142 FERC ¶ 61,054
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Viking Gas Transmission Company — Docket Nos. RP13-378-000, RP13-379-000

ORDER ACCEPTING TARIFFS SUBJECT TO CONDITIONS

(Issued January 18, 2013)

1. On December 7, 2012, Viking Gas Transmission Company (Viking) submitted for filing revised tariff records[1] in Docket Nos. RP13-378-000 and RP13-379-000, reflecting housekeeping changes and substantive changes for inclusion in its FERC Gas Tariff. Viking requests the Commission accept and make these tariff records effective January 22, 2013. For the reasons discussed below, the Commission accepts the revised tariff records effective January 22, 2013, subject to Viking making a compliance filing with changes consistent with this order within 15 days of its issuance.

Details of Filing

2. Viking states that it has undertaken a review of its FERC gas tariff and now seeks to update the tariff to be consistent with Commission policy and to provide consistency across all natural gas interstate pipeline subsidiaries of ONEOK Partners GP, L.L.C. In Docket No. RP13-378-000, Viking proposes various non-substantive typographical, capitalization, and grammatical corrections throughout the tariff. Viking is also updating the Table of Contents and making several clarifying changes. In addition, Viking proposes numerous substantive changes to its General Terms and Conditions (GT&C), including in: (1) section 15, Sales and Purchases of Gas for Operational Purposes; (2) section 18, Liability; (3) section 21, Releases or Assignments of Firm Transportation Agreements; (4) section 22, Requests for Service – Bidding Period Timelines; (5) sections 23 and 24, Right of First Refusal (ROFR) and Evergreen Provisions; (6) section 24, Termination of Mutual Extension of Service Agreements; (7) and section 34, Reservation Charge Credits. Also in Docket No. RP13-378-000, Viking

[1] *See* Appendix.

proposes to add the Non-Conforming and Negotiated Agreements previously filed in its Volume No. 1A tariff to its Volume No. 1 tariff. In Docket No. RP13-379-000, Viking proposes to cancel its Volume No. 1A tariff.

Sales and Purchases of Gas for Operational Purposes

3. Viking is proposing a new section 15 to its GT&C to list the reasons it may engage in sales or purchases of gas for operational purposes and to clarify the procedures that apply to such transactions. Viking states that it will post notice of sales on its Informational Postings Web Site or sell gas via the Intercontinental Exchange or another independent trading system. Viking is also proposing a requirement that it file an annual gas sales and purchases report.

Liability

4. Viking is proposing a new GT&C section 18 to describe limitations on damages. Viking asserts the new tariff language is in accordance with Commission precedent, which holds that a simple negligence standard is appropriate for liability and indemnification provisions. At the same time, notes Viking, the new section also follows precedent by limiting its liability for simple negligence to direct damages, so that Viking is only liable for indirect, consequential, incidental, or punitive damages where there is gross negligence, willful misconduct or bad faith.[2]

Releases or Assignments of Firm Transportation Agreements

5. In section 21 of its GT&C, Viking proposes to clarify that it may disapprove a permanent capacity release if the release would affect it financially. According to Viking, the provisions in this section will provide consistency between Viking's capacity release tariff language and the Commission's capacity release regulations. In addition, Viking states the tariff language will help ensure that the Commission retains authority over any transactions resulting from a shipper's bankruptcy.

Requests for Service – Timelines

6. Under GT&C section 22, Viking proposes to establish timelines for awards of capacity to allow fulfillment of contracts to commence at a future date. Viking proposes the following timeline for awards of capacity in section 22.1:

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[2] Citing *El Paso Natural Gas Co.*, 130 FERC ¶ 61,096, at P 5 (2010).

Primary Contract Term	**Earliest Time for Award of Capacity**
Less than three months	15 days
Three months or more, but less than one year	30 days
One year or more	90 days

7. Under section 22.6, Viking proposes a pre-arranged deal program that will allow Viking to sell firm capacity with service commencement dates more than 90 days in the future. When capacity is sold on a pre-arranged basis, Viking states that it will post the terms of the transaction and other parties will have an opportunity to bid on the capacity. Viking asserts that the Commission has found such pre-arranged sales of capacity, conducted properly, further the Commission's goal of efficiently allocating capacity to the party that values it the highest.[3]

