

128 FERC ¶ 61,109
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Maritimes & Northeast Pipeline, L.L.C.

Docket No. RP09-809-000

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

(Issued July 30, 2009)

1. On July 1, 2009, pursuant to section 4 of the Natural Gas Act (NGA), Maritimes & Northeast Pipeline, L.L.C. (Maritimes) filed revised tariff sheets to effectuate reductions in the rates applicable to Maritimes' various services¹ and to reflect out-of-cycle changes in Maritimes' Fuel Retainage Quantity.² For the reasons discussed below, the Commission: (a) accepts and suspends Maritimes' proposed tariff sheets in Appendix A establishing decreased system transportation rates, to be effective August 1, 2009, as requested, subject to refund and the outcome of a hearing established herein; and (b) accepts and suspends Maritimes' proposed tariff sheets in Appendix B revising Maritimes' fuel rate methodology and increasing its fuel charges, to be effective January 1, 2010, subject to refund and the outcome of a technical conference.

I. Background

2. In 1996, the Commission authorized Maritimes to build pipeline facilities to transport gas from the United States-Canada border near Goldsboro, Nova Scotia, through Maine, New Hampshire, and Massachusetts to a terminus near Dracut, Massachusetts. About 101 miles of the pipeline, from Westbrook, Maine, to Dracut, Massachusetts, is jointly owned with Portland Natural Gas Transmission System (Portland). At Dracut, the joint facilities interconnect with Tennessee Gas Pipeline Company (Tennessee). Maritimes later received authorization to construct Maritimes'

¹ See Appendix A.

² See Appendix B.

Phase III Project in an order issued April 13, 2001.³ Under the Phase III Project, Maritimes constructed a pipeline that extended from an interconnect with the joint facilities mainline at Methuen, Massachusetts, some 25 miles to an interconnect with proposed facilities of Algonquin Gas Transmission Company (Algonquin) at Beverly, Massachusetts. Maritimes was authorized to charge its existing rates for service on the Phase III Project facilities.⁴

3. On June 30, 2004, Maritimes filed a general rate increase under section 4 of the NGA. Maritimes' section 4 filing proposed, among other things, to increase Maritimes' maximum recourse rates for mainline transportation service to reflect an increase in Maritimes' annual revenue requirement. The increased revenue requirement, in turn, reflected the roll-in of the costs of the Phase III Project facilities. On July 29, 2004, the Commission accepted the filing, suspended it for five months, and permitted the proposed rates to become effective on January 1, 2005, subject to refund and the outcome of a hearing on the proposed rates.⁵ Subsequently, Maritimes negotiated a settlement (Settlement) with several key shippers, which was accepted by the Commission on May 15, 2006.⁶

4. For an interim period, the Settlement provides for, among other things, a partial roll-in of 40 percent of Phase III costs in mainline rates, partial recovery of 20 percent of the Phase III costs in a volumetric surcharge, and deferral of the remaining 40 percent of Phase III costs, which will accrue carrying charges monthly at Maritimes' cost of long-term debt. Until superseded by new rates, the Settlement provides for a 100 percent load factor reservation charge of \$0.78 per Dth/d for Rate Schedule MN365 with a volumetric surcharge of \$0.1400 per Dth for quantities transported on the Phase III facilities. For transportation service on the Phase III facilities only, the Settlement provides for a 100 percent load factor reservation charge of \$0.24 per Dth/d with a volumetric surcharge of \$0.14 per Dth.

5. Section 1.9 of the Settlement also provides that Maritimes will file, consistent with section 1.6 of the Settlement, a rate case under section 4 of the NGA within six months of the in-service date of a New Mainline Expansion Project. Under the Settlement, a "New

³ *Maritimes & Northeast Pipeline, L.L.C.*, 95 FERC ¶ 61,077, at 61,219-20 (2001); see also *Maritimes & Northeast Pipeline, L.L.C.*, 96 FERC ¶ 61,077 (2001); *Maritimes & Northeast Pipeline, L.L.C.*, 99 FERC ¶ 61,277 (2002) (amending certificates).

