

127 FERC ¶ 61,080
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 24, 2009

In Reply Refer To:
Natural Gas Pipeline Company of
America LLC
Docket No. RP99-176-192

Natural Gas Pipeline Company of America LLC
3250 Lacey Road
Suite 700
Downers Grove, IL 60515-7918

Attention: Bruce H. Newsome
Vice President, Regulatory Products & Services

Reference: Amendments to Negotiated Rate Agreement

Dear Mr. Newsome:

1. On March 27, 2009, Natural Gas Pipeline Company of America LLC (Natural) filed two amendments to an existing negotiated rate agreement with Nicor Gas Company (Nicor) under Rate Schedule FTS (Agreement). Amendment No. 3 extends the term of the service agreement and supersedes the existing negotiated rate agreement by adding Exhibit D. Amendment No. 4 supersedes the Exhibit D incorporated in Amendment No. 3 by adding a new Exhibit D. In addition, Natural submits First Revised Sheet No. 33H.02 to its FERC Gas Tariff, Seventh Revised Volume No. 1, to reflect the extension of the term of the service agreement and the addition of a new Exhibit. Natural requests waiver of the Commission's regulations to allow the revised tariff sheet and accompanying amendments to become effective April 1, 2009. The Commission grants waiver of the 30-day notice period¹ and accepts the revised tariff sheet and the two amendments to the Agreement effective April 1, 2009, as proposed, as discussed below.

¹ 18 C.F.R. § 154.207 (2008).

2. The underlying firm transportation service agreement was first filed as a negotiated rate transaction in September 2006 and accepted by the Commission on October 30, 2006.² This Agreement was also listed as a non-conforming contract in Natural's tariff, as it contained material deviations. The amendments extend the term of the underlying service agreement pursuant to the contract rollover provisions of Natural's tariff and revise the negotiated rates. Natural states that the instant negotiated rate agreement represents the first extension of the existing negotiated rate agreement.

3. Public notice of Natural's filing was issued on March 31, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2008)). Pursuant to Rule 214 of the Commission's regulations (18 C.F.R. § 385.214 (2008)), all timely filed motions to intervene and any motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late interventions at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No party filed a protest or adverse comment.

4. Article 5 of Exhibit D sets forth Nicor's contractual rollover and right of first refusal rights. Natural states that these provisions are authorized by section 22.4 of the General Terms and Conditions (GT&C) in Natural's tariff. However, Natural states that these provisions go beyond those provisions contained in Natural's *pro forma* service agreement. Therefore, Natural identifies these provisions as potentially non-conforming and marked such provisions in accordance with section 154.201(a).³ Natural affirms that it already lists the instant Agreement in its tariff as non-conforming in section 50.21 of the GT&C of its tariff. Natural states that, if the Commission determines that the deviations in Article 5 of Exhibit D are not material deviations, Natural will file to remove, in a future filing, the Agreement from its list of non-conforming contracts.⁴

5. The Commission's regulations require that pipelines include in their tariff a form of service agreement and file any contract that deviates materially from the *pro forma*

² *Natural Gas Pipeline Company of America*, Docket Nos. RP99-176-118 and RP99-176-119, (October 30, 2006) (unpublished letter order).

³ 18 C.F.R. § 154.201(a) (2008).

⁴ Natural's Transmittal Letter at P 3-4.

service agreement.⁵ In addition, a pipeline must include in Volume 1 of its tariff a listing of all contracts containing material deviations.⁶ In *Columbia Gas Transmission Corporation*, the Commission found that a material deviation is “any provision of a service agreement which goes beyond the filling in of the spaces in the form of service agreement with the appropriate information provided for in the tariff and that affects the substantive rights of the parties.”⁷ However, not all material deviations are impermissible. If the Commission finds that a deviation does not constitute a substantial risk of undue discrimination, the Commission may permit the deviation.⁸ Consistent with *Columbia*, the Commission finds that the provisions in Article 5 of Exhibit D of the Agreement deviate materially from Natural’s form of service agreement. However, the material deviations are permissible, since they are allowed under Natural’s generally applicable tariff. Since the provisions in Article 5 of Exhibit D of the Agreement are permissible material deviations, Natural must continue to list the Agreement as a non-conforming contract pursuant to section 50 of the GT&C of its tariff and section 154.112(b) of the Commission’s regulations.

6. Natural states that even though the base underlying Rate Schedule FTS Service Agreement does not deviate in any material respect from its *pro forma* service agreement, there are minor non-substantive differences between Exhibits A and C to the Agreement and the respective exhibits in the *pro forma* service agreement in Natural’s tariff. Section 154.201(a) of the Commission’s regulations requires that “[a] marked version of the pages to be changed must be included in each copy of the filing.”⁹ Therefore, Natural is reminded to comply with this regulation in its future filings.

⁵ 18 C.F.R. §§ 154.1(d) and 154.110 (2008). In its policy statement issued July 25, 2003, the Commission held that a material deviation included any provision in a service agreement that (1) goes beyond the filling-in-the-blank spaces with the appropriate information provided for in the tariff; or (2) affects the substantive rights of the parties. *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134, at P 27 (2003).

⁶ 18 C.F.R. § 154.112(b) (2008).

⁷ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001) (*Columbia*).

⁸ *Id.* at 62,004.

⁹ 18 C.F.R. § 154.201(a) (2008).

7. The Commission accepts Natural's revised tariff sheet and the two amendments to the Agreement to become effective April 1, 2009.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.