

145 FERC ¶ 61,116
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 8, 2013

In Reply Refer To:
Millennium Pipeline Company, LLC
Docket No. RP13-1312-000

Baker Botts LLP
Attorneys for Millennium Pipeline Company, LLC
1299 Pennsylvania Ave, NW
Washington, DC 20004

Attention: Thomas E. Holmberg
Jerrod L. Harrison

Dear Messrs. Holmberg and Harrison:

1. On September 26, 2013, Millennium Pipeline Company, LLC (Millennium) filed a request to withdraw tariff records¹ previously submitted for filing on September 3, 2013 in the above docket. The Millennium tariff records set forth the terms of a negotiated rate service agreement (Cabot Agreement) with Cabot Oil and Gas Corporation (Cabot) for firm backhaul service under Millennium's Rate Schedule BH-1 to be effective October 1, 2013. For the reasons discussed below, the Commission grants Millennium's request to withdraw the tariff records and the accompanying Cabot Agreement.
2. Under the Cabot Agreement, Millennium was to provide up to 110,000 Dth per day of transportation service to Cabot. The Cabot Agreement provided for backhaul service with the primary receipt point at an interconnection with Laser Gathering (Laser) in Broome County, New York, and a primary delivery point at the Stagecoach point in Tioga County, New York.
3. Public notice of Millennium's filing was issued on September 4, 2013 and on September 16, 2013, WPX Energy Marketing, LLC (WPX) filed a protest of Cabot Agreement arguing that the design capacity of 400,000 Dth at Millennium's Laser

¹ Millennium Pipeline Company, LLC, FERC NGA Gas Tariff, Millennium Tariffs, [Table of Contents, , 8.0.0](#) and [Negotiated Rate SVC Agmt, Contract No. 142902 - Cabot, 0.0.0](#).

receipt point would be exceeded if the Commission allowed the negotiated contract between Millennium and Cabot to go into effect. WPX asserted that it had entered into a service agreement with Millennium, under which it would receive up to 230,000 Dth/day of service at the Laser receipt point, including 50,000 Dth/day which will become effective on June 1, 2015, and the combined contract demands of Millennium's existing contracts, WPX's contract, and the Cabot Agreement would exceed 400,000 Dth/day as of June 1, 2015. WPX also argued that section 4 of the General Terms and Conditions (GT&C) of Millennium's tariff requires Millennium to hold an open season/capacity auction for capacity that becomes available, and Millennium had failed to satisfy that requirement. On September 20, 2013, Millennium filed a reply to dispute the allegations raised in WPX's protest, and WPX filed an answer to Millennium's reply on September 24, 2013.

4. Before the Commission could issue its decision on the tariff records and accompanying Cabot Agreement, Millennium filed the instant request to withdraw them.

5. In support of its request to withdraw, Millennium states that section 154.205(a) of the Commission's regulations allows a natural gas company to "withdraw in its entirety a tariff filing or executed service agreement that has not become effective and upon which no Commission or delegated order has been issued. . . ." ² Millennium asserts that the Cabot Agreement tariff records are not effective because no Commission or delegated order has been issued on the filing. Millennium further asserts that its previous request for approval of the tariff filing is now moot because, on September 26, 2013, Millennium and Cabot mutually agreed to terminate the Cabot Agreement.

6. Millennium states that, in lieu of the negotiated rate Cabot Agreement, Cabot and Millennium have entered into a discount rate agreement (Discount Agreement) for service under Rate Schedule BH-1 of Millennium's tariff. Specifically, in the Discount Agreement, Millennium agreed to provide up to 130,000 Dth per day of firm backhaul capacity from Millennium's interconnection at Laser, Scheduling Point No. 640608 to Stagecoach, Scheduling Point No. 640169, at a discounted reservation charge of \$0.1000 per Dth per day and a usage charge equal to Millennium's maximum usage charge of \$0.0037 per Dth plus applicable charges. Millennium asserts that the Discount Agreement also gives Cabot a contractual right of first refusal under its service agreement with Millennium. Finally, Millennium states that it will post notice of the Discount Agreement on its website following the effective date of service under that agreement.

7. Public notice of Millennium's request to withdraw was issued September 27, 2013, with interventions and protests due as provided in sections 154.211 and 154.214 of the Commission's regulations (18 C.F.R. §154.211 and § 154.214 (2013)). Pursuant to

² Millennium Withdrawal Request at 2 (citing 18 C.F.R. § 154.205(a) (2013)).

Rule 214 (18 C.F.R. § 385.214 (2013)), all timely filed motions to intervene and any unopposed motions to intervene filed out-of-time 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.

8. On October 3, 2013, WPX filed an opposition to Millennium's request to withdraw. On October 11, 2013, Millennium filed a motion for leave to answer and an answer to WPX's answer, and on October 15, 2013, WPX filed an answer.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.213(a)(2) (2013)) prohibits answers to protests unless otherwise ordered by the decisional authority. In this case, the Commission will accept WPX's and Millennium's answers because they have assisted us in our decision making process.

10. In its opposition, WPX states that the issues previously raised in its protest to the Cabot Agreement (i.e. that Millennium has oversold its capacity and that such sale was unduly discriminatory because the capacity was not subject to an open season) have not been resolved nor is the resulting harm to WPX cured by simply substituting the Discount Agreement for the Cabot Agreement. WPX states that Millennium has executed a precedent agreement with WPX, amended and restated in June 2011 which, among other capacity commitments, gives WPX an option to obtain an additional 50,000 Dth per day of primary receipt point capacity at the Laser receipt point on June 1, 2015. Moreover, WPX argues that the withdrawal request is a blatant attempt to avoid the Commission's scrutiny because the Discount Agreement does not need to be filed with the Commission, while the Cabot Agreement must be filed. Because the issues raised in WPX's protest of the Cabot Agreement are not resolved, WPX requests that the Commission deny the withdrawal and address the substantive issues raised on the merits.

11. In its answer, Millennium asserts that WPX has not demonstrated the occurrence of any violation or of any harm that it will suffer if Millennium withdraws the Cabot Agreement. Millennium asserts that WPX has not stated that it or any other shipper is or was interested in obtaining service using point capacity available at the Laser receipt point. Further, Millennium argues that it is not obliged to provide an additional 50,000 Dth of service to WPX until June 1, 2015, and if at that time Millennium is unable to do so because it has oversold its capacity, Millennium argues that WPX is free to use the Commission's complaint procedures to address its claims.

12. In its answer, WPX reasserted its previous arguments that Millennium has oversold its capacity with the execution of the agreement with Cabot and that such sale was unduly discriminatory because the capacity was not subject to an open season.

13. The Commission will grant Millennium's request to withdraw the tariff records and accompanying Cabot Agreement. WPX asserts that the Commission should deny Millennium's request to withdraw the tariff records and, instead, rule on the merits of the

claims it has raised regarding the agreement; we do not agree. Millennium and Cabot have mutually agreed to terminate the Cabot Agreement effective September 26, 2013 and Millennium has withdrawn the Cabot Agreement in favor of the Discount Agreement, which did not have to be submitted to the Commission for acceptance. Accordingly, there is nothing before us to rule on. If WPX believes that the Discount Agreement harms its interests and that Millennium has violated terms of its tariff, it may file a Complaint with the Commission pursuant to Rule 206 of the Commission's Rules of Practice and Procedure.³

By the direction of the Commission.

Kimberly D. Bose,
Secretary.

³ See 18 C.F.R. § 385.206(a) (2013), "Any person may file a complaint seeking Commission action against any other person alleged to be in violation of any statute, rule, order, or . . . for any other alleged wrong for which the Commission may have jurisdiction."