

136 FERC ¶ 61,225
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Stingray Pipeline Company, L.L.C.

Docket No. RP11-2531-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORD
SUBJECT TO REFUND AND CONDITION

(Issued September 29, 2011)

1. On August 31, 2011, Stingray Pipeline Company, L.L.C. (Stingray) filed a revised tariff record¹ to reflect a proposed change in its Annual Charge Adjustment (ACA) surcharge and to adjust its Event Surcharge. Stingray requests the Commission permit the proposed tariff record to become effective October 1, 2011. As discussed below, we accept Stingray's revised tariff record subject to refund and condition, to become effective October 1, 2011.

Background

2. Stingray's Event Surcharge was established pursuant to an uncontested rate settlement (Settlement) approved in a Commission order issued June 29, 2008, in Docket Nos. RP08-436-000 and RP08-436-001.² The Settlement approved by the Commission authorized Stingray to add an Event Surcharge to the rates for transportation services paid by all shippers on its system. The Event Surcharge allows Stingray to recover the actual costs of repairing its system caused by hurricanes and other named storms. Article IV of the Settlement provides that the Event Surcharge be updated and filed at six-month intervals (effective dates of October 1 and April 1) to reflect items such as new costs incurred, amounts recovered through the Event Surcharge, and the recovery of insurance

¹ Sheet No. 5, Currently Effective Rates, 2.0.0 to Fourth Revised Volume No. 1, FERC NGA Gas Tariff.

² *Stingray Pipeline Co., L.L.C.*, 127 FERC ¶ 61,308 (2009).

proceeds. The Settlement also provides that the maximum amount of the Event Surcharge in any given period would be \$0.02/Dth.

3. On March 31, 2011 in Docket No. RP11-1957-000, Stingray filed a general section 4 rate case, proposing among other things, to eliminate the existing \$0.02/Dth cap on its Event Surcharge. The Commission accepted and suspended Stingray's proposed tariff record eliminating the \$0.02/Dth cap to become effective October 1, 2011, subject to refund.³

Description of the Filing

4. In the instant filing, Stingray has proposed to increase its Event Surcharge to \$0.0644/Dth, effective October 1, 2011, to reflect costs incurred and revenues collected through June 1, 2011. Stingray states that the costs included in the instant filing reflect only actual "Eligible Costs" as specified in section 36.2 of its tariff and do not reflect accruals or costs included in Stingray's base rates. Stingray states the instant filing follows a format similar to those of previous filings with the calculation of the proposed \$0.0644/Dth Event Surcharge shown on Schedule A, which is included in the filing along with supporting work papers included on Schedules B through F.

5. Stingray's revised tariff record also reflects a proposed change pursuant to section 154.402 of the Commission's regulations to decrease Stingray's ACA from \$0.0019 to \$0.0018 per Dth. The proposed ACA permits Stingray to recover from its customers the regulatory expense assessed by the Commission under Part 382 of the regulations for the next fiscal year beginning October 1, 2011.

Notice, Intervention, Protest and Answer

6. Public notice of Stingray's filing issued on September 1, 2011, with interventions and protests due as provided in section 154.210 of the Commission's regulations.⁴ Pursuant to Rule 214,⁵ all timely filed motions to intervene and any unopposed motions to intervene out-of-time before this order issues are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. The Indicated Shippers⁶ and, collectively, Arena Energy, LP, Hunt

³ *Stingray Pipeline Co., L.L.C.*, 135 FERC ¶ 61,099 (2011).

⁴ 18 C.F.R. § 154.210 (2011).

⁵ 18 C.F.R. § 385.214 (2011).

⁶ The Indicated Shippers consist of Anadarko Energy Petroleum Company, Apache Corporation, and Chevron U.S.A. Inc.

Oil Company, LLOG Exploration, Inc., Superior Natural Gas Corporation, and Tana Exploration Company (Joint Parties) filed motions to intervene and protest. On September 20, 2011, Stingray filed an answer. The Commission's Rules of Practice and Procedure generally prohibit answers to protests or answers.⁷ However, in this case, the Commission will accept Stingray's answer because it provides information that will assist us in our decision-making process.

Protests and Answer

7. The Indicated Shippers and Joint Parties both protest the level of throughput Stingray used to calculate the Event Surcharge. The parties contend Stingray's use of actual July 2011 throughput "adjusted to reflect known and anticipated changes in throughput, including natural production declines, and annualized" is unsupported and requires closer examination. The Indicated Shippers request the Commission reject Stingray's tariff record and require Stingray to use a more representative throughput number in calculating the Event Surcharge.

8. In addition, the parties request the Commission suspend the filing for the maximum five-month period, subject to refund and the outcome of Stingray's base rate case proceeding in Docket No. RP11-1957-000. The Indicated Shippers argue the issue of Stingray's proposal to eliminate the \$0.02/Dth cap on the Event Surcharge was set for hearing as part of the base rate case; however, the hearing was held in abeyance subject to the outcome of settlement judge procedures. They contend a five-month suspension of the instant filing is warranted to permit interested parties an opportunity to resolve this case by settlement without being subject to an uncapped Event Surcharge. No party objected to Stingray's proposed reduction of its ACA from \$0.0019 per Dth to \$0.0018 per Dth.