Right of First Refusal, and Mutual Extension of Service Agreements

8. Viking is proposing changes to several sections of its GT&C that will affect the renewal and termination of contracts for capacity on its system. Viking states the changes will make Viking's ROFR language more consistent with ROFR language in the tariffs of its affiliates Midwestern Gas Transmission Company and Guardian Pipeline, L.L.C., and will further the goal of making their notice, bidding, and award processes more uniform.[4]

9. Viking proposes revisions to the ROFR language in section 23 of its GT&C. Viking's proposed ROFR language clarifies that agreements at the maximum rate for service not available for 12 consecutive months, but with a term of more than one year, are eligible for the ROFR. The proposed language also makes a shipper extending an agreement for one year or more at the maximum rate eligible for the ROFR at the end of the extension period. Viking states that, if it agrees to include ROFRs in firm service agreements that are not eligible for one under the Commission's regulations, it will do so only on a not unduly discriminatory basis.

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[3] Citing *Columbia Gas Transmission, LLC*, 138 FERC ¶ 61,209, at P 13 (2012).

[4] Midwestern Gas Transmission Company, Guardian Pipeline L.L.C., Viking Gas Transmission Company and OkTex Pipeline Company are interstate natural gas pipelines that are subsidiaries of and owned by ONEOK Partners, L.P. All four interstate pipelines are operated by ONEOK Partners, L.L.C., who is the general partner of ONEOK L.P.

10. Viking proposes to add language to section 24 of the GT&C to allow it to terminate a contract prior to its expiration in exchange for the shipper extending its use of all or part of the underlying capacity under new terms without competitive bidding. Secondly, Viking in section 24 proposes language to allow it and a shipper to extend a contract with respect to all or part of the capacity as long as any applicable ROFR procedures have not been initiated.

Reservation Charge Credits

11. Viking states that the Commission has urged pipelines to review their tariffs and make any necessary filings to bring them into compliance with its policy on reservation charge credits. Under section 34 of its GT&C, Viking states that it proposes to provide credits for outages due to non-*force majeure* events, in accordance with Commission policy. Viking states that it will continue to use the "Safe Harbor" method of crediting reservation charges for outages due to *force majeure* events, under which shippers receive 100 percent credits after the first ten days of the outage.

12. Viking proposes to establish the formula for calculating reservation charge credits when the inability to provide service is due to *force majeure* and non-*force majeure* events. In the event of *force majeure* outages, Viking's proposed language states that it will set the shipper's entitlement quantity (i.e. the amount of credits to be provided) for any Gas Day as the lesser of: (1) a shipper's average usage of primary FT-A service for the seven Gas Days prior to the first Gas Day of the curtailment; or, (2) a shipper's nomination for that Gas Day.[5]

13. In the event of non-*force majeure* outages, Viking states that it will calculate the credit based on the shipper's average usage of primary FT-A service for the seven Gas Days prior to the first Gas Day of a curtailment, except that, during the first Gas Day of the curtailment, the credit will be based on "the quantity of primary FT-A service that Company scheduled or, if greater, the quantity it would have scheduled but for the curtailment," if Viking has not given advance notice of the curtailment before the first opportunity to submit scheduling nominations for the day in question.[6] According to the proposed tariff language, Viking will only use the historical average usage in the determination of the entitlement quantity when Viking has posted notice prior to the first opportunity to submit scheduling nominations that the capacity will be unavailable. Viking contends this approach will minimize potential "gaming" of the credit mechanism and avoid penalizing shippers that seek to adjust their nominations in response to actual or potential disruptions.

[5] Proposed section 34.1(b) of Viking's GT&C.

[6] Proposed GT&C section 34.2(b).

Public Notice, Interventions and Protests

14. Public notice of Viking's filings was issued December 10, 2012, with interventions and protests due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2012)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2012)), all timely filed motions to intervene and any unopposed 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 the proceeding or place additional burdens on existing parties. On December 19, Minnesota Energy Resources Corporation (MERC) and Wisconsin Public Service Corporation (Public Service) filed joint comments in Docket No. RP13-378-000 suggesting certain modifications.

15. MERC and Public Service state that Viking has selected an unnecessarily cumbersome mechanism for crediting of reservation charges, as described in its GT&C section 34. They believe Viking's proposal to use the seven-day average of prior usage to determine the amount of credits is an inferior mechanism relative to mechanisms approved for other pipelines. Viking's proposal, they state, fails to acknowledge that what matters is how much the shipper wanted to ship on the day of the outage. In particular, the parties object to proposed language that provides for Viking to use the "lesser of" average prior usage or the daily nomination in determining the credits for an outage. They note that Natural Gas Pipeline Company of America, LLC (Natural) has a provision that in their opinion is straightforward and minimizes the burdens on all entities potentially affected by service outages (shippers, their suppliers, the pipeline, and upstream pipelines).[7] MERC and Public Service request that the Commission direct Viking to adopt Natural's approach to reservation charge crediting.

