

147 FERC ¶ 61,139  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

May 20, 2014

In Reply Refer To:  
Millennium Pipeline Company, LLC  
Docket No. RP14-764-000

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 April 23, 2014, Millennium Pipeline Company, LLC (Millennium) filed revised tariff records<sup>1</sup> to implement a negotiated rate service agreement under its Rate Schedule FT-1 with WPX Energy Marketing, LLC (WPX), Contract No. 152750 (WPX Agreement). Millennium requests waiver of the notice period so that the subject tariffs can be made effective May 1, 2014. As more fully discussed below, the Commission finds that the WPX Agreement contains an impermissible material deviation from the *pro forma* service agreement for Rate Schedule FT-1 service. Accordingly, the Commission accepts Millennium's revised tariff records, to be effective May 1, 2014, subject to condition, as discussed below. The Commission also grants waiver of the 30-day notice period to permit the proposed May 1, 2014 effective date.

2. Under the WPX Agreement, Millennium states that it will provide service to WPX for up to 30,000 Dth per day at: (1) the maximum reservation charge of \$0.6499 per Dth per day set forth in its FERC tariff from May 1, 2014 through May 31, 2015; and (2) a negotiated reservation charge of \$0.3900 per Dth per day from June 1, 2015 through

---

<sup>1</sup> Millennium Pipeline Company, LLC, FERC NGA Gas Tariff, Millennium Tariffs, [Table of Contents, , 14.0.0](#) and [Negotiated Rate Svc Agmt, Contract No. 152750 - WPX Energy, 0.0.0](#).

May 31, 2018. Millennium also states that, following the primary term of the agreement (from May 1, 2014 through May 31, 2018), WPX has the right to renew the agreement at a reservation rate of \$0.3900 per Dth per day for five three-year renewal terms for firm capacity of up to 30,000 Dth per day. Millennium specifies that Section 7 of the WPX Agreement states:

“Shipper will have the right to renew the term of this agreement at a reservation rate of \$0.39/dth/day for up to five three-year renewal terms for up to 30,000 dth/day, but not to exceed for any renewal term the volume renewed for the prior renewal term; provided however that shipper may request an increase for any renewal term up to 30,000 dth/day, which requested increase will be granted if such increased amount is available for all remaining renewal terms”

3. Millennium states this proposed language is consistent with its tariff and thus is not a non-conforming provision. Specifically, Millennium asserts that the provision is permitted by: (1) GT&C section 4.1(c)(7) of its tariff which allows Millennium to negotiate contract extension provisions in service agreements with its shippers and that such extensions may be conditioned upon a shipper’s agreement to take “service for the extended term at a particular rate (not to exceed the applicable Recourse Rate) and/or for a particular or minimum term”;<sup>2</sup> and (2) GT&C section 4.1(b)(2) which permits negotiated contract extensions to include decreases in a shipper’s level of Transportation Demand and provides in relevant part that “[p]rior to the expiration of the term of a . . . negotiated rate long-term Service Agreement(s), Transporter and Shipper may mutually agree to renegotiate the terms of such Agreement in exchange for Shipper’s agreement to extend the use of at least part of its existing service under a restructured Service Agreement.”<sup>3</sup> Millennium states that, although the WPX Agreement contemplates

---

<sup>2</sup> Section 4.1(c)(7) provides that “[n]otwithstanding the provisions of section 4.1(b) above, Transporter and its Shippers may mutually agree, on a not unduly discriminatory or preferential basis, to include in discount rate or negotiated rate firm Service Agreements that bear a term of 12 or more consecutive months of service, a right for Shipper to receive continued service beyond the term of such Service Agreement by providing notice to Transporter (a rollover right) of Shipper’s wish to rollover its Service Agreement. Transporter may, on a not unduly discriminatory or preferential basis, condition any such rollover rights on Shipper taking service for the extended term at a particular rate (not to exceed the applicable Recourse Rate) and/or for a particular or minimum term.”

<sup>3</sup> Section 4.1(b)(2) provides that “[p]rior to the expiration of the term of a Recourse Rate, discounted rate or negotiated rate long-term Service Agreement(s), Transporter and Shipper may mutually agree to renegotiate the terms of such Agreement (continued...) ”

extension of the contract for a lower level of capacity, the precise level of capacity (an indispensable contract term) is not specified and is left to the parties to negotiate at the time of the extension.

4. Public notice of the filing was issued on April 24, 2014. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.<sup>4</sup> Pursuant to Rule 214,<sup>5</sup> 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. No protests or adverse comments were filed.

