UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Maritimes and Northeast Pipeline, L.L.C. Docket No. RP04-360-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS SUBJECT TO REFUND AND ESTABLISHING A HEARING AND TECHNICAL CONFERENCE

(Issued July 29, 2004)

1. On June 30, 2004, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) filed the revised tariff sheets listed in the Appendix to reflect a general Natural Gas Act (NGA) section 4 rate increase. Maritimes states that this filing fulfills its obligations under Article III of the Stipulation and Agreement approved by the Commission in Docket No. RP02-134 requiring Maritimes to make a rate filing no later than April 1, 2006.[1] The proposed rates will result in an increase in Maritimes' revenue requirements from $120,844,193 to $151,288,531. Maritimes also filed several tariff revisions to its General Terms and Conditions (GT&C). Maritimes proposed an August 1, 2004 effective date.

2. This order accepts and suspends the tariff sheets listed in the Appendix, to be effective January 1, 2005, subject to refund, condition, and the outcome of the hearing established herein and establishes a technical conference to address certain tariff proposals. This order benefits the public interest by ensuring that Maritimes' recourse rates and terms and conditions of service will be just and reasonable.

I. Details of Filing

3. Maritimes states that its proposed changes will increase its revenue requirement to $151,288,531 which results in an increase in Maritimes' maximum recourse rate for mainline transportation service from $0.6950 per Dth to $1.0713 per Dth, an increase of 54.14 percent. The changes are based on an updated cost of service to reflect costs for the twelve-month base period ending February 29, 2004, as adjusted for known and

[1] Maritimes & Northeast Pipeline, L.L.C., 102 FERC ¶ 61,271 (2003).

measurable changes through the test period ending November 30, 2004.[2] According to Maritimes, the principal factors supporting the increase in cost of service are (1) decline in the reserves and deliverability associated with the Sable Offshore Energy Project (SOEP) fields, (2) the inclusion in the rates of costs related to the Phase III Project,[3] which was placed in service on November 24, 2003, and (3) an updated cost of service reflecting changes to return, capital structure, depreciation, related taxes and operation and maintenance expenses.

4. Maritimes states that it constructed its mainline capacity to accommodate volumes to be delivered from its SOEP fields to operate at or near 440,000 Dth/d. Based on its current information, Maritimes is projecting average throughput on its mainline to be less than the total firm mainline subscription of 360,575 Dth/d. However, to encourage further settlement discussions, Maritimes has proposed to use mainline billing determinants of 380,575 Dth/d to design mainline rates.

5. Maritimes proposes to roll-in the costs of its Phase III facilities by showing that the roll-in is consistent with the Commission's 1999 Policy Statement of Policy on New Pipeline Construction (Policy Statement).[4] Maritimes states that it placed the Phase III facilities into service on November 24, 2003. Maritimes further states that each of its previous existing long-term shippers has signed contract amendments which provide for firm, primary service over the Phase III facilities equal to the maximum Daily Transportation Quantity under its firm contract. As such Maritimes avers that this case does not present the types of cost shifting issues between existing and expansion shippers that often occur in roll-in cases.

6. Maritimes' filing proposes various changes to its cost of service and cost components. The filing reflects a rate of return on equity of 14.25 percent, capital structure consisting of 56.25 percent debt and 43.75 percent equity, long-term debt costs of 6.98 percent, and a system depreciation rate of 4 percent.

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[2] The rate changes are based on the adjusted base period quantities compared with the underlying rates contained in Maritimes' December 20, 2002 settlement approved by the Commission in Docket No. RP02-134. Maritimes & Northeast Pipeline, L.L.C., 102 FERC ¶ 61,271 (2003).

[3] The Phase III facilities represent an extension of Maritimes' mainline from Metheun, MA, to an interconnection in Beverly, MA, with Algonquin Gas Transmission Company (Algonquin).

[4] Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,277 (1999), order clarifying Statement of Policy, 90 FERC ¶ 61,128; order further clarifying Statement of Policy, 92 FERC ¶ 61,094 (2000).

7. As part of its proposal, Maritimes has not allocated any costs to its Rate Schedule MNPAL (parking and lending) service and is proposing to charge the same rate as its Rate Schedule MNIT (interruptible transportation) rate. Maritimes has also proposed the same rate for the Rate Schedule MNTTT (title transfer tracking) service, also without allocating any costs to this service.

