions of the participants and establishing any procedural dates necessary for the hearing. The Presiding Administrative Law Judge is authorized to conduct further proceedings in accordance with this order and the Commission's Rules of Practice and Procedure.

By the Commission. Commissioner McNamee is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.