16. Secondly, although MERC and Public Service generally support Viking's proposed section 15, Sales and Purchases of Gas for Operational Purposes, they believe additional detail concerning the elements of the report (proposed section 15.3) would be appropriate. They assert that Viking is proposing merely to file an annual report describing its transactions, while the tariffs of other pipelines, such as ANR Pipeline

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[7] Section 5.2 of Natural's GT&C provides that applicable reservation charges and related reservation-based surcharges shall be eliminated for the quantity of gas not delivered by Natural within the Shipper's Firm Daily Volume under the contract when the pipeline does not meet its obligations. A shipper's Firm Daily Volume is the volume of gas which Natural is obligated to deliver on a firm basis for Shipper at primary Delivery Point(s) under a firm contract on a Day, based on nominations for firm service within firm contract rights at such primary points which could be confirmed plus any applicable firm no-notice rights Shippers seek to exercise on that Day within its firm contract rights under that contract.

Company (ANR), describe the report's contents.[8] MERC and Public Service request that the Commission direct Viking to describe with more specificity what its annual report will contain.

17. MERC and Public Service state that they do not oppose the substance Viking's proposed changes on liability, but wish to provide comments on aspects of the proposed language. They assert Viking's language creates potential conflicts, or ambiguity, between the express language of a guaranty (for a shipper) and Viking's tariff. MERC and Public Service argue Viking should explicitly acknowledge that the guaranty, and not the tariff, defines the extent to which a guarantor is providing assurances and the liability it is assuming. Secondly, MERC and Public Service recommend labeling subsections differently than Viking has proposed. The captions for sections 18.1, 18.2, and 18.3 are somewhat imprecise, according to the parties. For example, they state, section 18.1 would more accurately be labeled "Limitation on Liability;" and section 18.2 would more accurately be labeled "Direct Damages for Negligent Acts and Willful Misconduct." Lastly, MERC and Public Service state that the terminology among the subsections is inconsistent. For example, they argue, sections 18.2 and 18.3 include "Balancing Party," but sections 18.1 and 18.4 do not reference this entity.

Viking's Answer

18. On January 2, 2013, Viking filed an answer to the comments by MERC and Public Service. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or adverse comments unless otherwise ordered by the decisional authority. We will accept Viking's answer because it has provided us with information that assists us in our decision-making process.

19. In its answer, Viking defends its proposed mechanism for establishing the proper credit in instances where a refund of the reservation charge is required, noting that it seeks to adopt a method that is identical to methods that the Commission has accepted in the past.[9] By establishing a credit based on the lesser of a shipper's prior seven day's utilization of primary firm capacity and the nomination for the Gas Day, Viking states that it is minimizing the potential for gaming as could occur with shippers submitting

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[8] Section 6.35 of ANR's GT&C states that its annual report will state the source of the gas purchased/sold, the date of the purchases/sales, volumes, the purchase/sales price, the cost and revenues for such purchase/sales and the disposition of the associated costs and revenues for all operational purchases and sales except those associated with section 6.15 (Cashout) of these General Terms and Conditions.

[9] Viking cites *Midwestern Gas Transmission Co.*, 137 FERC ¶ 61,257 (2011) and *Southern Natural Gas Co.*, 135 FERC ¶ 61,056 (2011).

scheduling nominations for high amounts knowing that the scheduling nomination will be rejected.

20. Viking further defends its tariff language for reservation charge crediting, stating that it proposes to use the "Safe Harbor" method of calculating credits when *force majeure* events cause outages. This method, which provides for full refunds of reservation charges after ten days of a *force majeure* event, was first approved in *Texan Eastern*[10] and subsequently approved in other proceedings.

