107 FERC ¶ 61,091
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell and Joseph T. Kelliher.

Natural Gas Pipeline Company of America   Docket No. RP04-229-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS, SUBJECT TO REFUND AND CONDITIONS

(Issued April 30, 2004)

1. On March 26, 2004, Natural Gas Pipeline Company of America (Natural) filed tariff sheets[1] to implement revisions to its General Terms & Conditions (GT&C) relating to shipper creditworthiness, requesting a May 1, 2004 effective date. Specifically, the proposed changes would allow Natural to obtain security from non-creditworthy customers for gas loaned under its park and loan services. The filing was protested. The Commission will accept and suspend Natural's tariff sheets that propose certain creditworthiness provisions, to become effective October 1, 2004, or on an earlier date specified by subsequent Commission order, subject to conditions, and subject to the outcome of a further review of the filing upon receipt of answers to questions set out in the Appendix to this order. This decision benefits the public interest because it will allow the Commission to investigate issues concerning the implications of the proposed creditworthiness provisions.

Background

2. Natural’s credit procedures recently underwent a general revision in Docket No. RP03-7-000 .[2] Natural revised the credit evaluation provisions in its tariff and implemented more stringent creditworthiness provisions for credit evaluation and

[1] First Revised Sheet Nos. 280A, 280B and 280C of Natural’s FERC Gas Tariff, Sixth Revised Volume No. 1.

[2] Natural Gas Pipeline Company of America, 102 FERC ¶ 61,355 (2003), order on rehearing and compliance, 106 FERC ¶ 61,175 (2004).

payment assurance. The Commission found that the proposal revised by the Commission allowed Natural to implement reasonable tariff provisions ensuring that its shippers will have the financial ability to pay for the pipeline services that they use.

Park and Loan Service

3. Natural has provided a park and loan service under Rate Schedule PALS (PALS) since 1998.[3] The park and loan service is an interruptible service rendered pursuant to a PALS service agreement and as mutually agreed to in a valid PALS Request Order (RO).[4] Receipt and Delivery Points are specified in the RO and includes a specified quantity and the date of a loan service.[5] The PALS agreement must specify the maximum aggregate quantity (MAQ) and daily quantity to be parked or loaned under all outstanding PALS RO agreements.[6] Shipper which fails to redeliver loaned gas must purchase the unreturned balance at 150 percent of the average Weekly Index Price.[7]

Line Pack Service

4. Natural has provided a line pack service under Rate Schedule LPS (LPS) since 2001.[8] Service under this rate schedule was accepted and suspended on March 30, 2001 in Docket No. RP01-246-000.[9] In contrast to Natural's park and loan service under

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[3] Original Sheet No. 182, authorized in Docket No. RP98-145-000, 82 FERC ¶ 61,306 (1998), 83 FERC ¶ 61,346 (1998), 98 FERC ¶ 61,328 (2001).

[4] Loan Service: shall consist of Natural lending a specified quantity of Natural gas, requested by Shipper and approved by Natural, from designated Delivery Point(s) set forth in Shipper's PALS RO and the Shipper's redelivery of and Natural's acceptance of such volumes for Shipper's account at the designated Receipt Point(s) on the designated date(s) set forth in such PALS RO [Request Order]. First Revised sheet No. 184.

[5] First Revised Sheet No. 184, § 2(e)(2).

[6] Second Revised Sheet No. 186 § 4.2 (a)(1).

[7] Substitute Original Sheet No. 193, § 9.4 (b)

[8] Original Sheet No. 195 (suspended)

[9] 94 FERC ¶ 61,389 (2001), 96 FERC ¶ 61,181 (2001), 98 FERC ¶ 61,116 (2002), 99 FERC ¶ 61,118 (2002).

PALS, which is storage based, interruptible park and loan service under LPS is based on system operating conditions and line pack, and does not rely on storage. Line pack service is an interruptible service available upon execution of an LPS service agreement and the parties entering into a valid LPS RO to park or loan gas at mutually agreeable points on Natural's system without relying on storage or Natural providing the gas supply.

