146 FERC ¶ 61,244
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 31, 2014

In Reply Refer To:
Millennium Pipeline Company, LLC
Docket No. RP14-569-000

Millennium Pipeline Company, LLC
Attn: John V. Keith, Vice President, Finance
and Controller
One Blue Hill Plaza, Seventh Floor
P.O. Box 1565
Pearl River, New York 10965

Dear Mr. Keith:

1. On February 28, 2014, Millennium Pipeline Company, L.L.C. (Millennium) filed a tariff record,[1] setting forth its revised annual Retainage Adjustment Mechanism (RAM) percentages calculated pursuant to section 32 of the General Terms and Conditions (GT&C) of its tariff.[2] The retainage percentages represent the quantity of gas, expressed as a percentage of receipt quantities, that shippers must provide Millennium for company-use (CU), and lost and unaccounted-for quantities (LAUF). Millennium proposes an April 1, 2014, effective date for its revised tariff record. As discussed more fully below, Millennium's revised tariff record is accepted and suspended, to be effective April 1, 2014, subject to refund and conditions.

2. Millennium's Retainage Percentage is comprised of two components: (1) a percentage designed to reimburse Millennium for the fuel it uses to operate its system and the cost of electricity to be used for electric gas heaters at Millennium's compressor stations (CU Percentage); and (2) a percentage that is used to reimburse Millennium for

[1] Millennium Pipeline Company, LLC, FERC NGA Gas Tariff, Millennium Tariffs, Currently Effective Rates, Section 7. Retainage Rates, 6.0.0.

[2] Millennium attached to its Transmittal a Schedule A and two workpapers in support of the adjustments made to its retainage percentages.

lost and unaccounted for gas experienced during operation (LAUF Percentage). The CU Percentage and LAUF Percentage are added together to calculate the Retainage Percentage under Millennium's tariff. Millennium asserts that, pursuant to GT&C section 32.4(a) of its tariff, the CU Percentage and LAUF Percentage applied to each year are based on estimates made for the year. Millennium states that, pursuant to GT&C section 32.4(b) of its tariff, the amount to be retained in a given year is also adjusted for any under-retainage or over-retainage in the prior calendar year. On March 5, 2014, the Commission accepted Millennium's filing in Docket No. RP14-439-000, revising section 32.4(b) of its GT&C to permit electric costs incurred in the operation of electric heaters associated with its gas-fired compressors to be recovered in its RAM.[3]

3. Commencing April 1, 2014, Millennium proposes to change its: (1) CU percentage to 0.277 percent (from 0.222 percent); and (2) LAUF Percentage to 0.178 percent (from 0.133 percent). Millennium states its CU Percentage is based on its estimate of the percentage of receipts that will need to be retained for anticipated fuel used and electric costs incurred for gas heaters at compressor stations based on its expected operations and throughput for this calendar year. Millennium notes that, in addition to the amount of fuel estimated to run its compressor stations, it also determines an amount of gas necessary to permit it to recover its electric costs, as defined in GT&C section 1.40 of its tariff, by dividing the electric costs by the first of the month Spot Index Price averaged over the proceeding calendar year. Millennium estimates that the electric costs for the coming year will be approximately $140,000 and the prior year's average Spot Index Price was $3.81, as further explained in its application at Docket No. RP14-439-000. Millennium states that it is including 36,750 dekatherms (Dth) of gas to recover the equivalent electric power costs.[4]

4. Millennium proposes to recover 620,197 Dth of CU gas and 684,645 Dth of LAUF gas under recovered from the previous year.[5] Millennium states, given its projected deliveries for 2014, its CU and LAUF Unrecovered Retainage Percentages are 0.123 percent and 0.136 percent, respectively. Millennium clarifies that it is not authorized to collect electric costs for gas heaters at its compressor stations that were incurred prior to the March 6, 2014 effective date of the tariff record authorizing it to

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[3] *Millennium Pipeline Co., LLC*, 146 FERC ¶ 61,156 (2014).

[4] *See* Schedule A and Workpaper 1.

[5] *See* Schedule A and Workpaper 2.

collect such costs,[6] but it reserves the right to do so in its next Annual or Periodic Retainage Adjustment Mechanism (RAM) filing.

5. Public notice of Millennium's RAM Filing was issued on March 4, 2014. 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 motion 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 March 12, 2014, Hess Corporation (Hess) filed a protest. On March 18, 2014, Millennium filed an answer to Hess' protest. On March 21, 2014, Hess filed a reply to Millennium's answer. While the Commission's regulations do not permit the filing of answers to protests or answers to answers,[7] the Commission will accept Millennium's answer and Hess' reply because they provide additional information which aided in our decision-making process.