21. In regard to proposed revisions on liability, Viking states that it is willing to amend its filing if the Commission believes it is necessary to provide clarification on a guarantor's liability. Viking states that it agrees with MERC and Public Service that the guaranty should define the guarantor's liability. Viking proposes clarifying language that would revise section 18 as follows:

> The liability of a party that has guaranteed the obligations of a Shipper or other party to an agreement subject to this FERC Gas Tariff shall be as set forth in its guaranty and the provisions of this Section 18 shall limit the liability of such guarantor only to the extent that it limits the liability of that Shipper or other party.[11]

Discussion

22. The Commission finds the arguments of MERC and Public Service unpersuasive in regard to the use of historical average usage in the calculation of Viking's proposed credits for reservation charges during *force majeure* and non-*force majeure* events. However, the Commission requires Viking to make certain other modifications in its proposed tariff language concerning the calculation of credits.

23. The Commission agrees with Viking that the shipper's average usage for the seven Gas Days prior to the first Gas Day of the outage is a reasonable measure of the credit the shipper should receive in situations where the pipeline has provided advance notice of the unavailability of service before shippers' first opportunity to submit scheduling nominations for the day (or days) of the outage.[12] The Commission has found

[10] *Texas Eastern Transmission Co.*, 62 FERC ¶ 61,015 (1993) (*Texas Eastern*).

[11] Viking Answer, p. 6.

[12] The North American Energy Standards Board (NAESB) standards currently provide shippers four nomination opportunities: the Timely Nomination Cycle (11:30 a.m. Central Clock Time (CCT) the day prior to gas flow); the Evening Nomination Cycle (6 p.m. CCT the day before gas flow); Intra-Day Cycle 1 (10 a.m. CCT the day of gas flow); and Intra-Day Cycle 2 (5 p.m. CCT the day of gas flow).

that it is reasonable in that situation for the pipeline to use an appropriate historical average of usage as a substitute for the use of actual nominated amounts to determine the level of the shipper's reservation charge credits. The Commission has explained that this approach minimizes the potential for gaming, where shippers would submit scheduling nominations for high amounts knowing that the scheduling nomination will be rejected, while ensuring that shippers who do not nominate will receive credits based on their recent usage of the system.[13] Accordingly, the Commission finds that it is reasonable for Viking to use the shipper's prior seven day's utilization of primary firm capacity to calculate the reservation charge credit when the pipeline has given advance notice before the first opportunity to submit a scheduling nomination for service.

24. MERC and Public Service object to the entitlement quantity for a credit being the lesser of the average of the 7-day historical usage and the shipper's nomination for the day in question. MERC and Public Service state that Viking's use of a "lesser of" calculation is unfair to shippers and could require shippers to engage in the fiction of scheduling quantities they know cannot be scheduled because the pipeline has already posted a specific limitation on the availability of service. The Commission finds that Viking must revise and clarify proposed GT&C sections 34.1(b) and 34.2(b) concerning the calculation of reservation charge credits in *force majeure* and non-*force majeure* situations as described below.

25. First, the Commission agrees with MERC and Public Service that the "lesser of" tariff language would unnecessarily require shippers to submit scheduling nominations in the situation where the pipeline has given advance notice of an outage so as to ensure that it would receive credits at the level of its average usage during the preceding seven days. As the Commission stated in *Southern*, a benefit of the use of the seven-day average is that it ensures that shippers who do not nominate service when they have advance notice that service cannot be provided will nevertheless receive credits based on their recent usage of the system.[14] Therefore, consistent with this finding, Viking must revise sections 34.1(b) and 34.2(b) to provide that, in situations where it has given notice of an outage before the first opportunity to schedule service for a Gas Day, the credits for that day will be based solely on each shipper's usage during the preceding seven days up to their contract demand, and not on shippers' nominations.

26. Second, the Commission finds that Viking's proposed section 34.1(b) concerning credits during *force majeure* outages improperly permits credits to be based on the seven-day average in situations where there was no advance notice that the outage would continue on the day in question. Consistent with precedent,[15] Viking's proposed

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[13] *Midwestern Gas Transmission Co.*, 137 FERC ¶ 61,257, at P 17 (2011).

[14] *Southern Natural Gas Company*, 135 FERC ¶ 61,056 at P 33.