5. The LPS service consists of Natural lending a specified quantity of gas on specific dates and volumes from designated delivery points set forth in the RO.[10] Natural may require that the loaned balances be returned and sets the time frame within which the balances are to be effectuated, "but in no event shall the specified time frame be less than three days (in one-third daily increments from the date of notification)."[11] Gas Quantities are specified as Maximum Daily Quantity (MDQ) and Maximum Aggregate Quantity (MAQ) to be parked or loaned under the LPS ROs outstanding on any day.[12] The Commission found that for the average length of 22 LPS service loan transactions was 5.6 days.[13]

Instant Filing

6. Natural proposes to make a limited change in its credit procedures to add an additional feature not included in Docket No. RP03-7-000, which the Commission has approved for other interstate pipelines.[14] Specifically, the proposed changes would allow Natural to obtain security from non-creditworthy customers for gas loaned under Rate Schedules LPS and PALS. Natural proposes to obtain such security through collection of collateral to be calculated under a prescribed formula based on volumes and index prices. This prescribed formula, contained in the proposed tariff language of Natural's GT&C, section 16(b)(3), is as follows:

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[10] Original Sheet No. 197, § (2) (suspended)

[11] First Revised Sheet No. 198.

[12] Original Sheet No. 199A and 199B at §§ (a) and (d).

[13] 99 FERC ¶ 61,118 at 61,506 (2002).

[14] Natural cites North Baja Pipeline, LLC, 105 FERC ¶ 61,374 at P 36-38 and 102 FERC ¶ 61,239 at P 9-11 (2003); Northern Natural Gas Company, 105 FERC ¶ 61,172 at P 66 (2003); Gulf South Pipeline L.P., 103 FERC ¶ 61,129 at P 41-46 (2003); and, PG&E Gas Transmission, 105 FERC ¶ 61,382 at P 68-70 and 103 FERC ¶ 61,137 at P 44 (2003).

> Natural may also require security from non-creditworthy Shippers for the value of gas loaned under any park or loan type of service. The amount of security necessary to collateralize gas loans shall be up to the greater of: (i) Shipper's maximum daily quantity in its service agreement times 30 days times the Index Price; or (ii) the volume actually loaned to the Shipper under its contract, plus the volume of gas agreed to be loaned during the current and the upcoming month (under a Request Order or RO), times the Index Price. (Emphasis added)

7. Natural states that the volume used in this calculation will be up to the greater of one month's volume at the contract MDQ or the quantity actually loaned "or to be loaned within the ensuing month." Natural indicates that the price (i.e., the Index Price) applied to this volume for calculating the value of collateral will be determined by using one of two approaches depending on the timeframe of the loan: (1) for current month loans, the price used will be the Midpoint price published in Gas Daily for the Natural receipt zone in which the loan is to occur; and, (2) for future month loans, the price used will be the most current basis adjusted NYMEX futures price for the month(s) in which the loan is to be made.

Public Notice, Interventions and Protests

8. Public notice of Natural's filing was issued on March 30, 2004. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2003)). Motions to intervene were filed by Duke Energy Trading and Marketing, LLC, The Peoples Gas Light and Coke Company and North Shore Gas Company, Nicor Gas, and Process Gas Consumers Group and the American Iron and Steel Institute (together, the Industrials). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2003)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Process Gas Consumers Group and the American Iron and Steel Institute jointly filed a protest.

Industrials Protest

9. The Industrials assert that the second method for calculating the amount of collateral required for park and loan service in Natural's proposed GT&C, section 16(b)(3), is unsupported and potentially excessive. Pointing to Natural's transmittal letter, which referenced other pipeline proceedings referenced as support for the instant filing, and, particularly citing North Baja Pipeline, LLC (NBP), 102 FERC ¶ 61,239:

> However, NBP proposed that the amount of the prepayment be equal to the maximum amount of service that may be provided in any three-month period under a lending service agreement. The Commission believes that requiring a prepayment based on the value of the entire amount of gas that might be loaned over a three-month period is excessive. This is because the service is interruptible and the loan transactions are likely to be short term, so that the outstanding lent gas balance on any given day would vary. Therefore, NBP must propose a more reasonable time period, in light of the nature of the service. NBP must also revise its tariff to provide for a nondiscriminatory mechanism for determining the per unit value of lent gas (e.g., the full value of the lent gas based on current market prices at the time of the contract).[15]

