

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

May 10, 2006

In Reply Refer To:
Stingray Pipeline Company, L.L.C.
Docket No. RP06-303-000

Stingray Pipeline Company, L.L.C.
1100 Louisiana, Suite 3300
Houston, Texas 77002

Attention: Neal A. Gerstandt, Vice President
Regulatory Affairs & Contract Administration

Reference: Pro Forma Reserve Dedication Agreement for Rate Schedule ITS

Ladies and Gentlemen:

1. On April 10, 2006, Stingray Pipeline Company, L.L.C. (Stingray) filed revised tariff sheets, listed in Appendix A, to include a form of Reserve Dedication Agreement for Rate Schedule ITS as a *pro forma* agreement along with several other conforming changes to its tariff to reflect the addition of the new *pro forma* agreement.¹ Stingray requests the proposed tariff sheets become effective May 10, 2006. For the reasons discussed below, we accept the proposed revised tariff sheets, effective May 10, 2006, subject to Stingray filing revised tariff sheets reflecting modifications to its proposed *pro forma* Reserve Dedication Agreement for Rate Schedule ITS as discussed below, within 20 days of the date of issuance of this order.
2. Stingray states that it proposes to include a form of Reserve Dedication Agreement for Rate Schedule ITS as a *pro forma* agreement and modify Exhibit C to the *pro forma* FTS and ITS service agreements regarding reserve dedication for Rate Schedule ITS.

¹ On April 26, 2006, in Docket No. RP06-303-001, Stingray filed revised tariff sheets to correct certain typographical errors in Exhibit B to its FTS-2 *pro forma* service agreement and to include a new term provision in Article 2 of the subject proposed *pro forma* Reserve Dedication Agreement for Rate Schedule ITS. The Commission will act on that filing in a later order.

Stingray states that the changes to Exhibit C to the *pro forma* FTS and ITS service agreements allow for clear explanation of varying types of reserve dedications that may be employed, consistent with the reserve dedication options set forth in section 1.1 of the proposed Reserve Dedication Agreement. In addition, Stingray states that it proposes to modify exhibits to the FTS, ITS, FTS-2, and PAL *pro forma* service agreements by providing a procedure for adding multiple exhibits to those agreements to accommodate multiple discount rates.

3. Notice of Stingray's filing was issued on April 18, 2006,² with interventions and protests due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2005). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2005), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. On April 24, 2006, Chevron U.S.A. Inc. (Chevron) filed a protest in response to the filing. On April 28, 2006, Stingray filed an Answer to the protest. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Generally, the Commission does not permit answers to protests; however, the Commission will accept Stingray's Answer as it aids in the Commission's review of the instant proposal.

4. While Chevron states that it does not oppose Stingray's proposal to grant discounts that are linked to the dedication of gas reserves, Chevron asserts that, without certain clarifications, Stingray's proposal is unjust, unreasonable and discriminatory. Chevron first asserts that section 1.3 of Stingray's proposed Reserve Dedication Agreement impermissibly provides for retroactive rates. Specifically, section 1.3 of Stingray's proposed Reserve Dedication Agreement provides:

- (a) In the event that any of the Dedicated Reserves are transported on another pipeline in violation of the dedication hereunder (other than when Stingray has invoked Force Majeure on its pipeline system), Stingray has the right to assess and Shipper shall pay Stingray the difference between Stingray's then-effective maximum Tariff rate under Rate Schedule ITS and the applicable discounted transportation rate for all of the volumes of Dedicated Reserves previously shipped on Stingray from the effective date of this Agreement through the date of such violation.
- (b) For all volumes of Dedicated Reserves shipped on Stingray from and after the date of the violation of Shipper's dedication hereunder, Stingray shall assess and Shipper shall pay the then-effective maximum Tariff rate under Rate Schedule ITS.

² 71 Fed. Reg. 23,991 (2006).

5. Chevron states that Stingray's proposed section 1.3(a) permits the pipeline to charge the difference between the pipeline's then-effective maximum tariff rate and the discounted rate to all volumes transported from the effective date of the Reserve Dedication Agreement to the date of the violation, including volumes which were transported on Stingray and were not transported in violation of the Reserve Dedication Agreement. In the alternative, Chevron argues that, to the extent that the Commission allows Stingray to charge what Chevron describes as "retroactive rates," those rates should only apply to the dedicated reserves that were transported on another pipeline in violation of the agreement, and that the Commission should reject proposed section 1.3(b) under which all volumes transported after the date of the violation would no longer receive the discounted rates. Chevron also asserts that, to the extent that Stingray is allowed to eliminate the discount applicable to some or all of the dedicated reserves, the shipper should no longer be required to dedicate its reserves under the agreement.

