

152 FERC ¶ 61,161  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

August 28, 2015

In Reply Refer To:  
Horizon Pipeline Company, L.L.C.  
Docket No. RP15-1147-000

Horizon Pipeline Company L.L.C.  
3250 Lacey Road, Suite 700  
Downers Grove, IL 60515-7918

Attention: Kevin L. Palmer  
Manager

Reference: Non-Conforming Recourse Rate Agreement

Dear Mr. Palmer:

1. On July 30, 2015, Horizon Pipeline Company, L.L.C. (Horizon) filed tariff records to reflect a non-conforming transportation rate schedule FTS agreement (Contract No. 145934) (Agreement) between Horizon and Main Line Generation, LLC (MLG).<sup>1</sup> Horizon requests the tariff records be accepted effective September 1, 2015. The Commission conditionally accepts Horizon's tariff records effective September 1, 2015, subject to the conditions more fully discussed below.

2. Horizon's proposed agreement deviates from the FTS form of service agreement in its currently effective FERC Gas Tariff as the maximum daily quantity (MDQ) totals under the Agreement include two separate MDQ totals for separate periods as part of the quantity blank. Specifically, Horizon proposes an MDQ of 24,000 Dth/day between September 1, 2015 through November 30, 2016 and an increased MDQ of 80,000 Dth/day from December 1, 2016 through November 30, 2017. Instead of entering into two separate contracts, Horizon states that the parties preferred to have a single contract for "administrative ease." Horizon states that the additional capacity has been

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<sup>1</sup> Horizon Pipeline Company, L.L.C.; FERC NGA Gas Tariff; First Revised Volume No. 1; [Sheet No. 256, General Terms and Conditions - Sections 37, 37.1 and 37.2, 3.0.0, Part 3.1, Contract No. 145934-FTSHPC, 0.0.0.](#)

posted as available on its website since the inception of Horizon's system in 2002. Horizon asserts that the non-conforming provision does not affect the quality of service to MLG nor does it create a risk of undue discrimination against other shippers.

3. Public notice of the filing was issued on August 3, 2015. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2015)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2015)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late interventions 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. If a pipeline and a shipper enter into a contract that materially deviates from the pipeline's form of service agreement, the Commission's regulations require the pipeline to file the contract containing the material deviations with the Commission.<sup>2</sup> In *Columbia*, the Commission clarified that a material deviation 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.<sup>3</sup> The Commission prohibits negotiated terms and conditions of service 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>4</sup> However, not all material deviations are impermissible. As the Commission explained in *Columbia*,<sup>5</sup> provisions that materially deviate from the corresponding *pro forma* agreement fall into two general categories: (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.<sup>6</sup>

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<sup>2</sup> 18 C.F.R. § 154.1(d) (2015); 18 C.F.R. § 154.112(b) (2015).

<sup>3</sup> *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001) (*Columbia*).

<sup>4</sup> *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113, at P 28 (2010) (*Monroe Gas*).

<sup>5</sup> *Columbia*, 97 FERC at 62,003-04.

<sup>6</sup> *Equitrans, L.P.*, 130 FERC ¶ 61,024, at P 5 (2010).

5. The Commission cannot accept Horizon's proposed non-conforming provision contained in the agreement with MLG as a permissible deviation from the *pro forma* service agreement. Administrative ease is an insufficient reason to accept a non-conforming contract that materially deviates from the pipeline's form of service agreement, potentially resulting in a shipper receiving a different quality of service than that offered other shippers under Horizon's generally applicable tariff, and may affect the quality of service received by others.<sup>7</sup>

6. The non-conforming provisions that vary MDQ over two periods of time present a substantial risk of undue discrimination among shippers and therefore constitute an impermissible material deviation from Horizon's form of service agreement. Therefore, Horizon is required, within 30 days of the issuance of this order, to either (1) revise the *pro forma* service agreement in its tariff to offer such a varying MDQ provision to all similarly situated shippers, or (2) revise the MLG Agreement to remove the varying MDQ contract provision.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

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<sup>7</sup> *Monroe Gas*, 130 FERC ¶ 61,113 at P 28.