8. In addition, Maritimes proposed a number of tariff changes in the instant filing. Under section 20 of Maritimes' existing GT&C, the fuel retainage percentage (FRP) is calculated for four calendar periods, a winter period, spring and fall shoulder periods, and a summer period. Maritimes is proposing to consolidate the FRP for the two shoulder periods along with the summer period since those three periods require essentially the same fuel usage. Thus, Maritimes will have a Winter Period FRP and a Non-Winter Period FRP. Maritimes proposes to switch to a cash basis method under which it would account for the difference in gas quantities based on actual purchase or sales price it pays or receives to make up the difference. Maritimes states that this change is being proposed because it will be easier to administer and more understandable from a customer standpoint.

9. Maritimes proposes to change section 4.2 of the GT&C to modify the procedures for bidding and matching on capacity that is subject to a shipper's ROFR. Maritimes states that its proposal allows Maritimes to specify a rate between the maximum and minimum rate in its tariff below which it will not accept bids. Maritimes states it will use a net present value calculation to determine the best bid, and will afford the shipper with the ROFR an opportunity to match the best bid. Maritimes also states that if it does not accept any bids, a shipper with a ROFR may retain its capacity if it agrees to pay the maximum rate or another agreed upon rate so long as the agreed upon rate is not below a bid previously rejected by Maritimes for being below the specified rate.

10. Maritimes proposes to change its OFO procedures in section 10 of its GT&C by adding an "Action Alert" provision that Maritimes would issue before issuing an OFO. The "Action Alert" would be used in the event that in Maritimes' judgment action is required to avoid a system integrity issue. Maritimes is proposing a penalty for the "Action Alert" that is 200 percent times the Gas Daily "Daily Price Survey" High Common Price for Dracut, Massachusetts. Maritimes is also proposing to change its OFO penalty to 500 percent times the Dracut price from the previous penalty of $50.00 per Dth. Maritimes states that it is making these changes to give it more control over system integrity and to give its shippers a warning with the new Action Alert before issuing an OFO.

11. Maritimes proposes administrative changes to its Rate Schedule MNPAL and its Form of Service Agreement applicable to Rate Schedule MNPAL. It proposes to rearrange the procedure for contracting for parking and lending service so that much of

the information will be on Exhibit A to the service agreement. This will allow parties to execute a new Exhibit A whenever they want to enter into a new park and loan transaction, rather than executing an entirely new service agreement.

12. Finally, Maritimes is proposing to eliminate its revenue sharing mechanism, section 33 of its GT&C. Maritimes states that the mechanism was created when Maritimes had no operating experience, and it was designed to deal with the possibility that Maritimes would over-recover its allocated costs for certain services. Maritimes states that revenues under Rate Schedules MNOP (off-peak firm transportation) and MNIT (interruptible transportation) have never reached the threshold so there has never been any revenue sharing under this tariff provision. Maritimes states that its experience supports the new cost allocation to these services that Maritimes proposes in this proceeding.

II. Notice, Intervention and Protests

13. Notice of Maritimes' filing was issued on July 8, 2004. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. §154.210. Pursuant to rule 214, 18 C.F.R. § 385.214, 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 intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties.

14. A number of parties filed protests stating that Maritimes' proposed rate increase has not been fully supported and request that a hearing be convened in order to investigate the reasonableness of the proposed rates including all aspects of Maritimes' proposed cost of service, the roll-in of its Phase III, and proposed tariff changes.

15. Mobil Natural Gas, Inc. (Mobil) states that Maritimes' proposed roll-in of its Phase III extension is factually unsupported and should be rejected. Mobil states that Maritimes seeks to impose the full cost of the Phase III extension on Maritimes' mainline shippers, who never requested the extension and receive comparatively little benefit from the extension. Mobil avers that the principal beneficiaries of the extension are Algonquin Pipeline Company, an affiliate of Maritimes, and Algonquin's shippers. Mobil also argues that Maritimes has used an inappropriate proxy group that includes four Master Limited Partnerships to calculate its proposed return on equity of 14.25 percent. In addition, Mobil questions Maritimes' adjustment of its capital structure from 30 percent equity and 70 percent debt to a structure of 43.75 percent equity and 56.25 percent debt. Mobil states that Maritimes is also proposing a dramatic reduction in billing determinants to 380,575 Dth/d, after having only three years ago sought and received from the Commission authority to increase its mainline capacity to 440,000 Dth/d. Mobil argues that these proposals are an attempt by Maritimes to shift its business risk to its firm shippers. Mobil states that Maritimes' proposed reduced billing determinants are tied to