6. Stingray responds that its proposal does not allow it to charge retroactive rates but merely reflects the condition – dedication of reserves – that must be met for a shipper to be entitled to a discounted rate under a Reserve Dedication Agreement. Stingray argues that at the time of execution of an agreement, the shipper will be on notice of the conditions of the agreement and that a shipper would have control over whether or not it elects to breach its reserve dedication by diverting transportation volumes from Stingray. Stingray further asserts that it would be inequitable to Stingray and its other shippers if the Commission were to reject the provision that removes the discount from all volumes shipped prior to a violation. Stingray maintains that doing so would allow the shipper to breach the Reserve Dedication Agreement, the consideration for which Stingray bargained in determining to grant the discounted rate, but would preserve the benefit for the shipper. However, Stingray states that it would be willing to revise its proposal to enable it to rescind the discounted rate for past volumes when a breach of a Reserve Dedication Agreement occurs, but leave the discounted rate in place for volumes transported after a violation to the extent that no further violations occur.

7. The Commission finds that Stingray's proposed section 1.3(a) is not just and reasonable and rejects it. Proposed section 1.3(a) effectively constitutes an unreasonable penalty on ITS service. Under the proposal, if the shipper ships gas on Stingray for several years under its ITS contract, it would owe Stingray several years' worth of discounts for even a single minor violation of the dedication provision. The effect of the provision is to lock an interruptible shipper into a contract for long-term service on Stingray akin to a firm commitment through the dedication condition even though the pipeline has dedicated, *i.e.*, committed, no capacity to the service (because it is interruptible) and it loses nothing if the service terminates. In the case of Stingray's other discount criteria, not meeting the criteria for the discount only results in the prospective loss of the discount, *i.e.*, the shipper must begin to pay the maximum lawful rate; it does not result in retroactive charges covering periods when the criteria for being charged the

discounted rate were met. Further, we agree with Chevron that if the discount is lost because of a violation of the dedication provision, then there is no basis to continue to require a dedication of the remaining reserves to maintain the shipper's ITS contract. Accordingly, we find that the prospective elimination of the discount as reflected in proposed section 1.3(b) is reasonable, provided that the dedication commitment, likewise, is eliminated. Acceptance of the subject filing is conditioned on Stingray filing to revise section 1.3, and to make such other conforming changes as necessary, to reflect the elimination of section 1.3(a) and the elimination of the dedication commitment in the event of a loss of the discount under section 1.3.

8. Chevron also seeks clarification of Stingray's proposed modifications of the exhibits to the FTS, ITS, FTS-2, and PAL *pro forma* service agreements which Stingray states in the transmittal to its filing were made to accommodate multiple discount rates in order to allow shippers to avoid having to enter into new, separate transportation agreements when a different discount agreement is reached for additional supply sources. Chevron states that it interprets the modifications to mean that a violation involving one supply source eliminates the discount for all supply sources.

9. In its Answer, Stingray clarifies that it is not proposing to include multiple exhibits to one Reserve Dedication Agreement, but is proposing to include multiple discount exhibits to an ITS agreement to reflect separate discounts for different production reserve blocks or fields. Stingray maintains that Chevron's assessment of the modifications incorrectly applies section 1.3 to the situation in which there are separate discounts and associated Reserve Dedication Agreements tied to one ITS agreement and that the provision does not affect any other separate reserve dedications whether or not the other discounts and associated Reserve Dedication Agreements may be tied to the same ITS agreement.

10. The Commission agrees with Stingray's reading of the proposed provisions and, and as clarified, finds that they are reasonable. Accordingly, we accept the modified exhibits to the FTS, ITS, FTS-2, and PAL *pro forma* service agreements.

11. Chevron also contends that Stingray should allow shippers to assign their dedicated reserve discounts to other shippers. Section 4.3 of Stingray's proposed Reserve Dedication Agreement provides that any entity which succeeds either party to a Reserve Dedication Agreement will be entitled to the rights and shall be subject to the obligations of its predecessor. In addition, the tariff indicates that Stingray must give prior written consent to any sale or assignment of a shipper's right, title or interest in a dedicated reserve and that such consent is subject to, among other conditions, Stingray and the assignee executing a new Reserve Dedication Agreement.

12. Chevron opposes the proposed restrictions on assignments and argues that if Stingray is permitted to condition the assignment or transfer of a shipper's right, title, and/or interest in dedicated reserves, Stingray should be required to allow the shipper to also assign any and all discounted rates applicable to a specific dedicated reserve. Thus, Chevron requests that the Commission require Stingray to modify its tariff to clearly state that a shipper is allowed to transfer or assign its discounted rates, as well as the Reserve Dedication Agreement.