9. In its answer, Stingray argues the Commission should reject the protestors' request to (a) reject the proposal, (b) suspend the proposed tariff record for five months, and (c) require Stingray to recalculate the proposed Event Surcharge because the filing fully complies with the Event Surcharge mechanism contained in Stingray's tariff and is not patently deficient. Stingray states, while the factual issues raised by Indicated Shippers "may" merit a hearing, the facts do not support rejecting the proposed tariff record. Stingray further states that a five-month suspension is not necessary to protect the shippers' interests and would lead to harsh and inequitable results for Stingray. Instead, Stingray suggests the Commission permit the filing to become effective October 1, 2011, subject to refund and the outcome of the proceeding in Docket No. RP11-1957-000.

⁷ 18 C.F.R. § 385.213(a)(2) (2011).

10. Stingray states its projected throughput is reasonable and consistent with Stingray's actual experience. Stingray explains that its tariff requires use of a twelve-month projection (unadjusted for discounting) for purposes of calculating the Event Surcharge.⁸ Stingray maintains the instant filing reflects an Event Surcharge calculated based upon a projected, unadjusted total annual throughput during the period covered by the projection (October 1, 2011-September 30, 2012) of 58,465,070 Dth. Contrary to Indicated Shippers' assertion (protest at 2) that the projected volume "has no relationship to actual throughput," Stingray states it derived this projection from actual throughput experienced in July 2011—the latest month available at the time—adjusted for anticipated future declines, which Stingray argues is based upon recent actual experience with rapidly declining throughput on its system, and annualized. Stingray states that, for the Event Surcharge filing, it applied a 31.45% anticipated annual decline factor, which it contends is the same decline factor used in its uncontested Event Surcharge filing effective March 1, 2011 (March 1 Filing).⁹ Stingray also used this same decline factor to develop projected test period throughput for its rate case filing.¹⁰ According to Stingray, it based this factor upon the throughput decline actually experienced in January 2010 as compared with the month of January 2011, and this factor is arguably conservative given that the actual decline experienced in August 2010 as compared with August 2011 is approximately 45.00%.

11. Stingray attaches, as Exhibit A to its Answer, updated data that reflect actual throughput experienced through August 31, 2011. Stingray also attaches, as Exhibit B, a graph depicting, *inter alia*, actual daily receipts and the daily projected receipts associated with the throughput projections from the March 1 Filing, the rate case filing and the Event Surcharge filing. Stingray asserts that, as can be seen from this

⁸ Stingray Answer at 5 (*citing* FERC Gas Tariff, General Terms and Conditions, Section 36.4).

⁹ Stingray states that the March 1 Filing reflected projected throughput for the twelve months commencing March 1, 2011 of 82,657,524 Dth, which equates to a daily throughput volume of approximately 226,459 Dth/d. Except for a change to the decline adjustment factor made in the March 1 Filing and the instant filing, to reflect actual recent decline experience, Stingray states it used the same methodology to project its system throughput in each of its past Event Surcharge filings made since the Commission approved this mechanism. Stingray Answer at 5, note 12.

¹⁰ Stingray explains that the rate case filing reflects billing determinants based upon a projected annual throughput (unadjusted for discounting) of 87.8 MMDth for the test period ending October 31, 2011, which it states equates to a daily throughput volume of 240,625 Dth/d. Stingray Answer at 6, note 13.

information, the actual daily throughput experienced by Stingray in June, July and August, 2011, is below the daily throughput volumes derived from the March 1 Filing projection and the rate case filing projection, which it argues supports the conservative nature of the 31.45% decline factor used in the instant filing.¹¹

12. Stingray compares the rate of decline in actual throughput for various time periods and concludes the data reflecting its actual throughput experience demonstrate that its projection in the Event Surcharge filing is reasonable, and possibly even conservative. Stingray anticipates that the “dramatic” throughput declines it experienced will continue. Stingray explains that this was the motivating factor for proposing to remove the cap applicable to its Event Surcharge in the rate case filing. Stingray states this persistent decline trend in actual daily receipts, which has now occurred largely unabated for twenty consecutive months, is depicted in Exhibit B. Stingray submits that, given the significant, persistent throughput decline Stingray actually experienced over almost two years, it is reasonable to factor in a continuing decline into its twelve-month projection, especially when the decline factor is somewhat conservative as compared with Stingray’s most recent actual experience. Stingray argues that a projection based solely on past or present throughput levels, which does not anticipate further decline, would itself be unrealistic and unreasonable.

