

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

November 25, 2014

In Reply Refer To:  
Wyoming Interstate Company, L.L.C.  
Docket No. RP15-133-000

Wyoming Interstate Company, L.L.C.  
P.O. Box 1087  
Colorado Springs, CO 80944

Attention: Mr. Francisco Tarin  
Director, Regulatory Affairs

Reference: Non-Conforming Transportation Service Agreement

Dear Mr. Tarin:

1. On October 31, 2014, Wyoming Interstate Company, L.L.C. (WIC) filed revised tariff records,<sup>1</sup> reflecting a non-conforming negotiated rate transportation service agreement (TSA) with Chesapeake Energy Marketing, Inc. (Chesapeake) under Rate Schedule FT (Chesapeake Agreement).<sup>2</sup> The Commission accepts the referenced tariff records to become effective December 1, 2014, subject to the conditions discussed below.

2. WIC states that the Chesapeake Agreement includes a maximum daily quantity of 75,000 dekatherms per day (Dth/day) for the period from December 1, 2014 until November 30, 2016 (Initial Period). On December 1, 2016, the maximum daily quantity will increase to 155,000 Dth/day (Secondary Period). The Chesapeake Agreement remains effective through November 30, 2024. WIC explains that the agreement includes a non-conforming provision which allows Chesapeake to increase its maximum daily quantity during the Initial Period up to 125,000 Dth/day provided the capacity is available and Chesapeake provides sixty days advance written notice. WIC explains that the non-conforming provision also permits Chesapeake to defer a portion of the December 1, 2016 increase specified by the agreement. WIC requests Commission

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<sup>1</sup> See Appendix.

<sup>2</sup> TSA No. 41266000.

approval of this non-conforming provision as a permissible deviation from its *pro forma* service agreement.

3. Public notice of the filing was issued on November 3, 2014. Interventions and protests were due as provided by section 154.210 (18 C.F.R. § 154.210 (2014)). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2014), all timely motions to intervene and any unopposed motions to intervene out-of-time filed before the 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.

4. The Commission accepts the proposed tariff records subject to conditions. In *Columbia Gas Transmission Corporation*,<sup>3</sup> the Commission clarified 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. A material deviation may be permissible if the Commission finds that such deviation does not constitute a substantial risk of undue discrimination.<sup>4</sup> Therefore, there are two general categories of material deviations: (1) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (2) provisions the Commission can permit without a substantial risk of undue discrimination. Moreover, if the Commission permits the contract containing the material deviation, the Commission's regulations require the pipeline to file tariff records that reference the materially deviating contract in its tariff.<sup>5</sup>

5. The Commission finds the Chesapeake Agreement contains an impermissible material deviation. The Commission has held that provisions which permit a shipper to vary contract demand confer a valuable right that enables a shipper to avoid liability associated with reservation charges.<sup>6</sup> Thus, provisions which permit shippers to vary contract demand may only be provided under generally applicable tariff provisions.<sup>7</sup> Under the non-conforming terms of the Chesapeake Agreement, Chesapeake will have the option to increase the maximum daily quantity on a date earlier than the date

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<sup>3</sup> 97 FERC ¶ 61,221 (2001).

<sup>4</sup> *Columbia*, 97 FERC at 62,004.

<sup>5</sup> 18 C.F.R. § 154.112(b) (2014).

<sup>6</sup> *Portland Natural Gas Transmission System*, 133 FERC ¶ 61,050, at P 6 (2010).

<sup>7</sup> *E.g. Portland*, 133 FERC ¶ 61,050 at PP 6-7, 10; *Questar Pipeline Co.*, 132 FERC ¶ 61,152, at PP 2, 7-8 (2010); *Tuscarora Gas Transmission Co.*, 131 FERC ¶ 61,091, at P 9 (2010); *Texas Gas Transmission, LLC*, 131 FERC ¶ 61,052, at P 10 (2010); *ANR Pipeline Co.*, 103 FERC ¶ 61,223, at P 21 (2003).

specified in its service agreement. Similarly, under the Chesapeake Agreement, Chesapeake will be able to defer a portion of the increases to its maximum daily quantity to a later date than the date specified in its agreement. There is, however, no provision in WIC's tariff making such flexibility generally available to other shippers which are similarly situated to Chesapeake.<sup>8</sup> This is inconsistent with Commission policy which requires that the ability to vary contract demand only be provided under generally applicable tariff provisions.<sup>9</sup> Accordingly, within 30 days, the Commission directs WIC either to file a revised agreement removing the impermissible material deviation or to file revised tariff records offering the same flexibility to other similarly situated shippers.

By direction of the Commission

Kimberly D. Bose,  
Secretary.

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<sup>8</sup> WIC's *pro forma* service agreement includes blanks that allow the contract demand to change on specific dates. However, there is no provision in WIC's tariff, including its *pro forma* service agreement, that would make available to other shippers the ability to accelerate or to defer the changes to contract demand that are specified in their service agreements.

<sup>9</sup> WIC claims that the Commission has approved similar provisions via Commission staff delegated letter orders. However, delegated letter orders do not establish any binding precedent on the Commission. *E.g. Millennium Pipeline Co., LLC*, 145 FERC ¶ 61,088, at P 10 n.11 (2013).

**APPENDIX**

**Wyoming Interstate Company, L.L.C.  
FERC NGA Gas Tariff  
WIC Tariff**

***Tariff Records Conditionally Accepted Effective December 1, 2014***

[Part I: Overview, Section 1 - Table of Contents, 18.0.0](#)

[Part VII: Non-Conforming, , 10.0.0](#)

[Part VII: Non-Conforming, Section 10 - Chesapeake Energy Marketing, Inc. #41266000, 2.0.0](#)

[Part VII: Non-Conforming, Section 10.1 - CEMI #41266000 Exhibit A, 2.0.0](#)

[Part VII: Non-Conforming, Section 10.2 - CEMI #41266000 Exhibit B, 2.0.0](#)