130 FERC ¶ 61,121
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 18, 2010

In Reply Refer To:
Millennium Pipeline Company, L.L.C.
Docket No. RP10-325-000

Millennium Pipeline Company, L.L.C.
One Blue Hill Plaza, Seventh Floor
P.O. Box 1565
Pearl River, NY 10965

Attention: Gary A. Kruse
Vice President – General Counsel & Secretary

Reference: Revisions to Offsystem Capacity Tariff Provisions

Dear Mr. Kruse:

1. On January 19, 2010, Millennium Pipeline Company, L.L.C. (Millennium) filed revised tariff sheets[1] to amend section 48 "Offsystem Capacity" of the General Terms and Conditions (GT&C) of its tariff. Millennium proposes to revise the cost recovery methodology for off-system capacity it acquires on third-party pipelines for service to its shippers. The Commission conditionally accepts Millennium's revised tariff sheets effective February 18, 2010, as discussed below.

2. Section 48 of Millennium's tariff currently permits it to contract for off-system capacity from third-party natural gas transportation providers for its operational needs or service to shippers. Millennium proposes to clarify how shippers utilizing such off-system capacity reimburse Millennium for its payments to the applicable third-party providers (Third Party Charges). In general, Millennium's proposed tariff changes permit it to flow through to a primary firm shipper any Third Party Charges Millennium incurs as a result of the primary firm shipper's reservation of firm capacity that requires Millennium to use off-system capacity. The tariff changes also permit Millennium to flow through to interruptible and secondary firm shippers any Third Party Charges it

[1] *See* the Appendix to this order for a listing of the revised tariff sheets.

incurs as a result of those shippers scheduling service that requires Millennium to use available off-system capacity.

3. Millennium is also proposing changes to its creditworthiness provisions at GT&C section 3.9(d) to provide for the provision of credit assurances from shippers equal to the net present value (NPV) of all future payments to a third-party when Millennium agrees to contract for off-system capacity pursuant to GT&C section 48 at the request of a shipper.

4. Notice of Millennium's filing was issued on January 26, 2010, with interventions and protests 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 motions to intervene 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 proceeding will not disrupt the proceeding or place additional burdens on existing parties. Both Consolidated Edison Company of New York (Con Edison) and the National Grid Gas Delivery Companies (National Grid)[2] filed requests for clarification. Millennium filed an answer to the requests.[3] The requests for clarification and answer are discussed below.

5. Con Edison seeks clarification that the proposed revisions to GT&C section 48 will not result in additional charges for transportation services within transmission paths, such as Con Edison's FT-1 (Firm Transportation) service, which do not utilize offsystem capacity.[4] Specifically, Con Edison requests Millennium clarify that GT&C section 48.1 should not be read to suggest that Con Edison could be called upon to pay additional charges when Millennium's services for Con Edison are limited to those contemplated by

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[2] The National Grid Gas Delivery Companies are comprised of: The Brooklyn Union Gas Company d/b/a National Grid; KeySpan Gas East Corporation d/b/a National Grid; Boston Gas Company, Colonial Gas Company, and Essex Gas Company, collectively d/b/a National Grid; EnergyNorth Natural Gas Inc. d/b/a National Grid NH; Niagara Mohawk Power Corporation d/b/a National Grid; and The Narragansett Electric Company d/b/a National Grid, all subsidiaries of National Grid USA, Inc.

[3] While the Commission's Rules of Practice and Procedure generally prohibit answers to protests, the Commission will accept Millennium's answer to allow a fuller understanding of the issues. *See* 18 C.F.R. § 385.213(a)(2) (2009).

[4] Con Edison states that it is not seeking to prohibit Millennium from seeking to recover from customers Third Party Charges when those charges are prudently incurred because of an emergency situation.

Con Edison's FT-1 service agreement. Millennium responds that, while its proposed language is clear, it confirms that the requested clarification is acceptable.

6. The Commission finds that this clarification, as agreed to by Millennium, is reasonable. Therefore, the Commission accepts Millennium's clarification of this matter.

7. Proposed sections 48.4(b) and 48.4(c) set forth Millennium's method for assessing Third Party Charges to secondary firm and interruptible shippers, respectively. Those sections include the following exculpatory provision, "Shipper shall not be required to pay for any penalties assessed to Transporter by the offsystem pipeline for activities that were beyond the control of the Shipper." Section 48.4(a), governing the Third Party Charges to be assessed to primary firm shippers using off-system capacity, does not contain similar language. National Grid requests clarification that such protection from penalties incurred due to activities that were beyond the shippers' control also applies to primary firm shippers as well. Millennium responds that it is willing to insert additional tariff language consistent with National Grid's request.

8. National Grid's requested clarification, agreed to by Millennium, is reasonable. Therefore, the Commission will accept Millennium's proposed tariff sheets subject to Millennium filing revised tariff sheets consistent with National Grid's request for clarification.

