

145 FERC ¶ 61,088
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 31, 2013

In Reply Refer To:
Millennium Pipeline Company, LLC
Docket No. RP13-1376-000

Millennium Pipeline Company, LLC
One Blue Hill Plaza, Seventh Floor
Pearl River, NY 10965

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

Dear Mr. Kruse:

1. On September 30, 2013, Millennium Pipeline Company, LLC (Millennium) filed revised tariff records¹ to implement a new negotiated rate agreement (Contract No. 144968) and to amend an existing non-conforming negotiated rate agreement (Contract No. 131890), both with Southwestern Energy Services Company (Southwestern). Millennium requests that the tariff records be made effective November 1, 2013. As more fully discussed below, the amended agreement contains a provision that gives Southwestern a right that is not available to other shippers under Millennium's tariff. Accordingly, the Commission will accept the negotiated rate agreements, and the associated tariff records listed in the Appendix, effective November 1, 2013, subject to the condition discussed below.

2. Under the new negotiated rate agreement, Millennium states that it will provide service to Southwestern with a discounted reservation charge and a negotiated daily usage charge. The agreement provides for a negotiated rate cap for all surcharges other than the applicable reservation and usage charge.

¹ See Appendix for list of tariff records.

3. Under the amended non-conforming negotiated rate agreement,² Millennium states that it will continue to provide a discounted reservation charge. However, Millennium states that the revised contract reduces the negotiated usage charge, extends the primary term from October 31, 2013 to March 31, 2017, and removes a provision regarding credit reporting agencies. Millennium explains that, during the renewal terms, the applicable negotiated usage charge will be \$0.0650/Dth, with a negotiated rate cap of \$0.0075 Dth/d for all surcharges other than the applicable reservation and usage charge.

4. Additionally, Millennium states that Contract No. 131890 contains a clause requiring Millennium to notify Southwestern in the event a new interconnection is added between Millennium's system and the system of Dominion Transmission, Inc. (Dominion). Millennium asserts that this provision is a permissible deviation because it does not afford to Southwestern any substantive rights beyond those generally available to other shippers under its tariff. Millennium asserts that this permissible deviation does not present a substantial risk of discrimination.

5. The flexible delivery point provision Millennium negotiated with Southwestern provides that the:

Shipper has the right at any time to move its primary delivery point to any point or combination of points that are interconnections with the Dominion transmission system (collectively, the "Dominion Points"); provided Transporter will provide notice to Shipper of any potential Dominion point, or any expansion of the capacity thereof, in advance of entering [into] any commitment for transportation services to such point that could limit Shipper's ability to exercise its rights under this section, so that Shipper can elect to receive its pro rata share of capacity at that point; provided further that any election by Shipper to move to any Dominion Point following the commencement of transportation services to that point, or any expansion of capacity at such point, shall be subject to there being sufficient capacity at such point when the change is requested.

6. Public notice of the filing was issued on October 1, 2013. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2013)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2013)), 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

² Original Contract No. 131890 was filed in Docket No. RP13-1314-000 on September 5, 2013 and accepted for filing by a Director's Letter Order dated September 26, 2013.

existing parties. Consolidated Edison Company of New York, Inc. (ConEd) motioned to intervene and requests clarification.

7. ConEd requests that the Commission require Millennium to clarify its non-conforming provision permitting Southwestern to move its primary delivery points to an interconnection with Dominion. Absent clarification that demonstrates Millennium's proposal is just and reasonable, ConEd asks that the Commission require Millennium to delete the subject provision in order to preserve the equal opportunity of other Millennium customers to access primary delivery points. ConEd argues that the negotiated flexible primary delivery point agreement with Southwestern appears to differ markedly from the flexible primary delivery point provision applicable to all other Millennium customers in section 11 of Millennium's General Terms and Conditions (GT&C). ConEd asserts that section 11.2 only permits shippers to shift their primary points to "existing facilities." However, ConEd states that it understands Millennium currently has no interconnections with Dominion. Therefore, the right given to Southwestern appears to apply to Southwestern's interest in delivery points at points that have yet to be constructed.³

8. ConEd further argues that the negotiated flexible primary delivery point agreement with Southwestern is unclear concerning: (a) how Southwestern's *pro rata* share of capacity at a new interconnection with Dominion would be determined; (b) the manner in which costs would be assigned if a planned interconnection with Dominion has to be expanded to give Southwestern its "*pro rata* share" of the capacity; and (c) how the contractually mandated notices to Southwestern would differ, either in timing or substance, from the notices provided to all other Millennium customers.⁴ Finally, ConEd argues that clarification is needed concerning the relationship between the contractual rights given to Southwestern and the rights under section 4.2 of Millennium's GT&C which governs auctions of capacity. ConEd questions whether the contractual rights proposed for Southwestern could be used to interfere with capacity allocations under section 4.2.⁵

9. If a pipeline and a shipper enter into a contract that materially deviates from the pipeline's form of service agreement, the Commission's regulations require the pipeline to file the contract containing the material deviations with the Commission.⁶ In

³ ConEd Clarification Request at 3-4.