⁴ *Maritimes*, 95 FERC at 61,220; 61,227-28.

⁵ *Maritimes & Northeast Pipeline, L.L.C.*, 108 FERC ¶ 61,087 (2004).

⁶ *Maritimes & Northeast Pipeline, L.L.C.*, 115 FERC ¶ 61,176 (2006).

Mainline Expansion Project” is an expansion project that (i) expands the system design capacity of Maritimes’ mainline; (ii) results in a system-wide mainline maximum recourse reservation charge for Rate Schedule MN365 service, upon roll-in of the costs of the new expansion project, along with the entire then-existing rate base amount associated with Maritimes’ Phase III facilities, including the amount in the Phase III-related deferred account, that is lower than \$0.7800 per Dth/d on a 100 percent load factor basis; and (iii) is underpinned by a new firm service agreement(s) with weighted average contract term(s) extending beyond November 30, 2019. The Settlement also provides that as part of any rate case filed pursuant to this provision, Maritimes is required to request authorization to place the proposed rates into effect immediately, subject only to a one-day suspension period.

6. Maritimes recovers its system’s fuel requirements and lost and unaccounted for gas (LAUF) by retaining in-kind a percentage of gas tendered by customers. Section 20 of the General Terms and Conditions (GT&C) of Maritimes tariff governs how Maritimes’ fuel retention percentages are set and updated in annual tracker filings that take effect on November 1 of each year. Before the Settlement, Maritimes charged a single system-wide Fuel Retainage Percentage.⁷ In the Settlement, the parties agreed to separate Fuel Retainage Percentages, one for deliveries on the mainline system upstream of the Richmond, Maine compressor station and one for deliveries on the mainline system downstream of the Richmond, Maine compressor station. The Settlement provided that this methodology for calculating Fuel Retainage Percentages would remain in effect until the earlier of November 30, 2019, or the date Maritimes first places into effect rates in a rate case in which Maritimes proposes a single system-wide maximum recourse reservation charges that is equal to or less than \$0.7700 per Dth/d on a 100 percent load factor basis for Rate Schedule MN365 service.

7. By order dated February 21, 2007, the Commission authorized the construction of the Maritimes Phase IV Project.⁸ The Phase IV Project was designed to increase Maritimes’ mainline design capacity by approximately 418,000 dekatherms per day (Dth/d) to 833,317 Dth/d of mainline capacity to accommodate the importation of regasified liquefied natural gas (LNG) from Canada. The Phase IV Project facilities consist of a 1.7 mile loop line from the Brunswick pipeline interconnection to the existing mainline in Baileyville, as well as new compression and metering facilities. The Phase IV Project was placed into service on January 15, 2009.

⁷ Section 20 provides for Maritimes Fuel Retainage Percentage to be established for two calendar periods, the winter period (November through March) and the non-winter period (April through October).

⁸ *Maritimes & Northeast Pipeline, L.L.C.*, 118 FERC ¶ 61,137 (2007).

II. Details of the Filing

A. General Section 4 Rate Case

8. Maritimes states that its general section 4 rate case is being filed pursuant to section 1.9 of the Settlement.⁹ Maritimes states that roll-in of the Phase IV Project costs, along with the roll-in of the entire existing Phase III Project rate base amount, results in a maximum recourse reservation charge for Rate Schedule MN365 service of \$0.6049 per Dth/d, which is lower than the existing \$0.7800 Dth/d rate now in effect for such service. Maritimes further states that, as of March 1, 2009, Maritimes' year-round mainline capacity of 833,317 Dth/d is fully subscribed, with the primary term of the firm service agreement underpinning the Phase IV Project extending for 25 years. Accordingly, Maritimes states that under the Settlement the Phase IV Project is a New Mainline Expansion Project.