[15] *Midwestern Gas Transmission Co.*, 137 FERC ¶ 61,257, at P 22 (2011).

language in section 34.1(b) should provide that for each day after the 10^{th} day, Viking must use the amount nominated by the shipper up to its contract demand, but not scheduled by Viking, if there was no advance notice the *force majeure* outage would continue for the day in question. Section 34.1(b) should also state that Viking will only use the seven-day average usage during the period before the *force majeure* outage when there is advance notice that the *force majeure* outage will continue.[16]

27. Third, the Commission will require Viking to modify section 34.2(b)'s language about reservation charge credits being based on the "service that Company scheduled or, if greater, the quantity it would have scheduled but for the curtailment." This language is inconsistent with Commission precedent that holds the reservation charge credit must be based on the amount the shipper nominated for scheduling, but the pipeline did not schedule.[17]

28. MERC and Public Service suggest that Viking's proposed section 18, Liability, contains inconsistencies and is ambiguous in certain subsections. They recommend changes to the wording of the titles of subsections and other inconsistencies. Because the Commission allows significant flexibility in pipeline tariffs, the Commission will not require all the changes as proposed by the commenters. However, as MERC and Public Service point out, section 18.4 which concerns the liability of guarantors, could be improved. In its January 2 answer, Viking states that it agrees with MERC and Public Service that the guaranty would define the guarantor's liability. Viking states that it is willing to amend its filing if the Commission believes it is necessary to provide clarification on a guarantor's liability. Accordingly, the Commission will require Viking to file a revised section 18 within 15 days of this order's publication.

29. The commenters ask the Commission to amend tariff language in Viking's proposed section 15, Sales and Purchases of Gas for Operational Purposes. MERC and Public Service suggest that Viking is proposing merely to file an annual report describing its transactions, while other pipelines delineate the report's contents. The Commission will not require further delineation of the contents of the proposed report. The Commission expects Viking to provide detailed information in the proposed report that provides a transparent view of its operational purchases and sales activities (similar to reports by other pipelines), but the Commission will not at this time require a listing of specified information in this regard.

30. The Commission accepts the unopposed proposed tariff language in these filings. Additionally, the Commission approves Viking unopposed proposal to cancel its Volume

[16] Proposed section 34.2(b) concerning non-*force majeure* outages already contains such language.

[17] *Gulf South Pipeline Company, LP*, 141 FERC ¶ 61,224 at P 53 (2012).

No. 1A tariff, and to add the Non-Conforming and Negotiated Agreements previously filed in its Volume No. 1A tariff to its Volume No. 1 tariff.

The Commission orders:

The tariff records listed in the Appendix to this order are accepted to be effective January 22, 2013, subject to Viking making a compliance filing within 15 days of the issuance of this order, consistent with the discussion above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Viking Gas Transmission Company
FERC NGA Gas Tariff
Viking - FERC Gas Tariff

Accepted Effective January 22, 2013, subject to conditions:

RP13-378-000

Tariff, Volume No. 1, 1.0.0
Part 7.10, Rate Schedule FT-A, 4.0.0
Part 7.30, Rate Schedule LMS, 1.0.0
Part 8.0, General Terms and Conditions, 1.0.0
Part 8.08, GT&C - Pressure of Gas Delivery and Operational Flow Orders, 1.0.0
Part 8.10, GT&C - Excuse of Performance, 1.0.0
Part 8.15, GT&C - Sales and Purchases of Gas for Operational Purposes, 1.0.0
Part 8.17, GT&C - Negotiated and Discounted Rates, 1.0.0
Part 8.18, GT&C - Liability, 1.0.0
Part 8.21, GT&C-Release or Assignment of Firm Transportation Agreements, 2.0.0
Part 8.22, GT&C - Requests for Service, 2.0.0
Part 8.23, GT&C- ROFR and Extension of Service Agreements, 1.0.0
Part 8.24, GT&C - Termination or Mutual Extension of Service Agreements, 1.0.0
Part 8.28, GT&C - Incorporation in Rate Schedules and Agreements, 1.0.0
Part 8.32, GT&C – Non-Conforming Agreements, 3.0.0
Part 8.34, GT&C - Reservation Charge Credits, 0.0.0
Part 9.10, Firm Transportation Agreement (FT-A), 3.0.0
Part 9.20, Interruptible Transportation Agreement (IT), 2.0.0
Tariff, Non-Conforming and Negotiated Rate Agreements, 0.0.0
Part 10.0, Summary of Non Conforming and Negotiated Rate Agreements, 0.0.0
Part 10.1, Northern States Power Company Agreement AF0156, 0.0.0
Part 10.2, Wisconsin Gas, L.L.C. Agreement AF0022, 0.0.0
Part 10.3, Wisconsin Gas, L.L.C. Agreement AF0025, 0.0.0
Part 10.4, Wisconsin Gas, L.L.C. Agreement AF0063, 0.0.0

Accepted Effective January 22, 2013

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Tariff, Volume No. 1A, 1.0.0