10. The Industrials state that the Commission made clear that "requiring a prepayment based on the value of the entire amount of gas that might be loaned over a three-month period is excessive." The Industrials clarify further that in each of the cases, the Commission based its determination on the fact the park and loan service is interruptible and loan transactions are likely to be of a limited duration and, thus, the loaned gas quantities are "too variable."[16] Stating that Natural's proposed tariff language "appears to require more than two months worth of security and possibly three…", the Industrials maintain that Natural's second method for calculating the collateral required of non-creditworthy shippers subscribing for park and loan service imposes a level that is excessive and unreasonable. The Industrials assert further that in other pipeline proceedings the Commission has approved smaller security amounts for park and loan service after rejecting the equivalent of three months worth of collateral.

11. The Industrials also make reference to prior Commission rulings on the issue regarding the volumetric component used to calculate the collateral requirement. The Industrials cite rulings that approved use of a Maximum Quantity of gas a shipper may borrow in contrast to use of a Maximum Contract Quantity, which was a total quantity as opposed to a MDQ.[17] The Industrials reference yet another approach approved by the Commission, wherein the Commission analogized running an imbalance to borrowing

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[15] North Baja Pipeline, LLC, 102 FERC ¶ 61,239 (2003) at P 11.

[16] The Industrials cite Northern Natural, 105 FERC ¶ 61,172 at P 66.

[17] The Industrials cite GTN, 105 FERC ¶ 61,382 at P 65; and North Baja, 105 FERC ¶ 61,374 at P 37.

gas from the pipeline and the collateral requirement was based on the shippers highest monthly imbalance example.[18]

12. Finally, the Industrials request that the Commission order Natural to modify the second prong of its proposed tariff section 16(b)(3) to require a reasonable amount of security for park and loan service based on the actual gas loaned, and not on potential quantities in future months.

Commission Ruling

13. Upon review of the filing and protest, we conclude that further information is needed before ruling on the justness and reasonableness of Natural's proposal. We have recognized that pipelines should be able to impose collateral requirements with respect to gas lent to shippers.[19] Including the value of loaned gas in the collateral protects pipelines and their customers against the risk of a shipper withdrawing gas from the system without replacing or paying for it, and the Commission has found that a pipeline's desire to cover the value of its gas is reasonable.

14. With respect to park and loan services, the Commission in North Baja, rejected a collateral provision in which the pipeline would have required the collateral to equal the maximum amount of service that may be provided in any three-month period under a lending service agreement.[20] The Commission found that that requiring a prepayment based on the value of the entire amount of gas that might be loaned over a three-month period is excessive, because park and loan service is interruptible and the loan transactions are likely to be short term, so that the outstanding lent gas balance on any given day would vary. The Commission required North Baja to refile its tariff taking into account the variable nature of the service. The Commission, however, did permit North Baja and GTN to require collateral up to the shipper's maximum contract quantity multiplied by a reported per unit price. The Commission noted, however, that these

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[18] The Industrials cite Gulf South, 103 FERC ¶ 61,129 at P 45.

[19] Notice of Proposed Rulemaking, Docket No. RM04-4-000, issued February 12, 2004, 106 FERC ¶ 61,123 (2004); See Gulf South Pipeline Co., LP, 103 FERC ¶ 61,129 at P 45-46 (2003) (Gulf South); North Baja Pipeline, LLC, 102 FERC ¶ 61,239 at P 11, order on reh'g, 105 FERC ¶ 61,374 at P 36-37 (2003) (North Baja); and PG&E Gas Transmission, Northwest Corp., 103 FERC ¶ 61,137 at P 42-44, order on reh'g, 105 FERC ¶ 61,382 at P 65-70 (2003) (GTN).