9. Maritimes states that its filing reflects a decrease in the recourse rates that apply to Maritimes' firm and interruptible mainline and lateral services. Maritimes states that its proposed recourse rate for mainline transportation service under Rate Schedules MN365 and MNIT of \$0.6049 per Dth/d on a 100 percent load factor basis represents an approximately 23 percent decrease in the Rate Schedules MN365 and MNIT rates.¹⁰

10. Maritimes states that it used the determinants described below in designing its rates. Maritimes proposes to use mainline rate design determinants of 853,317 Dth/d (833,317 Dth/d for firm service and 20,000 Dth/d for interruptible service) to design the mainline rates. Maritimes states that it proposes to eliminate the Phase III-only reservation charge and the Phase III surcharge and to roll in the entire cost of the Phase III and Phase IV Project facilities into Maritimes' system-wide cost of service, thereby establishing a single, system-wide rate recovering the cost of service for the entire mainline, including Phase III, plus the amount in the Phase III-related deferred account,¹¹ as well as the Phase IV Project costs. Maritimes also proposes an overall rate of return of 11.20 percent, which reflects a proposed rate of return on equity of 14.25 percent, a capital structure of 43.06 percent equity to 56.94 percent debt, and a cost of long term debt of 8.89 percent. Maritimes states that it is not proposing to change its system-wide depreciation rate of 2.40 percent.

⁹ *Id.*

¹⁰ Maritimes states that Rate Schedules MN151, MN90, MNOP and MNPAL are derived from this proposed mainline transportation rate.

¹¹ *See* paragraph 4, *supra*.

B. Fuel Retainage Quantity

11. Maritimes' current Fuel Retainage Percentages are 0.90 percent for deliveries north of the Richmond, Maine compressor station for both the winter and non-winter periods and 1.10 percent for deliveries south of the same compressor station for both the winter and non-winter periods. Maritimes proposes as part of this filing to change from the current bifurcated fuel rate methodology approved in the Settlement to a single, system-wide fuel rate effective on the date that the transportation rates proposed herein become effective. In addition, Maritimes proposes to increase its Fuel Retainage Percentage in order to recover increased fuel costs. Specifically, Maritimes proposes a single, system-wide fuel rate of 1.3 percent as compared to the existing bifurcated fuel rate rates of 0.9 percent for deliveries upstream of Richmond and 1.1 percent for deliveries downstream of Richmond.¹² Maritimes states that it is making this filing pursuant to section 20.5 of its GT&C, which provides for interim (out-of-cycle) fuel proposals between annual filings subject to approval by the Commission. Maritimes states that the proposed increase is the result of the estimated increase in mainline throughput associated with the publicly announced commencement of deliveries of LNG cargoes at Canaport™ LNG's new terminal (which is expected to occur in early July).

12. Maritimes states that, while this out-of-cycle Fuel Retainage Quantity filing is designed to match as closely as possible the timing of fuel incurrence on the system with actual fuel retainage, its fuel tracker mechanism ultimately will be utilized to reconcile any differences and keep shippers whole.

III. Notice of Filing, Interventions and Protests

13. Public notice of Maritimes' filing was issued on July 7, 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, 18 C.F.R. § 385.214 (2008), all timely 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. Emera Energy Services, Inc. (Emera), the Maine Public Advocate, and Pengrowth Corporation (Pengrowth) filed protests. Emera and Pengrowth also requested that the Commission order further proceedings to allow Commission staff and interested parties an opportunity to obtain additional information regarding the out-of-cycle fuel filing as

¹² Maritimes states that, pursuant to section 1.3(C) of the Settlement, the interim term for the requirement to have bifurcated fuel rates expires when the rates proposed in this filing are placed into effect.

well as requesting the rate case be set for hearing. Bangor Gas Company, LLC (Bangor) filed comments and requested that the general section 4 rate case be set for hearing. The Canadian Association of Petroleum Producers (CAPP) and Mobil Natural Gas Inc. (Mobil) requested that the out-of-cycle-fuel filing as well as the rate case be set for hearing. H.Q. Energy Services (U.S.), Inc. (HQUS) and the Maine Public Utilities Commission (Maine PUC) filed protests out-of-time. The Commission grants HQUS' and the Maine PUC's late-filed protests, as doing so does not delay or disrupt the proceeding or create additional burdens on the other parties.

15. On July 20, 2009, Maritimes filed an answer to the comments and protests made in this proceeding. Under Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), answers to protests are prohibited unless otherwise ordered by the decisional authority. We will accept Maritimes' answer because it provides information that will assist us in our decision-making process.