6. In its protest, Hess asserts that Millennium should be required to: (1) provide more information supporting the large increases in its CU and LAUF Percentages; (2) explain and substantiate the "2014 Forecasted Operational Changes" volumes set forth on Workpaper 1; and (3) substantiate and explain the reason for the substantial 2013 under recovery of 1,304,842 Dth. Particularly, with regard to this 2013 under recovery, Hess asserts Millennium fails to set forth the associated dollar impact upon its customers. Hess also takes issue with the following statement by Millennium on page 3 of its transmittal:

> Since Millennium will not be authorized to collect electric costs for gas heaters at its compressor stations that were incurred prior to the March 6, 2014 effective date of tariff record authorizing it to collect such costs filed in Docket No. RP14-439-000, Millennium is not proposing to collect any unrecovered Electric Costs in this filing, <u>although it reserves the right to do so in its next Annual or Periodic RAM filing</u>.[8]

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[6] *See Millennium Pipeline Co., LLC*, 146 FERC ¶ 61,156 (2013).

[7] 18 C.F.R. § 385.213(a)(2) (2013).

[8] Hess Protest at 4 (citing Millennium Transmittal at 3) (emphasis provided).

Hess states the Commission should summarily reject this "reservation of right" and clarify that Millennium may not recover costs that are not recoverable under tariff provisions in existence at the time of incurrence of those costs.

7. In its answer, Millennium states Hess' request for additional information regarding the proposed CU and LAUF Percentages is unsupported and vague. Millennium argues that, contrary to Hess' conclusion that the proposed CU and LAUF Percentages are "large increases," these proposed components are within the range of percentages that Millennium has proposed and the Commission has accepted in Millennium's recent RAM Filings. Specifically, Millennium states the proposed CU Percentage of 0.277 percent is below the CU Percentages included in some previous RAM Filings,[9] and the LAUF Percentage of 0.178 percent is likewise within the bounds of the LAUF Percentages that the Commission has approved as part of Millennium's Retainage Percentage.[10] With regard to Hess' request that the Commission require Millennium to provide further information before the Commission approves Millennium's filing, Millennium contends it is not clear what additional information Hess is requesting. Nevertheless, Millennium argues that it has provided the same level of detail in the instant RAM Filing as it has in previous RAM Filings, including those proceedings in which Hess itself has been a party.[11]

8. Regarding Hess' contention that it should be required to explain and substantiate the 2014 Forecasted Operational Changes volumes set forth on Workpaper 1, Millennium states the Commission has recognized that the use of projected throughput in calculating fuel and LAUF gas requirements (as Millennium's tariff mandates), "gives the pipeline

[9] Millennium Answer at 4 (citing *Millennium Pipeline Co., LLC*, Periodic Retainage Adjustment Mechanism Filing with a proposed CU percentage of 0.444 percent, Docket No. RP11-1936-001, accepted by Delegated Letter Order (Nov. 1, 2011); *see also*, *Millennium Pipeline Co., LLC*, 135 FERC ¶ 61,097 (2011) (*2011 RAM Order*) (with a CU Percentage of 0.307 percent)).

[10] Millennium Answer at 4 (citing *Millennium Pipeline Co., LLC*, Annual Retainage Adjustment Mechanism Filing with a proposed LAUF percentage of .194 percent (2012 RAM Filing), Docket No. RP12-427-000, accepted by Delegated Letter Order, Docket No. RP12-427-000 (Mar. 29, 2012)).

[11] Millennium Answer at 4-5 (citing *Millennium Pipeline Co., LLC*, Annual Retainage Adjustment Mechanism Filing, Docket No. RP13-597-000 (Feb. 28, 2013) (2013 RAM Filing); *see also*, 2012 RAM Filing).

greater flexibility to adjust the throughput volumes used to calculate its fuel retention percentage based on its best estimate of the next year's throughput as of the date of the filing."[12] Millennium asserts that the Commission has also stated that, in determining a projected throughput, a:

> pipeline is free to take into account recent developments such as contract terminations and expected new contracts. Also, the fact that the true-up mechanism ensures that the pipeline must return any over-recoveries leaves the pipeline little incentive to lowball its projection for purposes of raising its fuel retention percentage.[13]

Millennium maintains that, consistent with this policy, it incorporates into its forecast of annual throughput certain changes in the level of contracted capacity and its annual usage[14] and it is appropriate and consistent with Commission policy to include such revisions in its projection of annual throughput.

9. Regarding Hess' contention that it should be required to substantiate and explain the reason for the substantial 2013 under recovery of 1,304,842 Dth, Millennium states: (1) it under recovered this volume of gas because its CU and LAUF Percentages applied to throughput for the previous year did not exactly match its actual CU and LAUF volumes; and (2) its unrecovered CU and LAUF Percentages in the instant filing are fully supported, consistent with its previous RAM Filings. Millennium further states the Commission-approved true-up mechanism in its tariff entitles it to recoup volumes that it under recovered in the previous year, just as it has been required to return volumes that it has over recovered in previous RAM Filings. In this regard, Millennium also notes that Hess did not raise these same concerns in Millennium's previous RAM Filing where Millennium filed to implement Retainage Percentages which included a negative, unrecovered CU Percentage that permitted Millennium to return to shippers volumes of

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[12] Millennium Answer at 5 (citing *High Island Offshore System LLC*, 112 FERC ¶ 61,050, at P 136 (2005) (*HIOS*)).