5. Section 154.1(d) of the Commission's regulations requires pipelines to file with the Commission contracts that materially deviate from the pipeline's form of service agreements.<sup>6</sup> In *Columbia Gas*, the Commission explained that a material deviation is any provision in a service agreement that: (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (2) affects the substantive rights of the parties.<sup>7</sup> The Commission generally prohibits material deviations that result in a shipper receiving a different quality of service than that offered other shippers under the pipeline's generally applicable tariff or that affect the quality of service received by others.<sup>8</sup> However, if the Commission finds that a material deviation does not constitute a substantial risk of undue discrimination, the Commission may permit the deviation.<sup>9</sup>

---

in exchange for Shipper's agreement to extend the use of at least part of its existing service under a restructured Service Agreement. Such restructured Service Agreement(s) will be negotiated on a case-by-case basis in a not unduly discriminatory manner. If the Service Agreement has a regulatory right of first refusal, Transporter and Shipper must reach agreement to extend prior to initiation of the right of first refusal procedure, which means the Shipper notification pursuant to section 4.1(c)(2). To the extent that Transporter and Shipper mutually agree to such an arrangement, the requirements of section 4.1(c) will not be applicable."

<sup>4</sup> 18 C.F.R. § 154.210 (2013).

<sup>5</sup> 18 C.F.R. § 385.214 (2013).

<sup>6</sup> 18 C.F.R. § 154.1(d) (2011).

<sup>7</sup> *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001) (*Columbia Gas*). See also *ANR Pipeline Co.*, 97 FERC ¶ 61,224, at 62,022 (2001).

<sup>8</sup> *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113, at P 28 (2010).

<sup>9</sup> *Columbia Gas*, 97 FERC at 62,003; *ANR Pipeline Co.*, 97 FERC at 62,024.

6. Proposed Section 7 of the WPX Agreement would give WPX the right to decrease the 30,000 Dth/day contract demand under its FT-1 service agreement during each renewal period and in subsequent renewal periods increase its contract demand up to (but not above) 30,000 Dth/day, subject to availability. The Commission has held that a right for a shipper to adjust its contract demand presents too much potential for discrimination unless it is offered in the pipeline's tariff pursuant to generally applicable conditions.<sup>10</sup> Millennium has not cited any provision of its tariff that offers FT-1 shippers contract demand adjustment rights such as the one included in the WPX Agreement. The first tariff provision relied on by Millennium, GT&C section 4.1(c)(7), provides that Millennium and a shipper may agree to include in a negotiated rate agreement, such as the WPX Agreement, a right "to rollover its Service Agreement" and "condition any such rollover rights on Shipper taking service for the extended term at a particular rate (not to exceed the applicable Recourse Rate) and/or for a particular or minimum term." However, nothing in section 4.1(c)(7) indicates that the parties can agree to a right to roll over only part of the shipper's service agreement, rather than the entire service agreement. Nor does anything in that section authorize Millennium to offer a right in subsequent renewal periods to increase contract demand back to its previous level.

7. The second tariff provision relied on by Millennium, GT&C section 4.1(b)(2), provides that, before the expiration of an existing negotiated rate long-term service agreement, Millennium and the shipper may mutually agree to renegotiate the terms of the agreement in exchange for the shipper's agreement to extend the use of at least part of its existing service. However, that section only applies to a voluntary renegotiation of a previously executed service agreement. It does not authorize Millennium and a shipper to include in a service agreement at the time the agreement is negotiated a unilateral right for the shipper to adjust its contract demand, such as the parties have included in the WPX service agreement.

8. Moreover, the Commission observes that in 2011, in Docket No. RP12-20-000, Millennium filed a negotiated rate agreement with a contract demand adjustment that was similar to the one at issue here. In that proceeding, as we are finding here, the Commission determined that a right to adjust contract demand can only be offered in Millennium's tariff pursuant to a generally applicable tariff provision or its *pro forma* service agreement. We, therefore, accepted that agreement subject to the condition that Millennium either: (1) identify the provision(s) of Millennium's generally applicable tariff that permits the "Changes to Capacity" section in the letter agreement; (2) remove the "Changes to Capacity" section from the letter agreement; or (3) modify its tariff to offer the rights contained in the "Changes to Capacity" section to all shippers on a not

---

<sup>10</sup> See *Millennium Pipeline Co., L.L.C.*, 137 FERC ¶ 61,118 (2011). See also *East Tennessee Natural Gas, LLC*, 109 FERC ¶ 61,232, at P 29 (2004).

unduly discriminatory basis through a generally applicable tariff provision in its GT&C.<sup>11</sup> In its compliance filing, Millennium removed the contract demand adjustment provision from the negotiated rate agreement, choosing not to revise its tariff to offer the right to adjust contract demand on a generic basis.

9. Therefore, we find that proposed Section 7 of the WPX Agreement constitutes an impermissible material deviation from Millennium's form of service agreement for service under Rate Schedule FT-1. Based on the foregoing, the Commission accepts Millennium's instant filing, subject to the condition that Millennium, within 30 days of the date this order issues, either: (1) removes Section 7 from the WPX Agreement and files a copy of the revised agreement; or (2) modifies its tariff to offer the contract demand adjustment right contained in Section 7 of the WPX Agreement to all shippers on a not unduly discriminatory basis through a generally applicable tariff provision in its GT&C and revise its *pro forma* service agreement to reflect the same.<sup>12</sup>

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

---

<sup>11</sup> *Millennium Pipeline Co., L.L.C.*, 137 FERC ¶ 61,118 at PP 12-13.

<sup>12</sup> Providing spaces in the *pro forma* service agreement for the contract adjustment provision will ensure that an agreement with such a provision will be conforming.