A. General Section 4 Rate Case

16. Several parties state that Maritimes' proposed transportation rates may be unjust and unreasonable and should be subject to an evidentiary hearing. Specifically, Pengrowth, Emera, the Maine Public Advocate, Maine PUC, and Mobil state that they have concerns regarding Maritimes' proposed return on equity. Pengrowth and Emera state that it should be further examined whether Maritimes inadequately considers its improved risk profile with the now full subscription of its system. They state that Maritimes' modifications to the Commission's approved discounted cash flow analysis also need to be examined more closely, as well as Maritimes' proposed cost of debt rate of 8.89 percent, which they contend is substantially higher than Maritimes' outstanding long-term debt rate of 7.5 percent and Maritimes prior long-term bond rate of 7.7 percent.

17. Pengrowth and Emera also state that Maritimes' proposal to utilize the previously approved depreciation rates may no longer be appropriate given the substantial new facilities (i.e., Phase IV Project) and unconventional new supply sources (i.e., interconnection to new LNG terminalling facility) that may have the ability to substantially extend the useful life of the pipeline.

18. Pengrowth, Emera, and Mobil also have concerns regarding Maritimes proposed increases in operation and maintenance (O&M) costs categories and interruptible throughput projection. Based upon the information provided by Maritimes, Pengrowth and Emera state that it is difficult to determine if Maritimes' proposed O&M costs are just and reasonable. Pengrowth and Emera are also concerned with the \$2.1 million of projected legal and consultant expenses for this rate case. Regarding Maritimes' interruptible throughput projection, Pengrowth and Emera state that they have serious concerns with Maritimes' interruptible throughput projection of 20,000 Dth/d, which is a downward adjustment from the base period MNIT throughput of 25,680 Dth/d.

Pengrowth and Emera argue that Maritimes' assumption that capacity release activity will increase due to the full subscription of firm service is unsupported. Pengrowth and Emera argue that if Maritimes' largest firm shipper utilizes its service at only a 25 percent load factor, as Maritimes contends, there will be substantial unutilized capacity for either capacity release or additional MNIT service and Maritimes has no basis for assuming the former as opposed to the latter.¹³

19. Bangor is particularly concerned about the cost allocation and rate design for the Maritimes' laterals, particularly the Bucksport and Veazie laterals. Bangor states that one issue that should be explored at hearing is how Maritimes proposes to treat any revenues received for interruptible service on the Bucksport and Veazie laterals. Bangor states that based upon its initial review it does not appear that Maritimes has allocated any costs to interruptible transportation on the Bucksport and Veazie laterals, but instead designed the laterals' firm rates based on each Lateral's total projected cost of service divided by the lateral's annual contract quantities. Though this rate design may be appropriate for laterals, Bangor maintains that certain measures should be in place to protect the maximum recourse rates shippers from excessive charges. Bangor suggests that Maritimes flow the revenues, net costs resulting from any interruptible transportation on Bucksport and Veazie laterals to the shippers on those laterals.

20. The Maine Public Advocate and the Maine PUC also oppose Maritimes' proposal to continue using a postage stamp rate design. They argue that it violates the Commission's rule that variations in costs related to the distance of gas transported must be reflected in rates. Further, they point out that Maritimes ceased making payments to the special purpose fund that was created by the Settlement and overseen by the Maine Public Advocate to provide credits to Maine consumer that receive natural gas from Maritimes.

21. Finally, Pengrowth and Emera argue that under section 1.9(C) of the Settlement Maritimes is required to request a waiver of the 30-day statutory notice period and an effective date, after a one-day suspension, of July 2, 2009. Pengrowth and Emera urge the Commission to require Maritimes to honor its agreement and make the new, reduced rates effective after a one-day suspension from the date of filing, placing the new rates into effect immediately as required by the Settlement.¹⁴

¹³ It is Pengrowth's and Emera's understanding that Repsol's participation in capacity release activity was minimal, if at all.