[13] *Id.*

[14] Millennium Answer at 5 (citing *Millennium Pipeline Co., LLC*, 146 FERC ¶ 61,156 (2014); *Northern Natural Gas Co.*, 111 FERC ¶ 61,300, at P 14 (2005)).

CU gas that the pipeline had over recovered.[15] With regard to Hess' claim that it "fails to set forth the dollar impact upon its customers of the alleged under-recovery," Millennium states that Hess cites to no Commission regulation or policy requiring Millennium or any other interstate pipeline to make such a demonstration. In addition, Millennium states the unrecovered gas represents volumes it actually consumed or experienced as LAUF gas and it is entirely proper to expect shippers to reimburse it for that gas, just as it would be proper for Millennium to reimburse shippers for excess gas through a lower Retainage Percentage for any over recoveries.

10. With regard to Hess' objection to the "reservation of right" statement in its transmittal letter, Millennium asserts that Hess has misread this statement because Millennium is not suggesting that it may recover costs incurred prior to the acceptance of tariff provisions authorizing the collection of such costs, as Hess incorrectly infers. Millennium asserts that it was merely pointing to the fact that the proposed effective date of its changes implementing the inclusion of electric costs was March 6, 2014 (less than a month before the April 1, 2014 proposed effective date of the instant RAM Filing) and that the calculations underlying the instant RAM Filing did not include any true-up of costs previously incurred. Furthermore, Millennium contends that its statement was intended to put shippers on notice that, although it is not proposing to true-up any past volumes in the instant proceeding, it would have the right to true-up any actual volumes that were incurred *after* the effective date of the tariff change approved in Docket No. RP14-439-000 in future RAM Filings, as permitted by GT&C section 32.4(b) of its tariff.

11. In its reply, Hess states that it accepts Millennium's clarification of its "reservation of right" in its RAM Filing. However, Hess argues Millennium is not forthright in declaring that it has provided the same level of detail in its 2014 RAM Filing as it has in previous filings. Hess asserts that, after a protest submitted by Hess and other parties, the Commission held that the information submitted by Millennium in its 2011 RAM Filing was insufficient, and required Hess to submit:

> (1) workpapers reflecting detailed monthly calculations and projections for fuel use and LAUF, along with an explanation of the operational reasons for the proposed increase from prior periods; and (2) a narrative discussion of any

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[15] Millennium Answer at 7 (citing 2013 RAM Filing, Schedule A (reflecting an Unrecovered CU Gas Percentage of -0.150 percent); 2012 RAM Filing, Schedule A (reflecting an Unrecovered CU Gas Percentage of -0.163 percent)).

variances it has experienced between projected and actual fuel and LAUF volumes.[16]

Finally, Hess states that, contrary to Millennium's arguments, its request for additional information was not vague as it clearly requested that Millennium be to: (1) provide more information supporting the large increases in its CU and LAUF Percentages; (2) explain and substantiate the "2014 Forecasted Operational Changes" volumes set forth on Workpaper 1; and (3) substantiate and explain the reason for the substantial 2013 under recovery of 1,304,842 Dth.

12. Millennium's proposed RAM Filing appears to generally comply with the tracker filing provisions set forth in section 32 of its GT&C. However, the Commission shares the concerns expressed by Hess in its protest and answer, and finds that the filing does not provide adequate support for Millennium's forecasted and under-recovery volumes, and associated increases in its CU and LAUF Percentages. In particular, as illustrated by the chart below, Millennium's actual CU and LAUF were substantially greater in 2013 than in 2012:

	CUG	LAUF
2012:	105,880	355,908
2013:	1,119,077	1,190,859
increase of:	1,013,197	834,951
% increase:	957%	235%

In contrast, Millennium's actual delivery volumes for 2013 increased by only 36 percent from 2012 to 2013.[17] Yet, Millennium has not provided any explanation why its CU and LAUF increased so substantially during the last year.

13. Therefore, Millennium's proposed RAM Filing may result in fuel charges that are not just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission suspends Millennium's tariff record for the period set forth below, subject to refund, conditions discussed below, and further review and order of the Commission. The Commission directs Millennium to file additional information, within 30 days of the date this order issues, fully addressing the

[16] Hess Reply at 6 (citing *2011 RAM Order*, 135 FERC ¶ 61,097 at ordering para (B)).

[17] Actual tariff delivery volumes for 2012 and 2013 were 267,615,151 and 363,839,573, respectively.

protest and comments filed by Hess. Parties will have 20 days to comment on Millennium's informational filing. Specifically, Millennium should explain in detail why both its CU and its LAUF increased so substantially during 2013 and how it arrived at the 2014 Forecasted Operational Changes volumes reflected on Workpaper 1 and the under recovery volumes reflected on Workpaper 2.

14. 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.[18] It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results.[19] Such circumstances exist here where Millennium is filing to adjust retainage percentages pursuant to a tracking mechanism. Therefore, the Commission shall exercise its discretion to suspend the tariff sheets to become effective on April 1, 2014, subject to refund, the conditions set forth in the body of this order, and further review and order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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

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