[20] North Baja, 102 FERC ¶ 61,239 at P 11.

park and loan services may be different from park and loan services offered by other pipelines in that they specify a total contract quantity rather than a MDQ.[21]

15. Based on a review of the filing, the Commission finds that the proposed creditworthiness provisions of Natural's tariff have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Specifically, Natural's proposal employs a "greater of" methodology which departs from previously approved collateral requirement proposals. Particularly, this methodology set forth in section 16(b)(3) includes option (i), which requires collateral equivalent to 30 days times the full daily MDQ; and, as the Industrials point out, option (ii) that appears to require more than two and possibly three months worth of security. While pipelines are allowed to require collateral for loaned gas, collateral based on the value of the amount of gas that might be loaned over a three month period was found to be excessive,[22] and Natural's proposal may go beyond what is reasonable. Furthermore, Natural has proposed collateral equal to the maximum daily amount that can be borrowed multiplied by 30 days. It is not clear that such a provision takes appropriate account of the variable nature of the park and loan service, because it requires collateral as if the shipper borrows its MDQ quantity every day. In another example also referenced by the Industrials, in Gulf South, the Commission permitted the pipeline to base collateral for imbalance service on the shipper's highest monthly imbalance during the previous 12 months. This provision recognizes that imbalances, like loans, may vary during a month.

16. The Commission, therefore, finds that the proposed creditworthiness provisions of Natural's tariff have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. In order to evaluate Natural's proposal for collateral requirements for loaned gas under its park and loan services, additional information is required, as set out in the questions attached in the Appendix of this order. Natural is directed to respond to these questions within 30 days of issuance of this order.

17. Accordingly, the Commission will accept the tariff sheets for filing, and suspend their effectiveness for the period set forth below, subject to the conditions in this order.

[21] North Baja, 105 FERC ¶ 61,374 at P 37.

[22] North Baja Pipeline, LLC, 102 FERC ¶ 61,239 at P11.

18. 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 by unjust, unreasonable, or that it may be inconsistent with other statutory standards.[23] 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.[24] Such circumstances do not exist here. Therefore, the Commission shall exercise its discretion to suspend the rates for five months to take effect October 1, 2004 or on an earlier date specified by subsequent Commission order, subject to the conditions set forth in the body of this order and in the ordering paragraphs below.

The Commission orders:

(A) Natural's tariff sheets listed in footnote No. 1 are conditionally accepted and suspended, subject to further order of the Commission, to become effective the earlier of October 1, 2004, or on the date the Commission specifies in any future order issued in this proceeding.

(B) Natural is directed to file answers to the questions contained in the Appendix of the order within 30 days of the date of its issuance.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Acting Secretary.

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

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

APPENDIX

QUESTIONS TO BE ANSWERED BY NATURAL:

1. Explain in full the need and justification for Natural's proposed creditworthiness security requirements in its proposed tariff.

2. Set forth in full all shipper defaults on returning loaned gas during the past 6 years under the PALS program and the last 3 years under the LPS program.

3. Set forth the details of any defaults by borrowers where they were required to and did reimburse Natural for the gas not returned at 150 percent of the index price.

4. Explain why the proposed tariff section 16(b)(3) says the security shall be the greater of the provisions in subsections (i) or (ii).

5. What is the basis for requiring collateral 30 times MDQ in the proposed tariff provision? How do these provisions work with the provisions of the two rate schedules, each with distinct loan services?

6. Why does Natural propose to require collateral for future months? What is the basis for this in the service agreements or RO agreements?

7. Provide data on the number and duration of PLS and LPS RO transactions, the average amount of gas loaned, the duration of the loans, and the maximum balance at any given time for each shipper.

8. Explain the mechanics for the deposit of collateral and its return to shippers in conjunction with the other provisions of Natural's tariff, i.e., rate schedules PALS and LPS and the GT&C sections 5.11, 5.12 and 5.13. Are those provisions compatible with the proposal in this docket?

9. If Natural lends gas to a shipper with an MDQ of 1000 Dth and the shipper borrows 1000 Dth, under Natural's formula, the collateral obligation would be 30,000 Dth. Explain the justification for that result. Compare this example with current creditworthiness provisions.

10. Explain how the MDQ relates to the MAQ in the service agreements, which would be affected by the proposal in this docket.

11. Explain why a shipper's maximum gas balance on loan to any shipper at any given time, or the highest volume in any month, does not adequately protect Natural's interests.