¹⁴ Both Pengrowth and Emera note that this position does not extend to the effective date of Maritimes' out-of-cycle Fuel Retainage Quantity filing. Pengrowth Protest at n.2 and Emera Protest at n.2.

22. In its answer, Maritimes states that the claim by Pengrowth and Emera that the Settlement requires Maritimes to request a waiver of the 30-day notice period is incorrect and contrary to the Settlement. Maritimes states that according to the Settlement, its only obligation was to request a one-day suspension period. Further, Maritimes argues that if the parties to the Settlement had intended to require Maritimes to seek a waiver of the 30-day notice requirement as required by both the NGA and the Commission's regulations, the parties could have included such a requirement in the Settlement.

23. Maritimes also argues in its answer that Bangor Gas' argument that a lower rate of return may be appropriate for the Bangor Veazie and Bucksport laterals should be rejected. Maritimes argues that a pipeline is entitled to a return on equity sufficient to attract investment in its enterprise,¹⁵ which is a return on equity invested in the enterprise as a whole. Maritimes further states that separate returns on equity for various parts of the system are not allowed.¹⁶

B. Fuel Retainage Quantity

24. Pengrowth, Emera, HQUS, the Maine PUC and the Maine Public Advocate protest Maritimes' proposed Fuel Retainage Quantity. Pengrowth and Emera state that Maritimes' has provided no support for its proposed out-of-cycle fuel rate increase other than to state that it reflects an expected increase in throughput associated with the start-up of the Canaport™ LNG terminal. HQUS states that Maritimes' proposed system-wide fuel rate of 1.3 percent reflects an overall increase in the fuel quantities charged all Maritimes' shippers, as well as an increase of over 45 percent in fuel charges applied to volumes delivered north of Maritimes' Richmond compressor station. HQUS states that the need for zoning transportation rates and charges was a hard fought issue in Maritimes' last rate proceeding in Docket No. RP04-360-000 and although that case settled on a basis that maintained system-wide transportation rates, that settlement also provided for bifurcation of fuel charges on the Maritimes' system. HQUS states that Maritimes has not established that its current bifurcated fuel charges are unjust or unreasonable. Similarly, the Maine Public Advocate and Maine PUC state that, while Maritimes used a single, system-wide fuel rate prior to the Settlement, the subsequent increase in compression capacity on Maritimes' system and the associated 640 percent increase in compression capacity, together with the associated increase in potential fuel

¹⁵ Maritimes Answer at 9 (citing *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944)).

¹⁶ Maritimes Answer at 9 (citing *Kern River Gas Transmission Co.*, 123 FERC ¶ 61,056, at P 198 (2008)).

use, is a substantial change in circumstances that makes Maritimes' proposal to return to its historical single, system-wide fuel rate unreasonable.¹⁷

25. HQUS also requests that if Maritimes' filing is not rejected, it should be suspended for the full statutory five-month period. HQUS argues that given Maritimes is proposing to *increase* fuel rates, a one-day suspension is not appropriate.

26. In its answer, Maritimes argues that a hearing is unnecessary and inappropriate with respect to its proposed Fuel Retainage Quantity filing and its filing should be accepted and allowed to become effective on August 1, 2009. Maritimes argues that section 20 of its GT&C provides that Maritimes is entitled to recover its actual fuel cost through its Fuel Retainage Quantity. Maritimes argues that the Commission routinely approves fuel rates changes without a hearing when the fuel rate is subject to a tracker and true-up. Maritimes states that its fuel proposal is necessary to avoid a fuel under-recovery and thus, a future surcharge due to the expected increase in throughput and compressor fuel use associated with the Phase IV Project facilities and the start-up of the Canaport™ LNG terminal. Maritimes further states that if its projections are incorrect, Maritimes' is required to refund the over-recovery with interest to the shippers.