⁴ *Id.* at 4-5.

⁵ *See id.* at 5-6.

⁶ *See* 18 C.F.R. § 154.1(d) and 18 C.F.R. § 154.112(b) 2013.

Columbia Gas Transmission Corp.,⁷ the Commission clarified that a material deviation is any provision in a service agreement that (a) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff, and (b) affects the substantive rights of the parties. However, not all material deviations are impermissible. If the Commission finds that such deviation does not constitute a substantial risk of undue discrimination, the Commission may permit the deviation.⁸ Therefore, there are two general categories of material deviations: (a) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (b) provisions the Commission can permit without a substantial risk of undue discrimination. Moreover, if the Commission determines the contract contains a material deviation that is permissible, the Commission's regulations require the pipeline to file tariff records that reference the materially deviating contract.⁹

10. In this case, the Commission finds that the subject deviation is not permissible. The Commission has held that special provisions permitting a shipper to change a primary point without following the regular procedures in the pipeline's tariff are unduly discriminatory.¹⁰ Such provisions may adversely affect other similarly situated shippers seeking primary point capacity by giving the first shipper a priority for obtaining that capacity. The subject deviation in this case provides for Millennium to give Southwestern advance notice of any potential Dominion delivery point before entering into any contractual commitment with another shipper that could limit Southwestern's right to move its primary delivery point to the interconnection with Dominion. The deviation also states that the purpose of such advance notice is to allow Southwestern to "elect to receive its pro rata share of capacity at that point." Millennium's tariff does not provide for it to give similar advance notice to other shippers of contractual commitments that may adversely affect their ability to obtain primary point rights. Therefore, the subject deviation confers on Southwestern a valuable right that is not provided to any

⁷ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001) (Columbia).

⁸ *Columbia*, 97 FERC ¶ 61,221 at 62,004.

⁹ 18 C.F.R. § 154.112(b) (2013).

¹⁰ *ANR Pipeline Co.*, 103 FERC ¶ 61,223 at P 24, *reh'g denied*, 105 FERC ¶ 61,112, at P 22 (2003). *Colorado Interstate Gas Co.*, 105 FERC ¶ 61,124 at P 21 (2003). The Commission has only permitted an exception to this policy, when the shipper is an anchor shipper in a new construction project. *Tennessee Gas Pipeline Co.*, 140 FERC ¶ 61,120, at P 25 (2012).

other shipper under Millennium's tariff.¹¹ Accordingly, the Commission will require Millennium to eliminate this provision from Contract No. 131890. Therefore, the Commission accepts the new negotiated rate agreement in Contract No. 144968 and the amended Contract No. 131890, and the tariff records listed in the Appendix, effective November 1, 2013, subject to this condition.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

¹¹ The Commission recognizes that Millennium previously filed the contract containing the subject deviation, and that uncontested filing was accepted by a delegated letter order. However, such delegated letter orders do not establish precedent binding on the Commission. *See Westar Energy, Inc.*, 124 FERC ¶ 61,057, at P 26 (2008); *Norwalk Power, LLC*, 122 FERC ¶ 61,273, at P 25 (2008) (actions taken by the Commission's staff pursuant to delegated authority do not constitute Commission precedent binding the Commission in future cases and the exercise of delegated authority cannot serve to supplant Commission policies established in its decisions and regulations); *see also Mid-Continent Area Power Pool*, 97 FERC ¶ 61,038, at 61,184 n.10 (2001) (citing *Phoenix Hydro Corp.*, 26 FERC ¶ 61,389, at 61,870 (1984), *aff'd*, 249 U.S. App. D.C. 354, 775 F.2d 1187, 1191 (D.C. Cir. 1985)).

Appendix
Millennium Pipeline Company, LLC
FERC NGA Gas Tariff
Millennium Tariffs

Tariff Records Accepted Subject to Condition, Effective November 1, 2013

[Miscellaneous Forms, Non-Conforming Svc Agmts, 5.0.0](#)

[Table of Contents, , 10.0.0](#)

[Negotiated Rate Svc Agmt, Contract No. 144968 - SW, 0.0.0](#)

[Neg / Non-Conf Svc Agmts, Contract No. 131890 - Southwestern Energy, 1.0.0](#)