Commission Decision

13. The Commission finds Stingray’s proposed Event Surcharge is adequately supported by the record and is otherwise consistent with section 36 of the general terms and conditions (GT&C) of its tariff. Therefore, we will deny the request for summary rejection of Stingray’s Event Surcharge filing. We disagree with Indicated Shippers’ argument that the 58,465,075 Dth projected level of throughput utilized by Stingray to calculate its Event Surcharge is significantly understated. Citing Schedule D of Stingray’s filing, the Indicated Shippers note the actual throughput on Stingray’s system for the six-month period January 2011 through June 2011 was 51,093,628 Dth. The Indicated Shippers suggest a more realistic projected annual throughput figure could be determined by annualizing the actuals from January 2011 to June 2011, or 102,187, 256 Dth. We disagree. As Stingray has shown in its answer, Stingray’s projected annual

¹¹ Stingray notes that, unlike the projection in the Event Surcharge filing, the rate case filing projection of 87.8 MMDth reflects application of both the 31.45% expected decline factor, plus an additional 5.02% downward volume adjustment to account for the effects of named storms. Stingray further notes, even with this additional downward adjustment, the actual average throughput experienced most recently on the system is already substantially below the projected volumes used in the rate case filing. Stingray Answer at 6, note 14.

throughput is reasonable and consistent with Stingray's actual experience. Further, we find that Stingray used the same methodology to project its system throughput in each of the past Event Surcharge filings that Stingray has made since the mechanism was approved.

14. While Stingray showed its projected annual throughput figure is reasonable, and perhaps conservative, we find that the Indicated Shippers failed to support their claim that Stingray's projected annual throughput figure is unreasonable. Stingray previously submitted with the Commission four semi-annual Event Surcharge adjustment filings.¹² In each of these filings, Stingray consistently projected its annual throughput based on actual volumes transported in the most recent month available, adjusted to reflect known and measurable changes. As shown on Schedule D included with each filing, Stingray's actual throughput for each six-month period has been declining; beginning at 84,606,343 Dth for July 2009 through December 2009 to 51,093,628 Dth for the most recent six-month period. Stingray's projected annual throughput figure for each of these periods has similarly reflected a downward trend; 158,628,320 Dth to 58,465,070 Dth. A review of the relevant throughput figures submitted by Stingray in each of these filings does not indicate a significant historical disconnect between actuals and projected throughput.¹³ Stingray's projection of throughput also does not appear to be inconsistent with its tariff.¹⁴

15. As Stingray points out in its answer, comparisons for January 2010 and January 2011 and for August 2010 and August 2011 are consistent with the rates of decline experienced in other recent months. Similar comparisons of actual throughput for each of the months of February 2010-July 2010 with the actual throughput for the corresponding month in 2011 show comparative declines ranging from 33% (February) to 43% (July). Indeed, as shown in Exhibit B to the answer, if Stingray chose to base its projection on actual August 2011 volumes to reduce the throughput by a factor reflecting the decline experienced from August 2010 as compared with August 2011, the resulting projection would have been below the throughput volumes reflected here in the instant filing. Thus, the data reflecting Stingray's actual throughput experience demonstrate that

¹² See Docket Nos. RP09-1024-000, RP10-400-000, RP10-1239-000, and RP11-1863-000.

¹³ For example, Stingray's projected annual throughput in Docket No. RP10-400-000 was 147,449,618 Dth versus actuals of 141,842,916 Dth; and in Docket No. RP10-1239-000, Stingray's projected annual throughput was 129,279,951 Dth versus actuals of 115,860,184 Dth.

¹⁴ See GT&C section 36.5(a)(2) of Stingray's FERC Gas Tariff.

Stingray's projection in the Event Surcharge filing is reasonable. Therefore, the Commission concludes that the Indicated Shippers have not shown Stingray's projections to be unreasonable. Furthermore, since Stingray's Event Surcharge is a tracker, any deviations in projected versus actual throughput will be reconciled in future semi-annual filings.

16. The Commission also declines to suspend Stingray's filing for the maximum five-month suspension period. Stingray's proposal to eliminate the \$0.02/Dth cap on its Event Surcharge was accepted, subject to refund in the rate case proceeding in Docket No. RP11-1957-000. As a result, Stingray's collection of its proposed \$0.0644/Dth Event Surcharge will be subject to the ultimate disposition of that issue in the general rate case proceeding. Accordingly, the Commission will permit the proposed tariff record to become effective October 1, 2011, subject to refund and the outcome of the rate case proceeding. The Commission finds that shippers on the Stingray system will therefore be adequately protected from any over-collection should the removal of the cap be found to be unjust or unreasonable.

Suspension

17. Based upon a review of the filing, the Commission finds that the proposed tariff record has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept the tariff record for filing and suspend its effectiveness for the period set forth below, subject to the condition discussed in this order.

18. 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.¹⁵ 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.¹⁶ Such circumstances exist here where the proposed Event Surcharge is being accepted subject to the outcome of Stingray's general section 4 rate proceeding. Accordingly, in this case, the Commission will exercise its discretion to suspend the rates for a shorter period and permit the rates to take effect on October 1, 2011, subject to refund and to the condition set forth in the body of this order.

¹⁵ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

¹⁶ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

The Commission orders:

Stingray's tariff record is accepted and suspended, to be effective October 1, 2011, subject to refund and the outcome of Stingray's general section 4 proceeding.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.