27. Maritimes also argues in its answer that HQUS' request that the FRQ filing be suspended for a full five months ignores the substantial transportation rate reduction proposed in Maritimes' initial filing and constitutes an attempt to cherry pick the filing. Further, Maritimes states that the design of the Phase IV Project allowed Maritimes to double the capacity of the system and decrease transportation rates for all shippers, but also resulted in higher system fuel use. Maritimes claims that the Commission recognized this trade-off between lower transportation rates and higher fuel cost in the Phase IV Project proceeding.¹⁸ In response to the Commission's request, Maritimes states that it filed a study in the Phase IV Project docket, which the Commission accepted without modifying or conditioning the Phase IV Project certificate order,¹⁹ demonstrating

¹⁷ The Maine Public Advocate states that Maritimes began operations with just 16,622 horsepower of compression in continuous service at the Baileyville and Richmond compressor stations and at the time of the Settlement, Maritimes had 33,244 horsepower in service at the same two locations. The Maine Public Advocate further states that with the Phase IV Project expansion Maritimes now has approximately 123,125 horsepower of compression in service at 7 locations, all within the State of Maine.

¹⁸ Maritimes Answer at 7 (citing *Maritimes & Northeast Pipeline, L.L.C.*, 118 FERC ¶ 61,137).

¹⁹ Maritimes Answer at 7 (citing *Maritimes & Northeast Pipeline, L.L.C.*, Docket No. CP06-335-000, *et al.* (July 23, 2007) (unpublished letter order).

that the projected net revenue associated with the Phase IV Project would exceed the additional fuel costs that would be allocated to capacity subscribed by existing shippers over the first ten years of the life of the project.²⁰ Maritimes states that the parties that are seeking to separate the effective dates for the transportation rate decrease and the fuel percentage increase are attempting to take the benefits of the Phase IV Project, while not accepting responsibility for the related increase in fuel costs.

28. Maritimes also argues that it would be inappropriate to suspend the fuel filing in light of the brief period for which it will be effective. Maritimes states that it must submit its annual Fuel Retainage Quantity filing with the Commission on October 1, 2009. Therefore, Maritimes claims, if the Commission suspends the instant FRQ filing for the maximum five-month period, to become effective subject to refund as of January 1, 2010, the Commission will have essentially rejected the filing outright because the next Fuel Retainage Quantity filing will have been made three months before the end of the suspension period.

29. Maritimes states that HQUS is incorrect in its assertion that Maritimes has a burden of proving that its current bifurcated rates are unjust and unreasonable before Maritimes can propose a single, system-wide fuel rate because its existing bifurcated fuel rates expire upon the effectiveness of the general section 4 rate filing. Maritimes further argues it is just and reasonable for it to implement a single, system-wide fuel rate in light of the fact Maritime is implementing a single, system-wide transportation rate for the mainline in the general section 4 rate case. Maritimes argues that, if HQUS desires bifurcated or zoned fuel rates, they have the burden under NGA section 5 of proving that Maritimes' proposed fuel rate is unjust and unreasonable and of proving that such party's proposed bifurcated fuel rates are just and reasonable.

IV. Discussion

A. General Section 4 Rate Case

30. The Commission accepts and suspends Maritimes' proposed tariff sheets listed on Appendix A revising Maritimes' transportation rates, to be effective August 1, 2009, subject to the outcome of the hearing procedures discussed below. We deny Pengrowth's and Emera's request to make Maritimes' proposed general section 4 rates effective after a one-day suspension period from the date of Maritimes' filing. Pengrowth and Emera contend that section 1.9(C) of the Settlement required Maritimes to request such an effective date. That section provides in relevant part:

²⁰ Maritimes Answer at 7.

As part of any Rate Case Comeback, where the proposed mainline recourse Reservation Charge for Rate Schedule MN365 service is lower than \$0.78 per Dth/d on a 100 percent load factor basis, Maritimes shall request that the Commission authorize Maritimes to place the rates proposed in the Rate Case Comeback filing into effect immediately, subject only to a one-day suspension period.

Specifically, Pengrowth and Emera argue that the parties' use of the word "immediately" in this section means that Maritimes was required to request a waiver of the 30-day statutory period and an effective date, after a one-day suspension, of July 2, 2009.

