

148 FERC ¶ 61,166
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 5, 2014

In Reply Refer To:
Steckman Ridge, LP
Docket No. RP14-1172-000

Steckman Ridge, LP
P. O. Box 1642
Houston, TX 77251-1642

Attention: Janice K. Devers, General Manager
Tariffs and Commercial Development

Dear Ms. Devers:

1. On August 6, 2014, Steckman Ridge, LP (Steckman Ridge) filed revised tariff records¹ reflecting a non-conforming agreement with Consolidated Edison Company of New York, Inc., (Con Ed) for service under Rate Schedule FSS. Steckman Ridge also proposes to include this agreement on its list of non-conforming agreements set forth in section 38 of the General Terms and Conditions of its tariff. Steckman Ridge requests waiver of the Commission's 30-day notice requirement to permit the proposed tariff records to become effective August 6, 2014. As discussed below, the Commission grants waiver of the 30-day notice requirement and accepts the tariff records effective August 6, 2014, subject to the condition discussed below.

2. Public notice of Steckman Ridge's filing was issued on August 7, 2014. Interventions and protests were due on or before August 18, 2014. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2014)), 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. No protests or adverse comments were filed.

¹ Steckman Ridge, LP, FERC NGA Gas Tariff, Steckman Ridge Database 1, [38., Materially Non-Conforming Service Agreements, 1.0.0](#) and [2., Consolidated Edison - contract 920088, 0.0.0.](#)

3. The instant non-conforming agreement filed by Steckman Ridge is for firm storage service with Con Ed at market-based rates under its Rate Schedule FSS. The term of the agreement with Con Ed expires on July 31, 2018. Moreover, the agreement entered into between Steckman Ridge and Con Ed would provide Con Ed with a one-time election right to renew the full service provided under this Service Agreement at the stated terms and charges for a period of five (5) years from the end of the primary term. Specifically, the Service Agreement states that:

This Service Agreement shall be effective on August 6, 2014 and shall remain in force and effect until and including July 31, 2018 (the "Primary Term"). Customer shall have a onetime election right to renew the full service provided under this Service Agreement at the stated terms and charges for a period five (5) years from the end of the Primary Term ("Initial Renewal Period"). Customer shall provide written notice of renewal election prior to March 31, 2018. Any renewal of service subsequent to the Initial Renewal Period will be subject to negotiation of the terms and charges related to the service to be renewed.

4. However, Paragraph 3 of Steckman Ridge's *pro forma* Rate Schedule FSS service agreement provides for roll-overs from year-to-year after the primary term of the contract has ended. Specifically, this language states that:

This Service Agreement shall be effective on _____, ____ [this blank may include a date certain, a date either earlier or later than a specified date certain based on the completion of construction of facilities necessary to provide service under the Service Agreement, a date set forth in or established by a relevant order from the Federal Energy Regulatory Commission or a commencement date as defined in a precedent agreement between Customer and Steckman Ridge] and shall remain in force and effect until and including _____, ____ [or, when applicable, "shall continue for a term of ____ years"] (the "Primary Term").

Thereafter, this Agreement shall continue for successive terms of twelve (12) months each (the "Renewal Term"), provided that the original Primary Term was for a period of at least twelve (12) consecutive months, unless either party gives ninety (90) days written notice to the other party prior to the end of the Primary Term or any Renewal Term thereafter. [In the event that Steckman Ridge and Customer agree to a fixed term, the renewal term and notice of termination language shall be omitted from Customer's Service Agreement.]

5. Accordingly, the provision in the Service Agreement which holds that Con Ed will receive a one-time election right to renew the full service provided under the Service Agreement at the stated terms and charges for a period of five years from the end of the primary term is not consistent with the provision set forth in Steckman Ridge's

pro forma service agreement, which would permit the Agreement to continue for successive terms of twelve months each, provided that the original primary term was for a period of at least twelve consecutive months, unless either party gives ninety (90) days written notice to the other party prior to the end of the primary term or any renewal term thereafter.

6. When a pipeline and a shipper enter into a contract that includes a non-conforming provision, the Commission's regulations require the pipeline to file the contract containing the non-conforming provision with the Commission.² In *Columbia Gas Transmission Corp.*, the Commission clarified that a material deviation, or non-conforming provision, 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.³ 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.⁴ 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.

7. The Commission finds that the non-conforming provision set forth in Steckman Ridge's Service Agreement with Con Ed constitutes a substantial risk of undue discrimination in that it offers a roll-over provision to Con Ed that deviates from the roll-over provisions offered to other shippers through the *pro forma* service agreement. In cases where a pipeline has proposed roll-over or evergreen provisions in non-conforming service agreements that differ from the pipeline's *pro forma* service agreement, the Commission has held that the inclusion of a roll-over provision that significantly differs from the one included in its the *pro forma* service agreement is an impermissible material deviation.⁵ In the instant filing, Steckman Ridge attempts to incorporate into its agreement with Con Ed a roll-over provision that differs from the one set forth in its *pro forma* service agreement.

8. Consistent with previous determinations, the Commission finds that Steckman Ridge must remove the roll-over provision from Con Ed service agreement, or revise its

² See 18 C.F.R. § 154.1(d) and 18 C.F.R. § 154.112(b) 2013.

³ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001) (*Columbia*).

⁴ *Columbia*, 97 FERC ¶ 61,221 at 62,004.

⁵ See *Saltville Gas Storage Co. L.L.C.*, 110 FERC ¶ 61,324, at P 16 (2005) and *Kinetica Energy Express, LLC*, 145 FERC ¶ 61,124, at P 6 (2013).

service agreement with Con Ed so that the roll over provisions is consistent with the like provision in its *pro forma* service agreement or revise the General Terms and Conditions of its *pro forma* service agreement of its tariff so that all customers may negotiate a roll-over tariff provision such as that proposed for the Con Ed Service agreement. The proposed tariff records are accepted to be effective August 6, 2014, subject to Steckman Ridge filing to satisfy these conditions, within 30 days of the issuance of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.