104 FERC ¶ 61,190
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Natural Gas Pipeline Company of America Docket No. RP99-176-089

ORDER ACCEPTING AND SUSPENDING TARIFF SHEET, SUBJECT TO FURTHER PROCEEDINGS

(Issued August 8, 2003)

1. On July 11, 2003, Natural Gas Pipeline Company of America (Natural) filed Original Sheet No. 26W.31a to FERC Gas Tariff, Sixth Revised Volume No.1 to amend an existing negotiated rate transaction with Occidental Energy Marketing Inc. under Rate Schedule FTS, pursuant to Section 49 of the GT&C of Natural's tariff. The tariff sheet is accepted and suspended to become effective July 1, 2003, subject to further proceedings as discussed in the body of this order. The conditional acceptance of this filing conforms with the Commission's policy of ensuring that index prices used in pipeline tariffs be accurate, reliable, and trustworthy.

Subject Filing

2. Natural provides firm transportation service to Occidental pursuant to a negotiated rate agreement. Natural's existing negotiated rate agreement with Occidental is based on the greater of a set price of $0.1450/Dth or on a formula based on a spread between two indices: (1) the Gas Daily Price Guide Monthly Contract Index for Chicago LDCs (Chicago Index), and (2) the Inside FERC's Gas Market Monthly Report for the NGPL Midcontinent Zone Index plus (NGPL Amarillo Index) $0.04/Dth minus a minimum commodity rate applicable to the Amarillo Line.

3. Natural discovered on July 2, 2003, that a stated-index necessary to price certain July 2003 activity in accordance with the negotiated rate contract provisions was not published for July 2003 due to sparse activity. Accordingly, Natural proposes to amend the negotiated rated agreement to add alternative price indices to be used in any month in which one or more of the original price indices are not published. The revised indices are: (1) Arithmetic average of the following component indices, published in Inside

FERC's Gas Market Monthly Report for ANR- Oklahoma less $0.02; Williams Gas Pipelines Central - Texas, Oklahoma, Kansas less $0.03; and Panhandle Eastern - Oklahoma less $0.01; (2) Arithmetic average of the following component indices, published in Inside FERC's Gas Market Monthly Report for: Texas Eastern Transmission - East Texas plus $0.01; and Reliant Energy Gas transmission - East; and (3) Arithmetic average of the following component indices, published in Inside FERC's Gas Market Monthly Report for: Tennessee Zone 0; Texas Eastern - South Texas Zone; and Transco Zone 1. If any of the components used to calculate the alternative is not available, then the calculation of the alternative indices is based on the arithmetic average of the remaining components. Natural also requests waiver of the 30-day notice requirement so that the tariff revisions may be made effective July 1, 2003.

Notice, Interventions, Comments and Protests

4. Notice of the filing was issued on July 16, 2003, providing for the filing of interventions and protests in accordance with Section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2003). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2003), all timely filed motions to intervene are granted and any motions to intervene out-of-time filed before the issuance of this order are granted. Granting late intervention at this stage of the proceedings will not disrupt the proceedings or place undue additional burdens on existing parties. No protests or comments were filed.

Discussion

5. The Commission accepts and suspends Natural's proposal to be effective July 1, 2003, subject to further proceedings as discussed below.

6. The Commission issued a policy statement in Price Discovery in Natural Gas and Electric Markets in Docket No. PL03-3-000 on July 24, 2003.[1] The Commission requires that any prospective use of any index in the Commission's jurisdictional tariffs meet the criteria set forth in the order for price index developers and reflect adequate liquidity at the referenced location to be reliable. The Commission instructed staff to monitor both the level of reporting to index developers and the amount of adherence to the standards set forth therein. Specifically Staff is tasked to: identify the level of market participants currently reporting; identify increases (or lack thereof) in reporting by market participants currently not reporting; determine the quality of reporting (i.e. adherence to the mandated standards by data providers); review the quality of reported indices (i.e. adherence to the mandated standards by index developers); and communicate with index developers to

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[1]Price Discovery in Natural Gas and Electric Markets, 104 FERC ¶ 61,121 (2003).

insure appropriate Commission data access when needed. As the Commission stated in the policy statement, all pipelines, including Natural, must, in new tariff filings, use indices that meet the criteria in the policy statement and reflect adequate liquidity at the referenced locations to be reliable.

7. The Commission also issued a policy statement in Modification to Negotiated Rate Policy in Docket No. PL02-6-000 on July 25, 2003.[2] The policy statement states that the Commission will no longer permit the use of price differentials to develop the price for negotiated rate transactions. However, the policy statement did state that existing negotiated rates based upon such indices, such as those at issue here, may continue until the end of the contract period for which such rates were negotiated. Accordingly, we will allow the negotiated rate contract at issue here to continue for the remainder of its term, but the alternative price indices proposed to be used in the underlying contract for the price differential formula in the event the indices currently used are not published will be subject to the further proceedings required here.

8. The Commission directs Staff to file a report no later than 180 days from the date of this order regarding whether the alternative indices Natural proposes to use in its tariff meet the mandated standards and reflect adequate liquidity at the referenced locations to be reliable. Natural and other parties may file comments on Staff's report, including additional evidence, no later than 15 days after Staff issues its report. Thereafter, the Commission will issue an order determining whether the alternative indices proposed by Natural meet the criteria set forth in the policy statement and, if not, requiring Natural to make prospective changes to its proposed alternative indices necessary to conform to the policy statement. Accordingly, we accept Natural's filing subject to Natural refiling any changes ordered by the Commission.

Suspension

9. Based upon a review of the filing, the Commission finds that the proposed tariff sheet has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission accepts the tariff sheet for filing and suspends its effectiveness for the period set forth below, subject to the conditions set forth in this order.

10. It is the Commission's policy generally to suspend rate filings for the maximum period permitted by statute if preliminary study leads the Commission to believe that the

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[2] Natural Gas Pipeline Negotiated Rate Policies and Practices, 104 FERC ¶ 61,134 (2003).

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 also recognized however, that shorter suspensions may be warranted under circumstances in which suspension 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 exist here where the pipeline proposes to amend an existing negotiated rate agreement and add alternate indices to its tariff. Accordingly, the Commission will exercise its discretion to suspend the rates for a shorter period and permit the rates to take effect on July 1, 2003, and subject to the conditions set forth in the body of this order and in the Ordering Paragraphs below. The Commission will not require Natural to make any refunds with respect to its use of the index price proposed in the instant NGA Section 4 filing. Any changes the Commission requires will be prospective only. However, the ultimate burden remains on Natural to show that use of its proposed alternative indices is just and reasonable.

Waivers

11. Natural requests that the Commission grant any and all waivers of its regulations that it deems necessary to allow the filing to become effective July 1, 2003. Natural specifically requests waiver of Section 154.207 of the Commission's regulations to permit the filing to become effective upon less than 30-days notice. No party opposes Natural's request. We grant waiver of Section 154.207 of the Commission's regulations for good cause shown.

The Commission orders:

(A) The revised tariff sheet is accepted and suspended, to be effective July 1, 2003, subject to further proceedings as discussed in the body of this order and the Ordering Paragraph (C) below.

(B) The Commission grants Natural's request for the waiver of Section 154.207 of the Commission's regulations for good cause shown.

(C) Within 180 days of the date this order issues, Staff will file a report regarding whether the indices provided for the alternative indices Natural proposes to use meet the standards set forth in the policy statement and whether those alternative indices reflect adequate liquidity at the referenced locations to be reliable. All comments on Staff's report will be due no later than 15 days after Staff issues its report.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.