31. We disagree. Section 4 of the NGA requires that pipelines provide 30 days' notice of any proposed rate change, absent waiver by the Commission of that requirement. In addition, the Commission's regulations require pipelines to file for a proposed rate change at least 30 days, but no more than 60 days, prior to the proposed effective date of the change, unless a waiver of the time periods is granted by the Commission.²¹ Consistent with these requirements, when the Commission suspends a rate filing for the minimum period, the Commission generally makes the rate filing effective on the day after expiration of the 30-day notice period, absent a request by the pipeline for waiver of the notice period. Therefore, if the parties to the Settlement had intended reduced rates filed pursuant to section 1.9 to take effect in the manner requested by Pengrowth and Emera, we believe they would have included in that section an express requirement that Maritimes request a waiver of the 30-day notice requirement. However, they did not.

32. In its protest, Emera states that the Commission regulations specifically contemplate that waivers of the 30-day notice period may be sought and the Commission has granted such waiver in the past where a rate decrease is proposed.²² However, in each of those cases, the pipeline specifically requested waiver of the 30-day notice period. Here, Maritimes has not requested waiver of the 30-day notice period and, as stated above, the Settlement did not require it to do so. The Commission concludes that making Maritimes' general section 4 rate case filing effective August 1, immediately following the 30-day notice period is consistent with the Settlement.

33. We find that Maritimes' filing raises many typical rate case issues that warrant further investigation. Accordingly, the Commission will establish a hearing to explore the issues set forth in the protests, including, but not limited to, cost of service, cost

²¹ See 18 C.F.R. § 154.207 (2008).

²² Emera Protest at 5 (citing *Mojave Pipeline Co.*, 118 FERC ¶ 61,252 (2007) and *Sea Robin Pipeline Co.*, 45 FERC ¶ 61,125 (1988)).

allocation, rate design, projected interruptible throughput, and cost allocation and rate design for the Veazie and Bucksport laterals, including whether a separate return on equity is appropriate for the laterals given the Commission generally does not adopt separate returns on equity for separate portions of pipeline facilities. The Commission finds that it is appropriate to examine these issues in the context of a hearing where a factual record can be developed by the parties.

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

35. 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.²³ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.²⁴ Such circumstances exist here where Maritimes is filing in accordance with a provision of a Commission approved settlement and reflects an overall decrease in recourse rates. Therefore, the Commission shall exercise its discretion to suspend the proposed tariff sheets listed in the Appendix A, to be effective August 1, 2009, subject to refund and the outcome of a hearing established herein.

B. Fuel Retainage Quantity

36. The Commission accepts and suspends Maritimes' proposed tariff sheets listed on Appendix B revising and increasing Maritimes' fuel rates, to be effective the earlier of January 1, 2010 or further order of the Commission, subject to refund and the outcome of the technical conference procedures discussed below. Under section 20.5, Maritimes is permitted to file an out-of-cycle change to its Fuel Retainage Percentages. However, in its filing, Maritimes combined a proposed out-of-cycle fuel rate increase with a proposed change to its current methodology for calculating the fuel rates on its mainline system. While Maritimes need not show that its existing bifurcated fuel rates are unjust and

²³ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

²⁴ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

unreasonable in order to shift to a single system-wide fuel rate,²⁵ it does bear the burden under NGA section 4 to show that the proposed system-wide rate is just and reasonable. The parties have raised significant issues as to whether Maritimes has satisfied that burden. Therefore, consistent with our actions in other cases where pipelines have proposed significant changes in their fuel tracking mechanisms, the Commission will suspend Maritimes proposed system-wide fuel rate until the earlier of five months or further order of the Commission.²⁶ In addition, the Commission will establish a technical conference to gather additional information and to provide parties with a forum to discuss relevant issues and concerns raised by Maritimes' proposal.

37. If Maritimes desires to implement an out-of-cycle fuel rate increase during the suspension period (and before the effective date of its next annual tracker filing), Maritimes may make an out-of-cycle proposal consistent with its current bifurcated fuel mechanism.

38. 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.²⁷ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.²⁸ Such circumstances do not exist with respect to Maritimes' proposal to modify its methodology for calculating Fuel Retainage Percentages and at the same time increase those percentages. Accordingly, the Commission accepts and suspends the tariff sheets in

²⁵ See *Consolidated Edison Co. of New York, Inc. v. FERC*, 165 F.3d 992, 1007-08 (D.C. Cir. 1999).

