

125 FERC ¶ 61,120
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 29, 2008

In Reply Refer To:
Empire Pipeline, Inc.
Docket No. CP06-5-010

Empire Pipeline, Inc.
6363 Main Street
Williamsville, NY 14221

Attention: David W. Reitz
Attorney for Empire State Pipeline and Empire Pipeline, Inc.

Reference: Order Accepting Tariff Sheets and Request for Waiver

Dear Mr. Reitz:

1. On August 1, 2008, Empire Pipeline Inc. (EPI), filed tariff sheets¹ to comply with the Commission's orders in Docket Nos. CP98-150-006, *et al.*² EPI requests waiver of the order of discounts in section 154.109(c) of the Commission's regulations, which requires that the General Terms and Conditions of a tariff contain a statement that describes the order in which the company discounts its rates and surcharges. As discussed below, we will grant EPI's request for waiver of section 154.109(c) and accept the proposed tariff sheets with the effective date of November 1, 2008, or the date the facilities are placed into service.

2. The *EPI* orders authorized EPI to construct and operate a 78-mile pipeline to serve as the connection between its existing pipeline in Victor, New York and Millennium Pipeline Company, L.L.C. near Corning, New York. The *EPI* orders required EPI to file actual tariff sheets to reflect compliance with the discussion in the orders and with the effective rules of the North American Energy Standards Board. In its pro forma tariff sheets reviewed by the Commission, EPI provided a placeholder for the order of discounts required by section 154.109(c) of the Commission's regulations.

¹ Original Sheet Nos. 0-502 to EPI's FERC Gas Tariff, Original Volume No. 1.

² *Millennium Pipeline Company, L.L.C., et al.*, 117 FERC ¶ 61,319 (2006), *order on reh'g*, 119 FERC ¶ 61,173 (2007) (*EPI* orders).

3. Public notice of the filing was issued on August 6, 2008. Interventions and protests were due August 15, 2008 as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2008)), 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 the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

4. EPI requests waiver of section 154.109(c) of the Commission's regulations to omit the statement of discount policy from its FERC Gas tariff. EPI contends that: (1) it will recover its deferred state income tax balance in its base rates and not through a surcharge; and (2) the deferred tax balance will be fully recovered from all shippers subject to the applicable rate components whether they are paying maximum, discounted, or negotiated rates. Previously, the Commission has granted waivers of section 154.109(c) to other pipelines³ that have not included surcharges in their rates. Since EPI's rates currently do not contain a surcharge, consistent with its previous orders, the Commission will grant EPI's request for waiver of section 154.109(c). However, in the future, if EPI proposes to impose a surcharge, the Commission will require EPI to make a limited section 4 filing providing for the order of discounts.

5. The referenced tariff sheets are accepted for filing effective November 1, 2008, or on the date the project facilities are placed into service. EPI must notify the Commission of the exact date that the tariff sheets should be placed into effect. In addition, the Commission is accepting the negotiated rate agreements put forth in the revised tariff sheets under section 7 of the Natural Gas Act. Because the agreements are making changes to the terms and conditions of the rates, the changes should technically be filed under section 4 of the Natural Gas Act. Please be advised that in the future, it will be necessary to submit such filings in a manner consistent with the Commission's regulations.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

cc: All Parties

³ *Gulfstream Natural Gas System, LLC*, 91 FERC ¶ 61,119, at 61,467 (2000); *Vector Pipeline, L.P.*, 85 FERC ¶ 61,083, at 61,304 (1998); *Alliance Pipeline, L.P.*, 80 FERC ¶ 61,149, at 61,598 (1997).