

129 FERC ¶ 61,166
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 20, 2009

In Reply Refer To:
Guardian Pipeline, L.L.C.
Docket No. RP10-65-000

Guardian Pipeline, L.L.C.
100 West 5th Street
Tulsa, Oklahoma 74103

Attention: Ron M. Mucci, Vice President
Rates & Regulatory Affairs

Reference: Revised Exhibit A to a Non-Conforming Negotiated Rate Service
Agreement and Related Tariff Revisions

Dear Mr. Mucci:

1. On October 21, 2009, Guardian Pipeline, L.L.C. (Guardian) filed a revised tariff sheet to update its Statement of Negotiated Rates to reflect the amended Points of Receipt under an existing service agreement with Wisconsin Gas LLC under Guardian's Rate Schedule FT-1 (the Wisconsin Agreement).¹ Because the service agreement also contains previously approved material deviations from the *pro forma* service agreement,² Guardian filed a revised Exhibit A to the service agreement to reflect the change in the Points of Receipt. However, as described below, Guardian requests that the Commission find that the filing of the revised exhibit is not necessary. Finally, Guardian filed a revised tariff sheet to correct an inadvertent mistake in the Form of Exhibit A attached to

¹ Twelfth Revised Sheet No. 6 to FERC Gas Tariff, Original Volume No. 1.

² See *Guardian Pipeline, L.L.C.*, Docket No. RP09-929-000, (September 30, 2009) (unpublished letter order).

the *pro forma* service agreement for firm service under Rate Schedule FT-1.³ Guardian requests waiver of the Commission's 30-day notice requirement to allow the revised tariff sheets, and the revised Exhibit A to the Wisconsin Agreement, if necessary, to become effective November 1, 2009. Guardian requests that the Commission treat the Wisconsin Agreement's revised Exhibit A as having been withdrawn in the event the Commission determines that the filing of that exhibit to the Wisconsin Agreement was not required. The Commission grants waiver of its 30-day notice requirement and accepts the revised tariff sheets effective November 1, 2009, as proposed. Revised Exhibit A to the Wisconsin Agreement is treated as withdrawn.

2. Guardian states that, consistent with section 154.601 of the Commission's regulations, it has executed the amended Wisconsin Agreement with a separately revised exhibit. However, Guardian states that it is not entirely clear that it is required to submit the amended agreement and revised Exhibit A to the Commission for its approval pursuant to the Commission's policy regarding non-conforming agreements, since the amended Exhibit A is the only change that was made to the Wisconsin Agreement, and it conformed when executed to Exhibit A of the Form of Service Agreement for Rate Schedule FT-1 in its tariff. Therefore, Guardian requests the Commission to indicate whether it is required to file amendments to an exhibit to an Agreement where the exhibit conforms to the form of exhibit contained in the tariff. Guardian asserts that a revised exhibit that conforms to the tariff form of exhibit need not be filed, where the agreement itself, though non-conforming, was approved by the Commission.

3. Public notice of Guardian's filing was issued on October 27, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2009)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2009)), 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 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. Northwest Pipeline GP (Northwest) filed a motion to intervene urging the Commission to grant Guardian's clarification request and confirm that its regulations do not require the re-filing of amended non-conforming agreements where the original non-conforming provisions have been approved, and no existing non-conforming provision has been changed, or new non-conforming provisions added. Northwest states that it currently re-files any non-conforming agreement any time such agreement is amended, even if the amendment does not change existing non-conforming provisions or add new non-conforming provisions. Northwest believes such re-filed amended agreements

³ Fourth Revised Sheet No. 307 to FERC Gas Tariff, Original Volume No. 1. The existing tariff sheet contains references to "receipt" points and "MDRO" which were intended to refer to "delivery" points and "MDDO."

provide no new information about non-conforming provisions, even though such filings demand the dedication of significant Northwest personnel time.

5. When a pipeline enters into a negotiated rate transaction that does not deviate from its *pro forma* service agreement, it may file a tariff sheet reflecting the essential terms of the agreement, together with a statement that the agreement conforms in all material respects with its *pro forma* service agreement.⁴ In such circumstances, the Commission does not require the pipeline to file the service agreement itself. However, if a negotiated rate agreement does contain material deviations from the *pro forma* service agreement, the Commission's regulations require that the contract be filed.⁵ The Commission has held that a material deviation includes any provision in a service agreement that is not in the approved language of the form of service agreement and (1) goes beyond filling-in-the-blank spaces with the appropriate information allowed by the tariff, or (2) affects the substantive rights of the parties.

6. In this case, Guardian's filing of the revised tariff sheets, which describe the changes to the negotiated rate agreement, is sufficient to comply with these requirements, and there was no need for Guardian to file the revised Exhibit A to the Wisconsin Agreement. The revisions to Exhibit A do not materially deviate from the Form of Exhibit A to Rate Schedule FT-1 in Guardian's tariff, since the revisions to Exhibit A do not go beyond the filling-in-the-blank spaces or affect the substantive rights of the parties. In addition, section 154.1(d) of the Commission's regulations states, in part, that "[a]ny contract that conforms to the form of service agreement that is part of the pipeline's tariff ... does not have to be filed."⁶

7. As required by the Commission's negotiated rate policies, Guardian's Twelfth Revised Sheet No. 6 describes the essential elements of the Wisconsin Agreement, including the name of the shipper, the negotiated rate, the type of service, the receipt and delivery points applicable to the service, and the volume of gas to be transported, together with a statement affirming that the agreement conforms in all material respects with its *pro forma* service agreement. Because Guardian's Twelfth Revised Sheet No. 6 shows the change in the Wisconsin Agreement's Points of Receipt, and its Amended Exhibit A conforms to its *pro forma* service agreement, there is no need to submit the Exhibit A. Consequently, the Commission will treat the filing of revised Exhibit A to the Wisconsin Agreement as having been withdrawn.

⁴ *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 at P 32 (2003) (2003 Policy Statement).

⁵ 18 C.F.R. §§ 154.1(d) and 154.110 (2009).

⁶ *See* 18 C.F.R. § 154.1(d) (2009).

8. The Commission accepts Guardian's revised tariff sheets referenced in footnotes 1 and 3 to become effective November 1, 2009. Revised Exhibit A to the Wisconsin Agreement is treated as withdrawn.

By direction of the Commission.

Kimberly D. Bose,
Secretary.