²⁶ See *Texas Gas Transmission, LLC*, 125 FERC ¶ 61,134 (2008). Contrast *High Island Offshore System, L.L.C.*, 118 FERC ¶ 61,256 (2007), *Northern Natural Gas Co.*, 114 FERC ¶ 61,332 (2006), and *Florida Gas Transmission Co.*, 110 FERC ¶ 61,403 (2005) in which the pipelines were proposing changes in the amount of their fuel charge resulting from changes in fuel costs as opposed to reallocating their fuel costs among customers, and *Sabine Pipe Line LLC*, 116 FERC ¶ 61,309 (2006), in which the Commission found Sabine's newly proposed tracking mechanism acceptable, except for the absence of true-up mechanism which the Commission ordered Sabine to include with its tracking mechanism.

²⁷ See *Great Lakes*, 12 FERC ¶ 61,293 (five-month suspension).

²⁸ See *Valley Gas*, 12 FERC ¶ 61,197 (one-day suspension).

Appendix B until the earlier of January 1, 2010 or further order of the Commission, subject to refund and the conditions discussed herein.

The Commission orders:

(A) The tariff sheets listed in the Appendix A are accepted and suspended, to be effective August 1, 2009, subject to refund and the outcome of the hearing established herein.

(B) The tariff sheets listed in the Appendix B are accepted and suspended, to be effective the earlier of January 1, 2010 or further order of the Commission, subject to refund and conditions discussed in the body of this order.

(C) Pursuant to the Commission's authority under the Natural Gas Act, particularly sections 4, 5, 8, and 15, and the Commission's rules and regulations, a public hearing is to be held in Docket No. RP09-809-000 concerning Maritimes' proposed tariff sheets in Appendix A.

(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, shall convene a prehearing conference regarding the tariff sheets in Appendix A in this proceeding in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. The prehearing conference shall be held for the purpose of clarification of the positions of the participants and consideration by the presiding judge of any procedural issues and discovery dates necessary for the ensuing hearing. The Presiding Administrative Law Judge is authorized to conduct further proceedings in accordance with this order and the Rules of Practice and Procedure.

(E) The Commission's staff is directed to convene a technical conference to address the issues raised by Maritimes' proposed tariff sheets in Appendix B and report the results of the conference to the Commission within 120 days of the date this order issues.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX A

Maritimes & Northeast Pipeline, L.L.C.
Docket No. RP09-809-000
FERC Gas Tariff
First Revised Volume No. 1

Tariff Sheets Accepted and Suspended, to be Effective August 1, 2009
Subject to Refund and the Outcome of a Hearing

Eleventh Revised Sheet No. 7
Fifth Revised Sheet No. 7A
Eleventh Revised Sheet No. 8
Fifth Revised Sheet No. 8A
Second Revised Sheet No. 10
Tenth Revised Sheet No. 12
Tenth Revised Sheet No. 13
Eleventh Revised Sheet No. 14
Original Sheet No. 15
Third Revised Sheet No. 102
Fifth Revised Sheet No. 103
Fourth Revised Sheet No. 104
Second Revised Sheet No. 108
Fourth Revised Sheet No. 109
Fifth Revised Sheet No. 110
Second Revised Sheet No. 114
Fourth Revised Sheet No. 115
Fifth Revised Sheet No. 116
Second Revised Sheet No. 120
Fourth Revised Sheet No. 121
Fifth Revised Sheet No. 122
Fourth Revised Sheet No. 123
Third Revised Sheet No. 127
Fifth Revised Sheet No. 128
Six Revised Sheet No. 201
Third Revised Sheet No. 209
Fourth Revised Sheet No. 308

APPENDIX B

Maritimes & Northeast Pipeline, L.L.C.

Docket No. RP09-809-000

FERC Gas Tariff

First Revised Volume No. 1

Tariff Sheets Accepted and Suspended, to be Effective January 1, 2010

Subject to Refund and the Outcome of a Technical Conference

Thirteenth Revised Sheet No. 11