Maritimes' claimed rapid decline in the reserves associated with the Sable Offshore Energy Project fields, as well as uncertainties with other offshore Nova Scotia fields. Mobil argues that the contention that the declines in the production area have shortened the original economic life of the system should also be investigated at hearing as well.

16. Though Mobil does not object to certain aspects of Maritimes' proposed tariff changes. Mobil seeks an opportunity to better understand the workings of the change proposed by Maritimes. Specifically, Mobil states that it has in the past raised questions regarding the accounting for Maritimes' fuel retainage percentage. Mobil also states that Maritimes' Action Alert proposal is itself an OFO and as such should be subject to the Commission's policy that OFOs be invoked on as limited a basis as possible. Mobil also seeks the opportunity to explore further Maritimes' proposal to change its ROFR provisions in its tariff to allow Maritimes to reject ROFR bids below a certain minimum level.

III. Discussion

17. The Commission finds that the parties have raised numerous issues concerning Maritimes' proposed rate changes that are best addressed at a hearing. The rate issues to be addressed at the hearing established by this order include, but are not limited to, cost of service, rate design, rate of return, capital structure, throughput, depreciation rates, the proposed roll-in of Maritimes' Phase III facilities, and whether it is appropriate for Maritimes to continue to price its Rate Schedule MNPAL (parking and lending service) using the Rate Schedule MNIT (interruptible transportation) rate.

18. A number of parties have also raised concerns about Maritimes' proposed modifications to its tariff. For example, Mobil specifically requests the Commission to establish a technical conference to address Maritimes' proposed non-rate modifications to its tariff. The Commission finds that it would be beneficial to address Maritimes' proposed non-rate changes to its tariff at a technical conference. Accordingly, Staff is directed to convene a technical conference to address non-rate issues including, but not limited to, revisions to Maritimes' FRP, revisions to the ROFR, and the proposed Action Alert. While the Commission is suspending the revised tariff sheets until January 1, 2005, the non-rate changes may be made effective earlier pending the outcome of the technical conference established herein.

IV. Suspension

19. Based upon a review of the filing, the Commission finds that the proposed tariff sheets in the Appendix have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept such tariff sheets for filing and suspend their effectiveness for the period set forth below, subject to the conditions set forth in this order.

20. 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 suspensions for the maximum period may lead to harsh and inequitable results. *See Valley Gas Transmission, Inc*., 12 FERC **&** 61,197 (1980) (one-day suspension). Such circumstances do not exist here. Accordingly, the Commission will suspend Maritimes' revised tariff sheets for five months and will permit them to take effect January 1, 2005, subject to refund and subject to the conditions set forth in the body of this order and the ordering paragraphs below.

<u>The Commission orders:</u>

(A) The tariff sheets listed in the Appendix are accepted and suspended, to be effective January 1, 2005, subject to refund and subject to the outcome of the hearing and technical conference established in this proceeding.

(B) Staff is directed to convene a technical conference to discuss Maritime's proposed tariff revisions as discussed in the body of this order, as well as any other issues concerning Maritimes' terms and conditions, or system operations raised by the parties to this proceeding. Staff is directed to report the results of the technical conference to the Commission within 120 days of the date of this order.

(C) Pursuant to the authority of the NGA, particularly sections 4, 5, 8 and 15 thereof, a public hearing will be held in Docket No. RP04-360-000 concerning the lawfulness of Maritimes' proposed rates.

(D) 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, 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, N.E., Washington D.C. 20426. The prehearing conference shall be held for the purpose of establishment of a procedural schedule. 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.

(S E A L)

Linda Mitry,
Acting Secretary.

APPPENDIX

Maritimes and Northeast Pipeline, L.L.C.

Accepted and Suspended to be Effective January 1, 2005

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