13. Stingray responds that its proposed limitations on assignments of Reserve Dedication Agreements were made to comply with the Commission's policies for selective discounting of natural gas transportation services. Stingray asserts that the Commission's selective discounting policy requires that discounts be given to meet competition and that similarly situated shippers be treated similarly. To ensure compliance with this policy, Stingray asserts that pipelines must determine which shippers are receiving which discounts. Stingray asserts that section 4.3 will allow it to retain knowledge and control over which shippers have been granted discounts, and under what market and competitive conditions, in compliance with Commission policy. However, Stingray states that, should the Commission determine that Stingray's understanding of the dictates of Commission policy is incorrect, it has no objection to modify the assignment provisions, as Chevron suggests, to allow direct shipper assignments of discounts to parties that acquire dedicated reserves.

14. The Commission finds that, as modified to reflect Stingray's agreed-to changes, section 4.3 of Stingray's proposed Reserve Dedication Agreement is reasonable. Commission policy does not preclude the direct assignment of interruptible transportation contracts or the discounted rate agreements reflected therein.³ Acceptance of the subject filing is conditioned on Stingray filing to revise the *pro forma* Reserve Dedication Agreement for Rate Schedule ITS to reflect this modification within 20 days of the date this order issues.

15. Chevron also seeks clarification of which party (*i.e.*, assignee or assignor) is responsible for paying the difference between the then-effective tariff rate and the discounted rate when a violation of a Reserve Dedication Agreement occurs. Chevron states that shippers assigned a Reserve Dedication Agreement should not be responsible for the assignor shipper's violation of any reserve dedications. Chevron compares section 1.3 requiring the shipper to pay, in the occasion of a breach, for all volumes previously

³ This is consistent with Commission policy with respect to firm capacity release. If the releasing shipper's contract is terminated, the replacement shipper must be granted the same discount that the releasing shipper had, without any condition that such replacement shipper must be similarly situated. *Columbia Gas Transmission Corp.*, 101 FERC ¶ 61,179 (2002).

shipped from the effective date to the date of the violation, to section 2.3 which indicates that the Reserve Dedication Agreement terminates if it is assigned, and concludes that it is not clear if an assignee would be responsible for all volumes transported as of the effective date of assignor's dedication of the applicable reserves. Chevron maintains that the assignee should only be responsible for the difference between the then-effective maximum tariff rate and the discounted rate from the time of the assignment. Chevron also seeks clarification that no additional charges related to assignee's transport of dedicated reserves on another pipeline may be assessed on an assignor, and that any of assignor's remaining dedicated reserves are not impacted by the assignee transporting its dedicated reserves on another pipeline.

16. Stingray responds that the effect of section 2.3 (terminating a reserve dedication agreement upon assignment) and section 4.3(b)(v) (requiring the execution of a new Reserve Dedication Agreement between Stingray and the assignee-shipper) is to require the assignor to pay only for the difference between the then-effective maximum rate and the discounted rate for volumes transported in violation of the agreement for the time period that the assignment is in effect. This is so, it states, because the agreement terminates by its own terms upon assignment. In addition, according to Stingray, the assignee, who under section 4.3(b)(v) has executed a new Reserve Dedication Agreement, will be subject to section 1.3 contained in its own agreement between Stingray and assignee. Stingray states that its intention in requiring the termination of an existing Reserve Dedication Agreement and the execution of a new Reserve Dedication Agreement in the event of an assignment was to protect the interests of the assignor from effects of the assignee's violations and to protect the interests of the assigned from the effects of the assignor's violations.

17. We find that Stingray has adequately clarified that its proposed provisions do not inappropriately assign responsibility for violations of the Service Agreement provisions by one party on another party. Chevron's concerns, particularly its concerns related to liability for retroactive charges, are largely moot in light of our rejection of section 1.3(a) above.

18. For the reasons stated above, we accept the proposed tariff sheets effective May 10, 2006, subject to Stingray filing revised tariff sheets reflecting changes to its proposed *pro forma* Reserve Dedication Agreement for Rate Schedule ITS as discussed above, within 20 days of the date this order issues.

By direction of the Commission.

Magalie R. Salas,
Secretary.

Appendix A

**Stingray Pipeline Company, L.L.C.
FERC Gas Tariff, Third Revised Volume No. 1**

Tariff Sheets Effective May 10, 2006

Ninth Revised Sheet No. 2
Fifth Revised Sheet No. 301
Original Sheet No. 301A
Third Revised Sheet No. 302
First Revised Sheet No. 302A
First Revised Sheet No. 302B
Original Sheet No. 302C
First Revised Sheet No. 304
Second Revised Sheet No. 305
First Revised Sheet No. 305A
First Revised Sheet No. 305B
Original Sheet No. 305C
Second Revised Sheet No. 314
Second Revised Sheet No. 316
First Revised Sheet No. 317
Original Sheet No. 318
Original Sheet No. 319
Original Sheet No. 320
Original Sheet No. 321
Original Sheet No. 322
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