9. Finally, Con Edison requests clarification of the provision in section 48.4(a) that "[i]f offsystem capacity is utilized to serve multiple primary firm Shippers, any fees or charges not directly attributable to reservation and/or usage charges will be allocated pro rata among those primary firm Shippers based on the contract quantity of each Shipper." Con Edison asserts that this provision could be interpreted to permit Millennium to blend the rates for off-system capacity it charges its shippers. Con Edison proposes that the Commission require Millennium to incorporate what it refers to as "vintaging" of terms and rates for off-system capacity. Under this method, shippers that have contracted with Millennium for a specific primary firm path utilizing off-system capacity will be responsible for reservation and usage charges associated with that path, and shippers that later contract with Millennium for primary firm paths incorporating the same off-system capacity would be responsible for any different reservation and usage charges resulting from the subsequent contracting of off-system capacity.

10. Millennium responds that Con Edison is mistaken, and the requested clarification is unnecessary. Millennium contends that it based the proposed tariff provisions in section 48.4 upon the language recently approved by the Commission in *WIC*.[5] Millennium further contends that Con Edison's arguments are similar to those raised by

[5] *Wyoming Interstate Co., Ltd.*, 127 FERC ¶ 61,236 (2009) (*WIC*).

the protesting shippers in the *WIC* proceeding where such requests for clarification were denied. Millennium asserts that the pro rationing of charges to primary firm shippers proposed here is the same as that approved in the *WIC* proceeding. Millennium contends that the only charges that would be applicable to primary firm shippers on a *pro rata* basis are certain Third Party Charges which are not directly attributable to reservation and/or usage charges. Millennium asserts that proposed GT&C section 48.4(a), as the similar provision in *WIC*,[6] provides that pro rationing for primary firm shippers will only occur "in the rare circumstances that multiple shippers request off-system capacity on the same pipeline [at] the same time and the third-party pipeline has tariff authority to assess some additional fee or charge not directly attributable to an individual shipper."[7] Millennium further asserts that its proposed language provides a reasonable method of assigning costs that cannot be apportioned based upon the capacity reserved or volumes nominated by a primary firm shipper.

11. The Commission agrees with Millennium in regard to Con Edison's request for clarification of proposed section 48.4(a). As Millennium points out, similar tariff provisions were accepted in *WIC*. Millennium's proposed pro rationing of charges to primary firm shippers is expressly limited to those costs which are not directly attributable to a shipper's reservation and/or usage charges and is a reasonable method of assigning such costs. Consistent with our decision in *WIC*, we deny this request for clarification by Con Edison concerning Third Party Charges for primary firm shippers using off-system capacity as unnecessary.[8]

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[6] *Citing* Wyoming Interstate Company, Ltd., FERC Gas Tariff, Second Revised Volume No. 2, GT&C section 6.2.

[7] *Citing WIC* at P 10. Proposed section 48.4(a) provides, in part, that, if offsystem capacity is utilized to serve multiple primary firm Shippers, any fees or charges not directly attributable to reservation and/or usage charges will be allocated *pro rata* among those primary firm shippers based on the contract quantity of each Shipper.

[8] Con Edison states (at 4, n.2) that clarification also may be required to ensure that Millennium will not double collect its costs if off-system capacity is used both by the shippers for which it is acquired and by other shippers. To the extent that Con Edison's request concerns retention of revenues from secondary firm and interruptible shippers utilizing idle off-system capacity, as the Commission stated in *WIC* (at P 19), pipelines are at risk for the costs of off-system capacity and may retain any revenue from such interruptible or secondary sales. *See also Wyoming Interstate Co., Ltd.*, 120 FERC ¶ 61,162, at P 8 (2007). Therefore, Con Edison's request for clarification regarding the double collection of off-system capacity costs is also denied.

12. The Commission finds that Millennium's revised tariff sheets, as conditioned herein, are just and reasonable. Therefore, Millennium's proposed tariff sheets listed in the Appendix to this order are accepted, effective February 18, 2010, subject to Millennium filing revised tariff sheets, within 15 days of the date of this order, consistent with National Grid's request for clarification, as discussed above.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

Appendix

Millennium Pipeline Company, L.L.C.
Docket No. RP10-325-000
FERC Gas Tariff
Original Volume No. 1

<u>Tariff Sheets Accepted Conditionally Effective February 18, 2010</u>

Second Revised Sheet No. 11
First Revised Sheet No. 16
First Revised Sheet No. 16C
First Revised Sheet No. 16D
First Revised Sheet No. 16H
First Revised Sheet No. 16I
Second Revised Sheet No. 19
Third Revised Sheet No. 28
Third Revised Sheet No. 40
Second Revised Sheet No. 71A
Second Revised Sheet No. 484
First Revised Sheet No. 485
Original Sheet No. 486
Sheet No. 487